

PROCEDURAL RULES OF THE COMMISSION AND THE DEPARTMENT

16 Texas Administrative Code, Chapter 60

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Subchapter A. General Provisions.

60.1. Authority. *(Adopted effective July 1, 2009, 34 TexReg 4326)*

These rules are promulgated under the authority of Texas Occupations Code, Chapter 51. These rules apply except in the event of a conflict with other statutory provisions related to specific programs regulated by the Commission and the Department.

60.10. Definitions. *(Adopted effective July 1, 2009, 34 TexReg 4326)*

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

- (1) **Advisory Board**--A board, committee, council, or other body that is established by law to advise the Commission or Department on rules, policies, and/or technical matters.
- (2) **ALJ**--Administrative law judge employed by the State Office of Administrative Hearings.
- (3) **Alternative Dispute Resolution (ADR) Administrator**--The trained coordinator designated by the Commission:
 - (A) to coordinate and oversee the negotiated rulemaking and ADR procedures used by the Department;
 - (B) to serve as a resource for any training needed to implement the negotiated rulemaking and ADR procedures; and
 - (C) to collect data concerning the effectiveness of the negotiated rulemaking and ADR procedures. The ADR Administrator also may conduct ADR proceedings.
- (4) **Alternative Dispute Resolution (ADR) Procedures**--Alternative processes to judicial forums or administrative agency contested case proceedings for the voluntary settlement of contested matters through the facilitation of an impartial third-party.
- (5) **APA**--The Administrative Procedure Act (TEX. GOV'T. CODE, Chapter 2001).
- (6) **Applicant**--Any person seeking a license from the Department.
- (7) **Commission**--Texas Commission of Licensing and Regulation.
- (8) **Complainant**--Any person who has filed a complaint with the Department against any person whose activities are subject to the jurisdiction of the Department.
- (9) **Contested case or proceeding**--A proceeding in which the legal rights, duties, or privileges of a party are to be determined by the Commission and/or Executive Director after an opportunity for adjudicative hearing.
- (10) **Department**--Texas Department of Licensing and Regulation.
- (11) **Director of Enforcement**--The person who directs and oversees investigations, prosecutions, and other activities of the enforcement division of the Texas Department of Licensing and Regulation.
- (12) **Emergency**--Any of the following events that prevent a person from taking a scheduled examination:
 - (A) death of a spouse or family member within the second degree of consanguinity;
 - (B) personal medical necessity;
 - (C) medical necessity of a spouse or dependent; or
 - (D) severe weather or act of God that prevents the person from reaching the examination site.
- (13) **Executive Director**--The head administrative official of the Texas Department of Licensing and Regulation.

- (14) **Final Decision Maker**--The Commission and/or the Executive Director, both of whom are authorized by law to render the final decision in a contested case.
- (15) **License**--A license, certificate, registration, title, commission, or permit issued by the Department.
- (16) **License holder**--A person who holds a license issued by the Department.
- (17) **Mediation**--A confidential, informal dispute resolution process in which an impartial person, the mediator, facilitates communication between or among the parties to promote reconciliation, settlement, or understanding among them.
- (18) **Mediator**--The person who presides over a mediation. The mediator shall encourage and assist the parties in reaching a settlement but may not compel or coerce the parties to enter into a settlement agreement. The mediator may be a Department employee, an employee from another Texas state agency, or a person in the mediation profession who is not a Texas state employee ("private mediator").
- (19) **Negotiated Rulemaking**--A consensus-based process in which the Department develops a proposed rule by using a neutral facilitator and a balanced negotiating committee composed of representatives of all interests that the rule will affect including those interests represented by the Department itself. See Negotiated Rulemaking Act, Texas Government Code, Chapter 2008.
- (20) **Party**--A person admitted to participate in a contested case.
- (21) **Penalty or Administrative Penalty**--A monetary fine imposed by the Commission or the Executive Director on a licensee or other person who has violated this chapter or a statute or rule governing a program regulated by the Department.
- (22) **Person**--Any individual, partnership, corporation, or other legal entity, including a state agency or governmental subdivision.
- (23) **Pleading**--A written document submitted by a party, or a person seeking to participate in a case as a party, which requests procedural or substantive relief, makes claims, alleges facts, makes legal argument, or otherwise addresses matters involved in the case.
- (24) **Presiding Officer**--The Commission member designated by the Governor to serve as the lead Commission official as defined under Texas Occupations Code, §51.056.
- (25) **Respondent**--Any person, regardless of whether the person is licensed or unlicensed, who is charged with violating a law establishing a regulatory program administered by the Department or a rule adopted by or an order issued by the Commission or the Executive Director.
- (26) **Rule**--Any Commission statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the Department or Commission.
- (27) **Sanction**--An action by the Commission or Executive Director against a license holder or another person, including the denial, suspension, or revocation of a license, the reprimand of a license holder, the placement of a license holder on probation, or refusal to renew.
- (28) **SOAH**--State Office of Administrative Hearings.

Subchapter B. Powers and Responsibilities.

60.20. General Powers and Duties of the Commission. *(Adopted effective July 1, 2009, 34 TexReg 4326)*

- (a) The Commission shall have primary responsibility for policy-making activities including but not limited to:
 - (1) setting fees;
 - (2) adopting rules;
 - (3) imposing sanctions and penalties; and

- (4) issuing final orders in contested cases.
- (b) The Commission shall have the sole responsibility for the adoption of rules proposed by the Department or the Commission.
- (c) The Commission shall provide reasonable accommodations, as required by the Americans with Disabilities Act of 1990, Public Law 101-336 and any subsequent amendments, for the public to participate in the programs regulated by the Department.
- (d) Upon request, the Commission shall provide reasonable access to persons who do not speak English to the programs regulated by the Department.

60.21. Commission Meetings--Procedures. *(Adopted effective July 1, 2009, 34 TexReg 4326)*

- (a) Every regular, special, or called meeting of the Commission shall be open to the public as provided by the Government Code, Chapter 551 ("the Open Meetings Act").
- (b) Meetings will be conducted according to the current edition of *Robert's Rules of Order Newly Revised* in all instances to which they are applicable as long as they are not inconsistent with the constitution, the statutes and the rules of the Commission. Any *Robert's Rules of Order Newly Revised* may be modified as deemed necessary by the presiding officer for the proper conduct of the meeting subject to an objection by a Commission member.
- (c) A quorum for the Commission is a majority of all the members of the Commission as designated by statute. When a quorum is present, a motion before the Commission is carried by an affirmative vote of the majority of the Commissioner members present that are participating in the vote.
- (d) The presiding officer may limit the number and length of comments provided on any item on the agenda subject to an objection from a Commission member.
- (e) As a member of the Commission, the presiding officer may make motions without the necessity of relinquishing the chair subject to an objection from a Commission member.
- (f) The Commission shall provide the public with a reasonable opportunity to appear before the Commission and to speak on any issue under the Commission's jurisdiction. Persons wishing to speak at a Commission meeting may sign in at the beginning of the meeting and may speak during the public comment portion of the meeting.

60.22. General Powers and Duties of the Department and the Executive Director. *(Adopted effective July 1, 2009, 34 TexReg 4326)*

- (a) The Executive Director shall have primary responsibility to manage the operations and administration of the Department as provided by Texas Occupations Code Chapter 51 and other applicable law, including but not limited to:
 - (1) issuing licenses;
 - (2) resolving complaints;
 - (3) conducting investigations and inspections;
 - (4) imposing agreed order sanctions and administrative penalties; and
 - (5) administering exams.
- (b) The Executive Director may approve agreed orders in contested cases and shall have authority to issue other orders as provided by law or as delegated by the Commission.
- (c) The Executive Director may propose rules for publication in the *Texas Register* as delegated by the Commission.
- (d) The Executive Director may implement any emergency orders or proclamations issued by the Governor to suspend or amend existing statutes and rules. The Executive Director will notify the Commission of the Department's actions to comply with the Governor's emergency orders or proclamations.

60.23. Commission and Executive Director—Imposing Sanctions and Penalties. *(Adopted effective July 1, 2009, 34 TexReg 4326)*

- (a) The Commission or Executive Director may deny a license application or license renewal, or suspend or revoke any license, if:
 - (1) the license was obtained or attempted to be obtained by fraud or false representation;
 - (2) any required documents submitted as part of the initial or renewal application packet are falsified;
 - (3) the person refused to permit or interfered with an inspection or investigation by an authorized representative of the Commission or Executive Director;
 - (4) the person permitted the use or display of his license by a person not authorized by law to use that license;
 - (5) the person has been convicted of a crime or an offense that carries the possibility of confinement in a state or federal facility; or
 - (6) the person violates a law establishing a regulatory program administered by the Department, or a rule or order of the Commission or the Department.
- (b) The Commission or Executive Director shall consider the factors set forth in Texas Occupations Code, §51.302(b) and may:
 - (1) issue a written reprimand to the person that specifies the violation;
 - (2) revoke, suspend, or deny the person's license;
 - (3) place on probation a person whose license has been suspended;
 - (4) refuse to renew the person's license; or
 - (5) impose administrative penalties on the person.
- (c) If the suspension of a license is probated, the Commission or Executive Director may require the person to:
 - (1) report regularly to the Executive Director on matters that are the basis of the probation;
 - (2) limit practice to the areas prescribed by the Commission or Executive Director;
 - (3) complete professional education until the person attains a degree of skill satisfactory to the Commission or Executive Director in those areas that are the basis for the probation; or
 - (4) complete any other remedial actions agreed to by the parties.
- (d) If a person has outstanding or unpaid administrative penalties, which were imposed by the Commission or the Executive Director, the Department may place a hold on the person's license and the person will not be able to renew the license until the administrative penalties are paid.

60.24. Advisory Boards. *(Adopted effective July 1, 2009, 34 TexReg 4326)*

- (a) Unless otherwise provided by law, the presiding officer of the Commission, with the Commission's approval, shall appoint the members of each advisory board.
- (b) The purpose, duties, manner of reporting, and membership requirements of each advisory board are detailed in the statutes and rules of the specific program regulated by the Department.
- (c) In accordance with Texas Government Code, §2110.008, the Commission establishes the following periods during which the advisory boards listed will continue in existence. The automatic abolishment date of each advisory board will be the date listed for that board unless the Commission subsequently establishes a different date:
 - (1) Advisory Board on Barbering--09/01/2010;

- (2) Advisory Board on Cosmetology--09/01/2010;
- (3) Architectural Barriers Advisory Committee--09/01/2010;
- (4) Air Conditioning & Refrigeration Advisory Council--09/01/2010;
- (5) Auctioneer Education Advisory Board--09/01/2010;
- (6) Board of Boiler Rules--09/01/2010;
- (7) Electrical Safety and Licensing Advisory Board--09/01/2010;
- (8) Elevator Advisory Board--09/01/2010;
- (9) Licensed Court Interpreter Advisory Board--09/01/2010;
- (10) Medical Advisory Committee--09/01/2010;
- (11) Property Tax Consultants Advisory Council--09/01/2010;
- (12) Towing and Storage Advisory Board--09/01/2010;
- (13) Vehicle Protection Product Warrantor Advisory Board--09/01/2010;
- (14) Water Well Drillers Advisory Council--09/01/2010; and
- (15) Weather Modification Advisory Committee--09/01/2010.

Subchapter C. License Applications.

60.30. Initial License Applications. *(Adopted effective July 1, 2009, 34 TexReg 4326)*

- (a) All license applications must be submitted on Department-approved forms.
- (b) An applicant must complete all licensure requirements within one year of the date the application is received by the Department, or the application shall be deemed void.
- (c) If the applicant does not meet the deadline established in subsection (b), the applicant must reapply for a new license by complying with the requirements and procedures, including any examination requirements and payment of fees.

60.31. License Renewal Applications. *(Adopted effective July 1, 2009, 34 TexReg 4326)*

- (a) All license renewal applications must be submitted on Department-approved forms.
- (b) A license holder will be notified by the Department, not later than the 30th day before the date a person's license is scheduled to expire, of impending expiration of the license.
- (c) Non-receipt of a license renewal notice from the Department does not exempt a person from any requirements of this chapter or the chapter governing the specific program.
- (d) To renew and maintain continuous licensure, the license holder must complete all of the renewal requirements under this chapter and the chapter governing the specific program, including continuing education requirements, prior to the expiration of the license.
- (e) A complete renewal application, along with applicable fees, must be filed with the Department or postmarked prior to license expiration to avoid payment of a late renewal fee.
- (f) Any continuing education that is required to be fulfilled as part of the renewal application must be completed prior to the license expiration date to avoid payment of a late renewal fee.
- (g) A late renewal, if available, means the license holder will have an unlicensed period from the expiration date of the

expired license to the issuance date of the renewed license. During the unlicensed period, a person may not perform any act that requires a license under this chapter or the chapter governing the specific program.

- (h) A license holder must complete all license renewal requirements within one year of the date the license expires, or the renewal application shall be deemed void.
- (i) If the licensee does not meet the deadline established in subsection (h), the person must reapply for a new license by complying with the requirements and procedures, including any examination requirements and payment of fees.

Subchapter D. Criminal Convictions

60.40. Individuals with Criminal Convictions. *(Adopted effective July 1, 2009, 34 TexReg 4326)*

- (a) Texas Occupations Code, Chapter 53 provides that the Commission or Executive Director may suspend or revoke an existing license, disqualify a person from receiving a license, or deny to a person the opportunity to be examined for a license because of a person's conviction of a felony or misdemeanor if the crime directly relates to duties and responsibilities of a licensee. This subsection applies to persons who are not imprisoned at the time the Commission or Executive Director considers the conviction.
- (b) A person currently incarcerated because of a felony conviction may not sit for a license examination, obtain a license, or renew a previously issued license under this chapter or any statute governing a program regulated by the Department.
- (c) A person whose license is revoked by operation of law under Texas Occupations Code, §53.021(b) must wait until release from imprisonment before applying for a new license.
- (d) In considering whether a criminal conviction directly relates to the duties and responsibilities of the occupation for which the person is applying, the Commission and/or Executive Director shall consider the factors listed in Texas Occupations Code, §53.022 and the Criminal Conviction Guidelines established in accordance with Texas Occupations Code, §53.025.
- (e) In determining the present fitness of a person who has been convicted of a crime, the Commission and/or Executive Director shall consider the factors and guidelines referenced in subsection (d) and the factors listed in Texas Occupations Code, §53.023.

Subchapter E. Examinations.

60.50. Examination Rescheduling. *(Adopted effective July 1, 2009, 34 TexReg 4326)*

A person may reschedule an examination at no charge if the person:

- (1) notifies the examination provider at least two days prior to the date of the examination; or
- (2) provides the Department, as soon as possible, with documentation acceptable to the Department of the person's inability to take the examination because of an emergency.

60.51. Examination Fee Refund. *(Adopted effective July 1, 2009, 34 TexReg 4326)*

To obtain a refund of an examination fee, a person who is unable to take the examination must:

- (1) provide written notice to the Department not less than 10 days prior to the date of the examination; or
- (2) provide the Department, as soon as possible, with documentation acceptable to the Department of the person's inability to take the examination because of an emergency.

60.52. Examination Security. *(Adopted effective July 1, 2009, 34 TexReg 4326)*

- (a) When an examination is required to obtain a license, an applicant or prospective applicant may make use of only such assistance as is available and authorized for all persons taking the examination. A person who uses or provides unauthorized assistance in connection with an examination violates this section. Conduct that violates this section includes but is not limited to the following:

- (1) obtaining or attempting to obtain from any source examination questions or answers for use by an applicant, prospective applicant, or any other person, including a person associated with a school or examination preparation course;
 - (2) providing or attempting to provide examination questions or answers to an applicant, prospective applicant, or any other person, including a person associated with a school or examination preparation course;
 - (3) presenting a falsified or fraudulent document to gain entry to an examination;
 - (4) presenting a falsified or fraudulent document concerning an individual's results from an examination;
 - (5) taking an examination for another person;
 - (6) as an applicant or prospective applicant, knowingly allowing another person to take an examination for the applicant or prospective applicant;
 - (7) while taking an examination, using any materials not authorized by the Department or testing service for use in the examination, including but not limited to notes or study aides;
 - (8) bringing to the examination site or leaving the examination site with examination questions or answers obtained from the current examination or from previous examination attempts;
 - (9) while taking an examination, communicating with any person, other than an authorized representative of the Department or testing service, about the examination; or
 - (10) for open book examinations, bringing any materials into the examination, including hand-written notes in approved reference materials, other than those materials approved by the Department or testing service.
- (b) The contents of any examination that is required for the issuance of a Department license are confidential.

60.53. Access to Examinations. *(Adopted effective July 1, 2009, 34 TexReg 4326)*

- (a) Reasonable accommodation for examinations will be made available as required by the Americans with Disabilities Act of 1990, Public Law 101-336.
- (b) Upon request, examinations may be offered in a foreign language at the expense of the requestor.

60.54. Examination Results. *(Adopted effective July 1, 2009, 34 TexReg 4326)*

- (a) Examination results are valid for one year from the date of the examination, unless stated otherwise in specific program statutes or rules.
- (b) An applicant who fails to meet the time period prescribed by subsection (a) must reapply to retake the examination.

Subchapter F. Fees.

60.80. Program Fees. *(Adopted effective July 1, 2009, 34 TexReg 4326)*

- (a) Most fees set by the Commission are published in the rules relating to the statutes assigned to the Department. These program fees include fees for initial applications, renewals, duplicate licenses, examinations, and any other fees specific to a particular program.
- (b) All program fees are non-refundable unless stated otherwise.

60.81. Charges for Providing Copies of Public Information. *(Adopted effective July 1, 2009, 34 TexReg 4326)*

In providing public information the Department adheres to the standards for cost of copies as adopted under Title 1, TAC, Part 3, Chapter 70, §§70.1-70.12.

60.82. Dishonored Check Fee. *(Adopted effective July 1, 2009, 34 TexReg 4326)*

If a check, drawn to the Texas Department of Licensing and Regulation is dishonored by a payor, the Department shall charge a

fee of \$50 to the drawer or endorser for processing the dishonored check. The Department shall notify the drawer or endorser of the fee by sending a request for payment of the dishonored check and the processing fee by certified mail to the last known business address of the person as shown in the records of the Department. If the Department has sent a request for payment in accordance with the provisions of this section, the failure of the drawer or endorser to pay the processing fee within 15 days after the Department has mailed the request is a violation of these rules and subject to enforcement.

60.83. Late Renewal Fees. *(Adopted effective July 1, 2009, 34 TexReg 4326)*

- (a) A person whose license has been expired for 90 days or less may renew the license by paying a late renewal fee equal to 1 and 1/2 times the renewal fee.
- (b) A person whose license has been expired for more than 90 days but less than one year may renew the license by paying a late renewal fee equal to two times the renewal fee.
- (c) A person paying a late renewal fee is not required to pay the renewal fee in addition to the late renewal fee.
- (d) Pursuant to Texas Occupations Code, §55.002, an individual who fails to renew a license in a timely manner is exempt from the requirement to pay a late renewal fee and is not subject to any other penalty as a result of failing to renew the license in a timely manner if the individual furnishes to the Department satisfactory documentation that the individual failed to renew the license in a timely manner because the individual was on active duty in the United States armed forces serving outside this state. An individual to whom this subsection applies may renew the license by paying the renewal fee.

Subchapter G. Rulemaking.

60.100. Rulemaking. *(Adopted effective July 1, 2009, 34 TexReg 4326)*

The Commission and the Department will follow the rulemaking procedures established in the Administrative Procedures Act (Texas Government Code, Chapter 2001), except when §60.101 is applicable.

60.101. Negotiated Rulemaking. *(Adopted effective July 1, 2009, 34 TexReg 4326)*

- (a) It is the Commission's policy to engage in negotiated rulemaking procedures under Texas Government Code, Chapter 2008, when appropriate. When the Commission finds that proposed rules are likely to be complex, or controversial, or to affect disparate groups, negotiated rulemaking may be proposed.
- (b) When negotiated rulemaking is proposed, the Commission will appoint a convener to assist in determining whether it is advisable to proceed. The convener shall perform the duties and responsibilities contained in Texas Government Code, Chapter 2008.
- (c) If the convener recommends proceeding with negotiated rulemaking and the Commission adopts the recommendation, the Department shall initiate negotiated rulemaking according to the provisions of Texas Government Code, Chapter 2008.

60.102. Petition for Adoption of Rules. *(Adopted effective July 1, 2009, 34 TexReg 4326)*

Any interested party may request adoption of a rule(s) by submitting a letter of request to the Department with a draft of the rule(s) attached. As a minimum the request should contain:

- (1) items to be deleted should be bracketed or lined through;
- (2) items added should be underlined; and
- (3) the rationale for the requested rule change.

Subchapter H. Complaint Handling.

60.200. Complaints. *(Adopted effective July 1, 2009, 34 TexReg 4326)*

- (a) Complaints against a person or entity regulated by the Department are accepted in all forms, and under all circumstances, except as provided under subsection (b).

- (b) A complaint must be filed within two years of the event giving rise to the complaint. Complaints filed after the above stated period will not be accepted by the Department unless the complainant can show good cause to the Executive Director for the late filing.
- (c) Unless stated otherwise in the statutes or rules governing a specific program regulated by the Department, the Executive Director shall require license holders to notify consumers and service recipients of the name, mailing address, and telephone numbers of the Department for purposes of directing complaints to the Department. The notification shall be included on:
 - (1) the written contract for services of an individual or entity regulated by the Department;
 - (2) a sign prominently displayed in the place of business of each individual or entity regulated by the Department if the consumers or service recipients must visit the place of business for said service or products; and
 - (3) a bill for service provided by an individual or entity regulated by the Department.

Subchapter I. Contested Cases.

60.300. Purpose and Scope. *(Adopted effective July 1, 2009, 34 TexReg 4326)*

- (a) Unless otherwise provided by statute or by the provisions of this subchapter, this subchapter will govern the institution, conduct, and determination of all contested cases under the APA.
- (b) SOAH acquires jurisdiction over a contested case at certain stages of the adjudicative matter, as prescribed under the APA. SOAH's rules of procedure, 1 TAC Chapter 155, govern during the period when SOAH has jurisdiction over the contested case.
- (c) In the case of a conflict between SOAH's rules of procedure and the rules in this subchapter, SOAH's rules of procedure will control for the time period starting after the Request to Docket Case form has been filed and concluding after the final amendments or corrections to the proposal for decision have been filed.
- (d) The rules in this subchapter shall not be construed so as to enlarge, diminish, modify, or otherwise alter the jurisdiction, powers, or authority of the Commission, the Executive Director, or the substantive rights of any person or agency.

60.301. Filing of Documents. *(Adopted effective July 1, 2009, 34 TexReg 4326)*

- (a) The original of all pleadings and other documents requesting action or relief in a contested case, shall be filed with SOAH once it acquires jurisdiction. Pleadings, other documents, and service to SOAH shall be directed to the Docketing Division of the State Office of Administrative Hearings at its address in Austin, Texas. The time and date of filing shall be determined by the file stamp affixed by SOAH. Unless otherwise ordered by the ALJ, only the original and no additional copies of any pleading or document shall be filed.
- (b) Unless otherwise provided by law, after a proposal for decision has been issued, originals of documents requesting relief, such as exceptions to the proposal for decision or requests to reopen the hearing, shall be filed with the Department's Executive Director and/or Commission and a copy served on the Department's enforcement division, at their address in Austin, Texas; or by facsimile if the documents contain 20 or fewer pages including exhibits. Filings may be made until 5:00 p.m. on business days. Copies shall be filed with SOAH.

60.302. Notice of Alleged Violations. *(Adopted effective July 1, 2009, 34 TexReg 4326)*

- (a) If, after investigation of a possible violation and the facts surrounding that possible violation, the Department determines that a violation has occurred, the Department shall issue a notice of the alleged violation, stating the facts on which the conclusion that a violation occurred is based, recommending that an administrative penalty or administrative sanction, or both, be imposed on the person charged, and recommending the amount of that proposed penalty and/or type of sanction.
- (b) The written Notice of Alleged Violation shall include:
 - (1) a brief summary of the alleged violation(s);
 - (2) a statement of the amount of the penalty and/or sanction recommended; and

- (3) a statement that the Respondent has the right to a hearing to contest the alleged violation, the amount of the recommended penalty and/or sanction, or both.
- (c) Not later than the 20th day after the date on which the notice is received, the Respondent may accept the determination of the Department, including the recommended penalty and/or sanction, or make a written request for a hearing on that determination. There is a rebuttable presumption that notice is received three days after the notice is mailed. Upon receipt of a written request for hearing, the Department shall submit a Request for Docket Case form to SOAH accompanied by legible copies of all pertinent documents, including but not limited to the Notice of Hearing or other document describing the agency action giving rise to a contested case. In accordance with 1 TAC §155.9, the Department shall request one or more of the following actions on the Request to Docket Case form:
- (1) Setting of hearing;
 - (2) Assignment of an ALJ; and/or
 - (3) Setting of alternative dispute resolution proceeding, including but not limited to mediated settlement conference, mediation, or arbitration.

60.303. Notice of Other Proceedings. *(Adopted effective July 1, 2009, 34 TexReg 4326)*

The Department shall provide notice to all parties in accordance with Texas Government Code §2001.052, and Texas Occupations Code, Chapter 51.

60.304. Disposition by Agreement. *(Adopted effective July 1, 2009, 34 TexReg 4326)*

- (a) Disposition by agreement of any contested case may be made by stipulation, agreed settlement, or consent order, unless precluded by law.
- (b) The Commission may designate its chairperson and/or the Executive Director to adopt or reject stipulations, settlement agreements, or consent orders.
- (c) Parties agreeing to disposition by agreement shall prepare written stipulations, consent order, or settlement agreement, containing proposed findings of fact and conclusions of law, which shall be signed by all the agreeing parties and their designated representatives.
- (d) Upon receipt of the written stipulations, consent order, or settlement agreement the Executive Director and/or the Commission may:
 - (1) adopt the written stipulations, consent order, or settlement agreement and issue a final order;
 - (2) reject the written stipulations, consent order, or settlement agreement and remand the contested case for a hearing before SOAH;
 - (3) reject the written stipulations, consent order, or settlement agreement and order further investigation by the Department; or
 - (4) take such other action as the Executive Director and/or the Commission find just.

60.305. Place and Nature of Hearings *(Adopted effective July 1, 2009, 34 TexReg 4326)*

Every effort shall be made to conduct administrative hearings in Austin, Texas, to achieve the Department's mission to ensure effective and economical use of public resources while adhering to the provisions of 1 TAC §155.13.

60.306. Failure to Attend Hearing and Defaults. *(Adopted effective July 1, 2009, 34 TexReg 4326)*

- (a) If, within twenty days after receiving a Notice of Alleged Violation, the Respondent fails to accept the Department's determination and recommended administrative penalty and/or sanction, or fails to make a written request for a hearing on the determination, the Department may propose entry of a default order against the Respondent unless otherwise provided by applicable law. There is a rebuttable presumption that notice is received three days after the notice was mailed.
- (b) Where a Respondent fails to answer to the Notice of Alleged Violation, the Department may present to the Commission

and/or the Executive Director a motion for default order along with a proposed default order containing findings of fact and conclusions of law. Respondents will be notified as to the time and place the motion for default order will be considered. If a Respondent attends at the time and place prescribed in the notice, an administrative hearing may be set in accordance with §60.302(c).

- (c) After receiving a notice proposing denial of an application or a notice proposing denial of an opportunity to take an examination, an Applicant may request a hearing in writing within twenty days of receipt of the notice or forfeit the right to a hearing unless otherwise provided by applicable law. There is a rebuttable presumption that notice is received three days after the notice was mailed.
- (d) 1 TAC §155.55 applies where a Respondent fails to appear on the day and time set for administrative hearing. In that case, the Department's staff may move either for dismissal of the case from SOAH's docket or for the issuance of a default proposal for decision by the ALJ.
- (e) Any document served upon a party is prima facie evidence of receipt if it is directed to the party's last known complete, correct address as shown by the Department's records. This presumption is rebuttable. Failure to claim properly addressed certified or registered mail will not support a finding of non-delivery.

60.307. Hearing Costs. *(Adopted effective July 1, 2009, 34 TexReg 4326)*

- (a) Costs associated with the contested case hearing before SOAH shall be determined according to the rules in 1 TAC §155.43, except as noted below.
- (b) On the written request by a party to a case or on request of the ALJ, a written transcript of all or part of the proceedings shall be prepared. The cost of the transcript is borne by the requesting party. This section does not preclude the parties from agreeing to share the costs associated with the preparation of a transcript. If only the ALJ requests a transcript, costs will be assessed to the Respondent(s) or Applicant(s), as appropriate.
- (c) Any party who needs a certified or licensed language interpreter for presentation of its case shall be responsible for requesting the services of an interpreter by contacting SOAH and by following SOAH procedures provided in 1 TAC §155.

60.308. Proposals for Decision. *(Adopted effective July 1, 2009, 34 TexReg 4326)*

Proposed decisions for contested cases issued by a SOAH ALJ shall be brought before the Commission for decision, in accordance with the APA.

60.309. Filing of Exception and Replies. *(Adopted effective July 1, 2009, 34 TexReg 4326)*

- (a) Any party of record may, within 15 days after the date of service of a proposal for decision, file exceptions to the proposal for decision with the Executive Director of the Department and/or the Commission, as appropriate. Replies to such exceptions may be filed within 15 days after the deadline for filing such exceptions. Copies of exceptions and replies shall be filed with SOAH and served on the enforcement division of the Department as provided by §60.301(b).
- (b) A request for extension of time within which to file exceptions or replies shall be filed with the Department and SOAH, a copy thereof shall be served on all other parties of record by the party making such a request. An extension of time may be granted by agreement of parties or by order of the ALJ assigned to the case upon a showing of good cause.

60.310. Final Orders, Motions for Rehearing, and Emergency Orders. *(Adopted effective July 1, 2009, 34 TexReg 4326)*

- (a) A decision or order in a contested case shall be in writing and shall be signed by the Commission, the Executive Director or both, as applicable. Decisions or orders shall include findings of fact and conclusions of law separately stated. A party notified by mail of a decision or order shall be presumed to have been notified on the third day after the date on which the notice is mailed.
- (b) The timely filing of a motion for rehearing is a prerequisite to appeal. A motion for rehearing must be filed by a party not later than the 20th day after the date on which the party or the party's attorney of record is notified of the decision or order.
- (c) In the absence of a timely filed motion for rehearing, a decision or order is final on the expiration of the period for filing a motion for rehearing as described in subsection (b). The decision is not appealable.

- (d) If a timely motion for rehearing is filed as described in subsection (b), the Commission or Executive Director will act on a motion for rehearing not later than the 45th day after the date on which the party or the party's attorney of record is notified of the decision or order. The Commission or Executive Director may by written order extend the time for taking action, but may not extend the time beyond the 90th day after the date on which the party or the party's attorney of record is notified of the decision or order. The decision or order is final and appealable on the date an order overruling a motion for rehearing is signed or on the date the motion is overruled by operation of law.
- (e) If the Commission or the Executive Director finds that an imminent peril to the public health, safety, or welfare requires immediate effect of a decision or order, that finding shall be recited in the decision or order as well as the fact that the decision or order is final and effective on the date signed. The decision or order is final and appealable on the date signed and no motion for rehearing is required as a prerequisite for appeal.
- (f) A petition for judicial review must be filed in a District Court of Travis County Texas within 30 days after the order is final and appealable, as provided under the APA. A party filing a petition for judicial review must also comply with the requirements of Texas Occupations Code, §51.307.
- (g) A party who appeals a final decision in a contested case must pay all costs for the preparation of the original or a certified copy of the record of the agency proceeding that is required to be transmitted to the reviewing court.
- (h) If, after judicial review, the penalty is reduced or not assessed, the Executive Director shall remit to the person charged the appropriate amount, plus accrued interest if the penalty has been paid, or shall execute a release of the bond if a supersedeas bond has been posted. The accrued interest on amounts remitted by the Executive Director under this subsection shall be paid at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and shall be paid for the period beginning on the date that the assessed penalty is paid to the Department and ending on the date the penalty is remitted.

60.311. Corrected Orders. *(Adopted effective July 1, 2009, 34 TexReg 4326)*

The Executive Director may enter a corrected order to correct a clerical mistake in an order of the Commission.

Subchapter J. Mediation for Contested Cases.

60.400. Alternative Dispute Resolution--Mediation. *(Adopted effective July 1, 2009, 34 TexReg 4326)*

In addition to the procedures under §60.304, the Department uses mediation as an alternative method for resolving contested cases consistent with Texas Government Code, Chapters 2001 and 2009; Texas Civil Practice and Remedies Code, Chapter 154; and the model guidelines for the use of ADR by state agencies developed by SOAH.

60.401. Referral of Contested Matter for Mediation. *(Adopted effective July 1, 2009, 34 TexReg 4326)*

The Department's Director of Enforcement, on behalf of the Department, may seek to resolve a contested matter through mediation involving all parties, and if so, shall refer the matter for mediation in accordance with this subchapter.

60.402. Appointment of Mediator. *(Adopted effective July 1, 2009, 34 TexReg 4326)*

- (a) For each matter referred for mediation, the ADR Administrator shall:
 - (1) preside over the mediation proceeding,
 - (2) assign a Departmental mediator,
 - (3) appoint a mediator from another state agency, or
 - (4) appoint a private mediator.
- (b) A private mediator may be appointed provided that:
 - (1) the parties unanimously agree to use a private mediator;
 - (2) the parties unanimously agree to the selection of the person to serve as the private mediator; and
 - (3) the private mediator agrees to be subject to the direction of the ADR Administrator and to all time limits

imposed by the ADR Administrator, statute or regulation.

- (c) If a private mediator or a mediator from another state agency is used, the costs for the services of that mediator shall be apportioned equally among the parties, unless otherwise agreed upon by the parties, and shall be paid directly to the private mediator or the other state agency.
- (d) Unless the parties agree otherwise in writing, each party shall be responsible for its own costs incurred in connection with the mediation, including without limitation, costs of document reproduction, attorney's fees, consultant fees and expert fees.
- (e) The ADR Administrator may assign a substitute or additional mediator to a proceeding as the ADR Administrator deems necessary.

60.403. Qualifications of Mediators. *(Adopted effective July 1, 2009, 34 TexReg 4326)*

- (a) All mediators must have completed a minimum of 40 hours of Texas mediation training as prescribed under Texas Civil Practices and Remedies Code, Chapter 154.
- (b) All mediators shall subscribe to the ethical guidelines for mediators adopted by the ADR Section of the State Bar of Texas.

60.404. Disqualifications of Mediators. *(Adopted effective July 1, 2009, 34 TexReg 4326)*

- (a) If the mediator is a SOAH ALJ, that person will not also sit as the ALJ for the case if the contested matter goes to hearing.
- (b) If the mediator is an employee of the Department and the dispute does not settle, that mediator will not have any further contact or involvement concerning the contested matter.

60.405. Qualified Immunity of the Mediator. *(Adopted effective July 1, 2009, 34 TexReg 4326)*

The mediator shall have the qualified immunity prescribed by the Texas Civil Practice and Remedies Code, §154.055, if applicable.

60.406. Commencement of Mediation. *(Adopted effective July 1, 2009, 34 TexReg 4326)*

- (a) Mediation may begin, at the discretion of the Director of Enforcement, anytime after the Department anticipates initiation of an adverse action against an applicant or respondent. The Department may issue a Notice of Mediation along with a Notice of Alleged Violation or with a notice of a proposed denial of licensure or opportunity to take an examination. Prior to the submission of a Request for Docket Case form to SOAH, and with agreement of all parties, the ADR Administrator may schedule mediation upon any party's request.
- (b) After a Request for Docket Case form has been submitted to SOAH, the contested case is subject to SOAH's procedures under 1 TAC §155, and it is at the discretion of the ALJ whether mediation may apply or may continue to apply to a contested case.

60.407. Stipulations. *(Adopted effective July 1, 2009, 34 TexReg 4326)*

When mediation does not result in the full settlement of a matter, the parties in conjunction with the mediator, may limit the contested issues through the entry of written stipulations. Such stipulations shall be forwarded or formally presented to the ALJ assigned to conduct the contested case hearing on the merits and shall be made part of the hearing record.

60.408. Agreements. *(Adopted effective July 1, 2009, 34 TexReg 4326)*

- (a) All agreements between or among parties that are reached as a result of mediation must be committed to writing and the terms of the agreement will be incorporated in an order that is subject to approval by the Executive Director or Commission.
- (b) A final written agreement to which the Department is a signatory that is reached as a result of the mediation is subject to or excepted from required disclosure in accordance with Texas Government Code, Chapter 552.

60.409. Confidentiality. *(Adopted effective July 1, 2009, 34 TexReg 4326)*

- (a) Except as provided in subsections (c) and (d), a communication relating to the subject matter made by a participant in mediation, whether before or after the institution of formal mediation proceedings, is confidential, is not subject to disclosure, and may not be used as evidence in any further proceeding.
- (b) Any notes or records made regarding a mediation are confidential, and participants, including the mediator, may not be required to testify in any proceedings relating to or arising out of the matter in dispute or be subject to process requiring disclosure of confidential information or data relating to or arising out of the matter in dispute.
- (c) An oral communication or written material used in or made a part of a mediation process is admissible or discoverable only if it is admissible or discoverable independent of the mediation.
- (d) If this section conflicts with other legal requirements for disclosure of communications or materials, the issue of confidentiality may be presented to the judge to determine, in camera, whether the facts, circumstances, and context of the communications or materials sought to be disclosed warrant a protective order or whether the communications or materials are subject to disclosure.
- (e) All communications in the mediation between parties and between each party and the mediator are confidential. No shared information will be given to the other party unless the party sharing the information explicitly gives the mediator permission to do so. Material provided to the mediator will not be provided to other parties and will not be filed or become part of the contested case record. All notes taken during the mediation conference will be destroyed at the end of the process.