

---

# TEXAS REGISTER

*Volume 49 Number 12*

*March 22, 2024*

*Pages 1793 - 2014*

---



# TEXAS REGISTER

a section of the  
Office of the Secretary of State  
P.O. Box 12887  
Austin, Texas 78711  
(512) 463-5561  
FAX (512) 463-5569

<https://www.sos.texas.gov>  
[register@sos.texas.gov](mailto:register@sos.texas.gov)

***Texas Register*, (ISSN 0362-4781, USPS 12-0090)**, is published weekly (52 times per year) for \$340.00 (\$502.00 for first class mail delivery) by Matthew Bender & Co., Inc., 3 Lear Jet Lane Suite 104, P. O. Box 1710, Latham, NY 12110.

Material in the *Texas Register* is the property of the State of Texas. However, it may be copied, reproduced, or republished by any person without permission of the *Texas Register* director, provided no such republication shall bear the legend *Texas Register* or "Official" without the written permission of the director.

The *Texas Register* is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Easton, MD and at additional mailing offices.

**POSTMASTER:** Send address changes to the *Texas Register*, 4810 Williamsburg Road, Unit 2, Hurlock, MD 21643.

***Secretary of State*** - Jane Nelson

***Director*** - Je T'aime Swindell

***Editor-in-Chief*** - Jill S. Ledbetter

**Editors**

Leti Benavides

Jay Davidson

Briana Franklin

Belinda Kirk

Laura Levack

Joy L. Morgan

Matthew Muir

Breanna Mutschler

# IN THIS ISSUE

## **GOVERNOR**

Appointments .....1799

## **ATTORNEY GENERAL**

Requests for Opinions .....1801

Opinions .....1801

## **PROPOSED RULES**

### **PUBLIC UTILITY COMMISSION OF TEXAS**

#### PROCEDURAL RULES

16 TAC §22.104 .....1803

### **TEXAS DEPARTMENT OF LICENSING AND REGULATION**

#### PROCEDURAL RULES OF THE COMMISSION AND THE DEPARTMENT

16 TAC §60.24 .....1804

#### DRIVER EDUCATION AND SAFETY

16 TAC §84.30 .....1807

#### SANITARIANS

16 TAC §119.10 .....1809

#### LICENSED DYSLEXIA THERAPISTS AND LICENSED DYSLEXIA PRACTITIONERS

16 TAC §120.65 .....1810

#### BEHAVIOR ANALYST

16 TAC §121.65 .....1812

### **TEXAS RACING COMMISSION**

#### GENERAL PROVISIONS

16 TAC §303.201 .....1814

16 TAC §303.202 .....1815

#### RACETRACK LICENSES AND OPERATIONS

16 TAC §309.361 .....1816

#### OTHER LICENSES

16 TAC §311.4 .....1818

#### VETERINARY PRACTICES AND DRUG TESTING

16 TAC §319.362 .....1819

### **TEXAS EDUCATION AGENCY**

#### ADAPTATIONS FOR SPECIAL POPULATIONS

19 TAC §§89.1011, 89.1040, 89.1050, 89.1055 .....1823

19 TAC §89.1131 .....1835

#### ADAPTATIONS FOR SPECIAL POPULATIONS

19 TAC §§89.1049, §89.1065 .....1838

19 TAC §89.1141 .....1840

### FOUNDATION SCHOOL PROGRAM

19 TAC §105.1031 .....1840

### **STATE BOARD OF DENTAL EXAMINERS**

#### DENTAL LICENSURE

22 TAC §101.6 .....1842

22 TAC §101.14 .....1843

#### FEEES

22 TAC §102.1 .....1845

#### DENTAL HYGIENE LICENSURE

22 TAC §103.10 .....1846

#### EXTENSION OF DUTIES OF AUXILIARY PERSONNEL--DENTAL ASSISTANTS

22 TAC §114.5 .....1847

22 TAC §114.7 .....1848

#### EXTENSION OF DUTIES OF AUXILIARY PERSONNEL--DENTAL HYGIENE

22 TAC §115.10 .....1850

### **TEXAS STATE BOARD OF PHARMACY**

#### PHARMACIES

22 TAC §291.12 .....1852

22 TAC §291.131 .....1854

### **CANCER PREVENTION AND RESEARCH INSTITUTE OF TEXAS**

#### POLICIES AND PROCEDURES

25 TAC §701.3 .....1863

#### GRANTS FOR CANCER PREVENTION AND RESEARCH

25 TAC §§703.10, 703.21, 703.23 .....1867

### **TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION**

#### MONITORING AND ENFORCEMENT

28 TAC §180.2 .....1872

### **GENERAL LAND OFFICE**

#### EXPLORATION AND LEASING OF STATE OIL AND GAS

31 TAC §9.81 .....1874

### **TEXAS COMMISSION ON LAW ENFORCEMENT**

#### ADMINISTRATION

37 TAC §211.1, §211.16 .....1876

#### ENROLLMENT, LICENSING, APPOINTMENT, AND SEPARATION

37 TAC §217.9.....	1881	10 TAC §§23.20 - 23.29 .....	1903
SCHOOL MARSHALS		10 TAC §§23.30 - 23.32 .....	1904
37 TAC §§227.1, 227.4, 227.6.....	1882	10 TAC §§23.40 - 23.42 .....	1904
<b>STATE PENSION REVIEW BOARD</b>		10 TAC §§23.50 - 23.52 .....	1904
GENERAL PROVISIONS		10 TAC §§23.60 - 23.62 .....	1906
40 TAC §601.70.....	1883	10 TAC §§23.70 - 23.72 .....	1906
STANDARDIZED FORM		TEXAS BOOTSTRAP LOAN PROGRAM RULE	
40 TAC §605.1, §605.3.....	1885	10 TAC §§24.1 - 24.12 .....	1906
<b>WITHDRAWN RULES</b>		10 TAC §§24.1 - 24.12 .....	1907
<b>STATE BOARD OF DENTAL EXAMINERS</b>		TEXAS HOUSING TRUST FUND RULE	
EXTENSION OF DUTIES OF AUXILIARY PERSONNEL--DENTAL HYGIENE		10 TAC §§26.1 - 26.7 .....	1908
22 TAC §115.10.....	1887	10 TAC §§26.1 - 26.7 .....	1908
<b>TEXAS STATE BOARD OF SOCIAL WORKER EXAMINERS</b>		<b>TEXAS RACING COMMISSION</b>	
SOCIAL WORKER LICENSURE		OTHER LICENSES	
22 TAC §781.323.....	1887	16 TAC §311.2.....	1910
<b>ADOPTED RULES</b>		16 TAC §311.101.....	1911
<b>TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS</b>		OFFICIALS AND RULES OF HORSE RACING	
ADMINISTRATION		16 TAC §313.501.....	1912
10 TAC §1.23.....	1889	16 TAC §313.504.....	1912
10 TAC §1.23.....	1890	16 TAC §313.505.....	1913
ENFORCEMENT		PARI-MUTUEL WAGERING	
10 TAC §§2.101 - 2.104 .....	1893	16 TAC §321.1.....	1913
10 TAC §2.301, §2.302.....	1893	16 TAC §321.21.....	1915
10 TAC §2.401.....	1895	16 TAC §321.413.....	1915
SINGLE FAMILY PROGRAMS UMBRELLA RULE		16 TAC §321.417.....	1916
10 TAC §§20.1 - 20.15 .....	1898	16 TAC §321.607.....	1916
10 TAC §§20.1 - 20.15 .....	1899	<b>TEXAS EDUCATION AGENCY</b>	
SINGLE FAMILY HOME PROGRAM		STATEMENT OF INVESTMENT OBJECTIVES, POLICIES, AND GUIDELINES OF THE TEXAS PERMANENT SCHOOL FUND	
10 TAC §23.1, §23.2.....	1900	19 TAC §33.2.....	1917
10 TAC §§23.20 - 23.29 .....	1900	STATE REVIEW AND APPROVAL OF INSTRUCTIONAL MATERIALS	
10 TAC §§23.30 - 23.32 .....	1900	19 TAC §§67.21, 67.23, 67.25.....	1919
10 TAC §§23.40 - 23.42 .....	1901	19 TAC §67.81, §67.83.....	1921
10 TAC §§23.50 - 23.52 .....	1901	PLANNING AND ACCOUNTABILITY	
10 TAC §§23.60 - 23.62 .....	1901	19 TAC §97.1075, §97.1079.....	1922
10 TAC §§23.70 - 23.72 .....	1901	BUDGETING, ACCOUNTING, AND AUDITING	
SINGLE FAMILY HOME PROGRAM		19 TAC §109.41.....	1922
10 TAC §23.1, §23.2.....	1903	19 TAC §109.5001.....	1925

TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR SCIENCE	22 TAC §884.1.....	1947
19 TAC §112.26.....		1928
<b>TEXAS BOARD OF ARCHITECTURAL EXAMINERS</b>		
ARCHITECTS		
22 TAC §1.29.....		1929
LANDSCAPE ARCHITECTS		
22 TAC §3.29.....		1930
REGISTERED INTERIOR DESIGNERS		
22 TAC §5.39.....		1930
<b>TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGIST</b>		
APPLICATIONS AND EXAMINATIONS		
22 TAC §463.9.....		1931
<b>TEXAS STATE BOARD OF EXAMINERS OF PROFESSIONAL COUNSELORS</b>		
PROFESSIONAL COUNSELORS		
22 TAC §681.72.....		1934
<b>TEXAS STATE BOARD OF SOCIAL WORKER EXAMINERS</b>		
SOCIAL WORKER LICENSURE		
22 TAC §781.404.....		1935
22 TAC §781.412.....		1938
22 TAC §781.501.....		1939
<b>TEXAS STATE BOARD OF EXAMINERS OF MARRIAGE AND FAMILY THERAPISTS</b>		
LICENSURE AND REGULATION OF MARRIAGE AND FAMILY THERAPISTS		
22 TAC §801.2.....		1939
22 TAC §801.48.....		1940
22 TAC §801.142.....		1941
22 TAC §801.143.....		1941
22 TAC §801.305.....		1942
22 TAC §801.305.....		1943
<b>TEXAS BEHAVIORAL HEALTH EXECUTIVE COUNCIL</b>		
APPLICATIONS AND LICENSING		
22 TAC §882.23.....		1944
22 TAC §882.28.....		1945
RENEWALS		
22 TAC §883.1.....		1946
COMPLAINTS AND ENFORCEMENT		
	22 TAC §884.1.....	1947
	FEES	
	22 TAC §885.1.....	1947
	<b>TEXAS PARKS AND WILDLIFE DEPARTMENT</b>	
	EXECUTIVE	
	31 TAC §51.673.....	1948
	<b>COMPTROLLER OF PUBLIC ACCOUNTS</b>	
	COMPTROLLER GRANT PROGRAMS	
	34 TAC §§16.21 - 16.24.....	1949
	34 TAC §§16.30, 16.31, 16.35 - 16.38, 16.40 - 16.42.....	1956
	34 TAC §16.33, §16.34.....	1965
	<b>TEXAS COMMISSION ON LAW ENFORCEMENT</b>	
	TRAINING AND EDUCATIONAL PROVIDERS	
	37 TAC §215.13.....	1966
	ENROLLMENT, LICENSING, APPOINTMENT, AND SEPARATION	
	37 TAC §217.1.....	1967
	CONTINUING EDUCATION	
	37 TAC §218.3.....	1969
	PROFICIENCY CERTIFICATES	
	37 TAC §221.46.....	1971
	<b>RULE REVIEW</b>	
	<b>Proposed Rule Reviews</b>	
	Texas Health and Human Services Commission.....	1973
	Department of State Health Services.....	1973
	Health and Human Services Commission.....	1975
	Texas Commission on Fire Protection.....	1975
	Department of Aging and Disability Services.....	1976
	<b>Adopted Rule Reviews</b>	
	Department of State Health Services.....	1976
	Health and Human Services Commission.....	1976
	Texas Commission on Environmental Quality.....	1976
	Texas Commission on Fire Protection.....	1978
	State Pension Review Board.....	1979
	<b>TABLES AND GRAPHICS</b>	
	.....	1981
	<b>IN ADDITION</b>	
	<b>Comptroller of Public Accounts</b>	
	Local Sales Tax Rate Changes Effective April 1, 2024.....	1989
	<b>Office of Consumer Credit Commissioner</b>	

Notice of Rate Ceilings.....1993

**Texas Education Agency**

Announcement of Revised Request for Applications Concerning the 2024-2025 Charter School Program Grant (Subchapters C and D) 1994

**Texas Commission on Environmental Quality**

Agreed Orders.....1995

Combined Notice of Public Meeting and Notice of Application and Preliminary Decision for TPDES Permit for Municipal Wastewater New Permit No. WQ0016386001 .....1998

Notice of Application and Opportunity to Request a Public Meeting for a New Municipal Solid Waste Facility .....1999

Notice of District Petition .....2000

Notice of Opportunity to Comment on a Default Order of Administrative Enforcement Actions .....2000

Notice of Public Meeting Air Quality Standard Permit for Concrete Batch Plants Proposed Registration No. 174858.....2001

Notice of Receipt of Application and Intent to Obtain Municipal Solid Waste Permit .....2002

Notice of Water Quality Application .....2003

Notice of Water Quality Application .....2003

Revised Combined Notice of Public Meeting and Notice of Application and Preliminary Decision for TPDES Permit for Industrial Wastewater New Permit No. WQ0005289000 .....2003

**Texas Health and Human Services Commission**

Public Notice - Amendments to the Texas State Plan for Medical Assistance .....2005

**Texas Department of Insurance**

Company Licensing .....2005

**Texas Commission on Law Enforcement**

State of Texas Model Policies.....2005

**Texas Lottery Commission**

Scratch Ticket Game Number 2582 "\$250,000 50X Cashword" ..2006

**Middle Rio Grande Workforce Development Board**

RFQ for Legal Services .....2011

**North Central Texas Council of Governments**

Notice of Contract Award for Platform Available to Measure the Performance of the Traffic Signals in the Dallas-Fort Worth Region .2012

Request for Qualifications for NCTCOG Traffic Incident Management Training Program (First Responder and Manager's Course and Executive Level Course).....2012

**Public Utility Commission of Texas**

Notice of Application for Recovery of Universal Service Funding 2012

Notice of Application to Transfer Load to ERCOT.....2012

**Workforce Solutions North Texas**

RFQ 2024-012 Real Estate Broker .....2013

# THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

## Appointments

### Appointments for March 5, 2024

Pursuant to HB 5174, 88th Legislature, Regular Session, appointed to the Texas Semiconductor Innovation Consortium Executive Committee for a term to expire at the pleasure of the Governor, David E. Daniel, Jr. of Dallas, Texas.

Pursuant to HB 5174, 88th Legislature, Regular Session, appointed to the Texas Semiconductor Innovation Consortium Executive Committee for a term to expire at the pleasure of the Governor, Sameer P. Pendharkar of Allen, Texas.

Pursuant to HB 5174, 88th Legislature, Regular Session, appointed to the Texas Semiconductor Innovation Consortium Executive Committee for a term to expire at the pleasure of the Governor, Lawrence J. "Larry" Smith of Austin, Texas.

### Appointments for March 7, 2024

Appointed as Judge of the 393rd Judicial District, Denton County, for a term until December 31, 2024, or until her successor shall be duly elected and qualified, Karen A. Alexander of Ponder, Texas (replacing Judge Douglas M. "Doug" Robison of Argyle, who resigned).

Appointed to the Real Estate Research Advisory Committee for a term to expire January 31, 2025, Harry F. Gibbs of Georgetown, Texas (replacing Walter F. "Ted" Nelson of The Woodlands, who is deceased).

Appointed to the Real Estate Research Advisory Committee for a term to expire January 31, 2029, Troy C. Alley, Jr. of DeSoto, Texas (Mr. Alley is being reappointed).

Appointed to the Real Estate Research Advisory Committee for a term to expire January 31, 2029, Kristi L. Davis of Carrollton, Texas (replacing Russell L. Cain of Port Lavaca, whose term expired).

Appointed to the Real Estate Research Advisory Committee for a term to expire January 31, 2029, Patrick Geddes of Celina, Texas (Mr. Geddes is being reappointed).

### Appointments for March 12, 2024

Designating Sam G. "Gregg" Marshall, Ph.D. of Round Rock as presiding officer of the Texas Board of Respiratory Care for a term to expire at the pleasure of the Governor. Dr. Marshall is replacing Latana T. Jackson of DeSoto as presiding officer.

Appointed to the Texas Board of Respiratory Care for a term to expire February 1, 2029, Latana T. Jackson of DeSoto, Texas (Ms. Jackson is being reappointed).

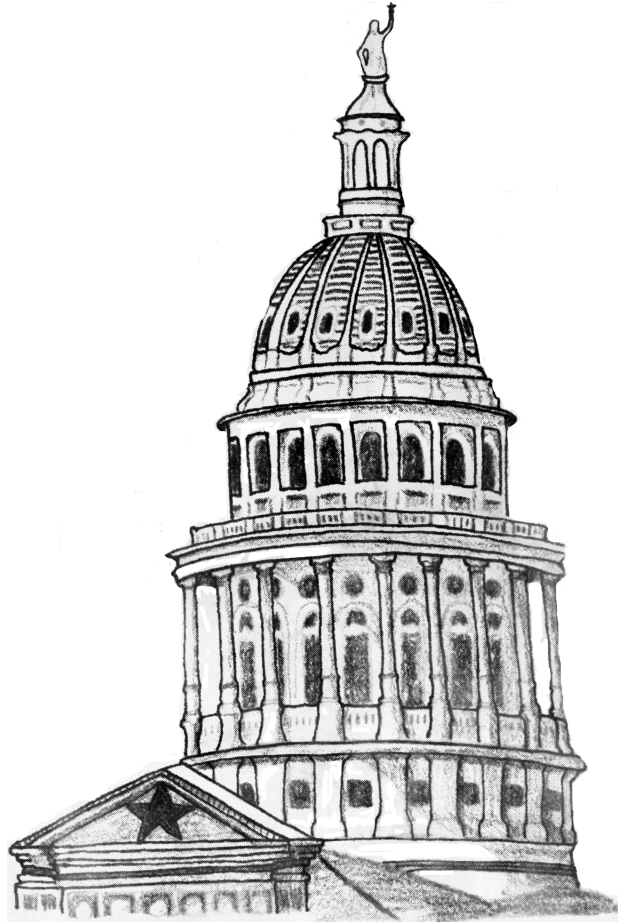
Appointed to the Texas Board of Respiratory Care for a term to expire February 1, 2029, Nathan A. Rodrigues of Round Rock, Texas (replacing Shad J. Pelizzari of Cedar Park, whose term expired).

Appointed to the Texas Board of Respiratory Care for a term to expire February 1, 2029, Sonia K. Sanderson of Beaumont, Texas (Ms. Sanderson is being reappointed).

Greg Abbott, Governor

TRD-202401143







# THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following: Requests for Opinions, Opinions, and Open Records Decisions.

An index to the full text of these documents is available on the Attorney General's website at <https://www.texas.attorneygeneral.gov/attorney-general-opinions>. For information about pending requests for opinions, telephone (512) 463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: <https://www.texasattorneygeneral.gov/attorney-general-opinions>.)

## Requests for Opinions

### RQ-0535-KP

#### Requestor:

The Honorable Brian Birdwell

Chair, Senate Committee on Natural Resources & Economic Development

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Calculation of "average land value" under Local Government Code section 212.209 (RQ-0535-KP)

#### Briefs requested by April 5, 2024

*For further information, please access the website at [www.texasattorneygeneral.gov](http://www.texasattorneygeneral.gov) or call the Opinion Committee at (512) 463-2110.*

TRD-202401124

Justin Gordon

General Counsel

Office of the Attorney General

Filed: March 12, 2024



## Opinions

### Opinion No. KP-0459

The Honorable Constance Filley Johnson

Victoria County Criminal District Attorney

205 North Bridge, Suite 301

Victoria, Texas 77901-8085

Re: Authority of a water control and improvement district to use surplus funds from its interest and sinking fund (RQ-0467-KP)

#### SUMMARY

A court would likely conclude that a water control and improvement district may not use surplus moneys in its interest and sinking fund to reduce indebtedness related to a future potential bond issuance.

Moreover, while we generally do not determine facts in attorney general opinions, we encourage the District to reassess the feasibility of providing a refund of the surplus moneys to taxpayers.

### Opinion No. KP-0460

The Honorable Charles Perry

Chair, Senate Committee on Water, Agriculture, & Rural Affairs

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Whether the refund of court costs required by Health and Safety Code subsection 571.018(j) is limited to patients who are committed to a mental health facility (RQ-0515-KP)

#### SUMMARY

Health and Safety Code subsection 571.018(j) requires court costs paid or advanced by certain inpatient mental health facilities to be refunded where its statutory requirements are met. Health and Safety Code subsection 571.018(h) generally prohibits the State and counties from paying costs for a patient committed to a private mental hospital unless its statutory requirements are met. Subsection 571.018(h) exempts some costs associated with certain hearings and proceedings from its general prohibition against payment. Nothing in either subsection limits the scope of subsection 571.018(j) to only court costs concerning individuals that have been committed. Accordingly, refunds under subsection 571.018(j) are not limited to only those hearings or proceedings involving commitment.

### Opinion No. KP-0461

The Honorable John Fleming

Nacogdoches County Attorney

101 West Main Street, Room 230

Nacogdoches, Texas 75961

Re: Calculation of the amount "not to exceed one-fourth of one percent" in Texas Special District Code section 1069.211, governing the Nacogdoches County Hospital District's allocation of its sales and use tax revenue for economic development (RQ-0516-KP)

#### SUMMARY

A court would likely conclude Special District Local Laws Code section 1069.211 authorizes the Nacogdoches County Hospital District to allocate for economic development up to one-fourth of one percent (0.01 x 0.25) of its annual sales and use tax revenue.

*For further information, please access the website at [www.texasattorneygeneral.gov](http://www.texasattorneygeneral.gov) or call the Opinion Committee at (512) 463-2110.*

TRD-202401125  
Justin Gordon  
General Counsel  
Office of the Attorney General  
Filed: March 12, 2024



# PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

**Symbols in proposed rule text.** Proposed new language is indicated by underlined text. ~~Square brackets and strikethrough~~ indicate existing rule text that is proposed for deletion. “(No change)” indicates that existing rule text at this level will not be amended.

## TITLE 16. ECONOMIC REGULATION

### PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

#### CHAPTER 22. PROCEDURAL RULES SUBCHAPTER F. PARTIES

##### 16 TAC §22.104

The Public Utility Commission of Texas (commission) proposes amendments to §22.104, relating to Motions to Intervene. The amendment will facilitate the implementation of PURA §37.057, as amended by Senate Bill (SB) 1076, enacted by the 88th Texas Legislature (R.S.), which reduced the time for the commission to approve new transmission facility certificate of convenience and necessity (CCN) to 180 days and aligns §22.104 with other commission rules. Specifically, the proposed amendment will change the intervention deadline from 45 days to 30 days for proceedings involving applications for a CCN for a new transmission facility that is subject to PURA §37.057. Commission Staff's proposal also makes minor clerical and grammatical changes to the rule. Project number 56253 is assigned to this proceeding.

##### Growth Impact Statement

The agency provides the following governmental growth impact statement for the proposed rule, as required by Texas Government Code §2001.0221. The agency has determined that for each year of the first five years that the proposed rule is in effect, the following statements will apply:

- (1) the proposed rule will not create a government program and will not eliminate a government program;
- (2) implementation of the proposed rule will not require the creation of new employee positions and will not require the elimination of existing employee positions;
- (3) implementation of the proposed rule will not require an increase and will not require a decrease in future legislative appropriations to the agency;
- (4) the proposed rule will not require an increase and will not require a decrease in fees paid to the agency;
- (5) the proposed rule will not create a new regulation, but will adjust the deadline associated with an existing regulation;
- (6) the proposed rule will not expand, limit, or repeal an existing regulation;
- (7) the proposed rule will not change the number of individuals subject to the rule's applicability; and
- (8) the proposed rule will not affect this state's economy.

##### Fiscal Impact on Small and Micro-Businesses and Rural Communities

There is no adverse economic effect anticipated for small businesses, micro-businesses, or rural communities as a result of implementing the proposed rule. Accordingly, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002(c).

##### Takings Impact Analysis

The commission has determined that the proposed rule will not be a taking of private property as defined in chapter 2007 of the Texas Government Code.

##### Fiscal Impact on State and Local Government

Mackenzie Arthur, Attorney, Rules and Projects Division, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

##### Public Benefits

Mr. Arthur has also determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be consistency for intervention deadlines across commission rules. There will not be any significant anticipated economic costs to persons who are required to comply with the section as proposed.

##### Local Employment Impact Statement

For each year of the first five years the proposed section is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act §2001.022.

##### Costs to Regulated Persons

Texas Government Code §2001.0045(b) does not apply to this rulemaking because the commission is expressly excluded under §2001.0045(c)(7).

##### Public Hearing

The commission will conduct a public hearing on this rulemaking if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by April 11, 2024. If a request for public hearing is received, commission staff will file in this project a notice of hearing.

##### Public Comments

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be filed by April 11, 2024. Comments should be organized in a manner consistent with the organization of the proposed rule. The

commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission will consider the costs and benefits in deciding whether to modify the proposed rule on adoption. All comments should refer to Project Number 56253.

Each set of comments should include a standalone executive summary as the last page of the filing. This executive summary must be clearly labeled with the submitting entity's name and should include a bulleted list covering each substantive recommendation made in the comments.

#### Statutory Authority

The amendment is proposed under the Public Utility Regulatory Act §14.002 and §14.052, which provide the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; and §37.057 which requires the commission to approve or deny an application for a certificate for a new transmission facilities not later than the 180th day after the date the application is filed.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002, §14.052; §37.057.

#### §22.104. Motions to Intervene.

(a) Necessity for filing motion to intervene. Applicants, complainants, and respondents, as defined in §22.2 of this title (relating to Definitions), are necessary parties to proceedings which they have initiated or which have been initiated against them, and need not file motions to intervene [in order] to participate as parties in such proceedings.

(b) Time for filing motion. Motions to intervene must [shall] be filed within 45 days from the date an application is filed with the commission, unless otherwise provided by statute, commission rule, or order of the presiding officer. For an application for a certificate of convenience and necessity (CCN) filed under Public Utility Regulatory Act §39.203(e) or an application for a CCN for a new transmission facility subject to PURA §37.057, motions to intervene must [shall] be filed within 30 days from the date the application is filed with the commission. The motion must [shall] be served upon all parties to the proceeding and upon all persons that have pending motions to intervene.

(c) Rights of persons with pending motions to intervene. Persons who have filed motions to intervene [shall] have all the rights and obligations of a party pending the presiding officer's ruling on the motion to intervene.

(d) Late intervention.

(1) Criteria for granting late intervention. A motion to intervene that was not timely filed may be granted by the presiding officer. In acting on a late filed motion to intervene, the presiding officer will [shall] consider:

(A) - (E) (No change.)

(2) Limitations on intervention. The presiding officer may impose limitations on the participation of an intervenor to avoid delay and prejudice to the other parties.

(3) Record and procedural schedule. Except as otherwise ordered, an intervenor must [shall] accept the procedural schedule and the record of the proceeding as it existed at the time of filing the motion to intervene.

(4) Intervention as a matter of right. In an electric licensing proceeding in which a utility did not provide direct notice to an owner of land directly affected by the requested certificate, late intervention

will [shall] be granted as a matter of right to such a person, provided that the person files a motion to intervene within 15 days of actually receiving the notice. Such a person should be afforded sufficient time to prepare for and participate in the proceeding.

(5) Late intervention after proposal for decision (PFD) or proposed order (PO) [Proposal for Decision or Proposed Order] issued. For late interventions, other than those allowed by paragraph (4) of this subsection, the procedures in subparagraphs (A) and [-] (B) of this paragraph apply:

(A) Agenda ballot. Upon receipt of a motion to intervene after the PFD or PO has been issued, the commission's Office of Policy [Commission Advising] and Docket Management (OPDM) will [Division shall] send separate ballots to each commissioner to determine whether the motion to intervene will be considered at an open meeting. An affirmative vote by one commissioner is required for consideration of a motion to intervene at an open meeting. OPDM will [The Commission Advising and Docket Management Division shall] notify the parties by letter whether a commissioner by individual ballot has added the motion to intervene to an open meeting agenda, but will not identify the requesting commissioner [commissioner(s)].

(B) Denial. If after five working days of the filing of a motion to intervene, which has been filed after the PFD or PO [Proposal for Decision or Proposed Order] has been issued, no commissioner has by agenda ballot, placed the motion on the agenda of an open meeting, the motion is deemed denied. If any commissioner has balloted in favor of considering the motion, it will [shall] be placed on the agenda of the next regularly scheduled open meeting or such other meeting as the commissioners may direct by the agenda ballot. In the event two or more commissioners vote to consider the motion, but differ as to the date the motion will [shall] be heard, the motion will [shall] be placed on the latest of the dates specified by the ballots. The time for ruling on the motion expires [shall expire] three days after the date of the open meeting, unless extended by action of the commission.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 7, 2024.

TRD-202401029

Adriana Gonzales

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: April 21, 2024

For further information, please call: (512) 936-7322



## PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

### CHAPTER 60. PROCEDURAL RULES OF THE COMMISSION AND THE DEPARTMENT SUBCHAPTER B. POWERS AND RESPONSIBILITIES

#### 16 TAC §60.24

The Texas Department of Licensing and Regulation (Department) proposes amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 60, Subchapter B, §60.24, regarding the Procedural Rules of the Commission and the

Department. These proposed changes are referred to as "proposed rules."

## EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 60 implement Texas Occupations Code, Chapter 51, the enabling statute of the Texas Commission of Licensing and Regulation (Commission) and the Texas Department of Licensing and Regulation (Department), and other laws applicable to the Commission and the Department. The Chapter 60 rules are the procedural rules of the Commission and the Department. These rules apply to all of the agency's programs and to all license applicants and licensees, except where there is a conflict with the statutes and rules of a specific program.

The proposed rules implement House Bill (HB) 3743, Section 4, 88th Legislature, Regular Session (2023), which exempts the Commission and the Department's advisory boards from Texas Government Code, Chapter 2110, State Agency Advisory Committees. HB 3743, Section 4 added new subsection (d) under Texas Occupations Code §51.209, Advisory Boards; Removal of Advisory Board Member. This provision states: "(d) Notwithstanding any other law, Chapter 2110, Government Code, does not apply to an advisory board established to advise the commission or department."

Texas Government Code, Chapter 2110 specifies certain requirements for a state agency advisory committee or board (advisory board), including the composition, duration, purpose, and tasks of the advisory board; the selection of the presiding officer; and the submission of specified reports. The requirements for the Commission and the Department's advisory boards, however, are specified and detailed in Texas Occupations Code, Chapter 51; in the applicable program statute and rules; and/or as authorized by the applicable program statute and established in rule.

As required by Texas Government Code, Chapter 2110, the Commission had previously established in the Chapter 60 rules the abolishment dates for all of the agency's advisory boards, except for any advisory board that was specifically exempted from Chapter 2110 by the statute that created the advisory board. The Chapter 60 rules contain two separate lists of advisory boards - those with an abolishment date and those that are statutorily exempt and do not have an abolishment date.

Since the Commission and the Department's advisory boards are no longer subject to Texas Government Code, Chapter 2110, the proposed rules remove the advisory board abolishment dates and the two separate lists of advisory boards from the Chapter 60 rules. The proposed rules are necessary to allow all of the agency's advisory boards to continue in existence unless and until there is a statutory change made to eliminate an advisory board's existence. The proposed rules will align the Chapter 60 rules with the statutory changes made by HB 3743, Section 4.

## SECTION-BY-SECTION SUMMARY

### *Subchapter B. Powers and Responsibilities.*

The proposed rules amend §60.24, Advisory Boards. The proposed rules repeal subsection (c), which lists the agency's advisory boards that were previously subject to abolishment and their designated abolishment dates. The proposed rules repeal subsection (d), which lists those advisory boards that are specifically exempt from Texas Government Code, Chapter 2110, as prescribed in the program statutes, and that do not have design-

nated abolishment dates. The proposed rules also add new subsection (c), which states that Texas Government Code, Chapter 2110 does not apply to the Commission and the Department's advisory boards.

## FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rules.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rules.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, enforcing or administering the proposed rules does not have foreseeable implications relating to costs or revenues of state or local government.

## LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Couvillon has determined that the proposed rules will not affect a local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

## PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be the repeal of the abolishment dates for the agency's advisory boards and committees and alignment of the rules with Texas Occupations Code, Chapter 51. The proposed rules under Chapter 60, which repeal the abolishment dates for the agency's advisory boards and committees, give notice to those boards and committees and the public that the agency's advisory boards and committee will continue in existence unless and until there is a statutory change made to eliminate a board or committee's existence. The proposed rules will also align the Chapter 60 rules with the statutory changes made by HB 3743, Section 4.

## PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules.

## FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. Because the agency has determined that the proposed rules will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Government Code §2006.002, is not required.

## ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a

special district, or a local government. Therefore, the agency is not required to take any further action under Government Code §2001.0045.

#### GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rules. For each year of the first five years the proposed rules will be in effect, the agency has determined the following:

1. The proposed rules do not create or eliminate a government program.
2. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed rules do not require an increase or decrease in fees paid to the agency.
5. The proposed rules do not create a new regulation.
6. The proposed rules expand, limit, or repeal an existing regulation. The proposed rules repeal an existing regulation in Chapter 60 by repealing the abolishment dates of the Commission and Department's advisory boards and by removing language stating that three of the advisory boards do not have abolishment dates.
7. The proposed rules do not increase or decrease the number of individuals subject to the rules' applicability.
8. The proposed rules do not positively or adversely affect this state's economy.

#### TAKINGS IMPACT ASSESSMENT

The Department has determined that no private real property interests are affected by the proposed rules and the proposed rules do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rules do not constitute a taking or require a takings impact assessment under Government Code §2007.043.

#### PUBLIC COMMENTS

Comments on the proposed rules may be submitted electronically on the Department's website at <https://ga.tdlr.texas.gov:1443/form/gcerules>; by facsimile to (512) 475-3032; or by mail to Monica Nuñez, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711. The deadline for comments is 30 days after publication in the *Texas Register*.

#### STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rule are those set forth in Texas Occupations Code, Chapter 51. In addition, the following statutes for the programs that have advisory boards are affected by the proposed rule: Agriculture Code, Chapter 301 (Weather Modification and Control); Education Code, Chapters

29, 53, and 1001 (Driver and Traffic Safety Education); Government Code, Chapter 469 (Elimination of Architectural Barriers); Health and Safety Code, Chapters 754 (Elevators, Escalators, and Related Equipment) and 755 (Boilers); Occupations Code, Chapters 202 (Podiatrists); 203 (Midwives); 401 (Speech-Language Pathologists and Audiologists); 402 (Hearing Instrument Fitters and Dispensers); 403 (Dyslexia Practitioners and Therapists); 451 (Athletic Trainers); 455 (Massage Therapy); 506 (Behavioral Analysts); 605 (Orthotists and Prosthetists); 701 (Dietitians); 802 (Dog or Cat Breeders); 1151 (Property Tax Professionals); 1152 (Property Tax Consultants); 1302 (Air Conditioning and Refrigeration Contractors); 1305 (Electricians); 1603 (Barbers and Cosmetologists); 1802 (Auctioneers); 1901 (Water Well Drillers); 1902 (Water Well Pump Installers); 1952 (Code Enforcement Officers); 1953 (Sanitarians); 1958 (Mold Assessors and Remediators); 2052 (Combative Sports); 2303 (Vehicle Storage Facilities); 2308 (Vehicle Towing and Booting); 2309 (Used Automotive Parts Recyclers); and 2310 (Motor Fuel Metering and Quality); and Transportation Code, Chapters 551A (Off-Highway Vehicle Training and Safety); and 662 (Motorcycle Operator Training and Safety). No other statutes, articles, or codes are affected by the proposed rule.

The legislation that enacted the statutory authority under which the proposed rules are proposed to be adopted is House Bill 3743, Section 4, 88th Legislature, Regular Session (2023).

#### §60.24. Advisory Boards.

(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 Occupations Code §51.209, Texas Government Code, Chapter 2110 does not apply to an advisory board established to advise the commission or the department.

~~{(e) 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 of Athletic Trainers—09/01/2024;}~~

~~{(2) Air Conditioning and Refrigeration Contractors Advisory Board—09/01/2024;}~~

~~{(3) Architectural Barriers Advisory Committee—09/01/2024;}~~

~~{(4) Auctioneer Education Advisory Board—09/01/2024;}~~

~~{(5) Barbering and Cosmetology Advisory Board—09/01/2024;}~~

~~{(6) Behavior Analyst Advisory Board—09/01/2024;}~~

~~{(7) Board of Boiler Rules—09/01/2024;}~~

~~{(8) Code Enforcement Officers Advisory Committee—09/01/2024;}~~

~~{(9) Combative Sports Advisory Board—09/01/2024;}~~

~~{(10) Dietitians Advisory Board—09/01/2024;}~~

~~{(11) Dyslexia Therapists and Practitioners Advisory Committee—09/01/2024;}~~

- [(12) Electrical Safety and Licensing Advisory Board--09/01/2024;]
- [(13) Elevator Advisory Board--09/01/2024;]
- [(14) Hearing Instrument Fitters and Dispensers Advisory Board--09/01/2024;]
- [(15) Massage Therapy Advisory Board--09/01/2024;]
- [(16) Midwives Advisory Board--09/01/2024;]
- [(17) Motor Fuel Metering and Quality Advisory Board--09/01/2024;]
- [(18) Orthotists and Prosthetists Advisory Board--09/01/2024;]
- [(19) Podiatric Medical Examiners Advisory Board--09/01/2024;]
- [(20) Property Tax Consultants Advisory Council--09/01/2024;]
- [(21) Registered Sanitarian Advisory Committee--09/01/2024;]
- [(22) Speech-Language Pathologists and Audiologists Advisory Board--09/01/2024;]
- [(23) Texas Tax Professional Advisory Committee--09/01/2024;]
- [(24) Towing and Storage Advisory Board--09/01/2024;]
- [(25) Used Automotive Parts Recycling Advisory Board--09/01/2024;]
- [(26) Water Well Drillers Advisory Council--09/01/2024; and]
- [(27) Weather Modification Advisory Committee--09/01/2024.]

[(d) The following advisory boards are specifically exempt from Texas Government Code, Chapter 2110 and do not have a designated abolishment date:]

- [(1) Driver Training and Traffic Safety Advisory Committee (exempt under Education Code §1001.058(i));]
- [(2) Licensed Breeder Advisory Committee (exempt under Occupations Code §802.065(j)); and]
- [(3) Motorcycle Safety Advisory Board (exempt under Transportation Code §662.0037(h)).]

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 8, 2024.  
 TRD-202401082  
 Doug Jennings  
 General Counsel  
 Texas Department of Licensing and Regulation  
 Earliest possible date of adoption: April 21, 2024  
 For further information, please call: (512) 475-4879



## CHAPTER 84. DRIVER EDUCATION AND SAFETY

## SUBCHAPTER B. DRIVER TRAINING AND TRAFFIC SAFETY ADVISORY COMMITTEE

### 16 TAC §84.30

The Texas Department of Licensing and Regulation (Department) proposes amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 84, Subchapter B, §84.30, regarding the Driver Education and Safety program. These proposed changes are referred to as "proposed rules."

#### EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 84 implement Texas Education Code, Chapter 1001, Driver and Traffic Safety Education; the driver education laws under Texas Education Code §29.902 and §51.308; and Texas Transportation Code, Chapter 521, Driver's Licenses and Certificates. The rules also implement Texas Occupations Code, Chapter 51, the enabling statute of the Texas Commission of Licensing and Regulation (Commission) and the Texas Department of Licensing and Regulation (Department).

The proposed rules implement House Bill (HB) 3743, Section 4, 88th Legislature, Regular Session (2023), which exempts the Commission and the Department's advisory boards from Texas Government Code, Chapter 2110, State Agency Advisory Committees. HB 3743, Section 4 added new subsection (d) under Texas Occupations Code §51.209, Advisory Boards; Removal of Advisory Board Member. This provision states: "(d) Notwithstanding any other law, Chapter 2110, Government Code, does not apply to an advisory board established to advise the commission or department."

Texas Government Code, Chapter 2110 specifies certain requirements for a state agency advisory committee or board (advisory board), including the composition, duration, purpose, and tasks of the advisory board; the selection of the presiding officer; and the submission of specified reports. The requirements for the Commission and the Department's advisory boards, however, are specified and detailed in Texas Occupations Code, Chapter 51; in the applicable program statute and rules; and/or as authorized by the applicable program statute and established in rule.

The proposed rules under Chapter 84, Driver Education and Safety, remove a now redundant provision that states that Texas Government Code, Chapter 2110 does not apply to the advisory committee established for that program. The proposed rules are necessary to remove language that is redundant with Texas Occupations Code, Chapter 51, as amended by HB 3743, Section 4, and to make the Driver Education and Safety program rules consistent with other program rules.

#### SECTION-BY-SECTION SUMMARY

*Subchapter B. Driver Training and Traffic Safety Advisory Committee.*

The proposed rules amend §84.30, Membership. The proposed rules repeal subsection (b), which states that Texas Government Code, Chapter 2110, does not apply to the advisory committee. This provision does not conflict with Texas Occupations Code, Chapter 51, as amended by HB 3743, Section 4, but it is redundant and is being removed for consistency with other program rules. The subsection (a) lettering is removed with the repeal of subsection (b).

#### FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rules.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rules.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, enforcing or administering the proposed rules does not have foreseeable implications relating to costs or revenues of state or local government.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Couvillon has determined that the proposed rules will not affect a local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

#### PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be the removal of redundant, unnecessary language regarding Government Code, Chapter 2110. Removing this language will also provide for consistency with other program rules.

#### PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules.

#### FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. Because the agency has determined that the proposed rules will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Government Code §2006.002, is not required.

#### ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Government Code §2001.0045.

#### GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rules. For each year of the first five years the proposed rules will be in effect, the agency has determined the following:

1. The proposed rules do not create or eliminate a government program.

2. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.

3. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.

4. The proposed rules do not require an increase or decrease in fees paid to the agency.

5. The proposed rules do not create a new regulation.

6. The proposed rules expand, limit, or repeal an existing regulation. The proposed rules repeal a redundant, unnecessary provision in Chapter 84 stating that the advisory committee is not subject to Government Code, Chapter 2110.

7. The proposed rules do not increase or decrease the number of individuals subject to the rules' applicability.

8. The proposed rules do not positively or adversely affect this state's economy.

#### TAKINGS IMPACT ASSESSMENT

The Department has determined that no private real property interests are affected by the proposed rules and the proposed rules do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rules do not constitute a taking or require a takings impact assessment under Government Code §2007.043.

#### PUBLIC COMMENTS

Comments on the proposed rules may be submitted electronically on the Department's website at <https://ga.tdlr.texas.gov:1443/form/gcerules>; by facsimile to (512) 475-3032; or by mail to Shamica Mason, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711. The deadline for comments is 30 days after publication in the *Texas Register*.

#### STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed rules are also proposed under Texas Education Code, Chapter 1001, Driver Education and Safety.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51; Texas Education Code, Chapters 29, 53, and 1001; and Texas Transportation Code, Chapter 521. No other statutes, articles, or codes are affected by the proposed rules.

The legislation that enacted the statutory authority under which the proposed rules are proposed to be adopted is House Bill 3743, Section 4, 88th Legislature, Regular Session (2023).

#### §84.30. *Membership.*

[(a)] The advisory committee consists of nine members appointed for staggered six-year terms by the presiding officer of the commission, with the approval of the commission, as follows:

- (1) three driver education providers;
- (2) three driving safety providers;



- (3) one driver education instructor;
- (4) the division head of the Department of Public Safety driver license division or the division head's designee; and
- (5) one member of the public.

~~[(b) Texas Government Code, Chapter 2110 does not apply to the advisory committee.]~~

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 8, 2024.

TRD-202401099

Doug Jennings

General Counsel

Texas Department of Licensing and Regulation

Earliest possible date of adoption: April 21, 2024

For further information, please call: (512) 463-7750



## CHAPTER 119. SANITARIANS

### 16 TAC §119.10

The Texas Department of Licensing and Regulation (Department) proposes amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 119, §119.10, regarding the Sanitarians program. These proposed changes are referred to as "proposed rules."

#### EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 119 implement Texas Occupations Code, Chapter 1953, Sanitarians, and Chapter 51, the enabling statute of the Texas Commission of Licensing and Regulation (Commission) and the Texas Department of Licensing and Regulation (Department).

The proposed rules implement House Bill (HB) 3743, Section 4, 88th Legislature, Regular Session (2023), which exempts the Commission and the Department's advisory boards from Texas Government Code, Chapter 2110, State Agency Advisory Committees. HB 3743, Section 4 added new subsection (d) under Texas Occupations Code §51.209, Advisory Boards; Removal of Advisory Board Member. This provision states: "(d) Notwithstanding any other law, Chapter 2110, Government Code, does not apply to an advisory board established to advise the commission or department."

Texas Government Code, Chapter 2110 specifies certain requirements for a state agency advisory committee or board (advisory board), including the composition, duration, purpose, and tasks of the advisory board; the selection of the presiding officer; and the submission of specified reports. The requirements for the Commission and the Department's advisory boards, however, are specified and detailed in Texas Occupations Code, Chapter 51; in the applicable program statute and rules; and/or as authorized by the applicable program statute and established in rule.

The proposed rules remove language from Chapter 119, Sanitarians, that states that Texas Government Code, Chapter 2110 applies to the advisory committee established for that program. The proposed rules are necessary to remove conflicting language and to align the Sanitarians program rules with Texas Oc-

cupations Code, Chapter 51, as amended by HB 3743, Section 4.

#### SECTION-BY-SECTION SUMMARY

The proposed rules amend §119.10, Advisory Committee. The proposed rules repeal subsection (b), which states that the Registered Sanitarian Advisory Committee is subject to Government Code, Chapter 2110. The proposed rules re-letter the subsequent subsection.

#### FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rules.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rules.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, enforcing or administering the proposed rules does not have foreseeable implications relating to costs or revenues of state or local government.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Couvillon has determined that the proposed rules will not affect a local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

#### PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be the alignment of the rules with Occupations Code, Chapter 51. The proposed rules under Chapter 119 remove conflicting language that does not align with the statutory changes made by HB 3743, Section 4.

#### PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules.

#### FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. Because the agency has determined that the proposed rules will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Government Code §2006.002, is not required.

#### ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is

not required to take any further action under Government Code §2001.0045.

#### GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rules. For each year of the first five years the proposed rules will be in effect, the agency has determined the following:

1. The proposed rules do not create or eliminate a government program.
2. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed rules do not require an increase or decrease in fees paid to the agency.
5. The proposed rules do not create a new regulation.
6. The proposed rules expand, limit, or repeal an existing regulation. The proposed rules repeal an existing rule by removing language in Chapter 119 stating that the advisory committee is subject to Government Code, Chapter 2110.
7. The proposed rules do not increase or decrease the number of individuals subject to the rules' applicability.
8. The proposed rules do not positively or adversely affect this state's economy.

#### TAKINGS IMPACT ASSESSMENT

The Department has determined that no private real property interests are affected by the proposed rules and the proposed rules do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rules do not constitute a taking or require a takings impact assessment under Government Code §2007.043.

#### PUBLIC COMMENTS

Comments on the proposed rules may be submitted electronically on the Department's website at <https://ga.tdlr.texas.gov:1443/form/gcerules>; by facsimile to (512) 475-3032; or by mail to Shamica Mason, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711. The deadline for comments is 30 days after publication in the *Texas Register*.

#### STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed rules are also proposed under Texas Occupations Code, Chapter 1953, Sanitarians.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 1953. No other statutes, articles, or codes are affected by the proposed rules.

The legislation that enacted the statutory authority under which the proposed rules are proposed to be adopted is House Bill 3743, Section 4, 88th Legislature, Regular Session (2023).

#### §119.10. Advisory Committee.

(a) (No change.)

~~{(b) The advisory committee is subject to the Government Code, Chapter 2110, concerning state agency advisory boards.}~~

(b) ~~[(e)]~~ The advisory committee shall be composed of nine members appointed by the presiding officer of the commission. The composition of the committee shall include:

(1) five registered sanitarians;

(2) one professional engineer, or one on-site sewage facility (OSSF) professional who is not and has never been registered as a sanitarian in Texas;

(3) two consumers, one of which must be a member of an industry or occupation which is regulated either by a city or county environmental health unit or department or equivalent, or by the Department of State Health Services; and

(4) one person involved in education in the field of public, consumer, or environmental health sciences.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 8, 2024.

TRD-202401098

Doug Jennings

General Counsel

Texas Department of Licensing and Regulation

Earliest possible date of adoption: April 21, 2024

For further information, please call: (512) 463-7750



## CHAPTER 120. LICENSED DYSLEXIA THERAPISTS AND LICENSED DYSLEXIA PRACTITIONERS

### 16 TAC §120.65

The Texas Department of Licensing and Regulation (Department) proposes amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 120, §120.65, regarding the Dyslexia Therapy program. These proposed changes are referred to as "proposed rules."

#### EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 120 implement Texas Occupations Code, Chapter 403, Licensed Dyslexia Practitioners and Licensed Dyslexia Therapists, and Chapter 51, the enabling statute of the Texas Commission of Licensing and Regulation (Commission) and the Texas Department of Licensing and Regulation (Department).

The proposed rules implement House Bill (HB) 3743, Section 4, 88th Legislature, Regular Session (2023), which exempts the Commission and the Department's advisory boards from Texas Government Code, Chapter 2110, State Agency Advisory Committees. HB 3743, Section 4 added new subsection (d) under Texas Occupations Code §51.209, Advisory Boards; Removal

of Advisory Board Member. This provision states: "(d) Notwithstanding any other law, Chapter 2110, Government Code, does not apply to an advisory board established to advise the commission or department."

Texas Government Code, Chapter 2110 specifies certain requirements for a state agency advisory committee or board (advisory board), including the composition, duration, purpose, and tasks of the advisory board; the selection of the presiding officer; and the submission of specified reports. The requirements for the Commission and the Department's advisory boards, however, are specified and detailed in Texas Occupations Code, Chapter 51; in the applicable program statute and rules; and/or as authorized by the applicable program statute and established in rule.

The proposed rules remove language from Chapter 120, Licensed Dyslexia Therapists and Licensed Dyslexia Practitioners, that states that Texas Government Code, Chapter 2110 applies to the advisory committee established for that program. The proposed rules are necessary to remove conflicting language and to align the Dyslexia Therapy program rules with Texas Occupations Code, Chapter 51, as amended by HB 3743, Section 4.

#### SECTION-BY-SECTION SUMMARY

The proposed rules amend §120.65, Dyslexia Therapists and Practitioners Advisory Committee; Membership. The proposed rules repeal subsection (b), which states that the advisory committee is subject to Government Code, Chapter 2110. The proposed rules re-letter the subsequent subsections and make a punctuation change in subsection (a).

#### FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rules.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rules.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, enforcing or administering the proposed rules does not have foreseeable implications relating to costs or revenues of state or local government.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Couvillon has determined that the proposed rules will not affect a local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

#### PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be the alignment of the rules with Occupations Code, Chapter 51. The proposed rules under Chapter 120 remove conflicting language that does not align with the statutory changes made by HB 3743, Section 4.

#### PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules.

#### FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. Because the agency has determined that the proposed rules will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Government Code §2006.002, is not required.

#### ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Government Code §2001.0045.

#### GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rules. For each year of the first five years the proposed rules will be in effect, the agency has determined the following:

1. The proposed rules do not create or eliminate a government program.
2. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed rules do not require an increase or decrease in fees paid to the agency.
5. The proposed rules do not create a new regulation.
6. The proposed rules expand, limit, or repeal an existing regulation. The proposed rules repeal an existing rule by removing language in Chapter 120 stating that the advisory committee is subject to Government Code, Chapter 2110.
7. The proposed rules do not increase or decrease the number of individuals subject to the rules' applicability.
8. The proposed rules do not positively or adversely affect this state's economy.

#### TAKINGS IMPACT ASSESSMENT

The Department has determined that no private real property interests are affected by the proposed rules and the proposed rules do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rules do not constitute a taking or require a takings impact assessment under Government Code §2007.043.

#### PUBLIC COMMENTS

Comments on the proposed rules may be submitted electronically on the Department's website at <https://ga.tdlr.texas.gov:1443/form/gcerules>; by facsimile to (512) 475-3032; or by mail to Monica Nuñez, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711. The deadline for comments is 30 days after publication in the *Texas Register*.

#### STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed rules are also proposed under Texas Occupations Code, Chapter 403, Dyslexia Practitioners and Therapists.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 403. No other statutes, articles, or codes are affected by the proposed rules.

The legislation that enacted the statutory authority under which the proposed rules are proposed to be adopted is House Bill 3743, Section 4, 88th Legislature, Regular Session (2023).

*§120.65. Dyslexia Therapists and Practitioners Advisory Committee; Membership.*

(a) The Dyslexia Therapists and Practitioners Advisory Committee shall be appointed under and governed by the Act and this section. The committee is established under the authority of Occupations Code [§] §403.051.

~~[(b) Applicable law. The committee is subject to Government Code, Chapter 2110, concerning state agency advisory committees.]~~

~~(b) [(e)]~~ The purpose of the committee is to provide advice to the department regarding the administration of the Act.

~~(c) [(d)]~~ The committee shall be composed of five members appointed by the presiding officer of the commission with the approval of the commission. The composition of the committee shall include:

- (1) two dyslexia therapists licensed under the Act;
- (2) one dyslexia practitioner licensed under the Act; and
- (3) two consumer or public members, one of whom must be a person with dyslexia or the parent of a person with dyslexia.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 8, 2024.

TRD-202401083

Doug Jennings

General Counsel

Texas Department of Licensing and Regulation

Earliest possible date of adoption: April 21, 2024

For further information, please call: (512) 475-4879



## CHAPTER 121. BEHAVIOR ANALYST SUBCHAPTER C. BEHAVIOR ANALYST ADVISORY BOARD

### 16 TAC §121.65

The Texas Department of Licensing and Regulation (Department) proposes amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 121, Subchapter C, §121.65, regarding the Behavior Analysts program. These proposed changes are referred to as the "proposed rules."

#### EXPLANATION OF AND JUSTIFICATION FOR THE RULE

The rule under 16 TAC Chapter 121, implements Texas Occupations Code, Chapter 506, Behavior Analysts, and Chapter 51, the enabling statute of the Texas Commission of Licensing and Regulation (Commission) and the Texas Department of Licensing and Regulation (Department).

The proposed rule implements House Bill (HB) 3743, Section 4, 88th Legislature, Regular Session (2023), which exempts the Commission and the Department's advisory boards from Texas Government Code, Chapter 2110, State Agency Advisory Committees. HB 3743, Section 4 added new subsection (d) under Texas Occupations Code §51.209, Advisory Boards; Removal of Advisory Board Member. This provision states: "(d) Notwithstanding any other law, Chapter 2110, Government Code, does not apply to an advisory board established to advise the commission or department."

Texas Government Code, Chapter 2110 specifies certain requirements for a state agency advisory committee or board (advisory board), including the composition, duration, purpose, and tasks of the advisory board; the selection of the presiding officer; and the submission of specified reports. The requirements for the Commission and the Department's advisory boards, however, are specified and detailed in Texas Occupations Code, Chapter 51; in the applicable program statute and rules; and/or as authorized by the applicable program statute and established in rule.

The proposed rule removes language from Chapter 121, Behavior Analysts, that states that Texas Government Code, Chapter 2110 applies to the advisory board established for that program. The proposed rule is necessary to remove conflicting language and to align the Behavior Analysts program rules with Texas Occupations Code, Chapter 51, as amended by HB 3743, Section 4.

#### SECTION-BY-SECTION SUMMARY

##### *Subchapter C. Behavior Analyst Advisory Board.*

The proposed rule amends §121.65, Membership. The proposed rule repeals subsection (b), which states that the Behavior Analyst Advisory Board is subject to Government Code, Chapter 2110.

The proposed rule re-letters the subsequent subsections.

#### FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rule is in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rule.

Mr. Couvillon has determined that for each year of the first five years the proposed rule is in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rule.

Mr. Couvillon has determined that for each year of the first five years the proposed rule is in effect, enforcing or administering the proposed rule does not have foreseeable implications relating to costs or revenues of state or local government.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Couvillon has determined that the proposed rule will not affect a local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

#### PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rule is in effect, the public benefit will be the alignment of the rule with Occupations Code, Chapter 51. The proposed rule under Chapter 121 remove conflicting language that does not align with the statutory changes made by HB 3743, Section 4.

#### PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule.

#### FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rule. Because the agency has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Government Code §2006.002, is not required.

#### ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed rule does not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Government Code §2001.0045.

#### GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rule. For each year of the first five years the proposed rule will be in effect, the agency has determined the following:

1. The proposed rule does not create or eliminate a government program.
2. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed rule does not require an increase or decrease in fees paid to the agency.
5. The proposed rule does not create a new regulation.

6. The proposed rule expands, limits, or repeals an existing regulation. The proposed rule repeals an existing rule by removing language in Chapter 121 stating that the advisory board is subject to Government Code, Chapter 2110.

7. The proposed rule does not increase or decrease the number of individuals subject to the rules' applicability.

8. The proposed rule does not positively or adversely affect this state's economy.

#### TAKINGS IMPACT ASSESSMENT

The Department has determined that no private real property interests are affected by the proposed rules and the proposed rule does not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rule does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

#### PUBLIC COMMENTS

Comments on the proposed rules may be submitted electronically on the Department's website at <https://ga.tdlr.texas.gov:1443/form/gcerules>; by facsimile to (512) 475-3032; or by mail to Monica Nuñez, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711. The deadline for comments is 30 days after publication in the *Texas Register*.

#### STATUTORY AUTHORITY

The proposed rule is proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed rule is also proposed under Texas Occupations Code, Chapter 506, Behavior Analysts.

The statutory provisions affected by the proposed rule is those set forth in Texas Occupations Code, Chapters 51 and 506. No other statutes, articles, or codes are affected by the proposed rules.

The legislation that enacted the statutory authority under which the proposed rule is proposed to be adopted is House Bill 3743, Section 4, 88th Legislature, Regular Session (2023).

§121.65. *Membership.*

(a) (No change.)

[(b) The advisory board is subject to Government Code, Chapter 2110, concerning state agency advisory boards.]

(b) [(e)] The advisory board shall be composed of nine members appointed by the presiding officer of the commission with the approval of the commission. The composition of the advisory board shall include:

- (1) four licensed behavior analysts, at least one of whom must be certified as a Board Certified Behavior Analyst--Doctoral or hold an equivalent certification issued by the certifying entity;
- (2) one licensed assistant behavior analyst;
- (3) one physician who has experience providing mental health or behavioral health services; and
- (4) three members who represent the public and who are either former recipients of applied behavior analysis services or the

parent or guardian of a current or former recipient of applied behavior analysis services.

(c) ~~(d)~~ To be qualified for appointment to the advisory board in the position of licensed behavior analyst, a person must have at least five years of experience as a licensed behavior analyst after being certified by the certifying entity.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 8, 2024.

TRD-202401081

Doug Jennings

General Counsel

Texas Department of Licensing and Regulation

Earliest possible date of adoption: April 21, 2024

For further information, please call: (512) 475-4879



## PART 8. TEXAS RACING COMMISSION

### CHAPTER 303. GENERAL PROVISIONS

#### SUBCHAPTER F. LICENSING PERSONS WITH CRIMINAL BACKGROUNDS

##### 16 TAC §303.201

The Texas Racing Commission (TXRC) proposes to amend selected language in Texas Administrative Code, Title 16, Part 8, Chapter 303, Subchapter F, Licensing Persons with Criminal Backgrounds, §303.201, General Authority, concerning factors that relate to the person's present fitness to perform the duties and responsibilities. The purpose of this rule amendment is to align the Texas Rules of Racing with legislative changes made to the Texas Racing Act during the 88th Legislative Session, specifically Texas Occupations Code § 2025.

##### GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEXAS GOVERNMENT CODE § 2001.022.

Amy F. Cook, Executive Director, has determined that the proposed rules will not create or eliminate a government program; create new or eliminates existing employee positions; require an increase or decrease in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; create a new regulation, expand an existing regulation, limit an existing regulation, or repeal an existing regulation; increase or decrease the number of individuals subject to the rules applicability; and will not positively or adversely affects the state's economy. The rule will not repeal an existing regulation, rather it will be amended to conform with Chapter 53, Texas Occupations Code which was incorporated into the Texas Racing Act in the 88th Legislative Session.

##### ECONOMIC IMPACT STATEMENT REQUIRED BY TEXAS GOVERNMENT CODE § 2006.002.

Amy F. Cook, Executive Director, has determined that the proposed rule amendments will have no adverse economic effect on small businesses, micro-businesses, or rural communities, therefore preparation of an Economic Impact Statement as

detailed under Texas Government Code § 2006.002, is not required.

##### REGULATORY FLEXIBILITY ANALYSIS REQUIRED BY TEXAS GOVERNMENT CODE § 2006.002.

Amy F. Cook, Executive Director, has determined that the proposed rule amendments will have no adverse economic effect on small businesses, micro-businesses, or rural communities, therefore preparation of a Regulatory Flexibility Analysis as detailed under Texas Government Code § 2006.002, is not required.

##### TAKINGS IMPACT ASSESSMENT REQUIRED BY TEXAS GOVERNMENT CODE § 2007.043.

Amy F. Cook, Executive Director, has determined that no private real property interests are affected by the proposed rule amendments, and the proposed rule amendments do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rule amendments do not constitute a taking or require a takings impact assessment under Texas Government Code § 2007.043.

##### LOCAL EMPLOYMENT IMPACT STATEMENT REQUIRED BY TEXAS GOVERNMENT CODE § 2001.024(A)(6).

Amy F. Cook, Executive Director, has determined that the proposed rule repeal and rule amendments are not expected to have any fiscal implications for state or local government as outlined in Texas Government Code § 2001.024(A)(6).

##### COST-BENEFIT ANALYSIS REQUIRED BY TEXAS GOVERNMENT CODE § 2001.024(A)(5).

Amy F. Cook, Executive Director has determined that the proposed rule amendments are expected to further align the administration of the occupational licensing program with recent statutory changes to the Texas Occupations Code that incorporate Chapter 53 in the agency licensing program.

##### FISCAL NOTE ANALYSIS REQUIRED BY TEXAS GOVERNMENT CODE § 2001.024(A)(4).

Amy F. Cook, Executive Director has determined that no significant fiscal impact is associated with the proposed rule change.

Comments on the proposal may be submitted to the Texas Racing Commission Executive Director, Amy F. Cook, via webpage comment form at <https://www.txrc.texas.gov/texas-rules-of-racing> or through the agency customer service desk at [customer.service@txrc.texas.gov](mailto:customer.service@txrc.texas.gov), or by calling the customer service phone number at (512) 833-6699. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

##### STATUTORY AUTHORITY.

The amendments are proposed under Texas Occupations Code § 2025.001(a-1).

CROSS REFERENCE TO STATUTE. Texas Occupations Code § 2025.001(a-1).

##### §303.201. General Authority.

(a) In accordance with state law, the commission may revoke, suspend, or deny a license ~~or the stewards or racing judges may suspend or deny a license to a person~~ because of the person's conviction of a felony or misdemeanor if the offense directly relates to the person's present fitness to perform the duties and responsibilities associated with the license.

(b) In determining whether ~~or not~~ an offense directly relates to a person's present fitness to perform the duties and responsibilities associated with the license, the commission ~~or stewards or racing judges~~ shall consider the relationship between the offense and the occupational [particular] license applied for and the following factors:

- (1) the extent and nature of the person's past criminal activity;
- (2) the age of the person at the time of the commission of the crime;
- (3) the amount of time that has elapsed since the person's last criminal activity;
- (4) the conduct and work activity of the person prior to and following the criminal activity;
- (5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release; and
- (6) other evidence presented by the person of the person's present fitness, including letters of recommendation from:
  - (A) prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;
  - (B) the sheriff or chief of police in the community where the person resides; or
  - (C) any other persons in contact with the convicted person.

(c) The executive director ~~secretary~~ shall ~~may~~ develop and publish guidelines relating to the administration of the of occupational licensing program. [regarding the factors listed in subsection (b) of this section and how the factors relate to the offenses listed in §303.202 of this title (relating to General Provisions.)

(d) On learning of the felony conviction, felony probation revocation, revocation of parole, or revocation of mandatory supervision of a licensee, the executive director or designee ~~commission~~ shall determine whether a license may be subject to suspension or revocation. [revoke the licensee's license.]

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 8, 2024.

TRD-202401075

Amy F. Cook

Executive Director

Texas Racing Commission

Earliest possible date of adoption: April 21, 2024

For further information, please call: (512) 833-6699



### 16 TAC §303.202

The Texas Racing Commission (TXRC) proposes amendments to Title 16, Part 8, Chapter 303, Subchapter F, Licensing Persons with Criminal Background, §303.202, Guidelines, concerning the occupational licensing guidelines. The purpose of these amendments is to clarify the responsibilities of the executive director and align the administration of the occupational licensing program with current state law. The proposed amendments will allow the agency to conform with the provisions of Texas Occupations Code § 2025.251-262.

### GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEXAS GOVERNMENT CODE § 2001.022.

Amy F. Cook, Executive Director, has determined that the proposed rules will not create or eliminate a government program; create new or eliminates existing employee positions; require an increase or decrease in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; create a new regulation, expand an existing regulation, limit an existing regulation, or repeal an existing regulation; increase or decrease the number of individuals subject to the rules applicability; and will not positively or adversely affects the state's economy. The rule will not repeal an existing regulation, rather it will be amended to conform with Chapter 53, Texas Occupations Code which was incorporated into the Texas Racing Act in the 88th Legislative Session.

### ECONOMIC IMPACT STATEMENT REQUIRED BY TEXAS GOVERNMENT CODE § 2006.002.

Amy F. Cook, Executive Director, has determined that the proposed amendments will have no adverse economic effect on small businesses, micro-businesses, or rural communities, therefore preparation of an Economic Impact Statement as detailed under Texas Government Code § 2006.002, is not required.

### REGULATORY FLEXIBILITY ANALYSIS REQUIRED BY TEXAS GOVERNMENT CODE § 2006.002.

Amy F. Cook, Executive Director, has determined that the proposed amendments will have no adverse economic effect on small businesses, micro-businesses, or rural communities, therefore preparation of a Regulatory Flexibility Analysis as detailed under Texas Government Code § 2006.002, is not required.

### TAKINGS IMPACT ASSESSMENT REQUIRED BY TEXAS GOVERNMENT CODE § 2007.043.

Amy F. Cook, Executive Director, has determined that no private real property interests are affected by the proposed amendments, and the proposed amendments do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed amendments do not constitute a taking or require a takings impact assessment under Texas Government Code § 2007.043.

### LOCAL EMPLOYMENT IMPACT STATEMENT REQUIRED BY TEXAS GOVERNMENT CODE § 2001.024(A)(6).

Amy F. Cook, Executive Director, has determined that the proposed amendments are not expected to have any fiscal implications for state or local government as outlined in Texas Government Code § 2001.024(A)(6).

### COST-BENEFIT ANALYSIS REQUIRED BY TEXAS GOVERNMENT CODE § 2001.024(A)(5).

Amy F. Cook, Executive Director has determined that the proposed amendments are expected to reduce the overall costs of the licensing process by clarifying the factors considered for issuance of an occupational license.

### FISCAL NOTE ANALYSIS REQUIRED BY TEXAS GOVERNMENT CODE § 2001.024(A)(4).

Amy F. Cook, Executive Director has determined that no significant fiscal impact is associated with the proposed amendments.

Comments on the proposal may be submitted to the Texas Racing Commission Executive Director, Amy F. Cook, via webpage comment form at <https://www.txrc.texas.gov/texas-rules-of-racing> or through the agency customer service desk at [customer.service@txrc.texas.gov](mailto:customer.service@txrc.texas.gov), or by calling the customer service phone number at (512) 833-6699. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

#### STATUTORY AUTHORITY.

The amendments are proposed under Texas Occupations Code § 2025.251-262.

CROSS REFERENCE TO STATUTE. Texas Occupations Code § 2025.251-262.

#### §303.202. Guidelines.

[(a)] In accordance with state law, the commission has delegated the administration of the occupational licensing program to the executive director who shall develop guidelines [developed guidelines] relating to the suspension, revocation, or denial of occupational licenses based on criminal background. [The offenses that the commission has determined are directly related to the occupational licenses issued by the commission are:]

[(1) an offense for which fraud, dishonesty, or deceit is an essential element;]

[(2) an offense relating to racing, pari-mutuel wagering, gambling, or prostitution;]

[(3) a felony offense of assault, such as those described by Penal Code, Chapter 22;]

[(4) a criminal homicide offense, such as those described by Penal Code, Chapter 19;]

[(5) a burglary offense, such as those described by Penal Code, Chapter 30;]

[(6) a robbery offense, such as those described by Penal Code, Chapter 29;]

[(7) cruelty to animals;]

[(8) a theft offense, such as those described by Penal Code, Chapter 31;]

[(9) an offense relating to the possession, manufacture, or delivery of a controlled substance, a dangerous drug, or an abusable glue or aerosol paint;]

[(10) arson; and]

[(11) a felony offense of driving while intoxicated.]

[(b) The commission has considered the following factors in determining whether or not a particular offense directly relates to a particular occupational license:]

[(1) the nature and seriousness of the crime;]

[(2) the relationship of the crime to the purposes for requiring a license to engage in the occupation;]

[(3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and]

[(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.]

[(c) Based on the factors described in subsection (b) of this section, the commission has determined that the offenses described in subsection (a) of this section are directly related to the following occupational licenses. (An "X" on the chart means the offense directly relates to the license.)]

[Figure: 16 TAC §303.202(c)]

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 8, 2024.

TRD-202401076

Amy F. Cook

Executive Director

Texas Racing Commission

Earliest possible date of adoption: April 21, 2024

For further information, please call: (512) 833-6699



## CHAPTER 309. RACETRACK LICENSES AND OPERATIONS

### SUBCHAPTER D. GREYHOUND RACETRACKS

#### DIVISION 2. OPERATIONS

#### 16 TAC §309.361

The Texas Racing Commission (TXRC) proposes amendments to Texas Administrative Code, Title 16, Part 8, Chapter 309, Subchapter D, Division 2, §309.361, concerning Authority. The purpose of these amendments is to provide the Commission full oversight on the administration of all funds derived from pari-mutuel wagering that the Texas Greyhound Association has received or is still receiving following the cessation of all live greyhound racing in February 2020 in Texas.

FISCAL NOTE ANALYSIS REQUIRED BY TEXAS GOVERNMENT CODE § 2001.024(A)(4).

Amy F. Cook, Executive Director has determined that no significant fiscal impact is associated with the proposed rule change.

ECONOMIC IMPACT STATEMENT REQUIRED BY TEXAS GOVERNMENT CODE § 2006.002.

Amy F. Cook, Executive Director, has determined that the proposed rule amendments will have no adverse economic effect on small businesses, micro-businesses, or rural communities, therefore preparation of an Economic Impact Statement as detailed under Texas Government Code § 2006.002, is not required.

REGULATORY FLEXIBILITY ANALYSIS REQUIRED BY TEXAS GOVERNMENT CODE § 2006.002.

Amy F. Cook, Executive Director, has determined that the proposed rule amendments will have no adverse economic effect on small businesses, micro-businesses, or rural communities, therefore preparation of a Regulatory Flexibility Analysis as detailed under Texas Government Code § 2006.002, is not required.

TAKINGS IMPACT ASSESSMENT REQUIRED BY TEXAS GOVERNMENT CODE § 2007.043.



Amy F. Cook, Executive Director, has determined that no private real property interests are affected by the proposed rule amendments, and the proposed rule amendments do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rule amendments do not constitute a taking or require a takings impact assessment under Texas Government Code § 2007.043.

#### LOCAL EMPLOYMENT IMPACT STATEMENT REQUIRED BY TEXAS GOVERNMENT CODE § 2001.024(A)(6).

Amy F. Cook, Executive Director, has determined that the proposed rule repeal and rule amendments are not expected to have any fiscal implications for state or local government as outlined in Texas Government Code § 2001.024(A)(6).

#### COST-BENEFIT ANALYSIS REQUIRED BY TEXAS GOVERNMENT CODE § 2001.024(A)(5).

Amy F. Cook, Executive Director has determined that the proposed rule amendments are expected to further align the administration of the occupational licensing program with recent statutory changes to the Texas Occupations Code that incorporate Chapter 53 in the agency licensing program.

#### GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEXAS GOVERNMENT CODE § 2001.022.

Amy F. Cook, Executive Director, has determined that the proposed rules will not create or eliminate a government program; create new or eliminates existing employee positions; require an increase or decrease in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; create a new regulation, expand an existing regulation, limit an existing regulation, or repeal an existing regulation; increase or decrease the number of individuals subject to the rules applicability; and will not positively or adversely affects the state's economy. The rule will repeal an existing regulation based on the cessation of live greyhound racing in the state.

Comments on the proposal may be submitted to the Texas Racing Commission Executive Director, Amy F. Cook, via webpage comment form at <https://www.txrc.texas.gov/texas-rules-of-racing> or through the agency customer service desk at [customer.service@txrc.texas.gov](mailto:customer.service@txrc.texas.gov), or by calling the customer service phone number at (512) 833-6699. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

**STATUTORY AUTHORITY.** The amendments are proposed under Texas Occupations Code §§ 2027; 2028

**CROSS REFERENCE TO STATUTE.** Texas Occupations Code §§ 2027; 2028

§309.361. *Authority.*

[(a)] Greyhound Purse and Kennel Account Administration. The Commission will determine the appropriate disposition of funds held by the Texas Greyhound Association that are derived from pari-mutuel wagering activities and may at any time inspect, review or audit any and all transactions relating to the greyhound purse account and the kennel account.

[(1)] All money required to be set aside for purses, whether from wagering on live races or simulcast races, are trust funds held by an association as custodial trustee for the benefit of kennel owners and greyhound owners. No more than three business days after the end of each week's wagering, the association shall deposit the amount set aside

for purses into a greyhound purse account maintained in a federally or privately insured depository.]

[(2)] The funds derived from a simulcast race for purses shall be distributed during the 12-month period immediately following the simulcast.]

[(b) Kennel Account.]

[(1)] An association shall maintain a separate bank account known as the "kennel account". The association shall maintain in the account at all times a sufficient amount to pay all money owed to kennel owners for purses, stakes, rewards, and deposits.]

[(2)] Except as otherwise provided by these rules, an association shall pay the purse money owed from a purse race to those who are entitled to the money not later than 10 days after the date of the race and from a stakes race to those who are entitled to the money immediately after the executive secretary advises the association that all of the qualifying rounds and the final race have been cleared for payment.]

[(e)] The Texas Greyhound Association ("TGA") shall negotiate with each association regarding the association's live racing program, including but not limited to the allocation of purse money to various live races, the exporting of simulcast signals, and the importing of simulcast signals during live race meetings.]

[(d)] If an association fails to run live races during any calendar year, all money in the greyhound purse account may, at the discretion of the TGA, be distributed as follows:]

[(1)] first, payment of earned but unpaid purses; and]

[(2)] second, subject to the approval of the TGA, transfer after the above mentioned calendar year period of the balance in the purse account to the purse account for one or more other association.]

[(e)] If an association ceases a live race meet before completion of the live race dates granted by the commission, the funds in and due the greyhound purse account shall be distributed as follows:]

[(1)] first, payment of earned but unpaid purses;]

[(2)] second, retroactive pro rata payments to the kennel owners; and]

[(3)] third, subject to the approval of the TGA, transfer within 120 days after cessation of live racing of the balance in the greyhound purse account to the greyhound purse account for one or more other associations.]

[(f) Administration of Accounts.]

[(1)] An association shall employ a bookkeeper to maintain records of the greyhound purse account and the kennel account.]

[(2)] The Commission may at any time inspect, review or audit any and all transactions relating to the greyhound purse account and the kennel account.]

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 8, 2024.

TRD-202401077

Amy F. Cook

Executive Director

Texas Racing Commission

Earliest possible date of adoption: April 21, 2024

For further information, please call: (512) 833-6699

◆   ◆   ◆

CHAPTER 311. OTHER LICENSES  
SUBCHAPTER A. LICENSING PROVISIONS  
DIVISION 1. OCCUPATIONAL LICENSES

16 TAC §311.4

The Texas Racing Commission (TXRC) proposes amendments to Texas Administrative Code, Title 16, Part 8, Chapter 311, Subchapter A, Division 1, Occupational Licenses, §311.4, Occupational License Restrictions. The purpose of these amendments is to align the Texas Rules of Racing with changes in the Texas Racing Act made during the 88th Legislative Session, specifically, Texas Occupations Code § 2025.001(a-1).

GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEXAS GOVERNMENT CODE § 2001.022.

Amy F. Cook, Executive Director, has determined that the proposed rules will not create or eliminate a government program; create new or eliminates existing employee positions; require an increase or decrease in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; create a new regulation, expand an existing regulation, limit an existing regulation, or repeal an existing regulation; increase or decrease the number of individuals subject to the rules applicability; and will not positively or adversely affects the state's economy. The rule will not repeal an existing regulation, rather it will be amended to conform with Chapter 53, Texas Occupations Code which was incorporated into the Texas Racing Act in the 88th Legislative Session.

ECONOMIC IMPACT STATEMENT REQUIRED BY TEXAS GOVERNMENT CODE § 2006.002.

Amy F. Cook, Executive Director, has determined that the proposed rule amendments will have no adverse economic effect on small businesses, micro-businesses, or rural communities, therefore preparation of an Economic Impact Statement as detailed under Texas Government Code § 2006.002, is not required.

REGULATORY FLEXIBILITY ANALYSIS REQUIRED BY TEXAS GOVERNMENT CODE § 2006.002.

Amy F. Cook, Executive Director, has determined that the proposed rule amendments will have no adverse economic effect on small businesses, micro-businesses, or rural communities, therefore preparation of a Regulatory Flexibility Analysis as detailed under Texas Government Code § 2006.002, is not required.

TAKINGS IMPACT ASSESSMENT REQUIRED BY TEXAS GOVERNMENT CODE § 2007.043.

Amy F. Cook, Executive Director, has determined that no private real property interests are affected by the proposed rule amendments, and the proposed rule amendments do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rule amendments do not constitute a taking or require a takings impact assessment under Texas Government Code § 2007.043.

LOCAL EMPLOYMENT IMPACT STATEMENT REQUIRED BY TEXAS GOVERNMENT CODE § 2001.024(A)(6).

Amy F. Cook, Executive Director, has determined that the proposed rule repeal and rule amendments are not expected to have any fiscal implications for state or local government as outlined in Texas Government Code § 2001.024(A)(6).

COST-BENEFIT ANALYSIS REQUIRED BY TEXAS GOVERNMENT CODE § 2001.024(A)(5).

Amy F. Cook, Executive Director has determined that the proposed rule amendments are expected to reduce the overall costs of the licensing process aligning the administration of the licensing program by the Executive Director with the current version of the Texas Racing Act.

FISCAL NOTE ANALYSIS REQUIRED BY TEXAS GOVERNMENT CODE § 2001.024(A)(4).

Amy F. Cook, Executive Director has determined that no significant fiscal impact is associated with the proposed rule change.

Comments on the proposal may be submitted to the Texas Racing Commission Executive Director, Amy F. Cook, via webpage comment form at <https://www.txrc.texas.gov/texas-rules-of-racing> or through the agency customer service desk at [customer.service@txrc.texas.gov](mailto:customer.service@txrc.texas.gov), or by calling the customer service phone number at (512) 833-6699. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

STATUTORY AUTHORITY. The amendments are proposed under Texas Occupations Code § 2025.001(a-1).

CROSS REFERENCE TO STATUTE. No other statute, code, or article is affected by the proposed amendments

§311.4. *Occupational License Restrictions.*

(a) Non-Transferable. Except as otherwise provided by this section, a license issued by the Executive Director is personal to the licensee and is not transferable.

~~[(1) Except as otherwise provided by this section, a license issued by the Commission is personal to the licensee and is not transferable.]~~

~~[(2) If the death of a licensee creates an undue hardship or results in a technical violation of the Act or a Rule, on application of a person who wishes to operate or work under the license, the Commission may issue a temporary license to the person for a period specified by the Commission not to exceed one year.]~~

(b) Education. To be eligible to receive a license to participate in racing with pari-mutuel wagering, an individual who is under 18 years of age must present to the Commission proof that the individual:

(1) has graduated from high school or received an equivalent degree; or

(2) is currently enrolled in high school or equivalent classes.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 8, 2024.

TRD-202401078

Amy F. Cook  
Executive Director  
Texas Racing Commission  
Earliest possible date of adoption: April 21, 2024  
For further information, please call: (512) 833-6699



## CHAPTER 319. VETERINARY PRACTICES AND DRUG TESTING

### SUBCHAPTER D. DRUG TESTING

#### DIVISION 3. PROVISIONS FOR HORSES

##### 16 TAC §319.362

The Texas Racing Commission (TXRC) proposes amendments to Title 16, Part 8, Chapter 319, Subchapter D, Division 3, §319.362 concerning the procedures for storing and testing split samples for horses. The purpose of these amendment is to align the rules with the interagency agreement the agency has with the Texas Veterinary Medical Diagnostic Lab (TVMDL). The current interagency agreement updated the process of storing primary and split samples at the laboratory instead of the racetrack locations.

##### FISCAL NOTE ANALYSIS REQUIRED BY TEXAS GOVERNMENT CODE § 2001.024(A)(4).

Amy F. Cook, Executive Director has determined that no significant fiscal impact is associated with the proposed rule change.

##### ECONOMIC IMPACT STATEMENT REQUIRED BY TEXAS GOVERNMENT CODE § 2006.002.

Amy F. Cook, Executive Director, has determined that the proposed amendments will have no adverse economic effect on small businesses, micro-businesses, or rural communities, therefore preparation of an Economic Impact Statement as detailed under Texas Government Code § 2006.002, is not required.

##### REGULATORY FLEXIBILITY ANALYSIS REQUIRED BY TEXAS GOVERNMENT CODE§ 2006.002.

Amy F. Cook, Executive Director, has determined that the proposed amendments will have no adverse economic effect on small businesses, micro-businesses, or rural communities, therefore preparation of a Regulatory Flexibility Analysis as detailed under Texas Government Code § 2006.002, is not required.

##### TAKINGS IMPACT ASSESSMENT REQUIRED BY TEXAS GOVERNMENT CODE§ 2007.043.

Amy F. Cook, Executive Director, has determined that no private real property interests are affected by the proposed amendments, and the proposed amendments do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed amendments do not constitute a taking or require a takings impact assessment under Texas Government Code § 2007.043.

##### LOCAL EMPLOYMENT IMPACT STATEMENT REQUIRED BY TEXAS GOVERNMENT CODE§ 2001.024(A)(6).

Amy F. Cook, Executive Director, has determined that the proposed amendments are not expected to have any fiscal implica-

tions for state or local government as outlined in Texas Government Code § 2001.024(A)(6).

##### COST-BENEFIT ANALYSIS REQUIRED BY TEXAS GOVERNMENT CODE§ 2001.024(A)(5).

Amy F. Cook, Executive Director has determined that the proposed amendments are expected to reduce the overall costs of the drug testing for licensees who no longer must pay \$175.00-\$250.00 to ship split samples to the laboratory chosen to test the split.

##### GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEXAS GOVERNMENT CODE§ 2001.022.

Amy F. Cook, Executive Director, has determined that the proposed rules will not create or eliminate a government program; create new or eliminates existing employee positions; require an increase or decrease in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; create a new regulation, expand an existing regulation, limit an existing regulation, or repeal an existing regulation; increase or decrease the number of individuals subject to the rules applicability; and will not positively or adversely affects the state's economy. The rule will not repeal an existing regulation, rather it clarifies the process for storage of drug testing samples.

Comments on the proposal may be submitted to the Texas Racing Commission Executive Director, Amy F. Cook, via webpage comment form at <https://www.txrc.texas.gov/texas-rules-of-racing> or through the agency customer service desk at [customer.service@txrc.texas.gov](mailto:customer.service@txrc.texas.gov), or by calling the customer service phone number at (512) 833-6699. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

##### STATUTORY AUTHORITY.

The amendments are proposed under Texas Occupations Code §§ 2034.002; 2034.005.

##### CROSS REFERENCE TO STATUTE. Texas Occupations Code §§ 2034.002; 2034.005.

##### §319.362. *Split Specimen.*

(a) Before sending a specimen from a horse to a testing laboratory, the commission veterinarian shall determine whether the specimen is of sufficient quantity to be split. If there is sufficient quantity of the specimen, the commission veterinarian or ~~the commission veterinarian's~~ designee shall divide the specimen into two parts. If the specimen is of insufficient quantity to be split, the commission veterinarian may require the horse to be detained until an adequate amount of urine can be obtained. If the commission veterinarian ultimately determines the quantity of the specimen obtained is insufficient to be split, the commission veterinarian shall certify that fact in writing and submit the entire specimen to the laboratory for testing. In either case, both the primary and split specimens shall be shipped to the laboratory for testing and storage, and secured in laboratory storage until the executive director determines that the specimens are no longer needed for regulatory purposes.

~~[(b) The commission veterinarian or commission veterinarian's designee shall retain custody of the portion of the specimen that is not sent to the laboratory. The veterinarian or designee shall store the retained part in a manner that ensures the integrity of the specimen.]~~

(b) [(e)] An owner or trainer of a horse which has received a positive result on a drug test may request, in writing, that the retained serum or urine, whichever provided the positive result, be submitted for testing to a laboratory approved by the executive director

[a Commission approved and listed laboratory] that is acceptable to the owner or trainer. The owner or trainer must notify the executive director [secretary] of the request not later than 48 hours after notice of the positive result. Failure to request the split or select a laboratory within the prescribed time period will be deemed a waiver of the right to the split specimen.

~~[(d)]~~ If the retained part of a specimen is sent for testing, the commission staff shall arrange for the transportation of the specimen in a manner that ensures the integrity of the specimen. The person requesting the tests shall pay all costs of transporting and conducting tests on the specimen. To ensure the integrity of the specimen, the split specimen must be shipped to the selected laboratory no later than 10 days after the day the trainer is notified of the positive test. Subject to this deadline, the owner or trainer of the horse from whom the specimen was obtained is entitled to be present or have a representative present at the time the split specimen is sent for testing.]

~~(c)~~ ~~[(e)]~~ If the test on the split specimen confirms the findings of the original laboratory, it is a prima facie violation of the applicable provisions of the chapter.

~~(d)~~ ~~[(f)]~~ If the test on the split specimen portion does not substantially confirm the findings of the original laboratory, the stewards may not take disciplinary action regarding the original test results.

~~(e)~~ ~~[(g)]~~ If an act of God, power failure, accident, labor strike, or any other event, beyond the control of the Commission, prevents the split from being tested, the findings of the original laboratory are prima facie evidence of the condition of the horse at the time of the race.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 8, 2024.

TRD-202401080

Amy F. Cook

Executive Director

Texas Racing Commission

Earliest possible date of adoption: April 21, 2024

For further information, please call: (512) 833-6699



## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS

The Texas Education Agency (TEA) proposes amendment to §§89.1011, 89.1040, 89.1050, 89.1055, and 89.1131, concerning clarification of special education provisions in federal regulations and state law and special education and related service personnel. The proposed amendments would implement House Bill (HB) 3928, 88th Texas Legislature, Regular Session, 2023, and codify current program practices.

**BACKGROUND INFORMATION AND JUSTIFICATION:** Section 89.1011 defines the criteria for school districts conducting full individual and initial evaluations (FIEs) to determine eligibility for special education and related services.

Changes are proposed throughout §89.1011 to clarify the evaluation process and address HB 3928, 88th Texas Legislature, Regular Session, 2023.

The proposed amendment to §89.1011(a) would clarify terms as well as establish one new expectation. The proposed amendment would include using the term "multi-tiered system of academic and behavioral supports" in place of an overall referral or screening system and aligning terms and text style within the subsection. A new requirement would be added that a student must continue to receive any necessary interventions and support services while an FIE is being conducted, which has been standard practice.

The TEC requires a school district to respond in a certain way when a parent submits a written request to the district's director of special education services or to a district administrative employee. Section 89.1011(b) would be modified to add campus principals as examples of district administrative employees. The Overview of Special Education for Parents form was created by the Texas Education Agency (TEA) to comply with HB 3928. While the form is only required by law for suspicions of dyslexia, the proposed amendment to §89.1011(b)(1) and (2) would add this requirement for suspicions of any disability.

New §89.1011(c) would establish what is required when a school district initiates the referral for an FIE of a student.

Information from existing §89.1011(d) would be removed, as new subsection (g) would address the same topic.

TEC, §29.004, outlines the timeline for the completion of FIEs. Section 89.1011(e) would be amended to more clearly describe the requirements of state law when parental consent is received less than 45 school days before the last instructional day of the school year.

New §89.1011(g) would establish timelines for the admission, review, and dismissal (ARD) committee to make decisions regarding a student's eligibility determination and, if appropriate, an IEP and placement within 30 calendar days of the completed FIE report. The proposed amendment would also specify that if the 30th day falls in the summer when school is not in session, the ARD committee must meet no later than the 15th day of school the next school year. If extended school year services are indicated as a need in a report, however, the ARD committee would need to meet as soon as possible after completion of the report.

New §89.1011(h) would establish that a copy of the written FIE report must be provided to the parent no later than when the initial ARD committee invitation is sent to the parent, or no later than June 30 if subsection (e)(1) of the section applies.

Re-lettered §89.1011(i) would establish the meaning of a school day for year-round schools, as authorized under TEC, §29.004.

The proposed amendment to re-lettered §89.1011(j) would clarify that student absences are those categorized as absences under the Student Attendance Accounting Handbook.

Section 89.1040 establishes eligibility criteria.

Changes are proposed throughout §89.1040 for clarification and to align more closely with law.

Section 89.1040(c)(1), regarding autism eligibility, would be amended to remove references to pervasive developmental disorder, as this diagnosis is no longer used, and update the

areas of recommendations that an evaluation report would contain.

Based on the receipt of a petition to adopt a rule change, §89.1040(c)(3) would be amended to remove the eligibility requirement for deaf or hard of hearing to include an ontological examination performed by an otolaryngologist. In addition, the subsection would be amended to include the completion of a communication assessment to align with current practice. In 26 TAC §350.809, regarding eligibility for early childhood intervention (ECI) services, the rule states that a child is eligible for ECI if he or she meets the criteria for deaf or hard of hearing as defined in §89.1040. Because §89.1040(c)(3) reflects the definition used in the Individuals with Disabilities Education Act (IDEA), Part B, for children age three and older, rather than Part C for those under the age of three, and because children under the age of three who are deaf or hard of hearing or who have a visual impairment are eligible for state special education funding, §89.1040(c)(3)(B) would be amended to reference when a child under the age of three can be determined eligible by a local education agency (LEA) for the deaf or hard of hearing eligibility category.

Based on requests from various stakeholders, the name of the emotional disturbance disability category would be changed to emotional/behavioral disability. New language would also specify that emotional/behavioral disability will be considered synonymous with the term emotional disturbance and serious emotional disturbance as those terms are used in federal and state law.

Section 89.1040(c)(6), regarding multiple disabilities, would be amended to more closely align with the definition in federal law.

In the eligibility categories of orthopedic impairment in §89.1040(c)(7), other health impairment in §89.1040(c)(8), and traumatic brain injury in §89.1040(c)(11), the proposed amendment would reference the requirement for certain medical professionals to provide information, rather than be an official part of the multidisciplinary team.

Section 89.1040(c)(9), regarding eligibility as a student with a specific learning disability, would be amended based on both HB 3928 and for clarification. The changes would include the following. Repeated performance on progress monitoring measures would be added as another example of a measure that can be reviewed to determine if a student is achieving adequately. Language would be added that written expression may include the identification of dysgraphia, and basic reading skill and reading fluency skills may include the identification of dyslexia. Clarification would be added that a significant variance among specific areas of cognitive function or between specific areas of cognitive function and academic achievement is not a requirement for determining the presence of a specific learning disability. New subparagraph (G) would be added to address specific requirements related to suspicions and identification of dyslexia or dysgraphia.

Section 89.1040(c)(12), regarding visual impairment, would be revised to add the statutory requirement of the expanded core curriculum and to remove redundant text about orientation and mobility specialists, as these specialists must be certified and part of the team as required by statute and it is unnecessary to repeat this requirement in administrative rule. In 26 TAC §350.809, regarding eligibility for ECI services, the rule states that a child is eligible for ECI if he or she meets the criteria for a visual impairment as defined in §89.1040. Because §89.1040(c)(12)(A) reflects the definition used in IDEA, Part B, for children age three and older, rather than Part C for those under the age of three,

and because children under the age of three who are deaf or hard of hearing or who have a visual impairment are eligible for state special education funding, §89.1040(c)(12)(C) would be amended to reference when a child under the age of three can be determined eligible by an LEA for the visual impairment eligibility category.

IDEA and its corresponding federal regulations allow states to use the disability category of developmental delay. If states choose to use this category, they may not require LEAs to use it. However, if an LEA uses this category, the LEA must comply with the eligibility requirements set by the state. Texas has historically not used the eligibility category of developmental delay but has used a category called "noncategorical," also known as "noncategorical early childhood." This is defined as a child between the ages of three and five who is evaluated as having an intellectual disability, an emotional disturbance, a specific learning disability, or autism. The proposed amendment would add new §89.1040(c)(13) to officially establish the state's definition of developmental delay and prescribe how LEAs would use this eligibility category should they choose to do so. A transition period is included with the amendment to phase out the category of noncategorical.

Section 89.1050 describes roles and duties of the ARD committee.

Section 89.1050(a) would be amended to add TEC, §37.004 and §37.307, to reflect duties for which the ARD committee is responsible.

A proposed amendment to §89.1050(c), regarding committee membership, would include the addition of a cross reference to federal regulations for the definition of parent and clarifications regarding current terminology.

Section 89.1050(g), (i), and (j) would be removed and included, with changes, in §89.1055, where those provisions are more appropriately addressed.

Section 89.1050(k) would be removed, as the subsection restates law and is unnecessary to repeat in administrative rule.

Section 89.1055 addresses the content of the IEP. To better align with the provisions included in this rule, the title would be changed to Individualized Education Program.

Section 89.1055(a) would be amended to include a reference to TEC, §29.0051, to clarify that an IEP must also contain any state-imposed requirements in addition to the federal requirements that are already listed.

To align with how TEA monitors IEP compliance, new §89.1055(b) would address how TEA will determine if a measurable annual goal is present in an IEP. The new subsection would also include information regarding when short-term objectives/benchmarks are required and how those relate to annual goals.

New §89.1055(d) would require the inclusion of TEA's alternate assessment participation form in a student's IEP to comply with the required statements when an ARD committee has determined that a student will not participate in the general statewide assessment.

Amendments to re-lettered §89.1055(g) would clarify expectations and terminology within the autism supplement.

Based on requests from stakeholders to clarify the expectations related to the state transition requirements found in TEC,

§29.011 and §29.0111, that begin at 14 years of age and the federal requirements for transition that begin no later than 16 years of age, TEA is proposing to align all transition requirements with 14 years of age as authorized in TEC, §29.011 and §29.0111. The following proposed changes to §89.1055 would address the alignment. References would be removed from re-lettered subsection (j) to a student being at least 18 years of age and added to another subsection so that subsection (j) is focused on the requirements that happen not later than the first IEP to be in effect when the student turns 14 years of age. Employment goals and objectives and independent living goals and objectives would be removed from re-lettered subsection (j). Although these are listed as state transition requirements, they are already adequately addressed in the federal requirements. New subsection (k) would address the federal transition requirements and align those requirements to begin no later than the first IEP to be in effect when the student turns 14 years of age. Subsections (j) and (k) are separated because state requirements in TEC, §29.011, require these areas to be "considered and addressed, if appropriate," and the federal requirements described in subsection (k) require them to be included in a student's IEP. New subsection (l) would clarify that the state requirements for employment goals and objectives and independent living goals and objectives will be addressed within the goals required under subsection (k). Re-lettered subsection (m) would be modified to include the required provisions once a student is 18. New subsection (n) would be added to address the requirement for the ARD committee to review certain issues at least annually. The language is similar to an existing requirement and is being moved from a subsection proposed for deletion to allow this requirement to be organized with transition requirements.

New §89.1055(o), which addresses the requirements for all members of the ARD committee to participate in a collaborative manner, would add language from §89.1050 with no changes to rule text.

New §89.1055(q), which addresses the requirements for translations of student IEPs, would add language from §89.1050 with no changes to rule text.

New §89.1055(r) would add modified language from §89.1050. Wording would be clarified related to students who transfer to a new school district from an in-state or out-of-state district. In addition, based on recent federal guidance on serving students who are highly mobile, additional text regarding extended school year services being considered a comparable service would be added. Within this same guidance, students who registered in new districts over the summer months are viewed the same as students who transferred during the school year. To reflect that guidance, changes would clarify that school districts will follow the same processes for students who register in the summer as those who transfer during the school year, depending on whether the student is coming from an in-state or out-of-state district.

Section 89.1131 establishes qualifications of special education, related service, and paraprofessional personnel.

New §89.1131(b) would establish that a provider of dyslexia instruction is not required to be certified in special education unless employed in a special education position requiring certification.

Language related to the special education endorsement for early childhood education for students with disabilities would be removed as the endorsement is no longer issued.

Re-lettered §89.1131(c)(4) would clarify the provisions for physical education when an ARD committee has determined that a student needs specially designed instruction in physical education.

Language related to secondary certification with the generic delivery system would be removed as the certification is no longer issued.

Re-lettered §89.1131(e) would be modified to delete references to the Department of Assistive and Rehabilitative Services (DARS) or Office for Deaf and Hard of Hearing Services (DHHS), as this department and office have been consolidated into the Health and Human Services Commission.

**FISCAL IMPACT:** Justin Porter, associate commissioner and chief program officer for special populations, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

**LOCAL EMPLOYMENT IMPACT:** The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

**SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT:** The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

**COST INCREASE TO REGULATED PERSONS:** The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

**TAKINGS IMPACT ASSESSMENT:** The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

**GOVERNMENT GROWTH IMPACT:** TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand existing regulations to align with HB 3928 and add into rule current program practices.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not limit or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

**PUBLIC BENEFIT AND COST TO PERSONS:** Mr. Porter has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be to update §89.1011 to define the criteria for school districts conducting FIEs to determine eligibility for special education and related services and establish criteria for how school districts will respond after receiving a written parent request for evaluation; update §89.1040 to establish eligibility criteria for special education and related services for students to include term changes and additional qualifying criteria based on stakeholder feedback; update §89.1050 to describe roles and

duties of the ARD committee, including the addition of a cross reference to federal regulations for the definition of parent and clarifications regarding current terminology; update §89.1055 to address the content of the IEP, including clarification of the expectations related to the state transition requirements, and align all transition requirements with students 14 years of age as authorized in TEC, §29.011 and §29.0111; and update §89.1131 to establish qualifications of special education, related service, and paraprofessional personnel. There is no anticipated economic cost to persons who are required to comply with the proposals.

**DATA AND REPORTING IMPACT:** The proposal would have no data and reporting implications.

**PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS:** TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

**PUBLIC COMMENTS:** The public comment period on the proposal begins March 22, 2024, and ends April 22, 2024. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About\\_TEA/Laws\\_and\\_Rules/Commissioner\\_Rules\\_\(TAC\)/Proposed\\_Commissioner\\_of\\_Education\\_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/). Public hearings will be conducted to solicit testimony and input on the proposed amendments at 9:30 a.m. on April 8 and 10, 2024. The public may participate in either hearing virtually by linking to the hearing at <https://zoom.us/j/94990719111>. Anyone wishing to testify must be present at 9:30 a.m. and indicate to TEA staff their intent to comment and are encouraged to also send written testimony to [sped@tea.texas.gov](mailto:sped@tea.texas.gov). The hearing will conclude once all who have signed in have been given the opportunity to comment. Questions about the hearing should be directed to Derek Hollingsworth, Special Populations Policy, Reporting, and Technical Assistance, [Derek.Hollingsworth@tea.texas.gov](mailto:Derek.Hollingsworth@tea.texas.gov).

## **SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING SPECIAL EDUCATION SERVICES**

### **DIVISION 2. CLARIFICATION OF PROVISIONS IN FEDERAL REGULATIONS**

#### **19 TAC §§89.1011, 89.1040, 89.1050, 89.1055**

**STATUTORY AUTHORITY.** The amendments are proposed under Texas Education Code (TEC), §28.025, which requires the State Board of Education (SBOE) to determine curriculum requirements for a high school diploma and certificate; TEC, §29.001, which requires the agency to develop and modify as necessary a statewide plan for the delivery of services to children with disabilities that ensures the availability of a free appropriate public education to children between the ages of 3-21; TEC, §29.003, which requires the agency to develop eligibility criteria for students receiving special education services; TEC, §29.004, which establishes criteria for completing full individual and initial evaluations of a student for purposes of special education services; TEC, §29.005, which establishes criteria for developing a student's individualized education program prior to a student enrolling in a special education program; TEC, §29.010, which requires the agency to develop and implement a monitoring system for school district compliance with federal and state laws regarding special education; TEC, §29.011, which requires the commissioner to adopt procedures for compliance with federal requirements relating to transition services

for students enrolled in special education programs; TEC, §29.0111, which appropriates state transition planning to begin for a student no later than the student turning 14 years of age; TEC, §29.012, which requires the commissioner to develop and implement procedures for compliance with federal requirements relating to transition services for students enrolled in a special education program; TEC, §29.017, which establishes criteria for the transfer of rights from a parent to a child with a disability who is 18 or older or whose disabilities have been removed under Texas Family Code, Chapter 31, to make educational decisions; TEC, §29.018, which requires the commissioner to make grants available to school districts to support covering the cost of education services for students with disabilities; TEC, §29.0031, as amended by House Bill (HB) 3928, 88th Texas Legislature, Regular Session, 2023, which establishes requirements of a district if it is suspected or has reason to suspect that a student may have dyslexia; TEC, §29.0032, as amended by HB 3928, 88th Texas Legislature, Regular Session, 2023, which establishes criteria for providers of dyslexia instruction; TEC, §30.001, which requires the commissioner, with approval by the SBOE, to establish a plan for the coordination of services to students with a disability; TEC, §30.002, which requires the agency to develop and administer a statewide plan for the education of children with visual impairments; TEC, §30.083, which requires the development of a statewide plan for educational services for students who are deaf or hard of hearing; TEC, §37.0021, which establishes the use of confinement, restraint, seclusion, and time-out for a student with a disability; TEC, §48.004, which requires the commissioner to adopt rules necessary for administering the Foundation School Program; TEC, §48.102, which establishes criteria for school districts to receive an annual allotment for students in a special education program; Texas Government Code, §392.002, which defines "authority" or "housing authority;" 34 CFR, §300.8, which defines terms regarding a child with a disability; 34 CFR, §300.100, which establishes eligibility criteria for a state to receive assistance; 34 CFR, §300.101, which defines the requirement for all children residing in the state between the ages of 3-21 to have a free appropriate education available; 34 CFR, §300.111, which defines the requirement of the state to have policies and procedures in place regarding child find; 34 CFR, §300.114, which defines least restrictive environment requirements; 34 CFR, §300.121, which establishes the requirement for a state to have procedural safeguards; 34 CFR, §300.122, which establishes the requirement for evaluation of children with disabilities; 34 CFR, §300.124, which establishes the requirement of the state to have policies and procedures in place regarding the transfer of children from the Part C program to the preschool program; 34 CFR, §300.129, which establishes criteria for the state responsibility regarding children in private schools; 34 CFR, §300.147, which establishes the criteria for the state education agency when implementing the responsibilities each must ensure for a child with a disability who is placed in or referred to a private school or facility by a public agency; 34 CFR, §300.149, which establishes the state education agency's responsibility for general supervision; 34 CFR, §300.151, which establishes the criteria for the adoption of state complaint procedures; 34 CFR, §300.152, which establishes the criteria for minimum state complaint procedures; 34 CFR, §300.153, which establishes the criteria for filing a complaint; 34 CFR, §300.156, which establishes the criteria for the state education agency to establish and maintain qualification procedures for personnel serving children with disabilities; 34 CFR, §300.320, which defines the requirements for an individualized

education program (IEP); 34 CFR, §300.322, which establishes the requirement for a parent participation opportunity at each IEP team meeting; 34 CFR, §300.323, which establishes the timeframe for when IEPs must be in effect; 34 CFR, §300.301, which establishes the requirement for initial evaluations; 34 CFR, §300.302, which clarifies that screening for instructional purposes is not an evaluation; 34 CFR, §300.303, which establishes the criteria for reevaluations; 34 CFR, §300.304, which establishes the criteria for reevaluation procedures; 34 CFR, §300.305, which establishes the criteria for additional requirements for evaluations and reevaluations; 34 CFR, §300.306, which defines the determination of eligibility; 34 CFR, §300.307, which establishes the criteria for determining specific learning disabilities; 34 CFR, §300.308, which establishes criteria for additional group members in determining whether a child is suspected of having a specific learning disability as defined in 34 CFR, §300.8; 34 CFR, §300.309, which establishes criteria for determining the existence of a specific learning disability; 34 CFR, §300.310, which establishes criteria for observation to document the child's academic performance and behavior in the areas of difficulty; 34 CFR, §300.311, which establishes criteria for specific documentation for the eligibility determination; 34 CFR, §300.500, which establishes the responsibility of a state education agency and other public agencies to ensure the establishment, maintenance, and implementation of procedural safeguards; 34 CFR, §300.506, which establishes the requirement of each public agency to establish procedures to resolve disputes through a mediation process; 34 CFR, §300.507, which establishes criteria for filing a due process complaint; and 34 CFR, §300.600, which establishes requirements for state monitoring and enforcement.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code (TEC), §§28.025; 29.001; 29.003; 29.0031, as amended by House Bill (HB) 3928, 88th Texas Legislature, Regular Session, 2023; 29.0032, as amended by HB 3928, 88th Texas Legislature, Regular Session, 2023; 29.004; 29.005; 29.010; 29.011; 29.0111; 29.012; 29.017; 29.018; 30.001; 30.002; 30.083; 37.0021; 48.004; and 48.102; Texas Government Code, §392.002; and 34 Code of Federal Regulations (CFR), §§300.8, 300.100, 300.101, 300.111, 300.114, 300.121, 300.122, 300.124, 300.129, 300.147, 300.149, 300.151, 300.152, 300.153, 300.156, 300.320, 300.322, 300.323, 300.301, 300.302, 300.303, 300.304, 300.305, 300.306, 300.307, 300.308, 300.309, 300.310, 300.311, 300.500, 300.506, 300.507, and 300.600.

*§89.1011. Full Individual and Initial Evaluation.*

(a) Referral of students for a full individual and initial evaluation (FIIE) for possible special education and related services must be a part of the school district's multi-tiered system of academic and behavioral supports [overall, general education referral or screening system]. Students not making progress [experiencing difficulty] in the general education classroom should be considered for all interventions and support services available to all students, such as tutorial; [remedial;] compensatory; response to evidence-based intervention; and other academic or behavior support services. A student is not required to be provided with interventions and support services for any specific length of time prior to a referral being made or an FIIE [a full individual and initial evaluation] being conducted. If the student continues to not make expected progress [experience difficulty in the general classroom] with the provision of interventions and support services, district personnel must refer the student for an FIIE [a full individual and initial evaluation]. A referral or request for an FIIE [for a full individual and initial evaluation] may be initiated at any time by school personnel, the

student's parents or legal guardian, or another person involved in the education or care of the student. While an FIIE is being conducted, a student must continue to receive any necessary interventions and support services to target their academic or behavioral needs.

(b) If a parent submits a written request to a school district's director of special education services or to a district administrative employee, such as a campus principal, for an FIIE [a full individual and initial evaluation] of a student, the school district must, not later than the 15th school day after the date the district receives the request:

(1) provide the parent with prior written notice of its proposal to conduct an evaluation consistent with 34 Code of Federal Regulations (CFR), §300.503; a copy of the procedural safeguards notice required by 34 CFR, §300.504; a copy of the Overview of Special Education for Parents form created by the Texas Education Agency (TEA); and an opportunity to give written consent for the evaluation; or

(2) provide the parent with prior written notice of its refusal to conduct an evaluation consistent with 34 CFR, §300.503; a copy of the Overview of Special Education for Parents form created by TEA; [;] and a copy of the procedural safeguards notice required by 34 CFR, §300.504.

(c) When a school district initiates the referral for an FIIE of a student, the district must provide the parent with the information and materials described in subsection (b)(1) of this section.

(d) [(e)] Except as otherwise provided in this section, a written report of an FIIE [a full individual and initial evaluation] of a student must be completed as follows:

(1) not later than the 45th school day following the date on which the school district receives written consent for the evaluation from the student's parent, except that if a student has been absent from school during that period on three or more school days, that period must be extended by a number of school days equal to the number of school days during that period on which the student has been absent; or

(2) for students under five years of age by September 1 of the school year and not enrolled in public school and for students enrolled in a private or home school setting, not later than the 45th school day following the date on which the school district receives written consent for the evaluation from the student's parent.

[(d) The admission, review, and dismissal (ARD) committee must make its decisions regarding a student's initial eligibility determination and, if appropriate, individualized education program (IEP) and placement within 30 calendar days from the date of the completion of the written full individual and initial evaluation report. If the 30th day falls during the summer and school is not in session, the student's ARD committee has until the first day of classes in the fall to finalize decisions concerning the student's initial eligibility determination, IEP, and placement, unless the full individual and initial evaluation indicates that the student will need extended school year services during that summer.]

(e) Notwithstanding the timelines in subsections [(e) and] (d) and (g) of this section, if the school district received the written consent for the evaluation from the student's parent ;

(1) at least 35 but less than 45 school days before the last instructional day of the school year, the written report of an FIIE [a full individual and initial evaluation] of a student must be provided to the student's parent not later than June 30 of that year ; [; The student's ARD committee must meet not later than the 15th school day of the following school year to consider the evaluation. If, however, the student was absent from school three or more days between the time that the school district received written consent and the last instructional day of



the school year, the timeline in subsection (e)(1) of this section applies to the date the written report of the full individual and initial evaluation is required. If an initial evaluation completed not later than June 30 indicates that the student will need extended school year services during that summer, the ARD committee must meet as expeditiously as possible.]

(2) at least 35 but less than 45 school days before the last instructional day of the school year but the student was absent three or more school days between the time that the school district received written consent and the last instructional day of the school year, the timeline in subsection (d)(1) of this section applies to the date the written report of the FIIE must be completed; or

(3) less than 35 school days before the last day of the school year, the timeline in subsection (d)(1) applies to the date the written report of the FIIE must be completed.

(f) If a student was in the process of being evaluated for special education eligibility by a school district and enrolls in another school district before the previous school district completed the FIIE [~~full individual and initial evaluation~~], the new school district must coordinate with the previous school district as necessary and as expeditiously as possible to ensure a prompt completion of the evaluation in accordance with 34 CFR, §300.301(d)(2) and (e) and §300.304(c)(5). The timelines in subsections (d) and (g) [~~(e) and (e)~~] of this section do not apply in such a situation if:

(1) the new school district is making sufficient progress to ensure a prompt completion of the evaluation; and

(2) the parent and the new school district agree to a specific time when the evaluation will be completed.

(g) The admission, review, and dismissal (ARD) committee must make its decisions regarding a student's initial eligibility determination and, if appropriate, individualized education program (IEP) and placement within 30 calendar days from the date of the completion of the written FIIE report. If the 30th day falls during the summer and school is not in session, the ARD committee must meet not later than the 15th school day of the following school year to finalize decisions concerning the student's initial eligibility determination, and, if appropriate, IEP and placement. If the 30th day falls during the summer and school is not in session but an FIIE report indicates that the student would need extended school year services during that summer, the ARD committee must meet as expeditiously as possible after completion of the report.

(h) A copy of the written FIIE report must be provided to the parent no later than when the invitation to the initial ARD committee meeting, which will determine a student's initial eligibility under subsection (g) of this section, is sent to the parent, or not later than June 30 if subsection (e)(1) of this section applies.

(i) [~~(g)~~] For purposes of subsections (b), (d), [~~(e), and~~] (e), and (g) of this section, school day does not include a day that falls after the last instructional day of the spring school term and before the first instructional day of the subsequent fall school term. In the case of a school that operates under a school year calendar without spring and fall terms, a school day does not include a day that falls after the last instructional day of one school year and before the first instructional day of the subsequent school year.

(j) [~~(h)~~] For purposes of subsections (d)(1) [~~(e)(1)~~] and (e) of this section, a student is considered absent for the school day if the student is not in attendance at the school's official attendance taking time or alternative [~~at the alternate~~] attendance taking time as described in the Student Attendance Accounting Handbook, adopted by reference under §129.1025 of this title (relating to Adoption by Reference: Stu-

dent Attendance Accounting Handbook). [set for that student. A student is considered in attendance if the student is off campus participating in an activity that is approved by the school board and is under the direction of a professional staff member of the school district, or an adjunct staff member who has a minimum of a bachelor's degree and is eligible for participation in the Teacher Retirement System of Texas.]

§89.1040. *Eligibility Criteria.*

(a) Special education and related services. To be eligible to receive special education and related services, a student must be a "child with a disability," as defined in 34 Code of Federal Regulations (CFR), §300.8(a), subject to the provisions of 34 CFR, §300.8(c), the Texas Education Code (TEC), Subchapter A, [~~§29.003,~~] and this section. The provisions in this section specify criteria to be used in determining whether a student's condition meets one or more of the definitions in federal regulations or in state law.

(b) Eligibility determination. The determination of whether a student is eligible for special education and related services is made by the student's admission, review, and dismissal committee. Any evaluation or re-evaluation of a student must be conducted in accordance with 34 CFR, §§300.301-300.306 and 300.122. The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility must include, but is not limited to, the following:

(1) a licensed specialist in school psychology (LSSP) /school psychologist, an educational diagnostician, or other appropriately certified or licensed practitioner with experience and training in the area of the disability; or

(2) a licensed or certified professional for a specific eligibility category defined in subsection (c) of this section.

(c) Eligibility definitions.

(1) Autism. A student with autism is one who has been determined to meet the criteria for autism as stated in 34 CFR, §300.8(c)(1). [~~Students with pervasive developmental disorders are included under this category.~~] The team's written report of evaluation must include specific recommendations for communication, social interaction, and behavioral interventions and strategies.

(2) Deaf-blindness. A student with deaf-blindness is one who has been determined to meet the criteria for deaf-blindness as stated in 34 CFR, §300.8(c)(2). In meeting the criteria stated in 34 CFR, §300.8(c)(2), a student with deaf-blindness is one who, based on the evaluations specified in subsection (c)(3) and (12) of this section:

(A) meets the eligibility criteria for a student who is deaf or hard of hearing specified in subsection (c)(3) of this section and visual impairment specified in subsection (c)(12) of this section;

(B) meets the eligibility criteria for a student with a visual impairment and has a suspected hearing loss that cannot be demonstrated conclusively, but a speech/language therapist, a certified speech and language therapist, or a licensed speech language pathologist indicates there is no speech at an age when speech would normally be expected;

(C) has documented hearing and visual losses that, if considered individually, may not meet the requirements for a student who is deaf or hard of hearing or for visual impairment, but the combination of such losses adversely affects the student's educational performance; or

(D) has a documented medical diagnosis of a progressive medical condition that will result in concomitant hearing and visual losses that, without the provision of special education services

[intervention], will adversely affect the student's educational performance.

(3) Deaf or hard of hearing.

(A) A student who is deaf or hard of hearing is one who has been determined to meet the criteria for deafness as stated in 34 CFR, §300.8(c)(3), or for students who have a hearing impairment [are deaf or hard of hearing] as stated in 34 CFR, §300.8(c)(5). The evaluation data reviewed by the multidisciplinary team in connection with the determination of a student's eligibility based on being deaf or hard of hearing must include [an otological examination performed by an otolaryngologist or by a licensed medical doctor, with documentation that an otolaryngologist is not reasonably available, and] an audiological evaluation performed by a licensed audiologist and a communication assessment completed by the multidisciplinary team. The evaluation data must include a description of the implications of the hearing loss for the student's hearing in a variety of circumstances with or without recommended amplification.

(B) A child under three years of age meets the criteria for deaf or hard of hearing if the student's individualized family service plan (IFSP) indicates that the child meets the criteria of subparagraph (A) of this paragraph, has a hearing impairment or a developmental delay as defined in 26 TAC §350.809 of this title (relating to Initial Eligibility Criteria) in the area of physical development because of hearing loss or impairment, or the plan documents a medical condition that has a high probability of developmental delay in the area of physical development because of hearing loss or impairment.

(4) Emotional /behavioral disability [disturbance]. A student with an emotional /behavioral disability [disturbance] is one who has been determined to meet the criteria for emotional disturbance as stated in 34 CFR, §300.8(c)(4). The written report of evaluation must include specific recommendations for positive behavioral supports and interventions. The term emotional/behavioral disability is synonymous with the term emotional disturbance and serious emotional disturbance, as these terms are used in federal or state law pertaining to students eligible for special education and related services.

(5) Intellectual disability. A student with an intellectual disability is one who has been determined to meet the criteria for an intellectual disability as stated in 34 CFR, §300.8(c)(6). In meeting the criteria stated in 34 CFR, §300.8(c)(6), a student with an intellectual disability is one who:

(A) has been determined to have significantly sub-average intellectual functioning as measured by a standardized, individually administered test of cognitive ability in which the overall test score is at least two standard deviations below the mean, when taking into consideration the standard error of measurement of the test; and

(B) concurrently exhibits deficits in at least two of the following areas of adaptive behavior: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, and safety.

(6) Multiple disabilities.

(A) A student with multiple disabilities is one who has been determined to meet the criteria for multiple disabilities as stated in 34 CFR, §300.8(c)(7). In meeting the criteria stated in 34 CFR, §300.8(c)(7), that a combination of impairments causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments, a student with multiple disabilities is one who has a combination of disabilities defined in this section and who meets all of the following conditions:

(i) the student's disabilities are [disability is] expected to continue indefinitely; and

(ii) the disabilities severely impair performance in two or more of the following areas:

(I) psychomotor skills;

(II) self-care skills;

(III) communication;

(IV) social and emotional development; or

(V) cognition.

(B) Students who have more than one of the disabilities defined in this section but who do not meet the criteria in subparagraph (A) of this paragraph must not be classified or reported as having multiple disabilities.

(C) Multiple disabilities does not include deaf-blindness.

(7) Orthopedic impairment. A student with an orthopedic impairment is one who has been determined to meet the criteria for orthopedic impairment as stated in 34 CFR, §300.8(c)(8). The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility based on an orthopedic impairment must include information provided by a licensed physician.

(8) Other health impairment. A student with other health impairment is one who has been determined to meet the criteria for other health impairment due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette's Disorder as stated in 34 CFR, §300.8(c)(9). The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility based on other health impairment must include information provided by a licensed physician, a physician assistant, or an advanced practice registered nurse with authority delegated under Texas Occupations Code, Chapter 157.

(9) Specific learning disability.

(A) Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities; intellectual disability; emotional /behavioral disability [disturbance]; or environmental, cultural, or economic disadvantage.

(B) A student with a specific learning disability is one who:

(i) has been determined through a variety of assessment tools and strategies to meet the criteria for a specific learning disability as stated in 34 CFR, §300.8(c)(10), in accordance with the provisions in 34 CFR, §§300.307-300.311;

(ii) when provided with learning experiences and instruction appropriate for the student's age or state-approved grade-level standards as indicated by performance on multiple measures such as in-class tests, grade average over time (e.g. six weeks or semester), repeated performance on progress monitoring measures, norm- or criterion-referenced tests, and statewide assessments, does not achieve

adequately for the student's age or to meet state-approved grade-level standards in one or more of the following areas:

- (I) oral expression;
  - (II) listening comprehension;
  - (III) written expression, which may include dysgraphia;
  - (IV) basic reading skill, which may include dyslexia;
  - (V) reading fluency skills, which may include dyslexia;
  - (VI) reading comprehension;
  - (VII) mathematics calculation; or
  - (VIII) mathematics problem solving;
- (iii) meets one of the following criteria:

(I) does not make sufficient progress to meet age or state-approved grade-level standards in one or more of the areas identified in clause (ii)(I)-(VIII) of this subparagraph when using a process based on the student's response to scientific, research-based intervention; or

(II) exhibits a pattern of strengths and weaknesses in performance, achievement, or both relative to age, state-approved grade-level standards, or intellectual development that is determined to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with 34 CFR, §300.304 and §300.305; and

(iv) does not meet the findings under clauses (ii) and (iii) of this subparagraph primarily as the result of:

- (I) a visual, hearing, or motor disability;
  - (II) an intellectual disability;
  - (III) emotional /behavioral disability
- [disturbance];
- (IV) cultural factors;
  - (V) environmental or economic disadvantage; or
  - (VI) being emergent bilingual.
- ~~(VII) limited English proficiency.~~

(C) As part of the evaluation described in subparagraph (B) of this paragraph and 34 CFR, §§300.304-300.311 [~~§§300.307-300.314~~], the presence of a significant variance among specific areas of cognitive function or between specific areas of cognitive function and academic achievement is not required when determining whether a student has a significant learning disability. [~~and in~~]

~~(i) data that demonstrates the student was provided appropriate instruction in reading (as described in 20 United States Code (USC), §6368(3)), and/or mathematics within general education settings delivered by qualified personnel; and]~~

~~(ii) data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal evaluation of student progress during instruction, which must be provided to the student's parents. Data-based documentation of repeated assessments may include, but is not limited to, response to intervention progress monitoring results, in-class tests on grade-level curriculum, or other regularly administered assessments. Intervals are considered~~

~~reasonable if consistent with the assessment requirements of a student's specific instructional program.]~~

(D) In order to ensure that underachievement by a student suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or mathematics, the following must be considered:

(i) data that demonstrates the student was provided appropriate instruction in reading (as described in 20 United States Code (USC), §6368(3)), and/or mathematics within general education settings delivered by qualified personnel; and

(ii) data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal evaluation of student progress during instruction, which must be provided to the student's parents. Data-based documentation of repeated assessments may include, but is not limited to, intervention progress monitoring results and reports, in-class tests on grade-level curriculum, or other regularly administered assessments. Intervals are considered reasonable if consistent with the assessment requirements of a student's specific instructional program.

(E) [(D)] The school district must ensure that the student is observed in the student's learning environment, including the general education [regular] classroom setting, to document the student's academic performance and behavior in the areas of difficulty. In determining whether a student has a specific learning disability, the multidisciplinary team [admission, review, and dismissal (ARD) committee] must decide to either use information from an observation in routine classroom instruction and monitoring of the student's performance that was conducted before the student was referred for an evaluation or have at least one of the members described in subsection (b) or (c)(9)(F) of this section conduct an observation of the student's academic performance in the general education [regular] classroom after the student has been referred for an evaluation and the school district has obtained parental consent consistent with 34 CFR, §300.300(a). In the case of a student of less than school age or out of school, a member described in subsection (b) or (c)(9)(F) of this section must observe the student in an environment appropriate for a student of that age.

(F) [(E)] The determination of whether a student suspected of having a specific learning disability is a child [student] with a disability as defined in 34 CFR, §300.8, must be made by the student's parents and a team of qualified professionals, which must include at least one person qualified to conduct individual diagnostic examinations of children such as a licensed specialist in school psychology /school psychologist, an educational diagnostician, a speech-language pathologist, or a remedial reading teacher and one of the following:

(i) the student's regular teacher;

(ii) if the student does not have a regular teacher, a regular classroom teacher qualified to teach a student of his or her age; or

(iii) for a student of less than school age, an individual qualified by the Texas Education Agency to teach a student of his or her age.

(G) Suspicion, and the identification, of dyslexia or dysgraphia, in addition to the requirements of subparagraphs (A)-(F) of this paragraph, must include consideration of the following:

(i) when dyslexia is a suspected specific learning disability or characteristics of dyslexia have been observed from a reading instrument administered under TEC, §28.006, or a dyslexia screener under TEC, §38.003, the team established under subsections (b) and (c)(9)(F) of this section must include a professional who meets

the requirements under TEC, §29.0031(b), and §74.28 of this title (relating to Students with Dyslexia and Related Disorders), including any handbook adopted in the rule ;

(ii) an evaluation for dyslexia or dysgraphia must include all of the domains or other requirements listed in TEC, §38.003, and §74.28 of this title, including any handbook adopted in the rule;

(iii) when identifying dyslexia and determining eligibility or continued eligibility for special education and related services, the admission, review, and dismissal (ARD) committee must include a professional who meets the requirements of TEC, §29.0031(b), and §74.28 of this title, including any handbook adopted in the rule; and

(iv) when a student is identified with dyslexia and/or dysgraphia, the terms dyslexia and/or dysgraphia, as appropriate must be used in a student's evaluation report. For formal eligibility purposes under special education, the category of specific learning disability will be reported by a school district.

(10) Speech impairment. A student with a speech impairment is one who has been determined to meet the criteria for speech or language impairment as stated in 34 CFR, §300.8(c)(11). The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility based on a speech impairment must include a certified speech and hearing therapist, a certified speech and language therapist, or a licensed speech/language pathologist.

(11) Traumatic brain injury. A student with a traumatic brain injury is one who has been determined to meet the criteria for traumatic brain injury as stated in 34 CFR, §300.8(c)(12). The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility based on a traumatic brain injury must include information provided by a licensed physician, in addition to the licensed or certified practitioners specified in subsection (b)(1) of this section.

(12) Visual impairment.

(A) A student with a visual impairment is one who has been determined to meet the criteria for visual impairment as stated in 34 CFR, §300.8(c)(13). Information from a variety of sources must be considered by the multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility based on visual impairment in order to determine the need for specially designed instruction as stated in 34 CFR, §300.39(b)(3), and must include:

*(i)* a medical report by a licensed ophthalmologist or optometrist that indicates the visual loss stated in exact measures of visual field and corrected visual acuity, at a distance and at near range, in each eye. If exact measures cannot be obtained, the eye specialist must so state and provide best estimates. The report should also include a diagnosis and prognosis whenever possible and whether the student has:

*(I)* no vision or visual loss after correction; or

*(II)* a progressive medical condition that will result in no vision or a visual loss after correction;

*(ii)* a functional vision evaluation by a certified teacher of students with visual impairments or a certified orientation and mobility specialist. The evaluation must include the performance of tasks in a variety of environments requiring the use of both near and distance vision and recommendations concerning the need for a clinical low vision evaluation;

*(iii)* a learning media assessment by a certified teacher of students with visual impairments. The learning media assessment must include recommendations concerning which specific visual, tactual, and/or auditory learning media are appropriate for the student and whether or not there is a need for ongoing evaluation in this area; and

*(iv)* as part of the full individual and initial evaluation, all elements of the expanded core curriculum identified in TEC, §30.002(c)(4)(B), which includes an orientation and mobility evaluation conducted by a person who is appropriately certified as an orientation and mobility specialist. The orientation and mobility evaluation must be conducted in a variety of lighting conditions and in a variety of settings, including in the student's home, school, and community, and in settings unfamiliar to the student.

(B) A person who is appropriately certified as an orientation and mobility specialist must participate in an initial eligibility determination and any reevaluation as part of the multidisciplinary team, in accordance with 34 CFR, §§300.122 and 300.303-300.311, in evaluating data used to make the determination of the student's need for specially designed instruction.

(C) A child under three years of age meets the criteria for visual impairment if the student's IFSP indicates that the child meets the eligibility criteria described in subparagraphs (A) and (B) of this paragraph, has a visual impairment or a developmental delay as defined in 26 TAC §350.809 of this title in the area of physical development because of vision loss or impairment, or the plan documents a medical condition that has a high probability of developmental delay in the area of physical development because of vision loss or impairment.

~~[(C) A person who is appropriately certified as an orientation and mobility specialist must participate, as part of a multidisciplinary team, in accordance with 34 CFR, §§300.122 and 300.303-300.311, in evaluating data used in making the determination of the student's eligibility as a student with a visual impairment.]~~

(13) Developmental delay. A student with developmental delay is one who is between the ages of 3-5 who is evaluated by a multidisciplinary team for at least one disability category listed in paragraphs (1)-(12) of this subsection and whose evaluation data indicates a need for special education and related services and shows evidence of, but does not clearly confirm, the presence of the suspected disability or disabilities due to the child's young age. In these cases, an ARD committee may determine that data supports identification of developmental delay in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development. To use this eligibility category, multiple sources of data must converge to indicate the student has a developmental delay as described by one of the following:

(A) performance on appropriate norm-referenced measures, including developmental measures, indicate that the student is at least 2 standard deviations below the mean or at the 2nd percentile of performance, when taking into account the standard error of measurement (SEM), in one area of development as listed in this paragraph, along with additional convergent evidence such as interviews and observation data that supports the delay in that area;

(B) performance on appropriate norm-referenced measures, including developmental measures, indicate that the student is at least 1.5 standard deviations below the mean or at the 7th percentile of performance, when taking into account the SEM, in at least two areas of development as listed in this paragraph, along with additional convergent evidence such as interviews and observation data that supports the delays in those areas; or

(C) a body of evidence from multiple direct and indirect sources, such as play-based assessments, information from the student's parent, interviews, observations, work samples, checklists, and other informal and formal measures of development, that clearly document a history and pattern of atypical development that is significantly impeding the student's performance and progress across settings when compared to age-appropriate expectations and developmental milestones in one or more areas of development as listed in this paragraph.

(14) ~~[(13)]~~ Noncategorical. A student between the ages of 3-5 who is evaluated as having an intellectual disability, an emotional/behavioral disability ~~[disturbance]~~, a specific learning disability, or autism may be described as noncategorical early childhood.

(d) Developmental delay eligibility guidelines. Developmental delay, as described in subsection (c)(13) of this section, and noncategorical, as described in subsection (c)(14) of this section, may be used within the following guidelines.

(1) No school district will be required to use the eligibility category of developmental delay; however, if a district chooses to use this eligibility category, it must use the definition and criteria described in subsection (c)(13) of this section.

(2) If a school district chooses to use the eligibility category described in subsection (c)(13) of this section, it may do so beginning with the 2024-2025 school year.

(3) The eligibility category of noncategorical, as described in subsection (c)(14) of this section, must no longer be used by any school district beginning with the 2025-2026 school year. Any eligible student who begins the 2025-2026 school year already identified under subsection (c)(14) of this section may maintain this eligibility category, if determined appropriate by the student's ARD committee, until the required re-evaluation before the age of six.

*§89.1050. The Admission, Review, and Dismissal Committee.*

(a) Each school district must establish an admission, review, and dismissal (ARD) committee for each eligible student with a disability and for each student for whom a full individual and initial evaluation is conducted pursuant to §89.1011 of this title (relating to Full Individual and Initial Evaluation). The ARD committee is the individualized education program (IEP) team defined in federal law and regulations, including, specifically, 34 Code of Federal Regulations (CFR), §300.321. The school district is responsible for all of the functions for which the IEP team is responsible under federal law and regulations and for which the ARD committee is responsible under state law, including the following:

(1) 34 CFR, §§300.320-300.325, and Texas Education Code (TEC), §29.005 (individualized education programs);

(2) 34 CFR, §§300.145-300.147 (relating to placement of eligible students in private schools by a school district);

(3) 34 CFR, §§300.132, 300.138, and 300.139 (relating to the development and implementation of service plans for eligible students placed by parents in private school who have been designated to receive special education and related services);

(4) 34 CFR, §300.530 and §300.531, and TEC, §37.004 (disciplinary placement of students with disabilities);

(5) 34 CFR, §§300.302-300.306 (relating to evaluations, re-evaluations, and determination of eligibility);

(6) 34 CFR, §§300.114-300.117 (relating to least restrictive environment);

(7) TEC, §28.006 (Reading Diagnosis);

(8) TEC, §28.0211 (Satisfactory Performance on Assessment Instruments Required; Accelerated Instruction);

(9) TEC, §28.0212 (Junior High or Middle School Personal Graduation Plan);

(10) TEC, §28.0213 (Intensive Program of Instruction);

(11) TEC, Chapter 29, Subchapter I (Programs for Students Who Are Deaf or Hard of Hearing);

(12) TEC, §30.002 (Education for Children with Visual Impairments);

(13) TEC, §30.003 (Support of Students Enrolled in the Texas School for the Blind and Visually Impaired or Texas School for the Deaf);

(14) TEC, §33.081 (Extracurricular Activities);

(15) TEC, §37.004 (Placement of Students with Disabilities);

(16) TEC, §37.307 (Placement and Review of Student with Disability);

(17) ~~[(15)]~~ TEC, Chapter 39, Subchapter B (Assessment of Academic Skills); and

(18) ~~[(16)]~~ TEC, §48.102 (Special Education).

(b) For a student from birth through two years of age with a visual impairment or who is deaf or hard of hearing, an individualized family services plan ~~[(IFSP)]~~ meeting must be held in place of an ARD committee meeting in accordance with 34 CFR, §§300.320-300.324, and the memorandum of understanding between the Texas Education Agency and the Texas Health and Human Services Commission. For students three years of age and older, school districts must develop an IEP.

(c) ARD committee membership.

(1) ARD committees must include the following:

(A) the parents, as defined by 34 CFR, §300.30, of the student;

(B) not less than one general ~~[regular]~~ education teacher of the student (if the student is, or may be, participating in the general ~~[regular]~~ education environment) who must, to the extent practicable, be a teacher who is responsible for implementing a portion of the student's IEP;

(C) not less than one special education teacher of the student, or where appropriate, not less than one special education provider of the student;

(D) a representative of the school district who:

*(i)* is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of students with disabilities;

*(ii)* is knowledgeable about the general education curriculum; and

*(iii)* is knowledgeable about the availability of resources of the school district;

(E) an individual who can interpret the instructional implications of evaluation results, who may be a member of the committee described in subparagraphs (B)-(D) and (F) of this paragraph;

(F) at the discretion of the parent or the school district, other individuals who have knowledge or special expertise regarding the student, including related services personnel, as appropriate;

(G) whenever appropriate, the student with a disability;

(H) to the extent appropriate, with the consent of the parents or a student who has reached the age of majority, a representative of any participating agency that is likely to be responsible for providing or paying for transition services;

(I) a representative from career and technical education (CTE), preferably the teacher, when considering initial or continued placement of a student in CTE; and

(J) a professional staff member who is on the language proficiency assessment committee who may be a member of the committee described in subparagraphs (B) and (C) of this paragraph, if the student is identified as emergent bilingual [an English language learner].

(2) The special education teacher or special education provider that participates in the ARD committee meeting must be appropriately certified or licensed as required by 34 CFR, §300.156.

(3) If the student is:

(A) a student with a suspected or documented visual impairment, the ARD committee must include a teacher who is certified in the education of students with visual impairments;

(B) a student who is suspected or documented to be deaf or hard of hearing, the ARD committee must include a teacher who is certified in the education of students who are deaf or hard of hearing; or

(C) a student with suspected or documented deaf-blindness, the ARD committee must include a teacher who is certified in the education of students with visual impairments and a teacher who is certified in the education of students who are deaf or hard of hearing.

(4) An ARD committee member is not required to attend an ARD committee meeting if the conditions of either 34 CFR, §300.321(e)(1), regarding attendance, or 34 CFR, §300.321(e)(2), regarding excusal, have been met.

(d) The school district must take steps to ensure that one or both parents are present at each ARD committee meeting or are afforded the opportunity to participate, including notifying the parents of the meeting early enough to ensure that they will have an opportunity to attend and scheduling the meeting at a mutually agreed upon time and place. Additionally, a school district must allow parents who cannot attend an ARD committee meeting to participate in the meeting through other methods such as through telephone calls or video conferencing. The school district must provide the parents with written notice of the ARD committee meeting that meets the requirements in 34 CFR, §300.322, at least five school days before the meeting unless the parents agree to a shorter timeframe.

(e) Upon receipt of a written request for an ARD committee meeting from a parent, the school district must:

(1) schedule and convene a meeting in accordance with the procedures in subsection (d) of this section; or

(2) within five school days, provide the parent with written notice explaining why the district refuses to convene a meeting.

(f) The school district must provide the parent with a written notice required under subsection (d) or (e)(2) of this section in the parent's native language, unless it is clearly not feasible to do so. If the parent's native language is not a written language, the school district

must take steps to ensure that the notice is translated orally or by other means to the parent in his or her native language or other mode of communication so that the parent understands the content of the notice.

~~[(g) All members of the ARD committee must have the opportunity to participate in a collaborative manner in developing the IEP. The school district must take all reasonable actions necessary to ensure that the parent understands the proceedings of the ARD committee meeting, including arranging for an interpreter for parents who are deaf or hard of hearing or whose native language is a language other than English. A decision of the ARD committee concerning required elements of the IEP must be made by mutual agreement if possible. The ARD committee may agree to an annual IEP or an IEP of shorter duration.]~~

~~[(1) When mutual agreement about all required elements of the IEP is not achieved, the parent who disagrees must be offered a single opportunity to recess and reconvene the ARD committee meeting. The period of time for reconvening the ARD committee meeting must not exceed ten school days, unless the parties mutually agree otherwise. The ARD committee must schedule the reconvened meeting at a mutually agreed upon time and place. The opportunity to recess and reconvene is not required when the student's presence on the campus presents a danger of physical harm to the student or others or when the student has committed an expellable offense or an offense that may lead to a placement in a disciplinary alternative education program. The requirements of this subsection do not prohibit the ARD committee from recessing an ARD committee meeting for reasons other than the failure to reach mutual agreement about all required elements of an IEP.]~~

~~[(2) During the recess, the ARD committee members must consider alternatives, gather additional data, prepare further documentation, and/or obtain additional resource persons who may assist in enabling the ARD committee to reach mutual agreement.]~~

~~[(3) If a recess is implemented as provided in paragraph (1) of this subsection and the ARD committee still cannot reach mutual agreement, the school district must implement the IEP that it has determined to be appropriate for the student.]~~

~~[(4) Each member of the ARD committee who disagrees with the IEP developed by the ARD committee is entitled to include a statement of disagreement in the IEP.]~~

~~[(g) [(h)] Whenever a school district proposes or refuses to initiate or change the identification, evaluation, or educational placement of a student or the provision of a free appropriate public education to the student, the school district must provide prior written notice as required in 34 CFR, §300.503, including providing the notice in the parent's native language or other mode of communication. This notice must be provided to the parent at least five school days before the school district proposes or refuses the action unless the parent agrees to a shorter timeframe.~~

~~[(i) If the student's parent is unable to speak English and the parent's native language is Spanish, the school district must provide a written copy or audio recording of the student's IEP translated into Spanish. If the student's parent is unable to speak English and the parent's native language is a language other than Spanish, the school district must make a good faith effort to provide a written copy or audio recording of the student's IEP translated into the parent's native language.]~~

~~[(1) For purposes of this subsection, a written copy of the student's IEP translated into Spanish or the parent's native language means that all of the text in the student's IEP in English is accurately translated into the target language in written form. The IEP translated~~

into the target language must be a comparable rendition of the IEP in English and not a partial translation or summary of the IEP in English.]

[(2) For purposes of this subsection, an audio recording of the student's IEP translated into Spanish or the parent's native language means that all of the content in the student's IEP in English is orally translated into the target language and recorded with an audio device. A school district is not prohibited from providing the parent with an audio recording of an ARD committee meeting at which the parent was assisted by an interpreter as long as the audio recording provided to the parent contains an oral translation into the target language of all of the content in the student's IEP in English.]

[(3) If a parent's native language is not a written language, the school district must take steps to ensure that the student's IEP is translated orally or by other means to the parent in his or her native language or other mode of communication.]

[(4) Under 34 CFR, §300.322(f), a school district must give a parent a written copy of the student's IEP at no cost to the parent. A school district meets this requirement by providing a parent with a written copy of the student's IEP in English or by providing a parent with a written translation of the student's IEP in the parent's native language in accordance with paragraph (1) of this subsection.]

[(j) A school district must comply with the following for a student who is new to the school district.]

[(1) When a student transfers to a new school district within the state in the same school year and the parents or previous school district verifies that the student had an IEP that was in effect in the previous district, the new school district must meet the requirements of 34 CFR, §300.323(e), regarding the provision of special education services. The timeline for completing the requirements outlined in 34 CFR, §300.323(e)(1) or (2), is 20 school days from the date the student is verified as being a student eligible for special education services.]

[(2) When a student transfers from a school district in another state in the same school year and the parents or previous school district verifies that the student had an IEP that was in effect in the previous district, the new school district must meet the requirements of 34 CFR, §300.323(f), regarding the provision of special education services. If the new school district determines that an evaluation is necessary, the evaluation is considered a full individual and initial evaluation and must be completed within the timelines established by §89.1011(c) and (e) of this title. The timeline for completing the requirements in 34 CFR, §300.323(f)(2), if appropriate, is 30 calendar days from the date of the completion of the evaluation report. If the school district determines that an evaluation is not necessary, the timeline for completing the requirements outlined in 34 CFR, §300.323(f)(2), is 20 school days from the date the student is verified as being a student eligible for special education services.]

[(3) In accordance with 34 CFR, §300.323(g), the new school district must take reasonable steps to promptly obtain the student's records from the previous school district, and, in accordance with TEC, §25.002, and 34 CFR, §300.323(g), the previous school district must furnish the new school district with a copy of the student's records, including the student's special education records, not later than the 10th working day after the date a request for the information is received by the previous school district.]

[(4) A student who registers in a new school district during the summer is not considered a transfer student for the purposes of this subsection or for 34 CFR, §300.323(e) or (f). For these students, if the parents or in- or out-of-state school district verifies before the new school year begins that the student had an IEP that was in effect in the previous district, the new school district must implement the IEP from

the previous school district in full on the first day of class of the new school year or must convene an ARD committee meeting during the summer to revise the student's IEP for implementation on the first day of class of the new school year. If the student's eligibility for special education and related services cannot be verified before the start of the new school year, the timelines in paragraphs (1) and (2) of this subsection apply to the student.]

[(5) In the case of a student described by paragraph (4) of this subsection, if the new district wishes to convene an ARD committee meeting to consider revision to the student's IEP before the beginning of the school year, the new district must determine whether the parent will agree to waive the requirement in subsection (d) of this section that the written notice of the ARD committee meeting must be provided at least five school days before the meeting. If the parent agrees to a shorter timeframe, the new district must make every reasonable effort to hold the ARD committee meeting prior to the first day of the new school year if the parent agrees to the meeting time.]

[(6) For the purposes of this subsection, "verify" means that the new school district has received a copy of the student's IEP that was in effect in the previous district.]

[(7) While the new school district waits for verification, the new school district must take reasonable steps to provide, in consultation with the student's parents, services comparable to those the student received from the previous district if the new school district has been informed by the previous school district of the student's special education and related services and placement.]

[(k) All disciplinary actions regarding students with disabilities must be determined in accordance with 34 CFR, §§300.101(a) and 300.530-300.536; TEC, Chapter 37, Subchapter A; and §89.1053 of this title (relating to Procedures for Use of Restraint and Time-Out). If a school district takes a disciplinary action regarding a student with a disability who receives special education services that constitutes a change in placement under federal law, the district shall:]

[(1) not later than the 10th school day after the change in placement:]

[(A) seek consent from the student's parent or person standing in parental relation to the student to conduct a functional behavioral assessment of the student if a functional behavioral assessment has never been conducted on the student or the student's most recent functional behavioral assessment is more than one year old; and]

[(B) review any previously conducted functional behavioral assessment of the student and any behavior improvement plan or behavioral intervention plan developed for the student based on that assessment; and]

[(2) as necessary:]

[(A) develop a behavior improvement plan or behavioral intervention plan for the student if the student does not have a plan; or]

[(B) if the student has a behavior improvement plan or behavioral intervention plan, revise the student's plan.]

§89.1055. *[Content of the] Individualized Education Program.*

(a) The individualized education program (IEP) developed by the admission, review, and dismissal (ARD) committee for each student with a disability must comply with the requirements of 34 Code of Federal Regulations (CFR), §300.320 and §300.324, and include all applicable information under Texas Education Code (TEC), §29.0051.

(b) To be considered a measurable annual goal under 34 CFR, §300.320(a)(2), a goal must include the components of a timeframe,

condition, behavior, and criterion. While at least one measurable annual goal is required, the number of annual goals will be determined by the ARD committee after examination of the student's present levels of academic achievement and functional performance and areas of need.

(1) Annual goals are also required in the following circumstances:

(A) when the content of a subject/course is modified, whether the content is taught in a general or special education setting, in order to address how the content is modified; and

(B) when a student is removed from the general education setting for a scheduled period of time but the content of the subject/course is not modified (e.g., a student who is progressing on enrolled grade level curriculum but requires a more restrictive environment for a period of time due to behavioral concerns).

(2) Short-term objectives/benchmarks, used as intermediary steps or milestones toward accomplishing an annual goal, may be included in a measurable annual goal. Short-term objectives/benchmarks:

(A) must be included in an annual goal if the ARD committee has determined that a student will not participate in the general state assessment; and

(B) regardless of whether the objectives/benchmarks are related to a student not participating the general state assessment, cannot be used as the criterion to indicate mastery of the annual goal.

(c) [(b)] The IEP must include a statement of any individual appropriate and allowable accommodations in the administration of assessment instruments developed in accordance with TEC [Texas Education Code (TEC)], §39.023(a)-(c), or districtwide assessments of student achievement (if the district administers such optional assessments) that are necessary to measure the academic achievement and functional performance of the student on the assessments. If the ARD committee determines that the student will not participate in a general statewide or districtwide assessment of student achievement (or part of an assessment), the IEP must include a statement explaining:

(1) why the student cannot participate in the general assessment; and

(2) why the particular alternate assessment selected is appropriate for the student.

(d) The Texas Education Agency's (TEA's) alternate assessment participation requirements form, if one is made available to school districts, must be included in the student's IEP to document the statement required under subsection (c) of this section.

(e) [(e)] If the ARD committee determines that the student is in need of extended school year (ESY) services, as described in §89.1065 of this title (relating to Extended School Year Services), then the IEP must identify which of the goals and objectives in the IEP will be addressed during ESY services.

(f) [(d)] For students with visual impairments, from birth through 21 years of age, the IEP or individualized family services plan [(IFSP)] must also meet the requirements of TEC, §30.002(e).

(g) [(e)] For students with autism eligible under §89.1040(c)(1) of this title (relating to Eligibility Criteria), the strategies described in this subsection must be considered, based on peer-reviewed, research-based educational programming practices to the extent practicable and, when needed, addressed in the IEP:

(1) extended educational programming (for example: extended day and/or extended school year services that consider the dura-

tion of programs/settings based on data collected related to [assessment of] behavior, social skills, communication, academics, and self-help skills);

(2) daily schedules reflecting minimal unstructured time and active engagement in learning activities (for example: lunch, snack, and recess periods that provide flexibility within routines; adapt to individual skill levels; and assist with schedule changes, such as changes involving substitute teachers and pep rallies);

(3) in-home and community-based training or viable alternatives that assist the student with acquisition of social, behavioral, [social/behavioral] communication, and self-help skills (for example: strategies that facilitate maintenance and generalization of such skills from home to school, school to home, home to community, and school to community);

(4) positive behavior support strategies based on relevant information, for example:

(A) antecedent manipulation, replacement behaviors, reinforcement strategies, and data-based decisions; and

(B) a behavioral intervention plan developed from a functional behavioral assessment that uses current data related to target behaviors and addresses behavioral programming across home, school, and community-based settings;

(5) beginning at any age, consistent with subsection (k) [(h)] of this section, futures planning for integrated living, work, community, and educational environments that considers skills necessary to function in current and post-secondary environments;

(6) parent/family training and support, provided by qualified personnel with experience in autism [Autism Spectrum Disorders (ASD)], that, for example:

(A) provides a family with skills necessary for a student to succeed in the home/community setting;

(B) includes information regarding resources (for example: parent support groups, workshops, videos, conferences, and materials designed to increase parent knowledge of specific teaching/management techniques related to the student's curriculum); and

(C) facilitates parental carryover of in-home training (for example: strategies for behavior management and developing structured home environments and/or communication training so that parents are active participants in promoting the continuity of interventions across all settings);

(7) suitable staff-to-student ratio appropriate to identified activities and as needed to achieve social/behavioral progress based on the student's developmental and learning level (acquisition, fluency, maintenance, generalization) that encourages work towards individual independence as determined by, for example:

(A) adaptive behavior evaluation results;

(B) behavioral accommodation needs across settings; and

(C) transitions within the school day;

(8) communication interventions, including language forms and functions that enhance effective communication across settings (for example: augmentative, incidental, and naturalistic teaching);

(9) social skills supports and strategies based on social skills assessment/curriculum and provided across settings [(for example: trained peer facilitators)] (e.g., peer-based instruction and



intervention [circle of friends]), video modeling, social narratives [stories], and role playing);

(10) professional educator/staff support (for example: training provided to personnel who work with the student to assure the correct implementation of techniques and strategies described in the IEP); and

(11) teaching strategies based on peer reviewed, research-based practices for students with autism [ASD] (for example: those associated with discrete-trial training, visual supports, applied behavior analysis, structured learning, augmentative communication, or social skills training).

(h) [(f)] If the ARD committee determines that services are not needed in one or more of the areas specified in subsection (g) [(e)] of this section, the IEP must include a statement to that effect and the basis upon which the determination was made.

(i) [(g)] If the ARD committee determines that a behavior improvement plan or a behavioral intervention plan is appropriate for a student, that plan must be included as part of the student's IEP and provided to each teacher with responsibility for educating the student. If a behavior improvement plan or a behavioral intervention plan is included as part of a student's IEP, the ARD committee shall review the plan at least annually, and more frequently if appropriate, to address:

(1) changes in a student's circumstances that may impact the student's behavior, such as:

(A) the placement of the student in a different educational setting;

(B) an increase or persistence in disciplinary actions taken regarding the student for similar types of behavioral incidents;

(C) a pattern of unexcused absences; or

(D) an unauthorized, unsupervised departure from an educational setting; or

(2) the safety of the student or others.

(j) [(h)] Not later than the first IEP to be in effect when the student turns [when a student reaches] 14 years of age, the ARD committee must consider and, if appropriate, address the following issues in the IEP:

(1) appropriate student involvement in the student's transition to life outside the public school system;

(2) [if the student is younger than 18 years of age,] appropriate involvement in the student's transition by the student's parents and other persons invited to participate by:

(A) the student's parents; or

(B) the school district in which the student is enrolled;

(3) if the student is at least 18 years of age, involvement in the student's transition and future by the student's parents and other persons; if the parent or other person:

[(A) is invited to participate by the student or the school district in which the student is enrolled; or]

[(B) has the student's consent to participate pursuant to a supported decision-making agreement under Texas Estates Code, Chapter 1357;]

(3) [(4)] appropriate postsecondary education options, including preparation for postsecondary-level coursework;

(4) [(5)] an appropriate functional vocational evaluation;

[(6) appropriate employment goals and objectives;]

[(7) if the student is at least 18 years of age, the availability of age-appropriate instructional environments, including community settings or environments that prepare the student for postsecondary education or training, competitive integrated employment, or independent living, in coordination with the student's transition goals and objectives;]

[(8) appropriate independent living goals and objectives;]

(5) [(9)] appropriate circumstances for facilitating a referral of a student or the student's parents to a governmental agency for services or public benefits, including a referral to a governmental agency to place the student on a waiting list for public benefits available to the student such as a waiver program established under the Social Security Act (42 U.S.C. Section 1396n(c)), §1915(c); and

(6) [(10)] the use and availability of appropriate:

(A) supplementary aids, services, curricula, and other opportunities to assist the student in developing decision-making skills; and

(B) supports and services to foster the student's independence and self-determination, including a supported decision-making agreement under Texas Estates Code, Chapter 1357.

(k) Beginning not later than the first IEP to be in effect when the student turns 14 years of age, or younger if determined appropriate by the ARD committee, the IEP must include:

(1) appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and

(2) the transition services, including courses of study, needed to assist the student in reaching the postsecondary goals.

(l) The goals included in a student's IEP to comply with subsection (k) of this section are intended to comply with the requirements in TEC, §29.011(a)(6) and (8).

(m) Beginning not later than the first IEP to be in effect when the student turns 18 years of age (see §89.1049 of this title (relating to Parental Rights Regarding Adult Students) for notice requirement of transfer of rights), the ARD committee must consider and, if appropriate, address the following issues in the student's IEP:

(1) involvement in the student's transition and future by the student's parents and other persons, if the parent or other person:

(A) is invited to participate by the student or the school district in which the student is enrolled; or

(B) has the student's consent to participate pursuant to a supported decision-making agreement under Texas Estates Code, Chapter 1357; and

(2) the availability of age-appropriate instructional environments, including community settings or environments that prepare the student for postsecondary education or training, competitive integrated employment, or independent living, in coordination with the student's transition goals and objectives.

(n) A student's ARD committee shall review at least annually the issues described in subsections (j), (k), and (m) of this section and, if necessary, update the portions of the student's IEP that address those issues.

(o) All members of the ARD committee must have the opportunity to participate in a collaborative manner in developing the IEP.

The school district must take all reasonable actions necessary to ensure that the parent understands the proceedings of the ARD committee meeting, including arranging for an interpreter for parents who are deaf or hard of hearing or whose native language is a language other than English. A decision of the ARD committee concerning required elements of the IEP must be made by mutual agreement if possible. The ARD committee may agree to an annual IEP or an IEP of shorter duration.

(1) When mutual agreement about all required elements of the IEP is not achieved, the parent who disagrees must be offered a single opportunity to recess and reconvene the ARD committee meeting. The period of time for reconvening the ARD committee meeting must not exceed ten school days, unless the parties mutually agree otherwise. The ARD committee must schedule the reconvened meeting at a mutually agreed upon time and place. The opportunity to recess and reconvene is not required when the student's presence on the campus presents a danger of physical harm to the student or others or when the student has committed an expellable offense or an offense that may lead to a placement in a disciplinary alternative education program. The requirements of this subsection do not prohibit the ARD committee from recessing an ARD committee meeting for reasons other than the failure to reach mutual agreement about all required elements of an IEP.

(2) During the recess, the ARD committee members must consider alternatives, gather additional data, prepare further documentation, and/or obtain additional resource persons who may assist in enabling the ARD committee to reach mutual agreement.

(3) If a recess is implemented as provided in paragraph (1) of this subsection and the ARD committee still cannot reach mutual agreement, the school district must implement the IEP that it has determined to be appropriate for the student.

(4) Each member of the ARD committee who disagrees with the IEP developed by the ARD committee is entitled to include a statement of disagreement in the IEP.

{(i) A student's ARD committee shall annually review the issues described in subsection (h) of this section and, if necessary, update the portions of the student's IEP that address those issues.}

{(j) In accordance with 34 CFR, §300.320(b), beginning not later than the first IEP to be in effect when the student turns 16 years of age, or younger if determined appropriate by the ARD committee, and updated annually thereafter, the IEP must include the following:}

{(1) appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and}

{(2) the transition services, including courses of study, needed to assist the student in reaching the postsecondary goals developed under paragraph (1) of this subsection.}

(p) [(k)] The written statement of the IEP must document the decisions of the ARD committee with respect to issues discussed at each ARD committee meeting. The written statement must also include:

- (1) the date of the meeting;
- (2) the name, position, and signature of each member participating in the meeting; and
- (3) an indication of whether the child's parents, the adult student, if applicable, and the administrator agreed or disagreed with the decisions of the ARD committee.

(q) If the student's parent is unable to speak English and the parent's native language is Spanish, the school district must provide a written copy or audio recording of the student's IEP translated into Spanish. If the student's parent is unable to speak English and the parent's native language is a language other than Spanish, the school district must make a good faith effort to provide a written copy or audio recording of the student's IEP translated into the parent's native language.

(1) For purposes of this subsection, a written copy of the student's IEP translated into Spanish or the parent's native language means that all of the text in the student's IEP in English is accurately translated into the target language in written form. The IEP translated into the target language must be a comparable rendition of the IEP in English and not a partial translation or summary of the IEP in English.

(2) For purposes of this subsection, an audio recording of the student's IEP translated into Spanish or the parent's native language means that all of the content in the student's IEP in English is orally translated into the target language and recorded with an audio device. A school district is not prohibited from providing the parent with an audio recording of an ARD committee meeting at which the parent was assisted by an interpreter as long as the audio recording provided to the parent contains an oral translation into the target language of all of the content in the student's IEP in English.

(3) If a parent's native language is not a written language, the school district must take steps to ensure that the student's IEP is translated orally or by other means to the parent in his or her native language or other mode of communication.

(4) Under 34 CFR, §300.322(f), a school district must give a parent a written copy of the student's IEP at no cost to the parent. A school district meets this requirement by providing a parent with a written copy of the student's IEP in English or by providing a parent with a written translation of the student's IEP in the parent's native language in accordance with paragraph (1) of this subsection.

(r) A school district must comply with the following for a student who is new to the school district.

(1) When a student transfers to a new school district within the state in the same school year and the parents or previous school district verifies that the student had an IEP that was in effect in the previous district, the new school district must meet the requirements of 34 CFR, §300.323(e), by either adopting the student's IEP from the previous school district or developing, adopting, and implementing a new IEP. The timeline for adopting the previous IEP or developing, adopting, and implementing a new IEP is 20 school days from the date the student is verified as being a student eligible for special education services.

(2) When a student transfers from a school district in another state in the same school year and the parents or previous school district verifies that the student had an IEP that was in effect in the previous district, the new school district must, if determined necessary, conduct a full individual and initial evaluation and make an eligibility determination and, if appropriate, develop, adopt, and implement a new IEP, within the timelines established in §89.1011 of this title (relating to Full and Individual Initial Evaluation). If the school district determines that an evaluation is not necessary, the timeline for the new district to develop, adopt, and implement a new IEP is 20 school days from the date the student is verified as being a student eligible for special education services.

(3) Students who register in a new school district in the state during the summer when students are not in attendance for instructional purposes, the provisions of paragraphs (1) and (2) of this

subsection apply based on whether the students are coming from an in-state or out-of-state school district. All other provisions in this subsection apply to these students.

(4) In accordance with 34 CFR, §300.323(g), the new school district must take reasonable steps to promptly obtain the student's records from the previous school district, and, in accordance with TEC, §25.002, and 34 CFR, §300.323(g), the previous school district must furnish the new school district with a copy of the student's records, including the student's special education records, not later than the 10th working day after the date a request for the information is received by the previous school district.

(5) If a parent hasn't already provided verification of eligibility and the new school district has been unable to obtain the necessary verification records from the previous district by the 15th working day after the date a request for the records was submitted by the new district to the previous district, the new school district must seek verification from the student's parent. If the parent provides verification, the new school district must comply with all paragraphs of this subsection. The new school district is encouraged to ask the parent to provide verification of eligibility before the 15th working day after the date a request for the records was submitted by the new district to the previous district. If the parent is unwilling or unable to provide such verification, the new district must continue to take reasonable steps to obtain the student's records from the previous district and provide any services comparable to what the student received at the previous district if they communicate those to the new district.

(6) For the purposes of this subsection, "verify" means that the new school district has received a copy of the student's IEP that was in effect in the previous district. The first school day after the new district receives a copy of the student's IEP that was in effect in the previous district begins the timelines associated with paragraphs (1) and (2) of this subsection.

(7) While the new school district waits for verification, the new school district must take reasonable steps to provide, in consultation with the student's parents, services comparable to those the student received from the previous district if the new school district has been informed by the previous school district of the student's special education and related services and placement.

(8) Once the new school district receives verification that the student had an IEP in effect at the previous district, comparable services must be provided to a student during the timelines established under paragraphs (1) and (2) of this subsection. Comparable services include provision of ESY services if those services are identified in the previous IEP or if the new district has reason to believe that the student would be eligible for ESY services.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 11, 2024.

TRD-202401103

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: April 21, 2024

For further information, please call: (512) 475-1497



## DIVISION 5. SPECIAL EDUCATION AND RELATED SERVICE PERSONNEL

### 19 TAC §89.1131

STATUTORY AUTHORITY. The amendments are proposed under Texas Education Code (TEC), §28.025, which requires the State Board of Education (SBOE) to determine curriculum requirements for a high school diploma and certificate; TEC, §29.001, which requires the agency to develop and modify as necessary a statewide plan for the delivery of services to children with disabilities that ensures the availability of a free appropriate public education to children between the ages of 3-21; TEC, §29.003, which requires the agency to develop eligibility criteria for students receiving special education services; TEC, §29.004, which establishes criteria for completing full individual and initial evaluations of a student for purposes of special education services; TEC, §29.005, which establishes criteria for developing a student's individualized education program prior to a student enrolling in a special education program; TEC, §29.010, which requires the agency to develop and implement a monitoring system for school district compliance with federal and state laws regarding special education; TEC, §29.011, which requires the commissioner to adopt procedures for compliance with federal requirements relating to transition services for students enrolled in special education programs; TEC, §29.0111, which appropriates state transition planning to begin for a student no later than the student turning 14 years of age; TEC, §29.012, which requires the commissioner to develop and implement procedures for compliance with federal requirements relating to transition services for students enrolled in a special education program; TEC, §29.017, which establishes criteria for the transfer of rights from a parent to a child with a disability who is 18 or older or whose disabilities have been removed under Texas Family Code, Chapter 31, to make educational decisions; TEC, §29.018, which requires the commissioner to make grants available to school districts to support covering the cost of education services for students with disabilities; TEC, §29.0031, as amended by House Bill (HB) 3928, 88th Texas Legislature, Regular Session, 2023, which establishes requirements of a district if it is suspected or has reason to suspect that a student may have dyslexia; TEC, §29.0032, as amended by HB 3928, 88th Texas Legislature, Regular Session, 2023, which establishes criteria for providers of dyslexia instruction; TEC, §30.001, which requires the commissioner, with approval by the SBOE, to establish a plan for the coordination of services to students with a disability; TEC, §30.002, which requires the agency to develop and administer a statewide plan for the education of children with visual impairments; TEC, §30.083, which requires the development of a statewide plan for educational services for students who are deaf or hard of hearing; TEC, §37.0021, which establishes the use of confinement, restraint, seclusion, and time-out for a student with a disability; TEC, §48.004, which requires the commissioner to adopt rules necessary for administering the Foundation School Program; TEC, §48.102, which establishes criteria for school districts to receive an annual allotment for students in a special education program; Texas Government Code, §392.002, which defines "authority" or "housing authority;" 34 CFR, §300.8, which defines terms regarding a child with a disability; 34 CFR, §300.100, which establishes eligibility criteria for a state to receive assistance; 34 CFR, §300.101, which defines the requirement for all children residing in the state between the ages of 3-21 to have a free appropriate education available; 34 CFR, §300.111, which defines the requirement of the state

to have policies and procedures in place regarding child find; 34 CFR, §300.114, which defines least restrictive environment requirements; 34 CFR, §300.121, which establishes the requirement for a state to have procedural safeguards; 34 CFR, §300.122, which establishes the requirement for evaluation of children with disabilities; 34 CFR, §300.124, which establishes the requirement of the state to have policies and procedures in place regarding the transfer of children from the Part C program to the preschool program; 34 CFR, §300.129, which establishes criteria for the state responsibility regarding children in private schools; 34 CFR, §300.147, which establishes the criteria for the state education agency when implementing the responsibilities each must ensure for a child with a disability who is placed in or referred to a private school or facility by a public agency; 34 CFR, §300.149, which establishes the state education agency's responsibility for general supervision; 34 CFR, §300.151, which establishes the criteria for the adoption of state complaint procedures; 34 CFR, §300.152, which establishes the criteria for minimum state complaint procedures; 34 CFR, §300.153, which establishes the criteria for filing a complaint; 34 CFR, §300.156, which establishes the criteria for the state education agency to establish and maintain qualification procedures for personnel serving children with disabilities; 34 CFR, §300.320, which defines the requirements for an individualized education program (IEP); 34 CFR, §300.322, which establishes the requirement for a parent participation opportunity at each IEP team meeting; 34 CFR, §300.323, which establishes the timeframe for when IEPs must be in effect; 34 CFR, §300.301, which establishes the requirement for initial evaluations; 34 CFR, §300.302, which clarifies that screening for instructional purposes is not an evaluation; 34 CFR, §300.303, which establishes the criteria for reevaluations; 34 CFR, §300.304, which establishes the criteria for reevaluation procedures; 34 CFR, §300.305, which establishes the criteria for additional requirements for evaluations and reevaluations; 34 CFR, §300.306, which defines the determination of eligibility; 34 CFR, §300.307, which establishes the criteria for determining specific learning disabilities; 34 CFR, §300.308, which establishes criteria for additional group members in determining whether a child is suspected of having a specific learning disability as defined in 34 CFR, §300.8; 34 CFR, §300.309, which establishes criteria for determining the existence of a specific learning disability; 34 CFR, §300.310, which establishes criteria for observation to document the child's academic performance and behavior in the areas of difficulty; 34 CFR, §300.311, which establishes criteria for specific documentation for the eligibility determination; 34 CFR, §300.500, which establishes the responsibility of a state education agency and other public agencies to ensure the establishment, maintenance, and implementation of procedural safeguards; 34 CFR, §300.506, which establishes the requirement of each public agency to establish procedures to resolve disputes through a mediation process; 34 CFR, §300.507, which establishes criteria for filing a due process complaint; and 34 CFR, §300.600, which establishes requirements for state monitoring and enforcement.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code (TEC), §§28.025; 29.001; 29.003; 29.0031, as amended by House Bill (HB) 3928, 88th Texas Legislature, Regular Session, 2023; 29.0032, as amended by HB 3928, 88th Texas Legislature, Regular Session, 2023; 29.004; 29.005; 29.010; 29.011; 29.0111; 29.012; 29.017; 29.018; 30.001; 30.002; 30.083; 37.0021; 48.004; and 48.102; Texas Government Code, §392.002; and 34 Code of Federal Regulations (CFR), §§300.8, 300.100, 300.101, 300.111, 300.114,

300.121, 300.122, 300.124, 300.129, 300.147, 300.149, 300.151, 300.152, 300.153, 300.156, 300.320, 300.322, 300.323, 300.301, 300.302, 300.303, 300.304, 300.305, 300.306, 300.307, 300.308, 300.309, 300.310, 300.311, 300.500, 300.506, 300.507, and 300.600.

§89.1131. *Qualifications of Special Education, Related Service, and Paraprofessional Personnel.*

(a) All special education and related service personnel must be certified, endorsed, or licensed in the area or areas of assignment in accordance with 34 Code of Federal Regulations, §300.156; the Texas Education Code (TEC), §§21.002, 21.003, and 29.304; or appropriate state agency credentials.

(b) In accordance with TEC, §29.0032, a provider of dyslexia instruction is not required to be certified in special education unless the provider is employed in a special education position that requires the certification.

(c) [(b)] A teacher who holds a special education certificate or an endorsement may be assigned to any level of a basic special education instructional program serving eligible students 3-21 years of age, as defined in §89.1035(a) of this title (relating to Age Ranges for Student Eligibility), in accordance with the limitation of their certification, except for the following.

(1) Persons assigned to provide speech therapy instructional services must hold a valid Texas Education Agency certificate in speech and hearing therapy or speech and language therapy, or a valid state license as a speech/language pathologist.

~~[(2) Teachers holding only a special education endorsement for early childhood education for students with disabilities must be assigned only to programs serving infants through Grade 6.]~~

(2) [(3)] Teachers certified in the education of students with visual impairments must be available to students with visual impairments, including deaf-blindness, through one of the school district's instructional options, a shared services arrangement with other school districts, or an education service center.

(3) [(4)] Teachers certified in the education of students who are deaf or hard of hearing must be available to students who are deaf or hard of hearing, including deaf-blindness, through one of the school district's instructional options, a regional day school program for the deaf, or a shared services arrangement with other school districts.

(4) [(5)] The following provisions apply to physical education when an admission, review, and dismissal (ARD) committee has determined that a student requires specially designed instruction in physical education.

(A) When the ARD [admission, review, and dismissal] committee has made the determination and the arrangements are specified in the student's individualized education program, physical education may be provided by those authorized under §231.703 of this title (relating to Teacher of Adaptive Physical Education) and the following personnel:

- (i) special education instructional or related service personnel who have the necessary skills and knowledge;
- (ii) physical education teachers;
- (iii) occupational therapists;
- (iv) physical therapists; or
- (v) occupational therapy assistants or physical therapy assistants working under supervision in accordance with the standards of their profession.

(B) When these services are provided by special education personnel, the district must document that they have the necessary skills and knowledge. Documentation may include, but need not be limited to, inservice records, evidence of attendance at seminars or workshops, or transcripts of college courses.

(5) [(6)] Teachers assigned full-time or part-time to instruction of students from birth through age two with visual impairments, including deaf-blindness, must be certified in the education of students with visual impairments. Teachers assigned full-time or part-time to instruction of students from birth through age two who are deaf or hard of hearing, including deaf-blindness, must be certified in education for students who are deaf and [severely] hard of hearing.

[(7) Teachers with secondary certification with the generic delivery system may be assigned to teach Grades 6-12 only.]

(d) [(e)] Paraprofessional personnel must be certified and may be assigned to work with eligible students, general and special education teachers, and related service personnel. Educational aides may also be assigned to assist students with special education transportation, serve as a job coach, or serve in support of community-based instruction. Educational aides paid from state administrative funds may be assigned to special education clerical or administrative duties.

(e) [(d)] Interpreting services for students who are deaf must be provided by an interpreter who is certified in the appropriate language mode(s), if certification in such mode(s) is available. If certification is available, the interpreter must be a certified member of or certified by the Registry of Interpreters for the Deaf [(RID)] or the Texas Board for Evaluation of Interpreters [(BEI), Department of Assistive and Rehabilitative Services (DARS), Office for Deaf and Hard of Hearing Services (DHHS)].

(f) [(e)] Orientation and mobility instruction must be provided by a certified orientation and mobility specialist [(COMS)] who is certified by the Academy for Certification of Vision Rehabilitation and Education Professionals.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 11, 2024.

TRD-202401104

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: April 21, 2024

For further information, please call: (512) 475-1497



## CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS

### SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING SPECIAL EDUCATION SERVICES

The Texas Education Agency (TEA) proposes amendment to §§89.1049, 89.1065, and 89.1141, concerning special education services. The proposed amendments would clarify terminology and codify current program practices.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 89.1049 establishes parental rights regarding adult students.

The proposed amendment to §89.1049 would remove references to an outdated school year.

Section 89.1065 establishes criteria for extended school year (ESY) services.

The proposed amendment to §89.1065(2) would establish the documentation required for ESY services to include data collected by the district and the student's parents using assessments, as opposed to evaluations. The amendment would also replace language related to individualized education program (IEP) goals and objectives with language related to areas where the student previously demonstrated acquired progress. An additional change would clarify severe or substantial regression as the student being unable to maintain previously acquired progress in one or more critical IEP areas in the absence of ESY services.

Section 89.1065(5) would be revised to establish a requirement for the admission, review, and dismissal (ARD) committee to consider ESY services at the student's annual IEP review, as opposed to the parent requesting a discussion regarding ESY services at the ARD committee meeting. Language would be added to specify that if a student for whom ESY services were considered and rejected at the annual IEP review later demonstrates a need for ESY services, the parent and school district must determine either through an IEP amendment by agreement in accordance with 34 CFR, §300.324(a)(4), or during an ARD committee meeting the location, duration, and frequency of ESY services the student requires.

New §89.1065(10) would add criteria regarding a student requiring ESY services who withdraws during the summer months from one district and registers in another to require the new district to be responsible for fulfilling ESY services. The new district may include the direct provision of the services or contract with the previous district or another entity to provide the services or payment for the services.

Section 89.1141 establishes education service center regional special education leadership. The section would be amended to remove guidelines already established in statute and/or program and grant guidelines.

FISCAL IMPACT: Justin Porter, associate commissioner and chief program officer for special populations, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

**GOVERNMENT GROWTH IMPACT:** TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand and limit existing regulations to clarify terminology and add into rule current program practices.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

**PUBLIC BENEFIT AND COST TO PERSONS:** Mr. Porter has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be to update §89.1049 to define the age range for student eligibility for receiving special education and related services; update §89.1065 to establish criteria for ESY services, including a revision to establish a requirement for the ARD committee to consider ESY services at the student's annual IEP review, as opposed to the parent requesting a discussion regarding ESY services at the ARD committee meeting, and add criteria for schools serving a student for whom ESY services were considered and rejected at the annual IEP review and who later demonstrates a need for ESY services; and update §89.1141 to remove guidelines for education service center regional special education leadership as these guidelines are already established in statute and/or program and grant guidelines. There is no anticipated economic cost to persons who are required to comply with the proposals.

**DATA AND REPORTING IMPACT:** The proposal would have no data and reporting implications.

**PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS:** TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

**PUBLIC COMMENTS:** The public comment period on the proposal begins March 22, 2024, and ends April 22, 2024. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About\\_TEA/Laws\\_and\\_Rules/Commissioner\\_Rules\\_\(TAC\)/Proposed\\_Commissioner\\_of\\_Education\\_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/). Public hearings will be conducted to solicit testimony and input on the proposed amendments at 9:30 a.m. on April 4 and 5, 2024. The public may participate in either hearing virtually by linking to the hearing at <https://zoom.us/j/96584642284>. Anyone wishing to testify must be present at 9:30 a.m. and indicate to TEA staff their intent to comment and are encouraged to also send written testimony to [sped@tea.texas.gov](mailto:sped@tea.texas.gov). The hearing will conclude once all who have signed in have been given the opportunity to comment. Questions about the hearing should be directed to Derek Hollingsworth, Special Populations Policy, Reporting, and Technical Assistance, [Derek.Hollingsworth@tea.texas.gov](mailto:Derek.Hollingsworth@tea.texas.gov).

## **DIVISION 2. CLARIFICATION OF PROVISIONS IN FEDERAL REGULATIONS**

### **19 TAC §89.1049, §89.1065**

**STATUTORY AUTHORITY.** The amendments are proposed under Texas Education Code (TEC), §8.001, which establishes the operation of education service centers; TEC, §8.002, which defines the purpose of education service centers; TEC, §8.051, which establishes the core services of education service centers and services to improve student and district performance; TEC, §8.052, which requires education service centers to use funds distributed under TEC, §8.123, to implement initiatives identified by the legislature; TEC, §8.053, which defines additional services a regional service center may provide; TEC, §29.001, which requires the agency to develop and modify as necessary a statewide plan for the delivery of services to children with disabilities that ensures the availability of a free appropriate public education to children between the ages of 3-21; TEC, §29.017, which establishes criteria for the transfer of rights from a parent to a child with a disability who is 18 or older or whose disabilities have been removed under Texas Family Code, Chapter 31, to make educational decisions; 34 Code of Federal Regulations (CFR), §300.12, which defines criteria for an educational service agency; 34 CFR, §300.320, which defines the requirements for an individualized education program (IEP); 34 CFR, §300.321, which establishes the requirements of an IEP team for each child with a disability; 34 CFR, §300.520, which establishes the criteria for the transfer of parental rights for a child with a disability who reaches the age of majority under state law; and 34 CFR, §300.106, which establishes the criteria for extended school year services.

**CROSS REFERENCE TO STATUTE.** The amendments implement Texas Education Code, §§8.001, 8.002, 8.051, 8.052, 8.053, 29.001, and 29.017; and 34 Code of Federal Regulations, §§300.12, 300.320, 300.321, 300.520, and 300.106.

#### *§89.1049. Parental Rights Regarding Adult Students.*

(a) In accordance with 34 Code of Federal Regulations (CFR), §300.320(c) and §300.520, and Texas Education Code (TEC), §29.017, beginning at least one year before a student reaches 18 years of age, the student's individualized education program (IEP) must include a statement that the student has been informed that, unless the student's parent or other individual has been granted guardianship of the student under the Probate Code, Chapter XIII, Guardianship, all rights granted to the parent under the Individuals with Disabilities Education Act (IDEA), Part B, other than the right to receive any notice required under IDEA, Part B, will transfer to the student upon reaching age 18. The [Beginning with the 2018-2019 school year, the] IEP must also state that the student has been provided information and resources regarding guardianship, alternatives to guardianship, including a supported decision-making agreement under Texas Estates Code, Chapter 1357, and other supports and services that may enable the student to live independently. After the student reaches the age of 18, except as provided by subsection (b) of this section, the school district shall provide any notice required under IDEA, Part B, to both the adult student and the parent.

(b) In accordance with 34 CFR, §300.520(a)(2), and TEC, §29.017(a), all rights accorded to a parent under IDEA, Part B, including the right to receive any notice required by IDEA, Part B, will transfer to an 18-year-old student who is incarcerated in an adult or juvenile state or local correctional institution, unless the student's parent or other individual has been granted guardianship of the student under Texas Estates Code, Title 3.

(c) In accordance with 34 CFR, §300.520(a)(3), a school district must notify in writing the adult student and parent of the transfer of parental rights, as described in subsections (a) and (b) of this section, at the time the student reaches the age of 18. This notification is sep-

arate and distinct from the requirement that the student's IEP include a statement relating to the transfer of parental rights beginning at least one year before the student reaches the age of 18. This notification is not required to contain the elements of notice referenced in 34 CFR, §300.503, but must include a statement that parental rights have transferred to the adult student. ~~The [Beginning with the 2018-2019 school year, the]~~ notice must also include information and resources regarding guardianship, alternatives to guardianship, including a supported decision-making agreement under Texas Estates Code, Chapter 1357, and other supports and services that may enable the student to live independently, and must provide contact information for the parties to use in obtaining additional information.

(d) A notice under IDEA, Part B, which is required to be given to an adult student and parent does not create a right for the parent to consent to or participate in the proposal or refusal to which the notice relates. For example, a notice of an admission, review, and dismissal [(ARD)] committee meeting does not constitute invitation to, or create a right for, the parent to attend the meeting. However, in accordance with 34 CFR, §300.321(a)(6), the adult student or the school district may invite individuals who have knowledge or special expertise regarding the student, including the parent.

(e) Nothing in this section prohibits a supported decision-making agreement or a valid power of attorney from being executed by an individual who holds rights under IDEA, Part B.

§89.1065. *Extended School Year Services.*

Extended school year (ESY) services are defined as individualized instructional programs beyond the regular school year for eligible students with disabilities.

(1) The need for ESY services must be determined on an individual student basis by the admission, review, and dismissal (ARD) committee in accordance with 34 Code of Federal Regulations (CFR), §300.106, and the provisions of this section. In determining the need for and in providing ESY services, a school district may not:

- (A) limit ESY services to particular categories of disability; or
- (B) unilaterally limit the type, amount, or duration of ESY services.

(2) The need for ESY services must be documented using data collected by the district and the student's parents using [from] formal or [and/or] informal assessments [evaluations provided by the district or the parents]. The documentation must demonstrate that in one or more critical areas addressed in the current individualized education program (IEP) where the student has previously demonstrated acquired progress [goals and objectives], the student has exhibited, or reasonably may be expected to exhibit, severe or substantial regression that cannot be recouped within a reasonable period of time. Severe or substantial regression means that the student has been, or will be, unable to maintain previously acquired progress in one or more [acquired] critical IEP areas [skills] in the absence of ESY services.

(3) The reasonable period of time for recoupment of acquired critical skills must be determined on the basis of needs identified in each student's IEP. If the loss of acquired critical skills would be particularly severe or substantial, or if such loss results, or reasonably may be expected to result, in immediate physical harm to the student or to others, ESY services may be justified without consideration of the period of time for recoupment of such skills. In any case, the period of time for recoupment must not exceed eight weeks.

(4) A skill is critical when the loss of that skill results, or is reasonably expected to result, in any of the following occurrences during the first eight weeks of the next regular school year:

- (A) placement in a more restrictive instructional arrangement;
- (B) significant loss of acquired skills necessary for the student to appropriately progress in the general curriculum;
- (C) significant loss of self-sufficiency in self-help skill areas as evidenced by an increase in the number of direct service staff and/or amount of time required to provide special education or related services;
- (D) loss of access to community-based independent living skills instruction or an independent living environment provided by noneducational sources as a result of regression in skills; or
- (E) loss of access to on-the-job training or productive employment as a result of regression in skills.

(5) The ARD committee must consider ESY services [If the district does not propose ESY services for discussion] at the annual review of a student's IEP. If a student for whom ESY services were considered and rejected at the annual IEP review meeting later demonstrates a need for ESY services based on the criteria described in this section, the parent and school district must determine either through an IEP amendment by agreement in accordance with 34 CFR, §300.324(a)(4), or during an ARD committee meeting the location, duration, and frequency of ESY services the student requires[; the parent may request that the ARD committee discuss ESY services pursuant to 34 CFR, §300.321].

(6) If a student for whom ESY services were considered and rejected loses critical skills because of the decision not to provide ESY services, and if those skills are not regained after the reasonable period of time for recoupment, the ARD committee must reconsider the current IEP if the student's loss of critical skills interferes with the implementation of the student's IEP.

(7) For students enrolling in a district during the school year, information obtained from the prior school district as well as information collected during the current year may be used to determine the need for ESY services.

(8) The provision of ESY services is limited to the educational needs of the student and must not supplant or limit the responsibility of other public agencies to continue to provide care and treatment services pursuant to policy or practice, even when those services are similar to, or the same as, the services addressed in the student's IEP. No student will be denied ESY services because the student receives care and treatment services under the auspices of other agencies.

(9) Districts are not eligible for reimbursement for ESY services provided to students for reasons other than those set forth in this section.

(10) If a student whose IEP notes that ESY services are required withdraws from one district and registers in another district during the summer months, the new district will be responsible for ensuring those services are provided. This may include the direct provision of those services or contracting with the previous district or another entity to provide the services or payment for the services.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 11, 2024.  
TRD-202401105

Cristina De La Fuente-Valadez  
Director, Rulemaking  
Texas Education Agency  
Earliest possible date of adoption: April 21, 2024  
For further information, please call: (512) 475-1497

◆ ◆ ◆  
**DIVISION 6. REGIONAL EDUCATION  
SERVICE CENTER SPECIAL EDUCATION  
PROGRAMS**

**19 TAC §89.1141**

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §8.001, which establishes the operation of education service centers; TEC, §8.002, which defines the purpose of education service centers; TEC, §8.051, which establishes the core services of education service centers and services to improve student and district performance; TEC, §8.052, which requires education service centers to use funds distributed under TEC, §8.123, to implement initiatives identified by the legislature; TEC, §8.053, which defines additional services a regional service center may provide; TEC, §29.001, which requires the agency to develop and modify as necessary a statewide plan for the delivery of services to children with disabilities that ensures the availability of a free appropriate public education to children between the ages of 3-21; TEC, §29.017, which establishes criteria for the transfer of rights from a parent to a child with a disability who is 18 or older or whose disabilities have been removed under Texas Family Code, Chapter 31, to make educational decisions; 34 Code of Federal Regulations (CFR), §300.12, which defines criteria for an educational service agency; 34 CFR, §300.320, which defines the requirements for an individualized education program (IEP); 34 CFR, §300.321, which establishes the requirements of an IEP team for each child with a disability; 34 CFR, §300.520, which establishes the criteria for the transfer of parental rights for a child with a disability who reaches the age of majority under state law; and 34 CFR, §300.106, which establishes the criteria for extended school year services.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §§8.001, 8.002, 8.051, 8.052, 8.053, 29.001, and 29.017; and 34 Code of Federal Regulations, §§300.12, 300.320, 300.321, 300.520, and 300.106.

§89.1141. *Education Service Center Regional Special Education Leadership.*

[(a)] Each regional education service center [(ESC)] will provide leadership, training, and technical assistance in the area of special education for students with disabilities in accordance with the Texas Education Agency's (TEA's) [(TEA)] focus on increasing student achievement and Texas Education Code [(TEC)], §8.051(d)(2) and (5), and will assist TEA in the implementation of 34 Code of Federal Regulations, [(CFR)] §300.119.

[(b)] Each regional ESC will provide technical assistance, support, and training in the area of special education to school districts based on the results of a comprehensive needs assessment process. Each regional ESC will continue to serve as first point of contact for school districts, parents, and other community stakeholders, and will provide for the joint training of parents and special education, related services, and general education personnel.]

[(c)] Regional ESC activities and responsibilities will be in accordance with current instructions, program guidelines, and program descriptions included in the ESC Performance Contract and Application, which will be made accessible to the public through the TEA website.]

[(d)] The ESC must utilize available TEA funding to implement activities and address needs identified under subsections (a)-(c) of this section. If additional funding is needed to implement supplementary or enhanced activities identified through the regional needs assessment process, ESCs may access and utilize alternate sources of funding. Any charges must be determined only after priorities have been established through input from affected school districts, including data collected from parents and communities through partnerships with school districts.]

[(e)] When an ESC provides leadership, training, and support pertaining to education and related services for students with visual impairments, directly or through contract, the personnel providing such services must be appropriately certified as identified in current program guidelines included in the ESC Performance Contract and Application, regardless of the fund source used to fund the service/personnel.]

[(f)] Regional ESCs may serve as fiscal agent for shared services arrangements in accordance with procedures established under §89.1075(e) of this title (relating to General Program Requirements and Local District Procedures).]

[(g)] For the purposes of this subchapter, ESCs shall be considered to be educational service agencies as defined in federal regulations.]

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 11, 2024.

TRD-202401106  
Cristina De La Fuente-Valadez  
Director, Rulemaking  
Texas Education Agency  
Earliest possible date of adoption: April 21, 2024  
For further information, please call: (512) 475-1497

◆ ◆ ◆  
**CHAPTER 105. FOUNDATION SCHOOL  
PROGRAM  
SUBCHAPTER DD. COMMISSIONER'S  
RULES CONCERNING UNIVERSITY  
INTERSCHOLASTIC LEAGUE ALLOTMENT  
19 TAC §105.1031**

The Texas Education Agency (TEA) proposes new §105.1031, concerning the allotment for non-enrolled students participating in University Interscholastic League (UIL) activities. The proposed new rule would implement House Bill (HB) 3708, 88th Texas Legislature, Regular Session, 2023, by establishing provisions related to an allotment for local educational agencies that allow non-enrolled students to participate in UIL activities.

BACKGROUND INFORMATION AND JUSTIFICATION: HB 547, 87th Texas Legislature, Regular Session, 2021, enabled public school districts to extend the option of UIL participation to non-enrolled students who live within the district's borders. The



bill defined a non-enrolled student as one who is home-schooled. The expansion of participation benefited both students and schools, as participating home-schooled students receive the educational enrichment of UIL activities and schools offer their services to more students in their community. However, school districts that provide these opportunities to home-schooled students receive no additional funding to accommodate the increased number of participants in their programs. HB 3708, 88th Texas Legislature, Regular Session, 2023, helps to support school districts in expanding their UIL programs to include home-schooled students by providing for an annual allotment of \$1,500 per UIL activity in which a non-enrolled student participates.

Proposed new §105.1031 would implement HB 3708 by establishing definitions; specifying the data used to calculate the estimated and final entitlement; and providing requirements for the UIL activities, student participation, and documentation.

FISCAL IMPACT: Monica Martinez, associate commissioner for standards and programs, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would create a new regulation by establishing a rule so that districts would be reimbursed for allowing non-enrolled students to participate in UIL activities.

It would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not expand, limit, or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Martinez has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be to provide school districts with clarification related to an allotment for local education agencies that allow non-enrolled students to participate in UIL activities. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have data and reporting implications. The proposed amendment would require school districts and open-enrollment charter schools to report each UIL activity in which a non-enrolled student participated.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins March 22, 2024, and ends April 22, 2024. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on March 22, 2024. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About\\_TEA/Laws\\_and\\_Rules/Commissioner\\_Rules\\_\(TAC\)/Proposed\\_Commissioner\\_of\\_Education\\_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

STATUTORY AUTHORITY. The new section is proposed under Texas Education Code (TEC), §33.0832(a)(2), which defines a non-enrolled student as one who predominantly receives instruction that is provided by the parent, or a person standing in parental authority, in or through the child's home; TEC, §48.004, which requires the commissioner of education to adopt rules as necessary to implement and administer the Foundation School Program; and TEC, §48.305, as added by House Bill 3708, 88th Texas Legislature, Regular Session, 2023, which permits each school district that allows participation for a non-enrolled student to receive an annual allotment of \$1,500 for each league activity in which the student participates.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §§33.0832(a)(2); 48.004; and 48.305, as added by House Bill 3708, 88th Texas Legislature, Regular Session, 2023.

*§105.1031. Allotment for Non-enrolled Students Participating in University Interscholastic League Activities.*

(a) The following terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Activity season--The period established by a school or the University Interscholastic League (UIL) in which practices, rehearsals, and interschool competitions or contests take place.

(2) Non-enrolled student--A student who predominantly receives instruction in a general elementary or secondary education program that is provided by the parent, or a person standing in parental authority, in or through the child's home. This may include a student who is designated as enrolled, not in membership.

(3) Participation--The active involvement of a student in a minimum of 75% of a combined total of practices, rehearsals, or preparation activities and associated competitions and contests, including selection as an alternate, for a specific UIL activity.

(4) University Interscholastic League or UIL activity--Any official UIL activity identified in the UIL Constitution and Contest Rules, not including pilot activities.

(b) In accordance with Texas Education Code (TEC), §48.305, a school district or open-enrollment charter school that allows participation of non-enrolled students in UIL activities under TEC, §33.0832,

is entitled to an annual allotment of \$1,500 for each UIL activity in which a non-enrolled student participates.

(c) In the fall of each school year, as part of the settle-up process for the preceding school year, data reported through the Texas Student Data System Public Education Information Management System (TSDS PEIMS) summer submission will be used to calculate the allotment prescribed in subsection (b) of this section.

(d) UIL activities shall:

(1) be overseen by a school district- or charter school-approved coach or sponsor;

(2) provide for a minimum of four weeks of coach- or sponsor-led practice, rehearsal, or preparation specific to the activity within the designated activity season; and

(3) provide opportunities for students to take part in formal, interschool competitions or contests in the associated activity during the designated activity season.

(e) A school district or charter school may still receive the allotment if a student began the activity season without injury or illness and later experienced an injury or prolonged illness that prevented participation.

(f) For audit purposes, a school district or charter school shall maintain documentation to support the requirements of this section.

(g) School districts and charter schools will be provided with estimated funding during a school year for non-enrolled students based on the prior year's summer TSDS PEIMS data using the same methodology described in subsection (c) of this section to calculate the entitlement. The final entitlement will be based on data from the current school year as provided for in subsection (c) of this section. Any difference from the estimated entitlement will be addressed as part of the Foundation School Program settle-up process according to the provisions of TEC, §48.272.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 11, 2024.

TRD-202401107

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: April 21, 2024

For further information, please call: (512) 475-1497



## TITLE 22. EXAMINING BOARDS

### PART 5. STATE BOARD OF DENTAL EXAMINERS

#### CHAPTER 101. DENTAL LICENSURE

##### 22 TAC §101.6

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §101.6, concerning dental licensing for military service members, military veterans, and military spouses.

The purpose of the proposal is to implement Senate Bill (S.B.) 422, 88th Legislature, Regular Session (2023), which amended Texas Occupations Code Chapter 55, Licensing of Military Service Members, Military Veterans, and Military Spouses. Specifically, this amendment requires the board to process a military service member, military spouse, or military veteran's application for alternative licensing within 30 days from receipt of the application and to issue a license to a qualified applicant. Additionally, the amendment includes language to specify that this rule does not modify or alter rights that may be provided under federal law.

FISCAL NOTE: Casey Nichols, Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: Casey Nichols has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this rule will be the protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: Casey Nichols has also determined that the proposed rule does not affect local economies and employment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: Casey Nichols has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase in fees paid to the agency; (5) the proposed rule does not create a new regulation; (6) the proposed rule does expand an existing regulation; (7) the proposed rule does not increase or decrease the number of individuals subject to it; and (8) the proposed rule does not positively or adversely affect the state's economy.

COST TO REGULATED PERSONS: This proposed rule does not impose a cost on a regulated person and, therefore, is not subject to Tex. Gov't. Code §2001.0045.

Comments on the proposed amendment may be submitted to Casey Nichols, Executive Director, 1801 Congress Avenue, Suite 8.600, Austin, Texas 78701, by fax to (512) 649-2482, or by email to [official\\_rules\\_comments@tsbde.texas.gov](mailto:official_rules_comments@tsbde.texas.gov) for 30 days following the date that the proposed rule is published in the *Texas Register*. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

This proposed rule implements the amendment to Section 55.005(a) of the Texas Occupations Code as set out in S.B. 422 of the 88th Texas Legislature, Regular Session (2023).

*§101.6. Dental Licensing for Military Service Members, Military Veterans, and Military Spouses.*

(a) Definitions.

(1) "Active duty" means current full-time military service in the armed forces of the United States or active duty military service as a member of the Texas military forces, as defined by §471.001, Government Code, or similar military service of another state.

(2) "Armed forces of the United States" means the army, navy, air force, coast guard, or marine corps of the United States or a reserve unit of one of those branches of the armed forces.

(3) "Military service member" means a person who is on active duty.

(4) "Military spouse" means a person who is married to a military service member.

(5) "Military veteran" means a person who has served on active duty and who was discharged or released from active duty.

(b) A licensee is exempt from any penalty or increased fee imposed by the Board for failing to renew the license in a timely manner if the individual establishes to the satisfaction of Board staff that the individual failed to renew the license in a timely manner because the individual was serving as a military service member.

(c) A licensee who is a military service member is entitled to two years of additional time to complete:

(1) any continuing education requirements; and

(2) any other requirement related to the renewal of the military service member's license.

(d) Alternative Licensing.

(1) A military service member, military veteran, or military spouse applicant may demonstrate competency by alternative methods in order to meet the requirements for obtaining a dental license issued by the Board if the applicant:

(A) holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the licensing requirements in this state; or

(B) within the five years preceding the application date held the license in this state.

(2) For purposes of this section, the standard method of demonstrating competency is the specific examination, education, and or/experience required to obtain a dental license. In lieu of the standard method(s) of demonstrating competency for a dental license and based on the applicant's circumstances, the alternative methods for demonstrating competency may include any combination of the following as determined by the Board:

(A) education;

(B) continuing education;

(C) examinations (written and/or practical);

(D) letters of good standing;

(E) letters of recommendation;

(F) work experience; or

(G) other methods required by the Executive Director.

(3) The executive director may waive any prerequisite to obtaining a license for an applicant described in paragraph (1) of this subsection after reviewing the applicant's credentials.

(e) The Board shall give credit to an applicant who is a military service member or military veteran for any verified military service, training, or education toward the licensing requirements, other than an examination requirement, including, but not limited to, education, training, certification, or a course in basic life support. The Board may not give credit if the applicant holds a restricted license issued by another jurisdiction or has an unacceptable criminal history according to Texas Occupations Code, Chapter 53 (relating to Consequences of Criminal Conviction) or §101.8 of this title (relating to Persons with Criminal Backgrounds).

(f) The Board has 30 days from the date a military service member, military veteran, or military spouse submits an application for alternative licensing to process the application and issue a license to an applicant who qualifies for the license. [The Board shall process an application from a military service member, military veteran, or military spouse as soon as practicable after receiving the application.]

(g) All applicants shall submit an application and proof of any relevant requirements on a form and in a manner prescribed by the Board.

(h) All applicants shall submit fingerprints for the retrieval of criminal history record information.

(i) All fees associated with a license application shall be waived for an applicant who is:

(1) a military service member or military veteran whose military service, training, or education substantially meets all of the requirements for the license; or

(2) a military service member, military veteran, or military spouse who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for licensure in this state.

(j) Licenses granted under this chapter have the terms established by §101.5 of this title (related to Staggered Dental Registrations), or a term of 12 months from the date the license is issued, whichever term is longer. The Board shall notify the licensee in writing or by electronic means of the requirements for renewal.

(k) This section establishes requirements and procedures authorized or required by Texas Occupations Code, Chapter 55, and does not modify or alter rights that may be provided under federal law.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 8, 2024.

TRD-202401074

Lauren Studdard

General Counsel

State Board of Dental Examiners

Earliest possible date of adoption: April 21, 2024

For further information, please call: (512) 305-8910



**22 TAC §101.14**

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §101.14, concerning exemption from

licensure for certain military service members and military spouses.

The purpose of the proposal is to implement Senate Bill (S.B.) 422, 88th Legislature, Regular Session (2023), which amended Texas Occupations Code Chapter 55, Licensing of Military Service Members, Military Veterans, and Military Spouses. Specifically, the proposed amendment includes "military service members" in the title and makes the rule applicable to military service members in addition to military spouses. The proposed amendment also adds a requirement that the Board verify the licensure and issue an authorization to practice recognizing the licensure within 30 days of the date a military service member or military spouse submits the information required by the rule. The proposed amendment further provides that, in the event of a divorce or similar event that affects a person's status as a military spouse, the spouse may continue to engage in the business or occupation until the third anniversary of the date the spouse received the authorization to practice. Additionally, the amendment includes language to specify that this rule does not modify or alter rights that may be provided under federal law, and corrects clerical errors.

**FISCAL NOTE:** Casey Nichols, Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

**PUBLIC BENEFIT-COST NOTE:** Casey Nichols has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this rule will be the protection of public safety and welfare.

**LOCAL EMPLOYMENT IMPACT STATEMENT:** Casey Nichols has also determined that the proposed rule does not affect local economies and employment.

**SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT:** Casey Nichols has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this rule.

**GOVERNMENT GROWTH IMPACT STATEMENT:** The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase in fees paid to the agency; (5) the proposed rule does not create a new regulation; (6) the proposed rule does expand an existing regulation; (7) the proposed rule increases the number of individuals subject to it; and (8) the proposed rule does not positively or adversely affect the state's economy.

**COST TO REGULATED PERSONS:** This proposed rule does not impose a cost on a regulated person and, therefore, is not subject to Tex. Gov't. Code §2001.0045.

Comments on the proposed amendment may be submitted to Casey Nichols, Executive Director, 1801 Congress Avenue, Suite 8.600, Austin, Texas 78701, by fax to (512) 649-2482, or by email to [official\\_rules\\_comments@tsbde.texas.gov](mailto:official_rules_comments@tsbde.texas.gov) for 30 days following the date that the proposed rule is published in the *Texas Register*. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by

the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

This proposed rule implements the amendments to Chapter 55, Texas Occupations Code as set out in S.B. 422 of the 88th Texas Legislature, Regular Session (2023).

*§101.14. Exemption from Licensure for Certain Military Service Members and Military Spouses.*

(a) The executive director of the Texas State Board of Dental Examiners must authorize a qualified military service member or military spouse to practice dentistry in Texas without obtaining a license in accordance with §55.0041(a), Texas Occupations Code. This authorization to practice is valid during the time the military service member or, with respect to a military spouse, the military service member to whom the military spouse is married is stationed at a military installation in Texas, but is not to exceed three years.

(b) In order to receive authorization to practice the military service member or military spouse must:

(1) hold an active license to practice dentistry in another state, territory, Canadian province, or country that:

(A) has licensing requirements that are determined by the board to be substantially equivalent to the requirements for licensure [certification] in Texas; and

(B) is not subject to any restriction, disciplinary order, probation, or investigation;

(2) notify the board of the military service member or military spouse's intent to practice in Texas on a form prescribed by the board; and

(3) submit proof of the military service member or military spouse's residency in this state, a copy of the military service member or military spouse's military identification card, and proof of the military service member's status as an active duty military service member as defined by §437.001(1), Texas Government Code (relating to Definitions). To establish residency, the military service member or military spouse must submit:

(A) a copy of the permanent change of station order for the military service member or military service member to whom the military spouse is married;

(B) a Texas address; and

(C) the name and address of the Texas military installation.

(c) While authorized to practice dentistry in Texas, the military service member or military spouse shall comply with all other laws and regulations applicable to the practice of dentistry in Texas.

(d) The board has 30 days from the date a military service member or military spouse submits the information required by subsection (b) of this section to: [Once the board receives the form containing notice of a military spouse's intent to practice in Texas, the board will verify whether the military spouse's dental license in another state, territory, Canadian province, or country is active and in good standing. Additionally, the board will determine whether the licensing requirements in that jurisdiction are substantially equivalent to the requirements for licensure in Texas.]

(1) verify that the member or spouse is active and in good standing in a jurisdiction that has licensing requirements that are substantially equivalent to the requirements for licensure in Texas; and

(2) issue an authorization recognizing the licensure as the equivalent license in this state.

(e) In the event of a divorce or similar event that affects a person's status as a military spouse, the spouse may continue to engage in the business or occupation under the authority of this section until the third anniversary of the date the spouse received the authorization described by subsection (d) of this section. A similar event includes the death of the military service member or the military service member's discharge from the military.

(f) This section establishes requirements and procedures authorized or required by Texas Occupations Code, Chapter 55, and does not modify or alter rights that may be provided under federal law.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 8, 2024.

TRD-202401073

Lauren Studdard

General Counsel

State Board of Dental Examiners

Earliest possible date of adoption: April 21, 2024

For further information, please call: (512) 305-8910



## CHAPTER 102. FEES

### 22 TAC §102.1

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §102.1, concerning fees.

The proposed amendment implements Section 257.002(c)-(c-1) of the Texas Occupations Code by requiring licensees whose license is expired for 90 days or less to pay a renewal fee that is equal to 1½ times the normally required renewal fee, and whose license is expired for more than 90 days but less than one year to pay a renewal fee that is equal to two times the normally required renewal fee.

The proposed amendment requires dental hygienists to pay a fee to apply for a local infiltration anesthesia certificate in accordance with Sections 258.001 and 262.002 of the Texas Occupations Code, and 22 TAC §115.10.

The proposed amendment requires registered dental assistants to pay a fee to reactivate a retired registration, and to reinstate a cancelled registration, in accordance with 22 TAC §114.8 and §114.13.

The proposed amendment changes the Texas Online fee to implement the Fiscal Year 2024 Texas.gov Fee Schedule. The updated fees were lower resulting in an overall smaller fee.

The proposed amendment changes the National Practitioner Data Bank (NPDB) fee to implement the NPDB's increased continuous query fee from \$2.00 to \$2.50.

FISCAL NOTE: Casey Nichols, Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: Casey Nichols has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this rule will be the protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: Casey Nichols has also determined that the proposed rule does not affect local economies and employment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: Casey Nichols has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this proposed rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the proposed rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does require an increase in fees paid to the agency; (5) the proposed rule does not create a new regulation; (6) the proposed rule does not expand an existing regulation; (7) the proposed rule does not increase or decrease the number of individuals subject to it; and (8) the proposed rule does not positively or adversely affect the state's economy.

COST TO REGULATED PERSONS: The Board finds that the provisions of Texas Government Code Section 2001.0045(b) do not apply to the proposal because the estimated costs associated with the proposal decreases licensees' costs for compliance with the rule, implements statutory requirements, and are necessary to protect the health, safety, and welfare of the people of Texas, as provided in Section 2001.045(c)(2)(B), (6) and (9).

Comments on the proposed rule may be submitted to Casey Nichols, Executive Director, 1801 Congress Avenue, Suite 8.600, Austin, Texas 78701, by fax to (512) 649-2482, or by email to [official\\_rules\\_comments@tsbde.texas.gov](mailto:official_rules_comments@tsbde.texas.gov) for 30 days following the date that the proposed rule is published in the *Texas Register*. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety, and Texas Occupations Code §254.004, which directs the Board to establish reasonable and necessary fees sufficient to cover the cost of administering the Board's duties.

No statutes are affected by this proposed rule.

Legal counsel for the Board has reviewed the proposed rule and has found it to be within the Board's authority to adopt.

#### §102.1. Fees.

(a) Effective ~~May 23, 2024~~ [November 3, 2023], the Board has established the following reasonable and necessary fees for the administration of its function. Upon initial licensure or registration, and at each renewal, the fees provided in subsections (b) - (d) of this section shall be due and payable to the Board.

Figure: 22 TAC §102.1(a)

[Figure: 22 TAC §102.1(a)]

(b) - (f) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 8, 2024.

TRD-202401069

Lauren Studdard

General Counsel

State Board of Dental Examiners

Earliest possible date of adoption: April 21, 2024

For further information, please call: (512) 305-8910



## CHAPTER 103. DENTAL HYGIENE LICENSURE

### 22 TAC §103.10

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §103.10, concerning exemption from licensure for certain military service members and military spouses.

The purpose of the proposal is to implement Senate Bill (S.B.) 422, 88th Legislature, Regular Session (2023), which amended Texas Occupations Code Chapter 55, Licensing of Military Service Members, Military Veterans, and Military Spouses. Specifically, the proposed amendment includes "military service members" in the title and makes the rule applicable to military service members in addition to military spouses. The proposed amendment also adds a requirement that the Board verify the licensure and issue an authorization to practice recognizing the licensure within 30 days of the date a military service member or military spouse submits the information required by the rule. The proposed amendment further provides that, in the event of a divorce or similar event that affects a person's status as a military spouse, the spouse may continue to engage in the business or occupation until the third anniversary of the date the spouse received the authorization to practice. Additionally, the amendment includes language to specify that this rule does not modify or alter rights that may be provided under federal law, and corrects clerical errors.

**FISCAL NOTE:** Casey Nichols, Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

**PUBLIC BENEFIT-COST NOTE:** Casey Nichols has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this rule will be the protection of public safety and welfare.

**LOCAL EMPLOYMENT IMPACT STATEMENT:** Casey Nichols has also determined that the proposed rule does not affect local economies and employment.

**SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT:** Casey Nichols has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this rule.

**GOVERNMENT GROWTH IMPACT STATEMENT:** The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase in fees paid to the agency; (5) the proposed rule does not create a new regulation; (6) the proposed rule does not expand an existing regulation; (7) the proposed rule increases the number of individuals subject to it; and (8) the proposed rule does not positively or adversely affect the state's economy.

**COST TO REGULATED PERSONS:** This proposed rule does not impose a cost on a regulated person and, therefore, is not subject to Tex. Gov't. Code §2001.0045.

Comments on the proposed amendment may be submitted to Casey Nichols, Executive Director, 1801 Congress Avenue, Suite 8.600, Austin, Texas 78701, by fax to (512) 649-2482, or by email to [official\\_rules\\_comments@tsbde.texas.gov](mailto:official_rules_comments@tsbde.texas.gov) for 30 days following the date that the proposed rule is published in the *Texas Register*. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

This proposed rule implements the amendments to Chapter 55, Texas Occupations Code as set out in S.B. 422 of the 88th Texas Legislature, Regular Session (2023).

#### *§103.10. Exemption from Licensure for Certain Military Service Members and Military Spouses.*

(a) The executive director of the Texas State Board of Dental Examiners must authorize a qualified military service member or military spouse to practice as a dental hygienist [~~dentistry~~] in Texas without obtaining a license in accordance with §55.0041(a), Texas Occupations Code. This authorization to practice is valid during the time the military service member or, with respect to a military spouse, the military service member to whom the military spouse is married is stationed at a military installation in Texas, but is not to exceed three years.

(b) In order to receive authorization to practice the military service member or military spouse must:

(1) hold an active dental hygienist license in another state, territory, Canadian province, or country that:

(A) has licensing requirements that are determined by the board to be substantially equivalent to the requirements for licensure [~~certification~~] in Texas; and

(B) is not subject to any restriction, disciplinary order, probation, or investigation;

(2) notify the board of the military service member or military spouse's intent to practice in Texas on a form prescribed by the board; and

(3) submit proof of the military service member or military spouse's residency in this state, a copy of the military service member or military spouse's military identification card, and proof of the military service member's status as an active duty military service member

as defined by §437.001(1), Texas Government Code (relating to Definitions). To establish residency, the military service member or military spouse must submit:

(A) a copy of the permanent change of station order for the military service member or military service member to whom the military spouse is married;

(B) a Texas address; and

(C) the name and address of the Texas military installation.

(c) While authorized to practice as a dental hygienist in Texas, the military service member or military spouse shall comply with all other laws and regulations applicable to the practice of dentistry in Texas.

(d) The board has 30 days from the date a military service member or military spouse submits the information required by subsection (b) of this section to: ~~[Once the board receives the form containing notice of a military spouse's intent to practice in Texas, the board will verify whether the military spouse's dental license in another state, territory, Canadian province, or country is active and in good standing. Additionally, the board will determine whether the licensing requirements in that jurisdiction are substantially equivalent to the requirements for licensure in Texas.]~~

(1) verify that the member or spouse is active and in good standing in a jurisdiction that has licensing requirements that are substantially equivalent to the requirements for licensure in Texas; and

(2) issue an authorization recognizing the licensure as the equivalent license in this state.

(e) In the event of a divorce or similar event that affects a person's status as a military spouse, the spouse may continue to engage in the business or occupation under the authority of this section until the third anniversary of the date the spouse received the authorization described by subsection (d) of this section. A similar event includes the death of the military service member or the military service member's discharge from the military.

(f) This section establishes requirements and procedures authorized or required by Texas Occupations Code, Chapter 55, and does not modify or alter rights that may be provided under federal law.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 8, 2024.

TRD-202401071

Lauren Studdard

General Counsel

State Board of Dental Examiners

Earliest possible date of adoption: April 21, 2024

For further information, please call: (512) 305-8910



## CHAPTER 114. EXTENSION OF DUTIES OF AUXILIARY PERSONNEL--DENTAL ASSISTANTS

### 22 TAC §114.5

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §114.5, concerning coronal polishing requirements for dental assistants.

The intent of the amendment is (1) to make it easier for dental assistants who have completed their training at a CODA-accredited program to begin coronal polishing without having to wait on gaining one year of work experience, and (2) to reduce the work experience requirement from two years to one year for dental assistants who did not graduate from a CODA-accredited program. Accordingly, the proposed amendment removes the work experience requirement for a dental assistant who graduated from a CODA-accredited program, and requires one-year work experience for a dental assistant who has not graduated from a CODA-accredited program before the dental assistant can apply to a CODA-accredited program to obtain coronal polishing education.

FISCAL NOTE: Casey Nichols, Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: Casey Nichols has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this rule will be the protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: Casey Nichols has also determined that the proposed rule does not affect local economies and employment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: Casey Nichols has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase in fees paid to the agency; (5) the proposed rule does not create a new regulation; (6) the proposed rule does expand an existing regulation; (7) the proposed rule may increase the number of individuals subject to it; and (8) the proposed rule does not positively or adversely affect the state's economy.

COST TO REGULATED PERSONS: This proposed rule does not impose a cost on a regulated person and, therefore, is not subject to Tex. Gov't. Code §2001.0045.

Comments on the proposed amendment may be submitted to Casey Nichols, Executive Director, 1801 Congress Avenue, Suite 8.600, Austin, Texas 78701, by fax to (512) 649-2482, or by email to [official\\_rules\\_comments@tsbde.texas.gov](mailto:official_rules_comments@tsbde.texas.gov) for 30 days following the date that the proposed rule is published in the *Texas Register*. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules

necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are affected by this proposed rule.

§114.5. *Coronal Polishing.*

(a) "Coronal polishing" means the removal of plaque and extrinsic stain from exposed natural and restored tooth surfaces using an appropriate rotary instrument with rubber cup or brush and polishing agent. This includes the use of a toothbrush.

(b) A Texas-licensed dentist may delegate coronal polishing to a dental assistant, if the dental assistant:

(1) works under the direct supervision of the licensed dentist; and [has]

(2) meets the education requirements in subsection (c) of this section.

[(2) at least two years experience as a dental assistant; and either]

[(A) completed a minimum of eight (8) hours of clinical and didactic education in coronal polishing taken through a dental school, dental hygiene school, or dental assisting program accredited by the Commission on Dental Accreditation of the American Dental Association and approved by the Board. The education must include courses on:]

[(i) oral anatomy and tooth morphology relating to retention of plaque and stain;]

[(ii) indications, contraindications, and complications of coronal polishing;]

[(iii) principles of coronal polishing, including armamentarium, operator and patient positioning, technique, and polishing agents;]

[(iv) infection control procedures;]

[(v) polishing coronal surfaces of teeth; and]

[(vi) jurisprudence relating to coronal polishing; or]

[(B) has either:]

[(i) graduated from a dental assisting program accredited by the Commission on Dental Accreditation of the American Dental Association and approved by the board that includes specific didactic course work and clinical training in coronal polishing; or]

[(ii) received certification of completion of requirements specified by the Dental Assisting National Board and approved by the Board.]

(c) To perform coronal polishing, a dental assistant must have either:

(1) graduated from a dental assisting program accredited by the Commission on Dental Accreditation of the American Dental Association (CODA) that includes specific didactic course work and clinical training in coronal polishing; or

(2) completed a minimum of eight (8) hours of clinical and didactic education in coronal polishing taken through a dental school, dental hygiene school, or dental assisting program accredited by CODA. A dental assistant must have at least one-year experience as a dental assistant before applying to a CODA program to obtain coronal polishing education. The education must include courses on:

(A) oral anatomy and tooth morphology relating to retention of plaque and stain;

(B) indications, contraindications, and complications of coronal polishing;

(C) principles of coronal polishing, including armamentarium, operator and patient positioning, technique, and polishing agents;

(D) infection control procedures;

(E) polishing coronal surfaces of teeth; and

(F) jurisprudence relating to coronal polishing.

(d) [(e)] The delegated duty of polishing by a dental assistant may not be billed as a prophylaxis.

(e) [(d)] Coronal polishing must be in accordance with the minimum standard of care and limited to the dental assistant's scope of practice.

(f) [(e)] The dental assistant must comply with the Dental Practice Act and Board Rules in the act of coronal polishing. Pursuant to §258.003 of the Dental Practice Act, the delegating dentist is responsible for all dental acts delegated to a dental assistant, including coronal polishing.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 8, 2024.

TRD-202401070

Lauren Studdard

General Counsel

State Board of Dental Examiners

Earliest possible date of adoption: April 21, 2024

For further information, please call: (512) 305-8910



**22 TAC §114.7**

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §114.7, concerning exemption from licensure for certain military service members and military spouses.

The purpose of the proposal is to implement Senate Bill (S.B.) 422, 88th Legislature, Regular Session (2023), which amended Texas Occupations Code Chapter 55, Licensing of Military Service Members, Military Veterans, and Military Spouses. Specifically, the proposed amendment includes "military service members" in the title and makes the rule applicable to military service members in addition to military spouses. The proposed amendment also adds a requirement that the Board verify the registration and issue an authorization to practice recognizing the registration within 30 days of the date a military service member or military spouse submits the information required by the rule. The proposed amendment further provides that, in the event of a divorce or similar event that affects a person's status as a military spouse, the spouse may continue to engage in the business or occupation until the third anniversary of the date the spouse received the authorization to practice. Additionally, the amendment includes language to specify that this rule does not modify or alter rights that may be provided under federal law, and corrects clerical errors.



FISCAL NOTE: Casey Nichols, Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: Casey Nichols has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this rule will be the protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: Casey Nichols has also determined that the proposed rule does not affect local economies and employment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: Casey Nichols has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase in fees paid to the agency; (5) the proposed rule does not create a new regulation; (6) the proposed rule does expand an existing regulation; (7) the proposed rule increases the number of individuals subject to it; and (8) the proposed rule does not positively or adversely affect the state's economy.

COST TO REGULATED PERSONS: This proposed rule does not impose a cost on a regulated person and, therefore, is not subject to Tex. Gov't. Code §2001.0045.

Comments on the proposed amendment may be submitted to Casey Nichols, Executive Director, 1801 Congress Avenue, Suite 8.600, Austin, Texas 78701, by fax to (512) 649-2482, or by email to [official\\_rules\\_comments@tsbde.texas.gov](mailto:official_rules_comments@tsbde.texas.gov) for 30 days following the date that the proposed rule is published in the *Texas Register*. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

This proposed rule implements the amendments to Chapter 55, Texas Occupations Code as set out in S.B. 422 of the 88th Texas Legislature, Regular Session (2023).

*§114.7. Exemption from Licensure for Certain Military Service Members and Military Spouses.*

(a) The executive director of the Texas State Board of Dental Examiners must authorize a qualified military service member or military spouse to perform delegated permitted duties as a dental assistant in Texas without obtaining a registration in accordance with §55.0041(a), Texas Occupations Code. This authorization to perform delegated permitted duties is valid during the time the military service member or, with respect to a military spouse, the military service member to whom the military spouse is married is stationed at a military installation in Texas, but is not to exceed three years.

(b) In order to receive authorization to perform delegated permitted duties the military service member or military spouse must:

(1) hold an active registration to perform delegated permitted duties as a dental assistant in another state, territory, Canadian province, or country that:

(A) has registration requirements that are determined by the board to be substantially equivalent to the requirements for registration in Texas; and

(B) is not subject to any restriction, disciplinary order, probation, or investigation;

(2) notify the board of the military service member or military spouse's intent to perform delegated permitted duties in Texas on a form prescribed by the board; and

(3) submit proof of the military service member or military spouse's residency in this state, a copy of the military service member or military spouse's military identification card, and proof of the military service member's status as an active duty military service member as defined by §437.001(1), Texas Government Code (relating to Definitions).

(c) While authorized to perform delegated permitted duties as a dental assistant in Texas, the military service member or military spouse shall comply with all other laws and regulations applicable to the practice of dentistry in Texas.

(d) The board has 30 days from the date a military service member or military spouse submits the information required by subsection (b) of this section to: [Once the board receives the form containing notice of a military spouse's intent to perform delegated permitted duties in Texas, the board shall verify whether the military spouse's dental assistant registration in another state, territory, Canadian province, or country is active and in good standing. Additionally, the board shall determine whether the registration requirements in that jurisdiction are substantially equivalent to the requirements for registration in Texas.]

(1) verify that the member or spouse is active and in good standing in a jurisdiction that has registration requirements that are substantially equivalent to the registration requirements in Texas; and

(2) issue an authorization recognizing the registration as the equivalent registration in this state.

(e) In the event of a divorce or similar event that affects a person's status as a military spouse, the spouse may continue to engage in the business or occupation under the authority of this section until the third anniversary of the date the spouse received the authorization described by subsection (d) of this section. A similar event includes the death of the military service member or the military service member's discharge from the military.

(f) This section establishes requirements and procedures authorized or required by Texas Occupations Code, Chapter 55, and does not modify or alter rights that may be provided under federal law.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 8, 2024.

TRD-202401072

◆ ◆ ◆  
**CHAPTER 115. EXTENSION OF DUTIES OF  
AUXILIARY PERSONNEL--DENTAL HYGIENE**

**22 TAC §115.10**

The State Board of Dental Examiners (Board) proposes new rule 22 TAC §115.10, concerning the administration of local infiltration anesthesia by a dental hygienist. The proposed new rule pertains to the certification and standards for the administration of a local anesthetic agent by a dental hygienist as set out in House Bill 3824 of the 88th Texas Legislature, Regular Session (2023), and codified at Sections 258.001 and 262.002 of the Texas Occupations Code.

This rule was initially proposed at the November 3, 2023 Board meeting and published in the December 15, 2023, issue of the *Texas Register*. During the public comment period, the Board received stakeholder comments requesting to clarify what "direct supervision" means in subsection (b)(1), and requesting to lower the amount of continuing education hours a dental hygienist is required to take in accordance with subsection (f)(1). As a result of the stakeholder comments, the Board decided to make the following changes to the rule: to add subsection (a)(2) to define what direct supervision means, which mirrors the definition found in 22 TAC §110.1(7) and the language in Section 258.001(5)(B); and, to lower the required amount of continuing education hours from 6 hours to 2 hours every two years. Additionally, the Board voted to have the continuing education requirement be in addition to any additional courses required for licensure. As a result of these changes, the Board voted to re-propose this rule at its February 16, 2024 meeting.

**FISCAL NOTE:** Casey Nichols, Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

**PUBLIC BENEFIT-COST NOTE:** Casey Nichols has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this rule will be the protection of public safety and welfare.

**LOCAL EMPLOYMENT IMPACT STATEMENT:** Casey Nichols has also determined that the proposed rule does not affect local economies and employment.

**SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT:** Casey Nichols has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this rule.

**GOVERNMENT GROWTH IMPACT STATEMENT:** The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the proposed rule does not create or eliminate a government program; (2) implementation of the proposed rule may require the creation of an additional employee position. The Board may need to hire an additional full-time license and permit specialist to

process applications for certificates issued pursuant to this proposal; (3) the implementation of the proposed rule may require an increase in future appropriations if the agency needs to hire an additional full-time license and permit specialist; (4) the proposed rule does require an increase in fees paid to the agency for the initial certification fee; (5) the proposed rule does create a new regulation; (6) the proposed rule does not expand an existing regulation; (7) the proposed rule does increase the number of individuals subject to the rule's applicability by including dental hygienists who were not previously approved to administer local infiltration anesthesia; and (8) the proposed rule does not positively or adversely affect the state's economy.

**COST TO REGULATED PERSONS:** The Board finds that the provisions of Texas Government Code Section 2001.0045(b) do not apply to the proposal because the estimated costs associated with the proposal implement statutory requirements and are necessary to protect the health, safety, and welfare of the people of Texas, as provided in Section 2001.045(c)(6) and (9).

Comments on the proposed rule may be submitted to Casey Nichols, Executive Director, 1801 Congress Avenue, Suite 8.600, Austin, Texas 78701, by fax to (512) 649-2482, or by email to [official\\_rules\\_comments@tsbde.texas.gov](mailto:official_rules_comments@tsbde.texas.gov) for 30 days following the date that the proposed rule is published in the *Texas Register*. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety; and Texas Occupations Code §254.004, which give the Board authority to establish reasonable and necessary fees.

This proposed rule implements the amendments to Sections 258.001 and 262.002 of the Texas Occupations Code as set out in House Bill 3824 of the 88th Texas Legislature, Regular Session (2023).

§115.10. Administration of Local Infiltration Anesthesia.

(a) Definitions.

(1) "Local infiltration anesthesia" means the deposition of a local anesthetic solution meant for the elimination of the sensation of pain by local injection of a drug near the terminal nerve endings of teeth and supporting tissues.

(2) "Direct supervision" means the delegating dentist is physically present in the facility where the procedure is occurring and is continuously aware of the patient's physical status and well-being.

(b) General Provisions.

(1) A Texas-licensed dentist may delegate the administration of local infiltration anesthesia to a licensed dental hygienist, if the dental hygienist works under the direct supervision of the licensed dentist.

(2) The dental hygienist must hold a current local infiltration anesthesia certificate in accordance with the requirements of this section.

(c) Standard of Care Requirements.

(1) Administration of local infiltration anesthesia must be in accordance with the minimum standard of care and limited to a pro-

cedure the dental hygienist is authorized to perform on a patient who must be:

(A) at least 18 years of age; and

(B) not sedated, or is sedated using only nitrous oxide-oxygen inhalation.

(2) Informed consent must be obtained in accordance with §108.7 and §108.8 of this title (relating to Minimum Standard of Care, General; and Records of the Dentist respectively). In addition, the informed consent must include the risks and complications with the administration of local anesthesia and vasoconstrictors, and the delegating dentist and provider of local infiltration anesthesia must be clearly disclosed.

(d) Requirements for Initial Certification. To receive a dental hygiene local infiltration anesthesia certificate from the Board, a dental hygienist must:

(1) apply on an application form approved by the Board;

(2) pay an application fee set by Board rule;

(3) submit proof to the Board of the successful completion of a current course in Basic Life Support (BLS) for Healthcare Providers;

(4) submit proof to the Board that he or she has fulfilled at least one of the following qualifications:

(A) completed a minimum of 12 hours of clinical and 20 hours of didactic education in the administration of local infiltration anesthesia taken in a classroom setting at an educational institution accredited by the Commission on Dental Accreditation of the American Dental Association (CODA). The education must fulfill the requirements in subsection (e) of this section;

(B) during the preceding year of initial application, was authorized to administer a local anesthetic agent by:

(i) a branch of the United States armed forces; or

(ii) another state with clinical and didactic requirements substantially equivalent to the requirements of a course as described under subparagraph (A) of this paragraph, and have practiced for a minimum of three out of five years immediately preceding application to the Board; or

(C) successful completion of a CODA-accredited dental hygiene program that fulfills the requirements of subparagraph (A) of this paragraph.

(5) have passed a Board-approved certification examination relating to the administration of a local anesthetic agent as described in subsection (e)(4) of this section. A "Board-approved certification examination" means an examination provided by a CODA-accredited course.

(e) Education and Examination Requirements.

(1) The education program must be overseen by a Texas-licensed dentist who is a member of the CODA-accredited education institution and who has experience teaching the administration of local infiltration anesthesia.

(2) Didactic component. The program must include at least 20 hours of didactic instruction relating to the administration of local infiltration anesthesia in the practice of dental hygiene. Such education may be completed using an on-demand video course and must include:

(A) Texas State Board of Dental Examiners laws and regulations;

(B) physiology and neurophysiology;

(C) head, neck, and oral anatomy;

(D) adult respiratory and circulatory physiology and related anatomy;

(E) emergency procedures;

(F) recognition and management of local complications associated with local anesthetic injections;

(G) recognition and management of systemic local anesthetic toxicity related to the administration of local anesthetics;

(H) medical history and evaluation procedures;

(I) considerations for medically complex patients;

(J) behavior context and dental patient management;

(K) definitions and descriptions of physiological and psychological aspects of anxiety and pain;

(L) pharmacology of agents used in local anesthetics and vasoconstrictors, including drug interactions and incompatibilities;

(M) indications and contraindications for use of local anesthetic and vasoconstrictors;

(N) recommended dosages of local anesthetic and vasoconstrictors;

(O) patient monitoring through observation, with particular attention to vital signs and reflexes related to consciousness;

(P) selection and preparation of the armamentaria and record keeping for administering local anesthetic agents via infiltration;

(Q) safety and infection control procedures with regard to local infiltration anesthetic techniques and proper disposal of sharps; and

(R) post-operative care and instructions to patients.

(3) Clinical component. The program must include at least 12 hours of clinical instruction relating to the administration of local infiltration anesthesia in the practice of dental hygiene. Such education must include:

(A) selection and preparation of the armamentaria for administering local anesthetic agents;

(B) demonstration of proper infection control techniques regarding local anesthetic agents and proper disposal of sharps;

(C) demonstration of proper evaluation of the patient's health status, taking and assessing vital signs and monitoring the patient's physical status while under the effects of local anesthetic;

(D) demonstration of the proper techniques for the administration of local infiltration anesthesia on a live patient or hands-on simulation:

(i) basic technique;

(ii) aspiration;

(iii) slow rate of injection; and

(iv) minimum effective dosage; and

(E) clinical experience demonstrating the successful use of local infiltration anesthesia on a minimum of 5 live patient experiences appropriate for dental hygiene treatment. At a minimum, each student must demonstrate clinical competency in 4 different quadrants

that includes at least 3 teeth. A hands-on simulation competency component must be demonstrated prior to treating the live patients. The live patient or hands-on simulation clinical experiences required must be performed under the direct supervision of a Texas-licensed dentist associated with the course.

(4) Examination.

(A) Each student must pass a competency examination on the material covered in the didactic section of the training course with a minimum passing score of 75% before continuing to the clinical section of the course. Students who do not pass the didactic competency examination may be offered remediation before the start of the clinical experience.

(B) Each student must pass a clinical competency examination including a demonstration of satisfactorily performing local anesthetic infiltration injections.

(f) Continuing Education.

(1) A dental hygienist with a local infiltration anesthesia certificate must complete no less than 2 hours of continuing education every two years in the administration of, or medical emergencies associated with, local anesthesia specific to the procedures to be performed by the dental hygienist administering the local anesthesia. The continuing education requirement under this subsection shall be in addition to any additional courses required for licensure.

(2) The continuing education must be provided by an educational course provider recognized by the Board.

(3) Dental hygienists must maintain documentation of the satisfactory completion of the required continuing education courses.

(g) Ineligibility. Applicants of an administration of local infiltration certificate are ineligible if they are in violation of a Board order at the time of application.

(h) A dental hygienist must submit a written report to the Board as provided below:

(1) The death of a dental patient which may have occurred as a consequence of the receipt of local infiltration anesthesia from the reporting hygienist must be reported within 72 hours of the death, or such time as the hygienist becomes aware or reasonably should have become aware of the death.

(2) The hospitalization of a dental patient, as a possible consequence of receiving local infiltration anesthesia from the reporting hygienist, must be reported within 30 days of the hospitalization or such time as the hygienist becomes aware of or reasonably should have become aware of the hospitalization. For purposes of this subsection, "hospitalization" shall be defined as an examination at a hospital or emergency medical facility that results in an in-patient admission for the purpose(s) of treatment and/or monitoring.

(3) In the evaluation of sedation/anesthesia morbidity or mortality, the Board shall consider the standard of care necessary to be that applicable to the patient's state of consciousness during the procedure.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 8, 2024.  
TRD-202401068

Lauren Studdard  
General Counsel  
State Board of Dental Examiners  
Earliest possible date of adoption: April 21, 2024  
For further information, please call: (512) 305-8910



## PART 15. TEXAS STATE BOARD OF PHARMACY

### CHAPTER 291. PHARMACIES SUBCHAPTER A. ALL CLASSES OF PHARMACIES

#### 22 TAC §291.12

The Texas State Board of Pharmacy proposes a new rule §291.12, concerning Delivery of Prescription Drugs. The new rule, if adopted, specifies requirements for the delivery of prescription drugs to a patient or patient's agent.

Daniel Carroll, Pharm.D., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Dr. Carroll has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the proposed rule will be to improve the health, safety, and welfare of patients by ensuring the safety and efficacy of prescription drugs that are delivered to a patient or patient's agent by Class A, Class A-S, Class E, and Class E-S pharmacies. For each year of the first five-year period the proposed rule §291.12 will be in effect, the probable economic cost to persons required to comply with the rule is \$0.28 to \$13.87 per package.

#### *Economic Impact Statement*

The Texas State Board of Pharmacy (Board) anticipates a possible adverse economic impact on some small or micro-businesses (pharmacies) or rural communities by the adoption of proposed rule §291.12. The economic cost to an individual will be the same as the economic cost to a business, if the individual chooses to pay the delivery-related expenses for the business. As of January 19, 2024, there are 3,936 Class A, Class A-S, Class E, and Class E-S pharmacies that offer home delivery services, as indicated by the pharmacies on Board licensing forms. The Board estimates that 381 rural communities in Texas have a Class A, Class A-S, Class E, or Class E-S pharmacy that offers home delivery services.

The economic impact of the proposed new rule on a particular pharmacy would be dependent on the volume of prescription dispensations the pharmacy delivers by common carrier or by pharmacy employee or same-day courier service. Additionally, the economic impact would be dependent on the types of drugs dispensed by the pharmacy as certain types of drugs are more likely to require strict temperature control. In total, the estimated cost would be \$0.28 to \$13.87 per package. The estimated cost of tamped evident packaging is \$0.07 to \$0.25 per package. The estimated cost of a temperature tag is \$1.82 per package. The estimated cost of a time temperature strip is \$1.20 per package. The estimated cost of insulated packaging is \$2.04 to \$5.60 per package. The estimated cost of an ice gel pack is \$0.21 to \$2.00 per package. The estimated cost of notification of delivery is \$0.00 to \$3.00 per package.

Alternative methods of achieved the purpose of proposed rule §291.12 were considered by the Board based on public comments received concerning two prior drafts of the proposed rule. The Board previously published for public comment proposed new rule §291.12 during its May 2, 2023, meeting. The proposed rule was published in the June 16, 2023, issue of the *Texas Register* (48 TexReg 3037). The Board received 12 written public comments concerning the proposed rule. Additionally, the Board received five oral public comments at the August 1, 2023, Board meeting. After reviewing and considering the comments, the Board directed Board staff to redraft the rule to address the concerns expressed in the comments. The amended rule draft was presented at the November 7, 2023, Board meeting and an additional oral comment was made concerning the potential rule proposal. After discussing the amended rule draft, the Board directed Board staff to redraft the rule to address the additional concerns expressed by Board members and the public. The amended rule draft was then presented at the February 6, 2024, Board meeting and two oral comments were made concerning the potential rule. The Board made additional changes to the rule proposal to address concerns expressed by Board members and the public. The updated rule proposal reflects the least restrictive methods of ensuring the safety and efficacy of prescription drugs delivered by common carrier or by pharmacy employee or same-day courier service.

#### *Regulatory Flexibility Analysis*

The Texas State Board of Pharmacy (Board) anticipates a possible adverse economic impact on some small or micro-businesses (pharmacies) or rural communities as a result of proposed rule §291.12. Alternative methods of achieved the purpose of proposed rule §291.12 were considered by the Board based on public comments received following a previous proposal of the rule. The Board previously published for public comment proposed new rule §291.12 during its May 2, 2023, meeting. The proposed rule was published in the June 16, 2023, issue of the *Texas Register* (48 TexReg 3037). The Board received 12 written public comments concerning the proposed rule. Additionally, the Board received five oral public comments at the August 1, 2023, Board meeting. After reviewing and considering the comments, the Board directed Board staff to redraft the rule to address the concerns expressed in the comments. The amended rule draft was presented at the November 7, 2023, Board meeting and an additional oral comment was made concerning the potential rule proposal. After discussing the amended rule draft, the Board again directed Board staff to redraft the rule to address the concerns expressed by Board members and the public. The amended rule draft was then presented at the February 6, 2024, Board meeting and two oral comments were made concerning the potential rule. The Board made additional changes to the rule proposal to address concerns expressed by Board members and the public. The updated rule proposal reflects the least restrictive methods of ensuring the safety and efficacy of prescription drugs delivered by common carrier or by pharmacy employee or same-day courier service. The Board finds that alternative regulatory methods would not be consistent with the health, safety, and environmental and economic welfare of the state.

For each year of the first five years the proposed rule will be in effect, Dr. Carroll has determined the following:

(1) The proposed rule does not create or eliminate a government program;

(2) Implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions;

(3) Implementation of the proposed rule does not require an increase or decrease in the future legislative appropriations to the agency;

(4) The proposed rule does not require an increase or decrease in fees paid to the agency;

(5) The proposed rule does create a new regulation concerning the delivery of prescription drugs;

(6) The proposed rule does not limit or expand an existing regulation;

(7) The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and

(8) The proposed rule would have a de minimis impact on this state's economy.

Written comments on the proposed rule may be submitted to Eamon D. Briggs, Deputy General Counsel, Texas State Board of Pharmacy, 1801 Congress Avenue, Suite 13.100, Austin, Texas 78701-1319, FAX (512) 305-8061. Comments must be received by 5:00 p.m., April 30, 2024.

The new rule is proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the proposed rule: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

#### §291.12. Delivery of Prescription Drugs.

(a) Applicability. This section applies to the delivery of prescription drugs by a pharmacy licensed by the board as a Class A, Class A-S, Class E, or Class E-S pharmacy.

(b) Delivery by common carrier. A pharmacy may deliver prescription drugs by use of a common carrier (e.g., U.S. Mail) as provided in §291.9 of this title (relating to Prescription Pick Up Locations) on request of the patient or patient's agent. For purposes of this section, common carrier means a person or entity who holds out to the general public a willingness to provide transportation of property from place to place for compensation in the normal course of business, with the exception of a same-day courier service.

(1) Standards. The pharmacy shall ensure that all prescription drugs are delivered to the patient or patient's agent in accordance with nationally recognized standards, such as those of the manufacturer or the United States Pharmacopeia.

(2) Packaging. The pharmacy shall ensure that prescription drugs are packaged in commercially available tamper evident packaging.

(3) Temperature. The pharmacy shall ensure that any prescription drug delivered by common carrier is packaged in a manner that maintains a temperature range appropriate for the drug. This may include, without limitation, use of temperature tags, time temperature strips, insulated packaging, gel ice packs, or a combination of these as necessary.

(4) Irregularity in delivery. The pharmacy shall provide a method by which a patient or patient's agent can notify the pharmacy

as to any irregularity in the delivery of the patient's prescription, to include but not be limited to:

- (A) timeliness of delivery;
- (B) condition of the prescription drug upon delivery;
- (C) failure to receive the proper prescription drug.

and

(5) Refusal to deliver. The pharmacy shall refuse to deliver by common carrier a prescription drug which in the professional opinion of the dispensing pharmacist may be clinically compromised by delivery by common carrier.

(c) Delivery by pharmacy employee or same-day courier service. A pharmacy may deliver prescription drugs by means of its employee or a same-day courier service as provided in §291.9 of this title on request of the patient or patient's agent.

(1) Standards. The pharmacy is responsible for any problems in the delivery of the prescription drug.

(2) Temperature. The prescription drug shall be maintained within the temperature range allowed by the United States Pharmacopeia or recommended by the manufacturer until the delivery has been received by the patient or patient's agent.

(d) All deliveries. A pharmacy that delivers prescription drugs by common carrier or by pharmacy employee or same-day courier service shall also comply with the following:

(1) Counseling information. The pharmacy shall comply with the requirements of §291.33(c)(1)(F) of this title (relating to Operational Standards).

(2) Notification of delivery. The pharmacy shall notify the patient or patient's agent of the delivery of a prescription drug.

(3) Compromised delivery. If a pharmacist determines a prescription drug is in any compromised during delivery, the pharmacy shall replace the drug or arrange for the drug to be replaced, either by promptly delivering a replacement to the patient or by promptly contacting the prescriber to arrange for the drug to be dispensed to the patient by a pharmacy of the patient's or patient's agent's choice.

(4) Records. The pharmacy shall maintain records for two years on the following events:

(A) when a prescription drug was sent and delivered to the patient or patient's agent; and

(B) patient complaints regarding compromised deliveries.

(5) Controlled substances. A pharmacy shall comply with all state and federal laws and rules relating to the delivery of controlled substances.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 11, 2024.

TRD-202401114

Daniel Carroll, Pharm.D.

Executive Director

Texas State Board of Pharmacy

Earliest possible date of adoption: April 21, 2024

For further information, please call: (512) 305-8033



## SUBCHAPTER G. SERVICES PROVIDED BY PHARMACIES

### 22 TAC §291.131

The Texas State Board of Pharmacy proposes amendments to §291.131, concerning Pharmacies Compounding Non-Sterile Preparations. The amendments, if adopted, update the personnel, environment, labeling, compounding process, quality assurance, and recordkeeping requirements for pharmacies compounding non-sterile preparations.

Daniel Carroll, Pharm.D., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Dr. Carroll has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to ensure the safety and efficacy of compounded non-sterile preparations for patients, improve the health, safety, and welfare of patients by ensuring that Class A, Class C, and Class E pharmacies engaged in non-sterile compounding operate in a safe and sanitary environment, and provide clearer regulatory language. For each year of the first five-year period the rule will be in effect, the probable economic cost to persons required to comply with the amendments is \$200. If a pharmacy engages in activities that require the purchase of a containment primary engineering control, the estimated cost of the device is \$5,000 to \$14,000.

#### *Economic Impact Statement*

The Texas State Board of Pharmacy (Board) anticipates a possible adverse economic impact on some small or micro-businesses (pharmacies) or rural communities as a result of the proposed amendments to §291.131. The Board is unable to estimate the number of small or micro-businesses subject to the proposed amendments. As of January 19, 2024, there are 4,487 Class A, Class C, and Class E pharmacies that perform non-sterile compounding, as indicated by the pharmacies on Board licensing forms. The Board estimates that 407 rural communities in Texas have a Class A, Class C, or Class E pharmacy that performs non-sterile compounding.

The economic impact of the proposed amendments on a particular pharmacy would be dependent on that pharmacy's current environment and the policies and procedures the pharmacy previously had in place for compounding non-sterile preparations. The estimated cost of certifying a containment primary engineering control is \$200. If a pharmacy engages in activities that require the purchase of a containment primary engineering control, the estimated cost of the device is \$5,000 to \$14,000 depending on the size and quality of the unit. The estimated cost of the new beyond-use date requirements is dependent on the pharmacy's current practices. A shortened beyond-use date may require the compound to be made more frequently or discarded more often. Additional testing costs may be incurred to prove that a specific compounded preparation can exceed a new beyond-use date standard.

The Board established a Compounding Rules Advisory Group, comprised of a Sterile Subcommittee and a Non-Sterile Subcommittee, to review the recently issued revisions to United States Pharmacopeia General Chapter <795> Pharmaceutical Compounding- Nonsterile Preparations and United States Pharmacopeia General Chapter <797> Pharmaceutical Compounding- Sterile Preparations, and the proposed amendments

are based on the recommendations of the Non-Sterile Subcommittee. The proposed amendments were presented at the February 6, 2024, Board meeting and three oral public comments were made concerning the amendments. The Board made changes to the proposed amendments to address concerns expressed by Board members and the public. Alternative methods of achieving the purpose of the proposed amendments were considered by the Non-Sterile Subcommittee and the proposed amendments reflect the Non-Sterile Subcommittee's recommendation of the least restrictive methods of ensuring the safety and efficacy of non-sterile compounded preparations.

#### *Regulatory Flexibility Analysis*

The Texas State Board of Pharmacy (Board) anticipates a possible adverse economic impact on some small or micro-businesses (pharmacies) or rural communities as a result of the proposed amendments to §291.131. The Board established a Compounding Rules Advisory Group, comprised of a Sterile Subcommittee and a Non-Sterile Subcommittee, to review the recently issued revisions to United States Pharmacopeia General Chapter <795> Pharmaceutical Compounding- Nonsterile Preparations and United States Pharmacopeia General Chapter <797> Pharmaceutical Compounding- Sterile Preparations, and the proposed amendments are based on the recommendations of the Non-Sterile Subcommittee. The Non-Sterile Subcommittee reviewed the new provisions of USP <795>, discussed whether any of the new provisions needed to be adopted in §291.131 to ensure patient safety in Texas, and considered various methods of achieving this purpose. The Non-Sterile Subcommittee discussed these changes during its meetings held on June 28, 2023, August 28, 2023, and September 26, 2023 meetings. The Non-Sterile Committee considered different options and levels of personnel training, environmental requirements, compounding processes, labeling requirements, quality assurance, and recordkeeping in determining recommendations for the least restrictive methods of ensuring the safety and efficacy of compounded non-sterile preparations. In reviewing the new provisions of USP <795>, the Non-Sterile Subcommittee recommended limiting or not adopting several of the new provisions, including annually re-demonstrating competency, daily temperature monitoring, and minimum frequencies for cleaning surfaces. The proposed amendments were presented at the February 6, 2024, Board meeting and three oral public comments were made concerning the amendments. The Board made changes to the proposed amendments to address concerns expressed by Board members and the public. The Board finds that alternative regulatory methods would not be consistent with the health, safety, and environmental and economic welfare of the state.

For each year of the first five years the proposed amendments will be in effect, Dr. Carroll has determined the following:

- (1) The proposed amendments do not create or eliminate a government program;
- (2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions;
- (3) Implementation of the proposed amendments does not require an increase or decrease in the future legislative appropriations to the agency;
- (4) The proposed amendments do not require an increase or decrease in fees paid to the agency;

- (5) The proposed amendments do not create a new regulation;
- (6) The proposed amendments do expand an existing regulation by adding new operational standards for Class A, Class C, and Class E, pharmacies engaged in non-sterile compounding;
- (7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and
- (8) The proposed amendments would have a de minimis impact on this state's economy.

Written comments on the amendments may be submitted to Eamon D. Briggs, Deputy General Counsel, Texas State Board of Pharmacy, 1801 Congress Avenue, Suite 13.100, Austin, Texas 78701-1319, FAX (512) 305-8061. Comments must be received by 5:00 p.m., April 30, 2024.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

#### *§291.131. Pharmacies Compounding Non-Sterile Preparations.*

(a) Purpose. Pharmacies compounding non-sterile preparations, prepackaging pharmaceutical products, and distributing those products shall comply with all requirements for their specific license classification and this section. The purpose of this section is to provide standards for the:

(1) compounding of non-sterile preparations pursuant to a prescription or medication order for a patient from a practitioner in Class A (Community), Class C (Institutional), and Class E (Non-resident) pharmacies;

(2) compounding, dispensing, and delivery of a reasonable quantity of a compounded non-sterile preparation in a Class A (Community), Class C (Institutional), and Class E (Non-resident) pharmacy to a practitioner's office for office use by the practitioner;

(3) compounding and distribution of compounded non-sterile preparations by a Class A (Community) pharmacy for a Class C (Institutional) pharmacy; and

(4) compounding of non-sterile preparations by a Class C (Institutional) pharmacy and the distribution of the compounded preparations to other Class C (Institutional) pharmacies under common ownership.

(b) Definitions. In addition to the definitions for specific license classifications, the following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Active pharmaceutical ingredient--Any substance intended to be used in the compounding of a preparation, thereby becoming the active ingredient in that preparation and furnishing pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals or affecting the structure and function of the body.

(2) [(+)] Beyond-use date--The date or time after which the compounded non-sterile preparation shall not be stored or transported or begin to be administered to a patient. The beyond-use date is determined from the date or time when the preparation was compounded.

(3) [(2)] Cleaning--The process of removing soil (e.g., organic and inorganic material) from objects and surfaces, normally accomplished by manually or mechanically using water with detergents or enzymatic products.

(4) [(3)] Component--Any ingredient intended for use in the compounding of a drug preparation, including those that may not appear in such preparation.

(5) [(4)] Compounding--The preparation, mixing, assembling, packaging, or labeling of a drug or device:

(A) as the result of a practitioner's prescription drug or medication order, based on the practitioner-patient-pharmacist relationship in the course of professional practice;

(B) for administration to a patient by a practitioner as the result of a practitioner's initiative based on the practitioner-patient-pharmacist relationship in the course of professional practice;

(C) in anticipation of prescription drug or medication orders based on routine, regularly observed prescribing patterns; or

(D) for or as an incident to research, teaching, or chemical analysis and not for sale or dispensing, except as allowed under §562.154 or Chapter 563 of the Occupations Code.

(6) Containment primary engineering control--A ventilated device designed and operated to minimize worker and environmental exposures to hazardous drugs by controlling emissions of airborne contaminants through the full or partial enclosure of a potential contaminant source, the use of airflow capture velocities to trap and remove airborne contaminants near their point of generation, the use of air pressure relationships that define the direction of airflow into the cabinet, and the use of high-efficiency particulate air (HEPA) filtration on all potentially contaminated exhaust streams. Examples of containment primary engineering control include containment ventilated enclosures, biological safety cabinets, and compounding aseptic containment isolators.

(7) Controlled room temperature--The temperature maintained thermostatically that encompasses the usual and customary working environment of 20 - 25 degrees C (68 - 77 degrees F).

(8) Designated person(s)--One or more individuals assigned by the pharmacist-in-charge or the pharmacist-in-charge's designee to be responsible and accountable for the performance and operation of the facility and personnel as related to the preparation of compounded non-sterile preparations.

(9) [(5)] Hot water--The temperature of water from the pharmacy's sink maintained at a minimum of 41 degrees C (105 degrees F) [105 degrees F (41 degrees C)].

(10) [(6)] Reasonable quantity--An amount of a compounded drug that:

(A) does not exceed the amount a practitioner anticipates may be used in the practitioner's office or facility before the beyond use date of the drug;

(B) is reasonable considering the intended use of the compounded drug and the nature of the practitioner's practice; and

(C) for any practitioner and all practitioners as a whole, is not greater than an amount the pharmacy is capable of compounding in compliance with pharmaceutical standards for identity, strength, quality, and purity of the compounded drug that are consistent with United States Pharmacopoeia guidelines and accreditation practices.

(11) Refrigerator--A cold place in which the temperature is controlled between 2 - 8 degrees C (36 - 46 degrees F).

(12) [(7)] Sanitizing--A process for reducing on inanimate surfaces the number of all forms of microbial life including fungi, viruses, and bacteria using an appropriate agent.

(13) [(8)] SOPs--Standard operating procedures.

(14) [(9)] USP/NF--The current edition of the United States Pharmacopeia/National Formulary.

(15) Water activity--A measure of the fraction of total water that is unbound and freely available to participate in chemical, biochemical, or physiochemical reactions or provide an environment that can support microbial growth.

(c) Personnel. All personnel who compound or have direct oversight of compounding non-sterile preparations shall be initially trained and qualified by demonstrating knowledge and competency in the areas outlined in paragraph (5)(C) of this subsection.

(1) Pharmacist-in-charge. In addition to the responsibilities for the specific class of pharmacy, the pharmacist-in-charge shall have the responsibility for, at a minimum, the following concerning non-sterile compounding:

(A) determining that all personnel involved in non-sterile compounding possess the education, training, and proficiency necessary to properly and safely perform compounding duties undertaken or supervised;

(B) determining that all personnel involved in non-sterile compounding obtain continuing education appropriate for the type of compounding done by the personnel;

(C) assuring that the equipment used in compounding is properly maintained;

(D) maintaining an appropriate environment in areas where non-sterile compounding occurs; and

(E) assuring that effective quality control procedures are developed and followed.

(2) Designated person(s). The pharmacist-in-charge or the pharmacist-in-charge's designee shall designate one or more individuals to be responsible and accountable for the performance and operation of the facility and personnel for the preparation of compounded non-sterile preparations. The designated person(s) shall be identified in the facility's SOPs. If the compounding facility has only one person responsible for all compounding in the facility, then that person is the designated person.

(3) [(2)] Pharmacists. Special requirements for non-sterile compounding.

(A) All pharmacists engaged in compounding shall:

(i) possess the education, training, and proficiency necessary to properly and safely perform compounding duties undertaken or supervised; and

(ii) obtain continuing education appropriate for the type of compounding undertaken or supervised [done] by the pharmacist.

(B) A pharmacist shall inspect and approve all components, including consideration of all physical and chemical properties of the components, drug product containers, closures, labeling, and any other materials involved in the compounding process.

(C) A pharmacist shall review all compounding records for accuracy and conduct in-process and final checks to ensure that errors have not occurred in the compounding process.



(D) A pharmacist is responsible for the proper maintenance, cleanliness, and use of all equipment used in the compounding process.

(4) [(3)] Pharmacy technicians and pharmacy technician trainees. All pharmacy technicians and pharmacy technician trainees engaged in non-sterile compounding shall:

(A) possess the education, training, and proficiency necessary to properly and safely perform compounding duties undertaken;

(B) obtain continuing education appropriate for the type of compounding done by the pharmacy technician or pharmacy technician trainee; and

(C) perform compounding duties under the direct supervision of and responsible to a pharmacist.

(5) [(4)] Training.

(A) All training activities shall be documented and covered by appropriate SOPs as outlined in subsection (d)(8)(A) of this section.

(B) All personnel involved in non-sterile compounding shall be well trained and must participate in continuing relevant training programs.

(C) Training shall include instruction, experience, and demonstrated proficiency in the following areas:

(i) hand hygiene;

(ii) garbing;

(iii) cleaning and sanitizing;

(iv) handling and transporting components and compounded non-sterile preparations;

(v) measuring and mixing;

(vi) proper use of equipment and devices selected to compound non-sterile preparations; and

(vii) documentation of the compounding process (e.g., Master Formulation Records and Compounding Records).

(d) Operational Standards.

(1) General requirements.

(A) Non-sterile drug preparations may be compounded in licensed pharmacies:

(i) upon presentation of a practitioner's prescription drug or medication order based on a valid pharmacist/patient/prescriber relationship;

(ii) in anticipation of future prescription drug or medication orders based on routine, regularly observed prescribing patterns; or

(iii) in reasonable quantities for office use by a practitioner and for use by a veterinarian.

(B) Non-sterile compounding in anticipation of future prescription drug or medication orders must be based upon a history of receiving valid prescriptions issued within an established pharmacist/patient/prescriber relationship, provided that in the pharmacist's professional judgment the quantity prepared is stable for the anticipated shelf time.

(i) The pharmacist's professional judgment shall be based on the criteria used to determine a beyond-use date outlined in paragraph (5)(C) of this subsection.

(ii) Documentation of the criteria used to determine the stability for the anticipated shelf time must be maintained and be available for inspection.

(iii) Any preparation compounded in anticipation of future prescription drug or medication orders shall be labeled. Such label shall contain:

(I) name and strength of the compounded preparation or list of the active ingredients and strengths;

(II) facility's lot number;

(III) beyond-use date as determined by the pharmacist using appropriate documented criteria as outlined in paragraph (5)(C) of this subsection; and

(IV) quantity or amount in the container.

(C) Commercially available products may be compounded for dispensing to individual patients provided the following conditions are met:

(i) the commercial product is not reasonably available from normal distribution channels in a timely manner to meet patient's needs;

(ii) the pharmacy maintains documentation that the product is not reasonably available due to a drug shortage or unavailability from the manufacturer; and

(iii) the prescribing practitioner has requested that the drug be compounded as described in subparagraph (D) of this paragraph.

(D) A pharmacy may not compound preparations that are essentially copies of commercially available products (e.g., the preparation is dispensed in a strength that is only slightly different from a commercially available product) unless the prescribing practitioner specifically orders the strength or dosage form and specifies why the patient needs the particular strength or dosage form of the preparation. The prescribing practitioner shall provide documentation of a patient specific medical need and the preparation produces a clinically significant therapeutic response (e.g. the physician requests an alternate product due to hypersensitivity to excipients or preservative in the FDA-approved product, or the physician requests an effective alternate dosage form) or if the drug product is not commercially available. The unavailability of such drug product must be documented prior to compounding. The methodology for documenting unavailability includes maintaining a copy of the wholesaler's notification showing back-ordered, discontinued, or out-of-stock items. This documentation must be available in hard-copy or electronic format for inspection by the board.

(E) A pharmacy may enter into an agreement to compound and dispense prescription/medication orders for another pharmacy provided the pharmacy complies with the provisions of §291.125 of this title (relating to Centralized Prescription Dispensing).

(F) Compounding pharmacies/pharmacists may advertise and promote the fact that they provide non-sterile prescription compounding services, which may include specific drug products and classes of drugs.

(G) A pharmacy may not compound veterinary preparations for use in food producing animals except in accordance with federal guidelines.

(H) A pharmacist may add flavoring to a prescription at the request of a patient, the patient's agent, or the prescriber. The pharmacist shall label the flavored prescription with a beyond-use-date that shall be no longer than fourteen days if stored in a refrigerator unless otherwise documented. Documentation of beyond-use-dates longer than fourteen days shall be maintained by the pharmacy electronically or manually and made available to agents of the board on request. A pharmacist may not add flavoring to an over-the-counter product at the request of a patient or patient's agent unless the pharmacist obtains a prescription for the over-the-counter product from the patient's practitioner.

(2) Library. In addition to the library requirements of the pharmacy's specific license classification, a pharmacy shall maintain a current copy, in hard-copy or electronic format, of Chapter 795 of the USP/NF concerning Pharmacy Compounding Non-Sterile Preparations.

(3) Environment.

(A) Pharmacies engaging in compounding shall have a designated and adequate area for the safe and orderly compounding of non-sterile preparations, including the placement of equipment and materials.

(B) Only personnel authorized by the responsible pharmacist shall be in the immediate vicinity of a drug compounding operation.

(C) A sink with hot and cold running water, exclusive of rest room facilities, shall be accessible to the compounding areas and be maintained in a sanitary condition. Supplies necessary for adequate washing shall be accessible in the immediate area of the sink and include:

- (i) soap or detergent; and
- (ii) air-driers or single-use towels.

(D) Appropriate measures shall be used to prevent cross-contamination between compounding non-sterile preparations with different components [If drug products which require special precautions to prevent contamination, such as penicillin, are involved in a compounding operation, appropriate measures], including dedication of equipment for such operations or the meticulous cleaning of contaminated equipment prior to its use for the preparation of other drug products[, must be used in order to prevent cross-contamination].

(E) Cleaning and sanitizing of surfaces in the non-sterile compounding area(s) shall occur on a regular basis as defined in appropriate SOPs as outlined in paragraph (8)(A) of this subsection.

(4) Equipment and Supplies.~~[ The pharmacy shall:]~~

(A) If [if] the pharmacy engages in compounding non-sterile preparations that require weighing a component of the preparation, the pharmacy shall have a Class A prescription balance, or analytical balance and weights which shall be calibrated and have the accuracy of the balance verified by the pharmacy at least every 12 months as specified in the pharmacy's SOPs. The pharmacy shall document the calibration and verification.; ~~and~~

(B) The pharmacy shall have equipment and utensils necessary for the proper compounding of prescription drug or medication orders. Such equipment and utensils used in the compounding process shall be:

(i) of appropriate design and capacity, and be operated within designed operational limits;

(ii) of suitable composition so that surfaces that contact components, in-process material, or drug products shall not be reactive, additive, or absorptive so as to alter the safety, identity, strength, quality, or purity of the drug product beyond the desired result;

(iii) cleaned and sanitized immediately prior to and after each use; and

(iv) routinely inspected, calibrated (if necessary), or checked to ensure proper performance.

(C) Weighing, measuring, or otherwise manipulating components that could generate airborne chemical particles (e.g., active pharmaceutical ingredients, added substances, and conventionally manufactured products) shall be evaluated to determine if these activities must be performed in a containment primary engineering control to reduce the potential exposure to personnel or contamination of the facility or compounded non-sterile preparations. The process evaluation shall be carried out in accordance with the facility's SOPs, and the assessment shall be documented.

(D) If a containment ventilated enclosure or biological safety cabinet is used, it shall be certified at least every 12 months or according to manufacturer specifications.

(5) Labeling. In addition to the labeling requirements of the pharmacy's specific license classification, the label dispensed or distributed pursuant to a prescription drug or medication order shall contain the following.

(A) The generic name(s) or the official name(s) of the principal active ingredient(s) of the compounded preparation.

(B) A statement that the preparation has been compounded by the pharmacy. (An auxiliary label may be used on the container to meet this requirement).

(C) A beyond-use date after which the compounded preparation should not be used. The beyond-use date shall be determined as outlined in Chapter 795 of the USP/NF concerning Pharmacy Compounding Non-Sterile Preparations including the following:

(i) The pharmacist shall consider:

(I) physical and chemical properties of active ingredients;

(II) use of preservatives and/or stabilizing agents;

(III) dosage form;

(IV) storage containers and conditions; and

(V) scientific, laboratory, or reference data from a peer reviewed source and retained in the pharmacy. The reference data should follow the same preparation instructions for combining components ~~[raw materials]~~ and packaged in a container with similar properties.

(ii) In the absence of stability information applicable for a specific drug or preparation, the following maximum beyond-use dates are to be used when the compounded preparation is packaged in tight, light-resistant containers ~~[and stored at controlled room temperatures]~~.

(I) Aqueous dosage forms. An aqueous preparation is one that has a water activity equal to or greater than 0.6 (e.g., emulsions, gels, creams, solutions, sprays, or suspensions). [Nonaqueous liquids and solid formulations (Where the manufactured drug product is the source of active ingredient): 25% of the time

remaining until the product's expiration date or 6 months, whichever is earlier.}]

(-a-) Nonpreserved aqueous dosage forms: Not later than 14 days when stored in a refrigerator.

(-b-) Preserved aqueous dosage forms: Not later than 35 days when stored at controlled room temperature or in a refrigerator.

(II) Nonaqueous dosage forms. A nonaqueous dosage form is one that has a water activity less than 0.6. [Water-containing formulations (Prepared from ingredients in solid form): Not later than 14 days when refrigerated between 2 - 8 degrees Celsius (36 - 46 degrees Fahrenheit).]

(-a-) Nonaqueous oral liquids: Not later than 90 days when stored at controlled room temperature or in a refrigerator.

(-b-) Other nonaqueous dosage forms: Not later than 180 days when stored at controlled room temperature or refrigerator. Other nonaqueous dosage forms that have a water activity of less than 0.6 (e.g., capsules, tablets, granules, powders, nonaqueous topicals, suppositories, and troches or lozenges).

{(III) All other formulations: Intended duration of therapy or 30 days, whichever is earlier.}

(iii) Compounded non-sterile preparations requiring shorter beyond-use dates. The beyond-use dates in subclauses (I) and (II) of clause (ii) are the beyond-use dates for compounded nonsterile preparations in the absence of specific stability information. However, the designated person(s) shall still perform due diligence to determine if there is existing stability data that would require a shorter beyond-use date.

(I) The beyond-use date of the compounded non-sterile preparation shall not exceed the shortest remaining expiration date of any of the commercially available starting components.

(II) For compounded non-sterile preparations prepared from one or more compounded components, the beyond-use date generally shall not exceed the shortest beyond-use date of any of the individual compounded components. However, there may be acceptable instances when the beyond-use date of the final compounded non-sterile preparation exceeds the beyond-use date assigned to compounded components (e.g., pH-altering solutions). If the assigned beyond-use date of the final compounded non-sterile preparation exceeds the beyond-use date of the compounded components, the physical, chemical, and microbiological quality of the final compounded non-sterile preparation shall not be negatively impacted.

(iv) [(iii)] Extending beyond-use dates for compounded non-sterile preparations. Beyond-use date limits may be exceeded when supported by valid scientific stability information for the specific compounded preparation.

(I) Compounded non-sterile preparations with a USP/NF monograph. When compounding from a USP/NF compounded preparation monograph for the compounded non-sterile preparation, the beyond-use date shall not exceed the beyond-use date specified in the monograph.

(II) Compounded non-sterile preparations with stability information. If there is a stability study using a stability-indicating analytical method for the active pharmaceutical ingredient(s), compounded non-sterile preparation formulation, and material of composition of the container closure that will be used, then the beyond-use date indicated by the study may be used in lieu of the beyond-use date specified in subclauses (I) and (II) of clause (ii) for aqueous and nonaqueous dosage forms, up to a maximum of 180 days.

(III) If the beyond-use date of the compounded non-sterile preparation is extended beyond the beyond-use date specified in subclauses (I) and (II) of clause (ii), an aqueous compounded non-sterile preparation must pass antimicrobial effectiveness testing.

(-a-) The designated person(s) may rely on antimicrobial effectiveness testing that is conducted, or contracted for, once for each formulation in the particular container closure system, including materials of composition or the container closure system, in which it will be packaged.

(-b-) Alternatively, the designated person(s) may rely on antimicrobial effectiveness testing results provided by an FDA-registered facility or published in peer-reviewed literature as long as the compounded non-sterile preparation formulation, including any preservative, and container closure materials of composition are the same as those tested, unless a bracketing study is performed.

(-c-) When a bracketing study is performed, antimicrobial effectiveness testing may be performed on a low concentration and on a high concentration of the active ingredient in the formulation to establish preservative effectiveness across various strengths of the same formulation (e.g. bracketing). The concentration of all other ingredients, including preservatives, must fall within the bracketed range.

(6) Written drug information. Written information about the compounded preparation or its major active ingredient(s) shall be given to the patient at the time of dispensing. A statement which indicates that the preparation was compounded by the pharmacy must be included in this written information. If there is no written information available, the patient should be advised that the drug has been compounded and how to contact a pharmacist, and if appropriate the prescriber, concerning the drug.

(7) Drugs, components, and materials used in non-sterile compounding.

(A) Drugs used in non-sterile compounding shall be USP/NF grade substances manufactured in an FDA-registered facility.

(B) If USP/NF grade substances are not available, or when food, cosmetics, or other substances are or must be used, the substance shall be of a chemical grade in one of the following categories:

- (i) Chemically Pure (CP);
- (ii) Analytical Reagent (AR); or
- (iii) American Chemical Society (ACS); or
- (iv) Food Chemical Codex; or

(C) If a drug, component, or material is not purchased from an FDA-registered facility, the pharmacist shall establish purity and stability by obtaining a Certificate of Analysis from the supplier and the pharmacist shall compare the monograph of drugs in a similar class to the Certificate of Analysis.

(D) A manufactured drug product may be a source of active ingredient. Only manufactured drugs from containers labeled with a batch control number and a future expiration date are acceptable as a potential source of active ingredients. When compounding with manufactured drug products, the pharmacist must consider all ingredients present in the drug product relative to the intended use of the compounded preparation.

(E) All components shall be stored in properly labeled containers in a clean, dry area, under proper temperatures.

(F) Drug product containers and closures shall not be reactive, additive, or absorptive so as to alter the safety, identity,

strength, quality, or purity of the compounded drug product beyond the desired result.

(G) Components, drug product containers, and closures shall be rotated so that the oldest stock is used first.

(H) Container closure systems shall provide adequate protection against foreseeable external factors in storage and use that can cause deterioration or contamination of the compounded drug product.

(I) A pharmacy may not compound a preparation that contains ingredients appearing on a federal Food and Drug Administration list of drug products withdrawn or removed from the market for safety reasons.

(8) Compounding process.

(A) All significant procedures performed in the compounding area shall be covered by written SOPs designed to ensure accountability, accuracy, quality, safety, and uniformity in the compounding process. At a minimum, SOPs shall be developed for:

- (i) the facility;
- (ii) equipment;
- (iii) personnel;
- (iv) preparation evaluation;
- (v) quality assurance;
- (vi) preparation recall;
- (vii) packaging; ~~and~~
- (viii) storage of compounded preparations;[-]
- (ix) hand hygiene and garbing; and
- (x) cleaning and sanitizing.

(B) Any compounded preparation with an official monograph in the USP/NF shall be compounded, labeled, and packaged in conformity with the USP/NF monograph for the drug.

(C) Any person with a communicable ~~[an apparent]~~ illness or open lesion that may adversely affect the safety or quality of a drug product being compounded shall report these conditions to the designated person(s). The designated person(s) shall determine whether the person must be excluded from compounding areas until the person's conditions have resolved ~~[be excluded from direct contact with components, drug product containers, closures, any materials involved in the compounding process, and drug products until the condition is corrected].~~

(D) Personnel engaged in the compounding of drug preparations shall perform proper hand hygiene prior to engaging in compounding activities. Proper hand hygiene shall be defined in appropriate SOPs as outlined in subparagraph (A) of this paragraph and appropriate for prevention of preparation and facility contamination.

(E) Garbing requirements and the frequency of changing garb shall be determined by the pharmacy and documented in appropriate SOPs as outlined in subparagraph (A) of this paragraph. The garbing requirements under the pharmacy's SOPs must be appropriate for the type of compounding performed. Gloves shall be worn for the prevention of preparation and facility contamination.

(F) At each step of the compounding process, the pharmacist shall ensure that components used in compounding are accurately weighed, measured, or subdivided as appropriate to conform to the formula being prepared.

(9) Quality Assurance.

(A) Initial formula validation. Prior to routine compounding of a non-sterile preparation, a pharmacy shall conduct an evaluation that shows that the pharmacy is capable of compounding a product that contains the stated amount of active ingredient(s).

(B) Finished preparation checks. The prescription drug and medication orders, written compounding procedure, preparation records, and expended materials used to make compounded non-sterile preparations shall be inspected for accuracy of correct identities and amounts of ingredients, packaging, labeling, and expected physical appearance and properties before the non-sterile preparations are dispensed.

(10) Quality Control.

(A) The pharmacy shall follow established quality control procedures to monitor the quality of compounded drug preparations for uniformity and consistency such as capsule weight variations, adequacy of mixing, clarity, or pH of solutions. When developing these procedures, pharmacy personnel shall consider the provisions of Chapter 795, concerning Pharmacy Compounding Non-Sterile Preparations, Chapter 1075, concerning Good Compounding Practices, and Chapter 1160, concerning Pharmaceutical Calculations in Prescription Compounding contained in the current USP/NF. Such procedures shall be documented and be available for inspection.

(B) Compounding procedures that are routinely performed, including batch compounding, shall be completed and verified according to written procedures. The act of verification of a compounding procedure involves checking to ensure that calculations, weighing and measuring, order of mixing, and compounding techniques were appropriate and accurately performed.

(C) Unless otherwise indicated or appropriate, compounded preparations are to be prepared to ensure that each preparation shall contain not less than 90.0 percent and not more than 110.0 percent of the theoretically calculated and labeled quantity of active ingredient per unit weight or volume and not less than 90.0 percent and not more than 110.0 percent of the theoretically calculated weight or volume per unit of the preparation.

(e) Records.

(1) Maintenance of records. Every record required by this section shall be:

(A) kept by the pharmacy and be available, for at least two years, for inspecting and copying by the board or its representative and to other authorized local, state, or federal law enforcement agencies; and

(B) supplied by the pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy. If the pharmacy maintains the records in an electronic format, the requested records must be provided in an electronic format. Failure to provide the records set out in this section, either on site or within 72 hours, constitutes prima facie evidence of failure to keep and maintain records in violation of the Act.

(C) Documentation of the performance of quality control procedures is not required if the compounding process is done pursuant to a patient specific order and involves the mixing of two or more commercially available oral liquids or commercially available preparations when the final product is intended for external use.

(2) Master Formulation Record and Compounding Record ~~[records].~~

(A) Master Formulation Record. A master formulation record shall be developed and approved by a pharmacist for all compounded preparations. Once approved, a duplicate of the master formulation record shall be used as the compound record each time the compound is prepared and on which all documentation for that compound occurs. The master formulation record shall contain at a minimum:

- (i) the formula;
- (ii) the components;
- (iii) the compounding directions;
- (iv) evaluation and testing requirements;
- (v) specific equipment used during preparation;
- (vi) storage requirements;
- (vii) a reference to the location of the following documentation which may be maintained with other records, such as quality control records:

(I) the criteria used to determine the beyond-use date; and

(II) documentation of performance of quality control procedures, including, but not limited to, expected physical appearance of the final product.

{(A) Compounding pursuant to patient specific prescription drug or medication orders. Compounding records for all compounded preparations shall be maintained by the pharmacy electronically or manually as part of the prescription drug or medication order, formula record, formula book, or compounding log and shall include:}

- {(i) the date of preparation;}
- {(ii) a complete formula, including methodology and necessary equipment which includes the brand name(s) of the raw materials, or if no brand name, the generic name(s) and name(s) of the manufacturer(s) of the raw materials and the quantities of each;}
- {(iii) signature or initials of the pharmacist or pharmacy technician or pharmacy technician trainee performing the compounding;}
- {(iv) signature or initials of the pharmacist responsible for supervising pharmacy technicians or pharmacy technician trainees and conducting in-process and final checks of compounded preparations if pharmacy technicians or pharmacy technician trainees perform the compounding function;}

{(v) the quantity in units of finished preparations or amount of raw materials;}

{(vi) the container used and the number of units prepared;}

{(vii) a reference to the location of the following documentation which may be maintained with other records, such as quality control records:}

{(I) the criteria used to determine the beyond-use date; and}

{(II) documentation of performance of quality control procedures. Documentation of the performance of quality control procedures is not required if the compounding process is done pursuant to a patient specific order and involves the mixing of two or more commercially available oral liquids or commercially available preparations when the final product is intended for external use.}

(B) Compounding Record. The record for each preparation shall document the following:

(i) identity of all components and their corresponding amounts, concentrations, or volumes;

(ii) lot number and expiration date of each component;

(iii) component manufacturer/distributor or suitable identifying number;

(iv) container specifications;

(v) unique lot or control number;

(vi) beyond use date;

(vii) date of preparation;

(viii) name, initials, or electronic signature of the person(s) involved in the preparation;

(ix) name, initials, or electronic signature of the responsible pharmacist;

(x) finished preparation evaluation and testing specifications, if applicable; and

(xi) comparison of actual yield to anticipated or theoretical yield, when appropriate.

{(B) Compounding records when batch compounding or compounding in anticipation of future prescription drug or medication orders.}

{(i) Master work sheet. A master work sheet shall be developed and approved by a pharmacist for preparations prepared in batch. Once approved, a duplicate of the master work sheet shall be used as the preparation work sheet from which each batch is prepared and on which all documentation for that batch occurs. The master work sheet shall contain at a minimum:}

{(I) the formula;}

{(II) the components;}

{(III) the compounding directions;}

{(IV) a sample label;}

{(V) evaluation and testing requirements;}

{(VI) specific equipment used during preparation;}

{(VII) storage requirements;}

{(VIII) a reference to the location of the following documentation which may be maintained with other records, such as quality control records:}

{(a-) the criteria used to determine the beyond-use date; and}

{(b-) documentation of performance of quality control procedures.}

{(i) Preparation work sheet. The preparation work sheet for each batch of preparations shall document the following:}

{(I) identity of all solutions and ingredients and their corresponding amounts, concentrations, or volumes;}

{(II) lot number and expiration date of each component;}

{(III) component manufacturer/distributor or suitable identifying number;}

~~{(IV)}~~ container specifications;]

~~{(V)}~~ unique lot or control number assigned to batch;]

~~{(VI)}~~ beyond use date of batch preparations;]

~~{(VII)}~~ date of preparation;]

~~{(VIII)}~~ name, initials, or electronic signature of the person(s) involved in the preparation;]

~~{(IX)}~~ name, initials, or electronic signature of the responsible pharmacist;]

~~{(X)}~~ finished preparation evaluation and testing specifications, if applicable; and]

~~{(XI)}~~ comparison of actual yield to anticipated or theoretical yield, when appropriate.]

(f) Office Use Compounding and Distribution of Compounded Preparations to Class C Pharmacies or Veterinarians in Accordance With §563.054 of the Act.

(1) General.

(A) A pharmacy may dispense and deliver a reasonable quantity of a compounded preparation to a practitioner for office use by the practitioner in accordance with this subsection.

(B) A Class A pharmacy is not required to register or be licensed under Chapter 431, Health and Safety Code, to distribute non-sterile compounded preparations to a Class C pharmacy.

(C) A Class C pharmacy is not required to register or be licensed under Chapter 431, Health and Safety Code, to distribute non-sterile compounded preparations that the Class C pharmacy has compounded for other Class C pharmacies under common ownership.

(D) To dispense and deliver a compounded preparation under this subsection, a pharmacy must:

(i) verify the source of the raw materials to be used in a compounded drug;

(ii) comply with applicable United States Pharmacopoeia guidelines, including the testing requirements, and the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191);

(iii) enter into a written agreement with a practitioner for the practitioner's office use of a compounded preparation;

(iv) comply with all applicable competency and accrediting standards as determined by the board; and

(v) comply with the provisions of this subsection.

(2) Written Agreement. A pharmacy that provides non-sterile compounded preparations to practitioners for office use or to another pharmacy shall enter into a written agreement with the practitioner or pharmacy. The written agreement shall:

(A) address acceptable standards of practice for a compounding pharmacy and a practitioner and receiving pharmacy that enter into the agreement including a statement that the compounded preparations may only be administered to the patient and may not be dispensed to the patient or sold to any other person or entity except as authorized by §563.054 of the Act;

(B) state that the practitioner or receiving pharmacy should include on a separate log or in a patient's chart, medication order, or medication administration record the lot number and be-

yond-use date of a compounded preparation administered to a patient; and

(C) describe the scope of services to be performed by the pharmacy and practitioner or receiving pharmacy, including a statement of the process for:

(i) a patient to report an adverse reaction or submit a complaint; and

(ii) the pharmacy to recall batches of compounded preparations.

(3) Recordkeeping.

(A) Maintenance of Records.

(i) Records of orders and distribution of non-sterile compounded preparations to a practitioner for office use or to a Class C pharmacy for administration to a patient shall:

(I) be kept by the pharmacy and be available, for at least two years from the date of the record, for inspecting and copying by the board or its representative and to other authorized local, state, or federal law enforcement agencies;

(II) maintained separately from the records of products dispensed pursuant to a prescription or medication order; and

(III) supplied by the pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy or its representative. If the pharmacy maintains the records in an electronic format, the requested records must be provided in an electronic format. Failure to provide the records set out in this subsection, either on site or within 72 hours for whatever reason, constitutes prima facie evidence of failure to keep and maintain records.

(ii) Records may be maintained in an alternative data retention system, such as a data processing system or direct imaging system provided the data processing system is capable of producing a hard copy of the record upon the request of the board, its representative, or other authorized local, state, or federal law enforcement or regulatory agencies.

(B) Orders. The pharmacy shall maintain a record of all non-sterile compounded preparations ordered by a practitioner for office use or by a Class C pharmacy for administration to a patient. The record shall include the following information:

(i) date of the order;

(ii) name, address, and phone number of the practitioner who ordered the preparation and, if applicable, the name, address, and phone number of the Class C pharmacy ordering the preparation; and

(iii) name, strength, and quantity of the preparation ordered.

(C) Distributions. The pharmacy shall maintain a record of all non-sterile compounded preparations distributed pursuant to an order to a practitioner for office use or by a Class C pharmacy for administration to a patient. The record shall include the following information:

(i) date the preparation was compounded;

(ii) date the preparation was distributed;

(iii) name, strength, and quantity in each container of the preparation;

(iv) pharmacy's lot number;

- (v) quantity of containers shipped; and
- (vi) name, address, and phone number of the practitioner or Class C pharmacy to whom the preparation is distributed.

(D) Audit Trail.

(i) The pharmacy shall store the order and distribution records of preparations for all non-sterile compounded preparations ordered by and or distributed to a practitioner for office use or by a Class C pharmacy for administration to a patient in such a manner as to be able to provide an audit trail for all orders and distributions of any of the following during a specified time period.

- (I) any strength and dosage form of a preparation (by either brand or generic name or both);
- (II) any ingredient;
- (III) any lot number;
- (IV) any practitioner;
- (V) any facility; and
- (VI) any pharmacy, if applicable.

(ii) The audit trail shall contain the following information:

- (I) date of order and date of the distribution;
- (II) practitioner's name, address, and name of the Class C pharmacy, if applicable;
- (III) name, strength, and quantity of the preparation in each container of the preparation;
- (IV) name and quantity of each active ingredient;
- (V) quantity of containers distributed; and
- (VI) pharmacy's lot number;

(4) Labeling. The pharmacy shall affix a label to the preparation containing the following information:

- (A) name, address, and phone number of the compounding pharmacy;
- (B) the statement: "For Institutional or Office Use Only--Not for Resale"; or if the preparation is distributed to a veterinarian the statement: "Compounded Preparation";
- (C) name and strength of the preparation or list of the active ingredients and strengths;
- (D) pharmacy's lot number;
- (E) beyond-use date as determined by the pharmacist using appropriate documented criteria;
- (F) quantity or amount in the container;
- (G) appropriate ancillary instructions, such as storage instructions or cautionary statements, including hazardous drug warning labels where appropriate; and
- (H) device-specific instructions, where appropriate.

(g) Recall Procedures.

(1) The pharmacy shall have written procedures for the recall of any compounded non-sterile preparations provided to a patient, to a practitioner for office use, or a pharmacy for administration. Written procedures shall include, but not be limited to, the requirements as specified in paragraph (3) of this subsection.

(2) The pharmacy shall immediately initiate a recall of any non-sterile preparation compounded by the pharmacy upon identification of a potential or confirmed harm to a patient.

(3) In the event of a recall, the pharmacist-in-charge shall ensure that:

(A) each practitioner, facility, and/or pharmacy to which the preparation was distributed is notified, in writing, of the recall;

(B) each patient to whom the preparation was dispensed is notified, in writing, of the recall;

(C) if the preparation is prepared as a batch, the board is notified of the recall, in writing;

(D) if the preparation is distributed for office use, the Texas Department of State Health Services, Drugs and Medical Devices Group, is notified of the recall, in writing;

(E) the preparation is quarantined; and

(F) the pharmacy keeps a written record of the recall including all actions taken to notify all parties and steps taken to ensure corrective measures.

(4) If a pharmacy fails to initiate a recall, the board may require a pharmacy to initiate a recall if there is potential for or confirmed harm to a patient.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 11, 2024.

TRD-202401115

Daniel Carroll, Pharm.D.

Executive Director

Texas State Board of Pharmacy

Earliest possible date of adoption: April 21, 2024

For further information, please call: (512) 305-8033



## TITLE 25. HEALTH SERVICES

### PART 11. CANCER PREVENTION AND RESEARCH INSTITUTE OF TEXAS

#### CHAPTER 701. POLICIES AND PROCEDURES

##### 25 TAC §701.3

The Cancer Prevention and Research Institute of Texas ("CPRIT" or "the Institute") proposes amending 25 Texas Administrative Code §701.3 by adding a definition of "tranche" to the Institute's defined terms.

##### Background and Justification

The proposed rule change defines the term "tranche" used CPRIT's administrative rules to refer to the portion of total Grant Award funds that is released to the Grant Recipient upon a Grant Recipient's successful completion of predefined milestones or adherence to specific timelines as outlined in the Grant Contract.

##### Fiscal Note

Kristen Pauling Doyle, Deputy Executive Officer and General Counsel for the Cancer Prevention and Research Institute of Texas, has determined that for the first five-year period the rule change is in effect, there will be no foreseeable implications relating to costs or revenues for state or local government due to enforcing or administering the rules.

#### Public Benefit and Costs

Ms. Doyle has determined that for each year of the first five years the rule change is in effect the public benefit anticipated due to enforcing the rule will be defining a term used in CPRIT's administrative rules and grant contract.

#### Small Business, Micro-Business, and Rural Communities Impact Analysis

Ms. Doyle has determined that the rule change will not affect small businesses, micro businesses, or rural communities.

#### Government Growth Impact Statement

The Institute, in accordance with 34 Texas Administrative Code §11.1, has determined that during the first five years that the proposed rule change will be in effect:

- (1) the proposed rule change will not create or eliminate a government program;
- (2) implementation of the proposed rule change will not affect the number of employee positions;
- (3) implementation of the proposed rule change will not require an increase or decrease in future legislative appropriations;
- (4) the proposed rule change will not affect fees paid to the agency;
- (5) the proposed rule change will not create new rule;
- (6) the proposed rule change will not expand existing rule;
- (7) the proposed rule change will not change the number of individuals subject to the rule; and
- (8) The rule change is unlikely to have an impact on the state's economy. Although the change is likely to have a neutral impact on the state's economy, the Institute lacks enough data to predict the impact with certainty.

Submit written comments on the proposed rule change to Ms. Kristen Pauling Doyle, General Counsel, Cancer Prevention and Research Institute of Texas, P.O. Box 12097, Austin, Texas 78711, no later than April 22, 2024. The Institute asks parties filing comments to indicate whether they support the rule revision proposed by the Institute and, if the party requests a change, to provide specific text for the proposed change. Parties may submit comments electronically to [kdoyle@cpr.it.texas.gov](mailto:kdoyle@cpr.it.texas.gov) or by facsimile transmission to (512) 475-2563.

#### Statutory Authority

The Institute proposes the rule change under the authority of the Texas Health and Safety Code Annotated, §102.108, which provides the Institute with broad rule-making authority to administer the chapter. Ms. Doyle has reviewed the proposed amendment and certifies the proposal to be within the Institute's authority to adopt.

There is no other statute, article, or code affected by these rules.

#### §701.3. Definitions.

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

(1) **Advisory Committee**--a committee of experts, including practitioners and patient advocates, created by the Oversight Committee to advise the Oversight Committee on issues related to cancer.

(2) **Allowable Cost**--a cost that is reasonable, necessary for the proper and efficient performance and administration of the project, and allocable to the project.

(3) **Annual Public Report**--the report issued by the Institute pursuant to Texas Health and Safety Code §102.052 outlining Institute activities, including Grant Awards, research accomplishments, future Program directions, compliance, and Conflicts of Interest actions.

(4) **Approved Budget**--the financial expenditure plan for the Grant Award, including revisions approved by the Institute and permissible revisions made by the Grant Recipient. The Approved Budget may be shown by Project Year and detailed budget categories.

(5) **Authorized Expense**--cost items including honoraria, salaries and benefits, consumable supplies, other operating expenses, contracted research and development, capital equipment, construction or renovation of state or private facilities, travel, and conference fees and expenses.

(6) **Authorized Signing Official (ASO)**--the individual, including designated alternates, named by the Grant Applicant, who is authorized to act for the Grant Applicant or Grant Recipient in submitting the Grant Application and executing the Grant Contract and associated documents or requests.

(7) **Bylaws**--the rules established by the Oversight Committee to provide a framework for its operation, management, and governance.

(8) **Cancer Prevention**--a reduction in the risk of developing cancer, including early detection, control and/or mitigation of the incidence, disability, mortality, or post-diagnosis effects of cancer.

(9) **Cancer Prevention and Control Program**--effective strategies and interventions for preventing and controlling cancer designed to reduce the incidence and mortality of cancer and to enhance the quality of life of those affected by cancer.

(10) **Cancer Prevention and Research Fund**--the dedicated account in the general revenue fund consisting of legislative appropriations, gifts, grants, other donations, and earned interest.

(11) **Cancer Research**--research into the prevention, causes, detection, treatments, and cures for all types of cancer in humans, including basic mechanistic studies, pre-clinical studies, animal model studies, translational research, and clinical research to develop preventative measures, therapies, protocols, medical pharmaceuticals, medical devices or procedures for the detection, treatment, cure or substantial mitigation of all types of cancer and its effects in humans.

(12) **Chief Compliance Officer**--the individual employed by the Institute to monitor and report to the Oversight Committee regarding compliance with the Institute's statute and administrative rules. The term may also apply to an individual designated by the Chief Compliance Officer to fulfill the duty or duties described herein, unless the context clearly indicates otherwise.

(13) **Chief Executive Officer**--the individual hired by the Oversight Committee to perform duties required by the Institute's Statute or designated by the Oversight Committee. The term may apply to an individual designated by the Chief Executive Officer to fulfill the duty or duties described herein, unless the context clearly indicates otherwise.

(14) **Chief Prevention Officer**--the individual hired by the Chief Executive Officer to oversee the Institute's Cancer Prevention



program, including the Grant Review Process, and to assist the Chief Executive Officer in collaborative outreach to further Cancer Research and Cancer Prevention. The term may also apply to an individual designated by the Chief Prevention Officer to fulfill the duty or duties described herein, unless the context clearly indicates otherwise.

(15) Chief Product Development Officer--the individual hired by Chief Executive Officer to oversee the Institute's Product Development program for drugs, biologicals, diagnostics, or devices arising from Cancer Research, including the Grant Review Process, and to assist the Chief Executive Officer in collaborative outreach to further Cancer Research and Cancer Prevention. The term may apply to an individual designated by the Chief Product Development Officer to fulfill the duty or duties described herein, unless the context clearly indicates otherwise.

(16) Chief Scientific Officer--the individual hired by the Chief Executive Officer to oversee the Institute's Cancer Research program, including the Grant Review Process, and to assist the Chief Executive Officer in collaborative outreach to further Cancer Research and Cancer Prevention. The term may apply to an individual designated by the Chief Scientific Officer to fulfill the duty or duties described herein, unless the context clearly indicates otherwise.

(17) Code of Conduct and Ethics--the code adopted by the Oversight Committee pursuant to Texas Health and Safety Code §102.109 to provide guidance related to the ethical conduct expected of Oversight Committee Members, Program Integration Committee Members, and Institute Employees.

(18) Compliance Program--a process to assess and ensure compliance by the Oversight Committee Members and Institute Employees with applicable laws, rules, and policies, including matters of ethics and standards of conduct, financial reporting, internal accounting controls, and auditing.

(19) Conflict(s) of Interest--a financial, professional, or personal interest held by the individual or the individual's Relative that is contrary to the individual's obligation and duty to act for the benefit of the Institute.

(20) Encumbered Funds--funds that are designated by a Grant Recipient for a specific purpose.

(21) Financial Status Report--form used to report all Grant Award related financial expenditures incurred in implementation of the Grant Award. This form may also be referred to as "FSR" or "Form 269-A."

(22) Grant Applicant--the public or private institution of higher education, as defined by §61.003, Texas Education Code, research institution, government organization, non-governmental organization, non-profit organization, other public entity, private company, individual, or consortia, including any combination of the aforementioned, that submits a Grant Application to the Institute. Unless otherwise indicated, this term includes the Principal Investigator or Program Director.

(23) Grant Application--the written proposal submitted by a Grant Applicant to the Institute in the form required by the Institute that, if successful, will result in a Grant Award.

(24) Grant Award--funding, including a direct company investment, awarded by the Institute pursuant to a Grant Contract providing money to the Grant Recipient to carry out the Cancer Research or Cancer Prevention project in accordance with rules, regulations, and guidance provided by the Institute.

(25) Grant Contract--the legal agreement executed by the Grant Recipient and the Institute setting forth the terms and conditions

for the Cancer Research or Cancer Prevention Grant Award approved by the Oversight Committee.

(26) Grant Management System--the electronic interactive system used by the Institute to exchange, record, and store Grant Application and Grant Award information.

(27) Grant Mechanism--the specific Grant Award type.

(28) Grant Program--the functional area in which the Institute makes Grant Awards, including research, prevention and product development.

(29) Grant Progress Report--the required report submitted by the Grant Recipient at least annually and at the close of the grant award describing the activities undertaken to achieve the Scope of Work of the funded project and including information, data and program metrics. Unless the context clearly indicates otherwise, the Grant Progress Report also includes other required reports such as a Historically Underutilized Business and Texas Supplier form, a single audit determination form, an inventory report, a single audit determination form, a revenue sharing form, and any other reports or forms designated by the Institute.

(30) Grant Recipient--the entire legal entity responsible for the performance or administration of the Grant Award pursuant to the Grant Contract. Unless otherwise indicated, this term includes the Principal Investigator, Program Director, or Company Representative.

(31) Grant Review Cycle--the period that begins on the day that the Request for Applications is released for a particular Grant Mechanism and ends on the day that the Oversight Committee takes action on the Grant Award recommendations.

(32) Grant Review Process--the Institute's processes for Peer Review, Program Review and Oversight Committee approval of Grant Applications.

(33) Indirect Costs--the expenses of doing business that are not readily identified with a particular Grant Award, Grant Contract, project, function, or activity, but are necessary for the general operation of the Grant Recipient or the performance of the Grant Recipient's activities.

(34) Institute--the Cancer Prevention and Research Institute of Texas or CPRIT.

(35) Institute Employee--any individual employed by the Institute, including any individual performing duties for the Institute pursuant to a contract of employment. Unless otherwise indicated, the term does not include an individual providing services to the Institute pursuant to a services contract.

(36) Intellectual Property Rights--any and all of the following and all rights in, arising out of, or associated therewith, but only to the extent resulting from the Grant Award:

(A) The United States and foreign patents and utility models and applications therefore and all reissues, divisions, re-examinations, renewals, extensions, provisionals, continuations and such claims of continuations-in-part as are entitled to claim priority to the aforesaid patents or patent applications, and equivalent or similar rights anywhere in the world in Inventions and discoveries;

(B) All trade secrets and rights in know-how and proprietary information;

(C) All copyrights, whether registered or unregistered, and applications therefore, and all other rights corresponding thereto throughout the world excluding scholarly and academic works such

as professional articles and presentations, lab notebooks, and original medical records; and

(D) All mask works, mask work registrations and applications therefore, and any equivalent or similar rights in semiconductor masks, layouts, architectures or topography.

(37) Invention--any method, device, process or discovery that is conceived and/or reduced to practice, whether patentable or not, by the Grant Recipient in the performance of work funded by the Grant Award.

(38) License Agreement--an understanding by which an owner of Technology and associated Intellectual Property Rights grants any right to make, use, develop, sell, offer to sell, import, or otherwise exploit the Technology or Intellectual Property Rights in exchange for consideration.

(39) Matching Funds--the Grant Recipient's Encumbered Funds equal to one-half of the Grant Award available and not yet expended that are dedicated to the research that is the subject of the Grant Award. For public and private institutions of higher education, this includes the dollar amount equivalent to the difference between the indirect cost rate authorized by the federal government for research grants awarded to the Grant Recipient and the five percent (5%) Indirect Cost limit imposed by §102.203(c), Texas Health and Safety Code.

(40) Numerical Ranking Score--the score given to a Grant Application by the Review Council that is substantially based on the final Overall Evaluation Score submitted by the Peer Review Panel, but also signifies the Review Council's view related to how well the Grant Application achieves program priorities set by the Oversight Committee, the overall Program portfolio balance, and any other criteria described in the Request for Applications.

(41) Overall Evaluation Score--the score given to a Grant Application during the Peer Review Panel review that signifies the reviewers' overall impression of the Grant Application. Typically it is the average of the scores assigned by two or more Peer Review Panel members.

(42) Oversight Committee--the Institute's governing body, composed of the nine individuals appointed by the Governor, Lieutenant Governor, and the Speaker of the House of Representatives.

(43) Oversight Committee Member--any person appointed to and serving on the Oversight Committee.

(44) Patient Advocate--a trained individual who meets the qualifications set by the Institute and is appointed to a Scientific Research and Prevention Programs Committee to specifically represent the interests of cancer patients as part of the Peer Review of Grant Applications assigned to the individual's committee.

(45) Peer Review--the review process performed by Scientific Research and Prevention Programs Committee members and used by the Institute to provide guidance and recommendations to the Program Integration Committee and the Oversight Committee in making decisions for Grant Awards. The process involves the consistent application of standards and procedures to produce a fair, equitable, and objective evaluation of scientific and technical merit, as well as other relevant aspects of the Grant Application. When used herein, the term applies individually or collectively, as the context may indicate, to the following review process(es): Preliminary Evaluation, Individual Evaluation by Primary Reviewers, Peer Review Panel discussion and Review Council prioritization.

(46) Peer Review Panel--a group of Scientific Research and Prevention Programs Committee members conducting Peer Review of assigned Grant Applications.

(47) Prevention Review Council--the group of Scientific Research and Prevention Programs Committee members designated as the chairpersons of the Peer Review Panels that review Cancer Prevention program Grant Applications. This group includes the Review Council chairperson.

(48) Primary Reviewer--a Scientific Research and Prevention Programs Committee member responsible for individually evaluating all components of the Grant Application, critiquing the merits according to explicit criteria published in the Request for Applications, and providing an individual Overall Evaluation Score that conveys the general impression of the Grant Application's merit.

(49) Principal Investigator, Program Director, or Company Representative--the single individual designated by the Grant Applicant or Grant Recipient to have the appropriate level of authority and responsibility to direct the project to be supported by the Grant Award.

(50) Product Development Prospects--the potential for development of products, services, or infrastructure to support Cancer Research efforts, including but not limited to pre-clinical, clinical, manufacturing, and scale up activities.

(51) Product Development Review Council--the group of Scientific Research and Prevention Programs Committee Members designated as the chairpersons of the Peer Review Panels that review Grant Applications for the development of drugs, drugs, biologicals, diagnostics, or devices arising from earlier-stage Cancer Research. This group includes the Review Council chairperson.

(52) Program Income--income from fees for services performed, from the use or rental of real or personal property acquired with Grant Award funds, and from the sale of commodities or items fabricated under the Grant Contract. Except as otherwise provided, Program Income does not include rebates, credits, discounts, refunds, etc. or the interest earned on any of these items. Interest otherwise earned in excess of \$250 on Grant Award funds is considered Program Income.

(53) Program Integration Committee--the group composed of the Chief Executive Officer, the Chief Scientific Officer, the Chief Product Development Officer, the Commissioner of State Health Services, and the Chief Prevention Officer that is responsible for submitting to the Oversight Committee the list of Grant Applications the Program Integration Committee recommends for Grant Awards.

(54) Project Results--all outcomes of a Grant Award, including publications, knowledge gained, additional funding generated, and any and all Technology and associated Intellectual Property Rights.

(55) Project Year--the intervals of time (usually 12 months each) into which a Grant Award is divided for budgetary, funding, and reporting purposes. The effective date of the Grant Contract is the first day of the first Project Year.

(56) Real Property--land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

(57) Relative--a person related within the second degree by consanguinity or affinity determined in accordance with §§573.021 - 573.025, Texas Government Code. For purposes of this definition:

(A) examples of an individual within the second degree by consanguinity are a child, grandchild, parent, grandparent, brother, sister;

(B) a husband and wife are related to each other in the first degree of affinity. For other relationship by affinity, the degree of

relationship is the same as the degree of the underlying relationship by consanguinity;

(C) an individual adopted into a family is considered a Relative on the same basis as a natural born family member; and

(D) an individual is considered a spouse even if the marriage has been dissolved by death or divorce if there are surviving children of that marriage.

(58) Request for Applications--the invitation released by the Institute seeking the submission of Grant Applications for a particular Grant Mechanism. It provides information relevant to the Grant Award to be funded, including funding amount, Grant Review Process information, evaluation criteria, and required Grant Application components. The Request for Applications includes any associated written instructions provided by the Institute and available to all Grant Applicants.

(59) Review Council--the term used to generally refer to one or more of the Prevention Review Council, the Product Development Review Council, or Scientific Review Council.

(60) Scientific Research and Prevention Programs Committee--a group of experts in the field of Cancer Research, Cancer Prevention or Product Development, including trained Patient Advocates, appointed by the Chief Executive Officer and approved by the Oversight Committee for the purpose of conducting Peer Review of Grants Applications and recommending Grant Awards. A Peer Review Panel is a Scientific Research and Prevention Programs Committee, as is a Review Council.

(61) Scientific Research and Prevention Programs Committee Member--an individual appointed by the Chief Executive Officer and approved by the Oversight Committee to serve on a Scientific Research and Prevention Programs Committee. Peer Review Panel Members are Scientific Research and Prevention Programs Committee Members, as are Review Council Members.

(62) Scientific Review Council--the group of Scientific Research and Prevention Programs Committee Members designated as the chairpersons of the Peer Review Panels that review Cancer Research Grant Applications. This group includes the Review Council chairperson.

(63) Scope of Work--the goals and objectives or specific aims and subaims, if appropriate, of the Cancer Research or Cancer Prevention project, including the timeline and milestones to be achieved.

(64) Senior Member or Key Personnel--the Principal Investigator, Project Director or Company Representative and other individuals who contribute to the scientific development or execution of a project in a substantive, measurable way, whether or not the individuals receive salary or compensation under the Grant Award.

(65) Technology--any and all of the following resulting or arising from work funded by the Grant Award:

(A) Inventions;

(B) Third-Party Information, including but not limited to data, trade secrets and know-how;

(C) databases, compilations and collections of data;

(D) tools, methods and processes; and

(E) works of authorship, excluding all scholarly works, but including, without limitation, computer programs, source code and executable code, whether embodied in software, firmware or otherwise, documentation, files, records, data and mask works; and all instantia-

tions of the foregoing in any form and embodied in any form, including but not limited to therapeutics, drugs, drug delivery systems, drug formulations, devices, diagnostics, biomarkers, reagents and research tools.

(66) Texas Cancer Plan--a coordinated, prioritized, and actionable framework that helps to guide statewide efforts to fight the human and economic burden of cancer in Texas.

(67) Third-Party Information--generally, all trade secrets, proprietary information, know-how and non-public business information disclosed to the Institute by Grant Applicant, Grant Recipient, or other individual external to the Institute.

(68) Tobacco--all forms of tobacco products, including but not limited to cigarettes, cigars, pipes, water pipes (hookah), bidis, kreteks, electronic cigarettes, smokeless tobacco, snuff and chewing tobacco.

(69) Tranche--the portion of the Grant Award disbursed to the Grant Recipient in a sequential and conditional manner based upon the successful completion of predefined milestones as specified in the Grant Contract.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 8, 2024.

TRD-202401065

Heidi McConnell

Chief Operating Officer

Cancer Prevention and Research Institute of Texas

Earliest possible date of adoption: April 21, 2024

For further information, please call: (512) 463-3190



## CHAPTER 703. GRANTS FOR CANCER PREVENTION AND RESEARCH

### 25 TAC §§703.10, 703.21, 703.23

The Cancer Prevention and Research Institute of Texas ("CPRIT" or "the Institute") proposes amending 25 Texas Administrative Code §§703.10, 703.21, and 703.23 to consistently use the term "Tranche" as defined in §701.3.

#### Background and Justification

The proposed changes to Chapter 703 capitalize "Tranche" to consistently refer to the term as written and defined in §701.3. The proposed amendments do not change any substantive requirements in Chapter 703.

#### Fiscal Note

Kristen Pauling Doyle, Deputy Executive Officer and General Counsel for the Cancer Prevention and Research Institute of Texas, has determined that for the first five-year period the rule change is in effect, there will be no foreseeable implications relating to costs or revenues for state or local government due to enforcing or administering the rules.

#### Public Benefit and Costs

Ms. Doyle has determined that for each year of the first five years the rule change is in effect the public benefit anticipated due to enforcing the rule will be defining a term used in the agency's administrative rules.

## Small Business, Micro-Business, and Rural Communities Impact Analysis

Ms. Doyle has determined that the rule change will not affect small businesses, micro businesses, or rural communities.

### Government Growth Impact Statement

The Institute, in accordance with 34 Texas Administrative Code §11.1, has determined that during the first five years that the proposed rule change will be in effect:

- (1) the proposed rule change will not create or eliminate a government program;
- (2) implementation of the proposed rule change will not affect the number of employee positions;
- (3) implementation of the proposed rule change will not require an increase or decrease in future legislative appropriations;
- (4) the proposed rule change will not affect fees paid to the agency;
- (5) the proposed rule change will not create new rule;
- (6) the proposed rule change will not expand existing rule;
- (7) the proposed rule change will not change the number of individuals subject to the rule; and
- (8) The rule change is unlikely to have an impact on the state's economy. Although the change is likely to have a neutral impact on the state's economy, the Institute lacks enough data to predict the impact with certainty.

Submit written comments on the proposed rule changes to Ms. Kristen Pauling Doyle, General Counsel, Cancer Prevention and Research Institute of Texas, P.O. Box 12097, Austin, Texas 78711, no later than April 22, 2024. The Institute asks parties filing comments to indicate whether they support the rule revision proposed by the Institute and, if the party requests a change, to provide specific text for the proposed change. Parties may submit comments electronically to [kdoyle@cpr.itx.gov](mailto:kdoyle@cpr.itx.gov) or by facsimile transmission to (512) 475-2563.

### Statutory Authority

The Institute proposes the rule change under the authority of the Texas Health and Safety Code Annotated, §102.108, which provides the Institute with broad rule-making authority to administer the chapter. Ms. Doyle has reviewed the proposed amendment and certifies the proposal to be within the Institute's authority to adopt.

There is no other statute, article, or code affected by these rules.

#### §703.10. *Awarding Grants by Contract.*

- (a) The Oversight Committee shall negotiate on behalf of the state regarding the awarding of grant funds and enter into a written contract with the Grant Recipient.
- (b) The Oversight Committee may delegate Grant Contract negotiation duties to the Chief Executive Officer and the General Counsel for the Institute. The Chief Executive Officer may enter into a written contract with the Grant Recipient on behalf of the Oversight Committee.
- (c) The Grant Contract shall include the following provisions:
  - (1) If any portion of the Grant Contract has been approved by the Oversight Committee to be used to build a capital improvement, the Grant Contract shall specify that:

- (A) The state retains a lien or other interest in the capital improvement in proportion to the percentage of the Grant Award amount used to pay for the capital improvement; and

- (B) If the capital improvement is sold, then the Grant Recipient agrees to repay to the state the Grant Award used to pay for the capital improvement, with interest, and share with the state a proportionate amount of any profit realized from the sale;

- (2) Terms relating to Intellectual Property Rights and the sharing with the Institute of revenues generated by the sale, license, or other conveyance of such Project Results consistent with the standards established by this chapter;

- (3) Terms relating to publication of materials created with Grant Award funds or related to the Cancer Research or Cancer Prevention project that is the subject of the Grant Award, including an acknowledgement of Institute funding and copyright ownership, if applicable:

- (A) Acknowledgment of Institute funding must include the grant number of every Institute-funded grant contributing to the work memorialized in the publication; and

- (B) Subparagraph (A) of this paragraph is effective beginning September 1, 2021;

- (4) Repayment terms, including interest rates, to be enforced if the Grant Recipient has not used Grant Award funds for the purposes for which the Grant Award was intended;

- (5) A statement that the Institute does not assume responsibility for the conduct of the Cancer Research or Cancer Prevention project, and that the conduct of the project and activities of all investigators are under the scope and direction of the Grant Recipient;

- (6) A statement that the Cancer Research or Cancer Prevention project is conducted with full consideration for the ethical and medical implications of the project and that the project will comply with all federal and state laws regarding the conduct of the Cancer Research or Prevention project;

- (7) Terms related to the Standards established by the Oversight Committee in Chapter 701 of this title (relating to Policies and Procedures) to ensure that Grant Recipients, to the extent reasonably possible, demonstrate good faith effort to purchase goods and services for the Grant Award project from suppliers in this state and from historically underutilized businesses as defined by Chapter 2161, Texas Government Code, and any other state law;

- (8) An agreement by the Grant Recipient to submit to regular inspection reviews of the Grant Award project by Institute staff during normal business hours and upon reasonable notice to ensure compliance with the terms of the Grant Contract and continued merit of the project;

- (9) An agreement by the Grant Recipient to submit Grant Progress Reports to the Institute on a schedule specified by the Grant Contract that includes information on a grant-by-grant basis quantifying the amount of additional research funding, if any, secured as a result of Institute funding;

- (10) An agreement that, to the extent possible, the Grant Recipient will evaluate whether any new or expanded preclinical testing, clinical trials, Product Development, or manufacturing of any real or intellectual property resulting from the award can be conducted in this state, including the establishment of facilities to meet this purpose;

- (11) An agreement that the Grant Recipient will abide by the Texas Grant Management Standards (TxGMS) published by the Comptroller of Public Accounts Statewide Procurement Division, if

applicable, unless one or more standards conflicts with a provision of the Grant Contract, Chapter 102, Texas Health and Safety Code, or the Institute's administrative rules. Such interpretation of the Institute rules and TxGMS shall be made by the Institute;

(12) An agreement that the Grant Recipient is under a continuing obligation to notify the Institute of any adverse conditions that materially impact the Scope of Work in the Grant Contract;

(13) An agreement that the design, conduct, and reporting of the Cancer Research or Prevention project will not be biased by conflicting financial interest of the Grant Recipient or any individuals associated with the Grant Award. This duty is fulfilled by certifying that an appropriate written, enforced Conflict of Interest policy governs the Grant Recipient;

(14) An agreement regarding the amount, schedule, and requirements for payment of Grant Award funds, if such advance payments are approved by the Oversight Committee in accordance with this chapter. Notwithstanding the foregoing, the Institute may require that up to ten percent of the final Tranche [~~tranehe~~] of funds approved for the Grant Award must be expended on a reimbursement basis. Such reimbursement payment shall not be made until close out documents described in this section and required by the Grant Contract have been submitted and approved by the Institute;

(15) An agreement to provide quarterly Financial Status Reports and supporting documentation for expenses submitted for reimbursement or, if appropriate, to demonstrate how advanced funds were expended;

(16) A statement certifying that, as of June 14, 2013, the Grant Recipient has not made and will not make a contribution, during the term of the Grant Contract, to the Institute or to any foundation established specifically to support the Institute;

(17) A statement specifying the agreed effective date of the Grant Contract and the period in which the Grant Award funds must be spent. If the effective date specified in the Grant Contract is different from the date the Grant Contract is signed by both parties, then the effective date shall control;

(18) A statement providing for reimbursement with Grant Award funds of expenses made prior to the effective date of the Grant Contract at the discretion of the Institute. Pre-contract reimbursement shall be made only in the event that:

(A) The expenses are allowable pursuant to the terms of the Grant Contract;

(B) The request is made in writing by the Grant Recipient and approved by the Chief Executive Officer; and

(C) The expenses to be reimbursed were incurred on or after the date the Grant Award recommendation was approved by the Oversight Committee;

(19) Requirements for closing out the Grant Contract at the termination date, including the submission of a Financial Status Report, a final Grant Progress Report, an equipment inventory, a HUB and Texas Business report, a revenue sharing form, a single audit determination report form and a list of contractual terms that extend beyond the termination date;

(20) A certification of dedicated Matching Funds equal to one-half of the amount of the Research Grant Award that includes the name of the Research Grant Award to which the matching funds are to be dedicated, as specified in Section §703.11 of this chapter (relating to Requirement to Demonstrate Available Funds for Cancer Research Grants);

(21) The project deliverables as described by the Grant Application and stated in the Scope of Work for the Grant Contract reflecting modifications, if any, approved during the Peer Review process or during Grant Contract negotiation;

(22) An agreement that the Grant Recipient shall notify the Institute and seek approval for a change in effort for any of the Senior Members or Key Personnel of the research or prevention team listed on the Grant Application, including any proposed temporary leave of absence of a Principal Investigator, Program Director, or Company Representative;

(23) An agreement that the Grant Recipient is legally responsible for the integrity of the fiscal and programmatic management of the organization; and

(24) An agreement that the Grant Recipient is responsible for the actions of its employees and other research collaborators, including third parties, involved in the project. The Grant Recipient is responsible for enforcing its standards of conduct, taking appropriate action on individual infractions, and, in the case of financial conflict of interest, informing the Institute if the infraction is related to a Grant Award.

(d) The Grant Recipient's failure to comply with the terms and conditions of the Grant Contract may result in termination of the Grant Contract, pursuant to the process prescribed in the Grant Contract, and trigger repayment of the Grant Award funds.

*§703.21. Monitoring Grant Award Performance and Expenditures.*

(a) The Institute, under the direction of the Chief Compliance Officer, shall monitor Grant Awards to ensure that Grant Recipients comply with applicable financial, administrative, and programmatic terms and conditions and exercise proper stewardship over Grant Award funds. Such terms and conditions include requirements set forth in statute, administrative rules, and the Grant Contract.

(b) Methods used by the Institute to monitor a Grant Recipient's performance and expenditures may include:

(1) Financial Status Reports Review--The Institute shall review Grant Award expenditures reported by Grant Recipients on the quarterly Financial Status Reports and supporting documents to determine whether expenses charged to the Grant Award are:

(A) Allowable, allocable, reasonable, necessary, and consistently applied regardless of the source of funds; and

(B) Adequately supported with documentation such as cost reports, receipts, third party invoices for expenses, or payroll information.

(2) Timely submission of Grant Award Reports--The Institute shall monitor the submission of all required reports and implement a process to ensure that Grant Award funds are not disbursed to a Grant Recipient with one or more delinquent reports.

(3) Grant Progress Reports--The Institute shall review Grant Progress Reports to determine whether sufficient progress is made consistent with the Scope of Work set forth in the Grant Contract.

(A) The Grant Progress Reports shall be submitted at least annually, but may be required more frequently pursuant to Grant Contract terms or upon request and reasonable notice of the Institute.

(B) Unless specifically stated otherwise herein, the annual Grant Progress Report shall be submitted within sixty (60) days after the anniversary of the effective date of the Grant Contract. The annual Grant Progress Report shall include at least the following information:

(i) An affirmative verification by the Grant Recipient of compliance with the terms and conditions of the Grant Contract;

(ii) A description of the Grant Recipient's progress made toward completing the Scope of Work specified by the Grant Contract, including information, data, and program metrics regarding the achievement of the Scope of Work;

(iii) The number of new jobs created and the number of jobs maintained for the preceding twelve month period as a result of Grant Award funds awarded to the Grant Recipient for the project;

(iv) An inventory of the equipment purchased for the project in the preceding twelve month period using Grant Award funds;

(v) A verification of the Grant Recipient's efforts to purchase from suppliers in this state more than 50 percent goods and services purchased for the project with grant funds;

(vi) A Historically Underutilized Businesses report;

(vii) Scholarly articles, presentations, and educational materials produced for the public addressing the project funded by the Institute;

(viii) The number of patents applied for or issued addressing discoveries resulting from the research project funded by the Institute;

(ix) A statement of the identities of the funding sources, including amounts and dates for all funding sources supporting the project;

(x) A verification of the amounts of Matching Funds dedicated to the research that is the subject of the Grant Award for the period covered by the annual report, which shall be submitted pursuant to the timeline in §703.11 of this title (relating to Requirement to Demonstrate Available Funds for Cancer Research Grants). In order to receive disbursement of grant funds, the most recently due verification of the amount of Matching Funds must be approved by CPRIT;

(xi) All financial information necessary to support the calculation of the Institute's share of revenues, if any, received by the Grant Recipient resulting from the project; and

(xii) A single audit determination form, which shall be submitted pursuant to the timeline in §703.13 of this title (relating to Audits and Investigations).

(C) Notwithstanding subparagraph (B) of this paragraph, in the event that the Grant Recipient and Institute execute the Grant Contract after the effective date of the Grant Contract, the Chief Program Officer may approve additional time for the Grant Recipient to prepare and submit the outstanding reports. The approval shall be in writing and maintained in the Institute's electronic Grants Management System. The Chief Program Officer's approval may cover more than one report and more than one fiscal quarter.

(D) In addition to annual Grant Progress Reports, a final Grant Progress Report shall be filed no more than ninety (90) days after the termination date of the Grant Contract. The final Grant Progress Report shall include a comprehensive description of the Grant Recipient's progress made toward completing the Scope of Work specified by the Grant Contract, as well as other information specified by the Institute.

(E) The Grant Progress Report will be evaluated pursuant to criteria established by the Institute. The evaluation shall be conducted under the direction of the Chief Prevention Officer, the Chief Product Development Officer, or the Chief Scientific Officer, as may be appropriate. Required financial reports associated with the Grant

Progress Report will be reviewed by the Institute's financial staff. In order to receive disbursement of grant funds, the final progress report must be approved by CPRIT.

(F) If the Grant Progress Report evaluation indicates that the Grant Recipient has not demonstrated progress in accordance with the Grant Contract, then the Chief Program Officer shall notify the Chief Executive Officer and the General Counsel for further action.

(i) The Chief Program Officer shall submit written recommendations to the Chief Executive Officer and General Counsel for actions to be taken, if any, to address the issue.

(ii) The recommended action may include termination of the Grant Award pursuant to the process described in §703.14 of this chapter (relating to Termination, Extension, and Close Out of Grant Contracts, and De-Obligation of Grant Award Funds).

(G) If the Grant Recipient fails to submit required financial reports associated with the Grant Progress Report, then the Institute financial staff shall notify the Chief Executive Officer and the General Counsel for further action.

(H) In order to receive disbursement of grant funds, the most recently due progress report must be approved by CPRIT.

(I) If a Grant Recipient fails to submit the Grant Progress Report within 60 days of the anniversary of the effective date of the Grant Contract, then the Institute shall not disburse any Grant Award funds as reimbursement or advancement of Grant Award funds until such time that the delinquent Grant Progress Report is approved.

(J) In addition to annual Grant Progress Reports, Product Development Grant Recipients shall submit a Grant Progress Report at the completion of specific Tranches [~~tranches~~] of funding specified in the Award Contract. For the purpose of this subsection, a Grant Progress Report submitted at the completion of a Tranche [~~tranche~~] of funding shall be known as "Tranche Grant Progress Report."

(i) The Institute may specify other required reports, if any, that are required to be submitted at the time of the Tranche Grant Progress Report.

(ii) Grant Funds for the next Tranche [~~tranche~~] of funding specified in the Grant Contract shall not be disbursed until the Tranche Grant Progress Report has been reviewed and approved pursuant to the process described in this section.

(K) A Grant Award in the prevention program with a Grant Contract effective date within the last quarter of a state fiscal year (June 1-August 31) will have an initial reporting period beginning September 1 of the following state fiscal year.

(4) Desk Reviews--The Institute may conduct a desk review for a Grant Award to review and compare individual source documentation and materials to summary data provided during the Financial Status Report review for compliance with financial requirements set forth in the statute, administrative rules, and the Grant Contract.

(5) Site Visits and Inspection Reviews--The Institute may conduct a scheduled site visit to a Grant Recipient's place of business to review Grant Contract compliance and Grant Award performance issues. Such site visits may be comprehensive or limited in scope.

(6) Audit Reports--The Institute shall review audit reports submitted pursuant to §703.13 of this chapter (relating to Audits and Investigations).

(A) If the audit report findings indicate action to be taken related to the Grant Award funds expended by the Grant Recipient or for the Grant Recipient's fiscal processes that may impact

Grant Award expenditures, the Institute and the Grant Recipient shall develop a written plan and timeline to address identified deficiencies, including any necessary Grant Contract amendments.

(B) The written plan shall be retained by the Institute as part of the Grant Contract record.

(c) All required Grant Recipient reports and submissions described in this section shall be made via an electronic grant portal designated by the Institute, unless specifically directed to the contrary in writing by the Institute.

(d) The Institute shall document the actions taken to monitor Grant Award performance and expenditures, including the review, approvals, and necessary remedial steps, if any.

(1) To the extent that the methods described in subsection (b) of this section are applied to a sample of the Grant Recipients or Grant Awards, then the Institute shall document the Grant Contracts reviewed and the selection criteria for the sample reviewed.

(2) Records will be maintained in the electronic Grant Management System as described in §703.4 of this chapter (relating to Grants Management System).

(e) The Chief Compliance Officer shall be engaged in the Institute's Grant Award monitoring activities and shall notify the General Counsel and Oversight Committee if a Grant Recipient fails to meaningfully comply with the Grant Contract reporting requirements and deadlines, including Matching Funds requirements.

(f) The Chief Executive Officer shall report to the Oversight Committee at least annually on the progress and continued merit of each Grant Program funded by the Institute. The written report shall also be included in the Annual Public Report. The report should be presented to the Oversight Committee at the first meeting following the publication of the Annual Public Report.

(g) The Institute may rely upon third parties to conduct Grant Award monitoring services independently or in conjunction with Institute staff.

(h) If a deadline set by this rule falls on a Saturday, Sunday, or federal holiday as designated by the U.S. Office of Personnel Management, the required filing may be submitted on the next business day. The Institute will not consider a required filing delinquent if the Grant Recipient complies with this subsection.

#### §703.23. Disbursement of Grant Award Funds.

(a) The Institute disburses Grant Award funds by reimbursing the Grant Recipient for allowable costs already expended; however, the nature and circumstances of the Grant Mechanism or a particular Grant Award may justify advance payment of funds by the Institute pursuant to the Grant Contract.

(1) The Chief Executive Officer shall seek authorization from the Oversight Committee to disburse Grant Award funds by advance payment.

(A) A simple majority of Oversight Committee Members present and voting must approve the Chief Executive Officer's advance payment recommendation for the Grant Award.

(B) Unless specifically stated at the time of the Oversight Committee's vote, the Oversight Committee's approval to disburse Grant Award funds by advance payment is effective for the term of the Grant Award.

(2) Unless otherwise specified in the Grant Contract, the amount of Grant Award funds advanced in any particular Tranche

[tranche] may not exceed the budget amount for the corresponding Project Year.

(3) The Grant Recipient receiving advance payment of Grant Award funds must maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the Grant Award funds and disbursement by the Grant Recipient.

(4) The Grant Recipient must comply with all financial reporting requirements regarding use of Grant Award funds, including timely submission of quarterly Financial Status Reports.

(5) The Grant Recipient must expend at least 90% of the Grant Award funds in a Tranche [tranche] before Institute will advance additional grant funds or reimburse additional costs. To the extent possible, the Institute will work with the Grant Recipient to coordinate the advancement of Grant Award fund Tranches [tranches] in such a way as to avoid affecting work in progress or project planning.

(6) Nothing herein creates an entitlement to advance payment of Grant Award funds; the Institute may determine in its sole discretion that circumstances justify limiting the amount of Grant Award funds eligible for advance payment, may restrict the period for the advance payment of Grant Award funds, or may revert to payment on a reimbursement-basis. Unless specifically stated in the Grant Contract, the Institute will disburse the last ten percent (10%) of the total Grant Award funds using the reimbursement method of funding, and will withhold payment until the Grant Recipient has closed its Grant Contract and the Institute has approved the Grant Recipient's final reports pursuant to §703.14 of this chapter relating to Termination, Extension, Close Out of Grant Contracts, and De-Obligation of Grant Award funds.

(A) A Grant Recipient receiving advance payment may request in writing that the Institute withhold less than ten percent (10%) of the total Grant Award funds. The Grant Recipient must submit the request and reasonable justification to the Institute no sooner than the start of the final year and no later than the start of the final financial status reporting period of the grant project.

(B) The Chief Executive Officer may approve or deny the request. If approved, the Chief Executive Officer will provide written notification to the Oversight Committee. The Chief Executive Officer's decision to approve or deny a request is final.

(b) The Institute will disburse Grant Award funds for actual cash expenditures reported on the Grant Recipient's quarterly Financial Status Report.

(1) Only expenses that are allowable and supported by adequate documentation are eligible to be paid with Grant Award funds.

(2) A Grant Recipient must pay their vendors and subcontractors prior to requesting reimbursement from CPRIT.

(c) The Institute may withhold disbursing Grant Award funds if the Grant Recipient has not submitted required reports, including quarterly Financial Status Reports, Grant Progress Reports, Matching Fund Reports, audits and other financial reports. Unless otherwise specified for the particular Grant Award, Institute approval of the required report(s) is necessary for disbursement of Grant Award funds.

(d) All Grant Award funds are disbursed pursuant to a fully executed Grant Contract. Grant Award funds shall not be disbursed prior to the effective date of the Grant Contract.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 8, 2024.

TRD-202401066

Heidi McConnell

Chief Operating Officer

Cancer Prevention and Research Institute of Texas

Earliest possible date of adoption: April 21, 2024

For further information, please call: (512) 463-3190



## TITLE 28. INSURANCE

### PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

#### CHAPTER 180. MONITORING AND ENFORCEMENT

##### SUBCHAPTER A. GENERAL RULES FOR ENFORCEMENT

###### 28 TAC §180.2

**INTRODUCTION.** The Texas Department of Insurance, Division of Workers' Compensation (DWC) proposes to amend 28 TAC §180.2, concerning filing a complaint. Section 180.2 implements Texas Labor Code §402.023.

**EXPLANATION.** The proposed amendments prevent health care providers or their agents from trying to use DWC's complaint process to collect fees instead of submitting their medical fee disputes properly through the medical fee dispute resolution (MFDR) process established by Labor Code §413.031. Under the MFDR process, health care providers have one year after the date of service to bring a fee dispute, unless an exception applies. However, some health care providers and their agents have tried to use DWC's complaint process to collect disputed fees when they fail to file a fee dispute before the MFDR deadline. To address this problem, the proposed amendments clarify that a health care provider cannot submit a complaint about a medical billing issue if the date of service for the medical billing issue was more than 12 months before the date of the complaint, unless an MFDR deadline exception applies. The restriction does not apply to a health care provider submitting a complaint under Insurance Code Chapter 1305.

The proposed amendments also include nonsubstantive editorial and formatting changes that make updates for plain language and agency style to improve the rule's clarity.

Amending §180.2 is necessary to ensure that no health care provider or agent can use the complaint process to circumvent the MFDR filing deadline in 28 TAC §133.307(c), concerning medical fee dispute resolution. Labor Code §402.023 requires the commissioner to adopt rules about filing complaints, including how to file a complaint and what constitutes a frivolous complaint. Labor Code §413.031 requires the commissioner to adjudicate disputes over the amount of payment due for services determined to be medically necessary and appropriate for treatment of a compensable injury. DWC's MFDR rules, including §133.307, contain requirements for adjudicating those disputes. Amending §180.2 as proposed will prevent health care providers and their agents from using DWC's complaint process to avoid

the MFDR rules that the commissioner adopted to comply with Labor Code §§402.023 and 413.031.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Deputy Commissioner for Compliance and Investigations Dan LaBruyere has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the sections, other than that imposed by the statute. This determination was made because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Deputy Commissioner LaBruyere does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

**PUBLIC BENEFIT AND COST NOTE.** For each year of the first five years the proposed amendments are in effect, Deputy Commissioner LaBruyere expects that enforcing and administering the proposed amendments will have the public benefits of ensuring a level playing field, in which all health care providers and their agents follow the same rules for disputing medical fees. This will reduce respondents' and DWC staff's time spent on meritless complaints. The proposed amendments will also have the public benefits of ensuring that DWC's rules conform to Labor Code §§402.023 and 413.031, and 28 TAC §133.307, and that they are current and accurate, which promotes transparent and efficient regulation.

Deputy Commissioner LaBruyere expects that the proposed amendments will not increase the cost to comply with Labor Code §§402.023 and 413.031, or with 28 TAC §133.307, because they do not impose requirements beyond those in the statutes and rule. Labor Code §402.023 requires the commissioner to adopt rules about filing complaints, including how to file a complaint and what constitutes a frivolous complaint. Labor Code §413.031 requires the commissioner to adjudicate disputes over the amount of payment due for services determined to be medically necessary and appropriate for treatment of a compensable injury. DWC's MFDR rules, including §133.307, implement those sections by providing requirements for adjudicating those disputes. Attempts to circumvent the MFDR rules by filing a complaint after having missed the MFDR deadline are counter to the statutes and rules. As a result, any cost associated with the proposed amendments is necessary to comply with the statutes and does not result from the enforcement or administration of the proposed amendments.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** DWC has determined that the proposed amendments will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities because the proposed amendments ensure consistent application of the MFDR statutes and rules, and make editorial changes and updates for plain language and agency style. The proposed amendments do not change the people the rule affects or impose additional costs. As a result, and in accordance with Government Code §2006.002(c), DWC is not required to prepare a regulatory flexibility analysis.

**EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045.** DWC has determined that this proposal does not impose a possible cost on regulated persons. As a result, no



additional rule amendments are required under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT. DWC has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will not expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

DWC made these determinations because the proposed amendments ensure consistent application of the MFDR statutes and rules, and make editorial changes and updates for plain language and agency style only. They do not change the people the rule affects or impose additional costs.

TAKINGS IMPACT ASSESSMENT. DWC has determined that no private real property interests are affected by this proposal, and this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. DWC will consider any written comments on the proposal that DWC receives no later than 5:00 p.m., Central time, on April 22, 2024. Send your comments to [RuleComments@tdi.texas.gov](mailto:RuleComments@tdi.texas.gov); or to Texas Department of Insurance, Division of Workers' Compensation, Legal Services, MC-LS, P.O. Box 12050, Austin, Texas 78711-2050.

DWC will also consider written and oral comments on the proposal at a public hearing at 11:00 a.m., Central time, on April 16, 2024. The hearing will take place remotely. DWC will publish details of how to view and participate in the hearing on the agency website at [www.tdi.texas.gov/alert/event/index.html](http://www.tdi.texas.gov/alert/event/index.html).

STATUTORY AUTHORITY. DWC proposes §180.2 under Labor Code §§402.023, 408.027, 413.031, 415.003, 402.00111, 402.00116, and 402.061.

Labor Code §402.023 requires the commissioner to adopt rules about the filing of a complaint under Title 5, Subtitle A of the Labor Code. The rules must, at a minimum, ensure that DWC clearly defines the method for filing a complaint and define what constitutes a frivolous complaint under Subtitle A.

Labor Code §408.027 addresses payment of health care providers in accordance with the fee guidelines or contracted network rates, and requires the commissioner to adopt rules necessary to implement the provisions of §§408.027 and 408.0271.

Labor Code §413.031 addresses medical dispute resolution. It entitles a party, including a health care provider, to a review of a

medical service provided or for which authorization of payment is sought if a health care provider is denied payment or paid a reduced amount for the medical service rendered; denied authorization for the payment for the service requested or performed if authorization is required or allowed by Subtitle A or commissioner rules; ordered by the commissioner to refund a payment received; or ordered to make a payment that was refused or reduced for a medical service rendered. It also entitles a health care provider who submits a charge in excess of the fee guidelines or treatment policies to a review of the medical service to determine if reasonable medical justification exists for the deviation. It requires the commissioner to adopt rules to notify claimants of their rights for that process, and states that DWC's role is to adjudicate the payment given the relevant statutory provisions and commissioner rules. It also requires the commissioner to specify by rule the appropriate dispute resolution process for disputes in which a claimant has paid for medical services and seeks reimbursement. It allows the commissioner to prescribe by rule an alternative dispute resolution process to resolve disputes about medical services costing less than the cost of a review of the medical necessity of a health care service by an independent review organization.

Labor Code §415.003 states that a health care provider commits an administrative violation if the person: (1) submits a charge for health care that was not furnished; (2) administers improper, unreasonable, or medically unnecessary treatment or services; (3) makes an unnecessary referral; (4) violates DWC's fee and treatment guidelines; (5) violates a commissioner rule; or (6) fails to comply with a provision of Subtitle A.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

CROSS-REFERENCE TO STATUTE. Section 180.2 implements Labor Code §402.023, recodified by House Bill (HB) 752, 73rd Legislature, Regular Session (1993), and last amended by HB 2605, 82nd Legislature, Regular Session (2011).

*§180.2. Filing a Complaint.*

(a) Any person may submit a complaint to the division for alleged administrative violations, except as provided in subsection (b) of this section.

(b) A health care provider cannot submit a complaint about a medical billing issue if the date of service for the medical billing issue was more than 12 months before the date of the complaint, unless the issue qualifies for an exception to the filing deadline under §133.307(c)(1)(B) of this title, concerning medical fee dispute resolution. If the issue qualifies for an exception to the medical fee dispute resolution filing deadline under §133.307(c)(1)(B), then a health care provider cannot submit a complaint about that issue if the medical fee dispute resolution filing deadline in §133.307(c)(1)(B) has passed. This subsection does not apply to a health care provider submitting a complaint under Insurance Code Chapter 1305.

(c) [(b)] A person may submit a complaint to the division:

- (1) through the division's website;

- (2) by email [through electronic correspondence];
- (3) through written correspondence;
- (4) by fax [through facsimile correspondence]; or
- (5) in person. The division will help a person submitting an in-person complaint reduce [and] the complaint [will be reduced] to writing.

(d) [(e)] A complaint submitted on the form provided by the division or in any other written format must [shall] contain the following information as applicable:

- (1) complainant's name and contact information;
- (2) name and contact information of the subject or parties of the complaint, if known;
- (3) name and contact information of witnesses, if known;
- (4) claim file information, including, but [;] not limited to, the name, address, and date of injury of the injured employee, if known;
- (5) the statement of the facts about [constituting] the alleged violation, including the dates or time period the alleged violation occurred;
- (6) the nature of the alleged violation, including [;] the specific sections of the Act and division rules alleged to have been violated, if known;
- (7) supporting documentation relevant to the allegation that may include, but [;] is not limited to, medical bills, Explanation of Benefits statements [Statements], copies [copy] of payment invoices or checks, and medical reports, as applicable;
- (8) supporting documentation for alleged fraud that may include photographs, video, audio, and surveillance recordings, and reports; and
- (9) other sources of pertinent information, if known.

(e) [(d)] Contact information may include, but [;] is not limited to, name, address, telephone number, fax [facsimile] number, email address, business name, business address, business telephone number, and websites.

(f) [(e)] A complaint must [shall] contain sufficient information for the division to investigate the complaint.

(g) [(f)] On [Upon] receipt of a complaint, the division will review, monitor, and may investigate the allegation against a person or entity who may have violated the Act or division rules.

(h) [(g)] The division will assign priorities to complaints being investigated based on a risk-based complaint investigation system that considers:

- (1) the severity of the alleged violation;
  - (2) whether the [continued] noncompliance or [of the] alleged violation is ongoing;
  - (3) whether a commissioner order has been violated; or
  - (4) other risk-based criteria the division determines necessary.
- (i) [(h)] A person commits an administrative violation if the person submits a complaint to the division that is:
- (1) frivolous, as defined in §180.1 of this title (relating to Definitions);
  - (2) groundless or made in bad faith; or

- (3) done specifically for competitive or economic advantage.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 8, 2024.

TRD-202401087

Kara Mace

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Earliest possible date of adoption: April 21, 2024

For further information, please call: (512) 804-4703

◆ ◆ ◆

## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### PART 1. GENERAL LAND OFFICE

#### CHAPTER 9. EXPLORATION AND LEASING OF STATE OIL AND GAS

#### SUBCHAPTER E. POOLING AND UNITIZING STATE PROPERTY

##### 31 TAC §9.81

##### BACKGROUND AND ANALYSIS OF PROPOSED AMENDMENT

The General Land Office ("GLO") proposes an amendment to 31 TAC §9.81 (relating to Pooling and Unitizing of State Property) paragraphs 9.81(a), 9.81(b), 9.81(c), and 9.81(d). The proposed amendments to 31 TAC §9.81 update and clarify the timelines associated with School Land Board ("SLB") meetings, pooling committee meetings and makeup, and the GLO process to review and approve pooling and production sharing agreement applications.

##### FISCAL AND EMPLOYMENT IMPACTS

Brian Carter, Senior Deputy Director of Asset Enhancement of the GLO, has determined that (i) during the first five-year period the proposed rules are in effect, there will be no cost or fiscal implications for local governments or the local economy expected as a result of enforcing or administering the rules, and (ii) there is no expected impact on employment.

##### PUBLIC BENEFIT

Brian Carter, Senior Deputy Director of Asset Enhancement of the GLO, has determined that during the first five-year period the proposed amended rules are in effect, the public benefits expected from the proposed rules include a more accurate understanding of: (i) the timelines associated with SLB meetings; (ii) timelines and makeup of the pooling committee; and (iii) the time necessary for the GLO, pooling committee and SLB to review and process applications for pooling and production sharing agreements. Mr. Carter has further determined that, during the same period, there are no additional persons required to comply with these rules, and that there are no net increased costs to regulated persons as a result of the rules.

##### RURAL COMMUNITY IMPACT

Brian Carter does not anticipate any rural community impact as a result of administering the proposed rule amendments.

#### SMALL BUSINESS ANALYSIS

There may be some economic cost to small businesses, micro-businesses, and individuals based on the proposed amendments. The total costs for an individual, small business, or micro-business associated with compliance will vary depending on the different situations and choices made by each individual, small business, or micro-business. Further, the GLO does not have information on these businesses' gross receipts, sales revenues, or labor costs. Therefore, the GLO is not able to determine the exact cost of compliance.

#### GOVERNMENT GROWTH IMPACT STATEMENT

The GLO prepared a Government Growth Impact Statement for the proposed rulemaking. During the first five years the amended rules would be in effect, the rules would not: (i) create or eliminate a government program; (ii) create or eliminate any employee positions; (iii) require an increase or decrease in future legislative appropriations to the agency; (iv) require an increase or decrease in fees paid to the agency; (v) create a new regulation; (vi) expand, limit, or repeal an existing regulation; (vii) increase or decrease the number of individuals subject to the rule's applicability; or (viii) affect the state's economy.

#### PUBLIC COMMENT REQUEST

Comments may be submitted to Walter Talley, Office of General Counsel, Texas General Land Office, 1700 N. Congress Avenue, Austin, Texas 78701 or by email at [walter.talley@glo.texas.gov](mailto:walter.talley@glo.texas.gov), by no later than 30 days after publication.

#### STATUTORY AUTHORITY

The amendment to 31 TAC §9.81 is proposed pursuant to the authority set out in Texas Natural Resources Code Sections 31.05 (3), 32.062(a), 32.205, and 33.064, which state that the Commissioner of the GLO shall make and enforce suitable rules consistent with the law.

#### CROSS-REFERENCE TO STATUTE

Texas Natural Resources Code Sections 31.051, 32.062, and 32.205 are affected by the proposed amendments.

#### §9.81. Pooling and Unitizing of State Property.

(a) Approval. An agreement to pool or unitize any state leases or royalty interests or to amend an existing unit must be approved by the SLB or appropriate board or agency and executed by the commissioner to be effective. ~~When necessary, the [The] SLB meets [has regular meetings] on the first and/or [and] third Tuesday of each month.~~

(b) Procedure.

(1) Submit a completed pooling or production sharing application and the processing fee prescribed by §3.31 of this title, (relating to fees) to the GLO. Application forms may be obtained from the GLO upon request. The application must be submitted at least 30 business [14] days prior to the SLB meeting at which the application will be considered. If not timely submitted, the application will be considered at the next available meeting. Any proprietary information submitted with the application shall be kept confidential as required by law, and upon request of applicant, will be returned after examination by GLO staff. The application should include the following information if available:

(A) a legal description of the area to be pooled (or to be subject to production sharing) and a list of the affected leases; [~~leases to be pooled;~~]

(B) geological and geophysical data; e.g., structural maps, isopach maps, cross-sections, productive limits, engineering studies and analysis;

(C) electrical and/or geophysical logs;

(D) information on wells drilled in the general area of the proposed unit, and current production rates of offset wells;

(E) names of all the working interest owners in the leases (or units) to be pooled (or from which production will be shared) and the names and respective capacities (e.g., president, vice-president, attorney-in-fact, etc.) of the persons authorized to execute the pooling or production sharing agreement;

(F) for Relinquishment Act Leases, [~~Leases;~~] a list of the owners of the soil who have not authorized pooling in the lease and will be executing the pooling agreement; and

(G) any other data which may be requested.

(2) Pooling and production sharing applications will be reviewed by GLO staff and the pooling committee. The pooling committee consists of a representative from the GLO and the governor's office. The pooling committee meets to review pooling applications before the week of an SLB meeting. An appearance before the pooling committee is generally not required, however, an applicant may be present while the application is considered. The pooling committee will present the terms of the application to the SLB and make a recommendation.

~~{(2) The pooling application will be reviewed by GLO staff and the pooling committee. The pooling committee consists of a representative from the GLO, the governor's office and the office of the attorney general. The pooling committee usually meets to review pooling applications on the Wednesday before the week of a SLB meeting. An appearance before the pooling committee is generally not required, however, an applicant may be present while the application is considered. The pooling committee will present the terms of the application to the SLB and make a recommendation.}~~

(c) Agreement provisions. After pooling approval by the SLB, the state's [states'] form of pooling agreement, or ratification will be prepared by the GLO and sent to the applicant for signature. The agreement may provide:

(1) the effective date of the agreement;

(2) the term of the agreement, whether it be for a specified term (a temporary pooled unit) or for so long as the pooled mineral is produced from the pooled unit or the leases in the unit are otherwise maintained in force (a standard [~~permanent~~] pooled unit). A new pooling application should be submitted prior to the expiration of a temporary pooled unit to extend its term or to obtain a standard [~~permanent~~] pooled unit;

(3) the manner in which unit production is to be allocated to each tract within the unit (e.g., surface acres, productive acreage or volumetric calculation, etc.); and

(4) any other provisions which the SLB considered necessary to protect the state's interests.

(d) Requirement of timely execution.

(1) If the pooling agreement or ratification is not signed and returned to the GLO within 90 days of approval by the SLB, or within 30 days after the approved pooling agreement or ratification has been sent to the applicant by the GLO, whichever date is later, the agreement

or ratification shall be of no force and effect, unless a written request is made and accepted by the GLO to extend the 90 or 30 day period, as applicable. [period.]

(2) An applicant may resubmit a pooling or production sharing application to the GLO.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 6, 2024.

TRD-202400995

Mark Havens

Chief Clerk

General Land Office

Earliest possible date of adoption: April 21, 2024

For further information, please call: (512) 475-1859



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT

#### CHAPTER 211. ADMINISTRATION

##### 37 TAC §211.1, §211.16

The Texas Commission on Law Enforcement (Commission) proposes amended 37 Texas Administrative Code §211.1, Definitions, and §211.16, Establishment or Continued Operation of an Appointing Entity. These proposed amended rules conform with the amendments to Texas Occupations Code §1701.163 made by Senate Bill 1445 (88R). The proposed amended rules outline the minimum standards for the creation or continued operation of a law enforcement agency.

These proposed amended rules were developed with input from an advisory committee as required by Texas Occupations Code §1701.163. The Minimum Standards for Law Enforcement Agencies Advisory Committee was charged under Texas Occupations Code §1701.163 with developing rules to establish minimum standards with respect to the creation or continued operation of a law enforcement agency based on the function, size, and jurisdiction of the agency.

Mr. John P. Beauchamp, General Counsel, has determined that for each year of the first five years these proposed amended rules will be in effect, there will be no foreseeable fiscal implications to state or local governments as a result of enforcing or administering the proposed amendments.

Mr. Beauchamp has determined that for each year of the first five years these proposed amended rules will be in effect, there will be a positive benefit to the public by conforming with Texas Occupations Code §1701.163 to establish minimum standards with respect to the creation or continued operation of a law enforcement agency. There may be economic costs to persons required to comply with the proposed amendments by requiring that each law enforcement agency possess at least one motor vehicle owned and insured by the agency. This part of the rule is necessary to protect the health, safety, and welfare of the residents of this state by facilitating an officer's ability to fulfill law enforcement duties and functions.

Mr. Beauchamp has determined that for each year of the first five years these proposed amended rules will be in effect, there will be no adverse economic effects to small businesses, microbusinesses, or rural communities as a result of implementing the proposed amendments.

Mr. Beauchamp has determined that for each year of the first five years these proposed amended rules will be in effect, there will be no effects to a local economy as a result of implementing the proposed amendments.

Mr. Beauchamp has determined the following:

- (1) the proposed rules do not create or eliminate a government program;
- (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions;
- (3) implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency;
- (4) the proposed rules do not require an increase or decrease in fees paid to the agency;
- (5) the proposed rules do not create a new regulation;
- (6) the proposed rules may expand an existing regulation, but do not limit or repeal an existing regulation, by requiring that each law enforcement agency possess at least one motor vehicle owned and insured by the agency;
- (7) the proposed rules do not increase or decrease the number of individuals subject to the rule's applicability; and
- (8) the proposed rules do not positively or adversely affect this state's economy.

The Commission will accept comments regarding the proposed amended rules. The comment period will last 30 days following the publication of this proposal in the *Texas Register*. Comments may be submitted electronically to public.comment@tcole.texas.gov or in writing to Mr. John P. Beauchamp, General Counsel, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amended rules are proposed pursuant to Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, and §1701.163, Minimum Standards for Law Enforcement Agencies. Texas Occupations Code §1701.151 authorizes the Commission to adopt rules for the administration of Occupations Code Chapter 1701. Texas Occupations Code §1701.163 requires the Commission to adopt rules to establish minimum standards with respect to the creation or continued operation of a law enforcement agency.

The amended rules as proposed affect or implement Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, and §1701.163, Minimum Standards for Law Enforcement Agencies. No other code, article, or statute is affected by this proposal.

##### §211.1. Definitions.

(a) The following words and terms, when used in this part, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) Academic alternative program--A program for college credit offered by a training provider recognized by the Southern Association of Colleges and Schools or its successors and the Texas Higher

Education Coordinating Board, authorized by the commission to conduct preparatory law enforcement training as part of a degree plan program, and consisting of commission-approved curricula.

(2) Academic provider--A school, accredited by the Southern Association of Colleges and Schools or its successors and the Texas Higher Education Coordinating Board, which has been approved by the commission to provide basic licensing courses.

(3) Accredited college or university--An institution of higher education that is accredited or authorized by the Southern Association of Colleges and Schools, the Middle States Association of Colleges and Schools, the New England Association of Schools and Colleges, the North Central Association of Colleges and Schools, the Northwest Commission on Colleges and Universities, the Western Association of Schools and Colleges or its successors, or an international college or university evaluated and accepted by a United States accredited college or university.

(4) Active--A license issued by the commission that meets the current requirements of licensure and training as determined by the commission.

(5) Administrative Law Judge (ALJ)--An administrative law judge appointed by the chief administrative law judge of the State Office of Administrative Hearings.

(6) Agency--A law enforcement unit or other entity, whether public or private, authorized by Texas law to appoint a person licensed or certified by the commission.

(7) Appointed--Elected or commissioned by an agency as a peace officer, reserve or otherwise selected or assigned to a position governed by the Texas Occupations Code, Chapter 1701, without regard to pay or employment status.

(8) Background investigation--An investigation completed by the enrolling or appointing entity into an applicant's personal history as set forth in §217.1(b)(10).

(9) Basic licensing course--Any current commission developed course that is required before an individual may be licensed by the commission.

(10) Certified copy--A true and correct copy of a document or record certified by the custodian of records of the submitting entity.

(11) Chief administrator--The head or designee of a law enforcement agency.

(12) Commission--The Texas Commission on Law Enforcement.

(13) Commissioned--Has been given the legal power to act as a peace officer or reserve, whether elected, employed, or appointed.

(14) Commissioners--The nine commission members appointed by the governor.

(15) Contract jail--A correctional facility, operated by a county, municipality or private vendor, operating under a contract with a county or municipality, to house inmates convicted of offenses committed against the laws of another state of the United States, as provided by Texas Government Code, §511.0092.

(16) Contract Jailer--A person licensed as a Jailer in a Contract Jail or employed by an agency outside of a County Jail whose employing agency provides services inside of a County Jail which would require the person to have a Jailer License.

(17) Contractual training provider--A law enforcement agency or academy, a law enforcement association, alternative deliv-

ery trainer, distance education, academic alternative, or proprietary training provider that conducts specific education and training under a contract with the commission.

(18) Convicted--Has been adjudged guilty of or has had a judgment of guilt entered in a criminal case that has not been set aside on appeal, regardless of whether:

(A) the sentence is subsequently probated and the person is discharged from probation;

(B) the charging instrument is dismissed and the person is released from all penalties and disabilities resulting from the offense; or

(C) the person is pardoned, unless the pardon is expressly granted for subsequent proof of innocence.

(19) Community supervision--Any court-ordered community supervision or probation resulting from a deferred adjudication or conviction by a court of competent jurisdiction. However, this does not include supervision resulting from a pretrial diversion.

(20) Diploma mill--An entity that offers for a fee with little or no coursework, degrees, diplomas, or certificates that may be used to represent to the general public that the individual has successfully completed a program of secondary education or training.

(21) Distance education--Study, at a distance, with an educational provider that conducts organized, formal learning opportunities for students. The instruction is offered wholly or primarily by distance study, through virtually any media. It may include the use of: videotapes, DVD, audio recordings, telephone and email communications, and Web-based delivery systems.

(22) Duty ammunition--Ammunition required or permitted by the agency to be carried on duty.

(23) Executive director--The executive director of the commission or any individual authorized to act on behalf of the executive director.

(24) Experience--Includes each month, or part thereof, served as a peace officer, reserve, jailer, telecommunicator, or federal officer. Credit may, at the discretion of the executive director, be awarded for relevant experience from an out-of-state agency.

(25) Family Violence--In this chapter, has the meaning assigned by Chapter 71, Texas Family Code.

(26) Field training program--A program intended to facilitate a transition from the academic setting to the performance of the general duties of the appointing agency.

(27) Firearms--Any handgun, shotgun, precision rifle, patrol rifle, or fully automatic weapon that is carried by the individual officer in an official capacity. Conducted energy devices (CEDs) are not firearms.

(28) Firearms proficiency--Successful completion of the annual firearms proficiency requirements.

(29) Fit for duty review--A formal specialized examination of an individual, appointed to a position governed by the Texas Occupations Code, Chapter 1701, without regard to pay or employment status, to determine if the appointee is able to safely and/or effectively perform essential job functions. The basis for these examinations should be based on objective evidence and a reasonable basis that the cause may be attributable to a medical and/or psychological condition or impairment. Objective evidence may include direct observation, credible third party reports; or other reliable evidence. The review should come after other options have been deemed inappropriate in light of the facts

of the case. The selected Texas licensed medical doctor or psychologist, who is familiar with the duties of the appointee, conducting an examination should be consulted to ensure that a review is indicated. This review may include psychological and/or medical fitness examinations.

(30) High School Diploma--An earned high school diploma from a United States high school, an accredited secondary school equivalent to that of United States high school, or a passing score on the general education development test indicating a high school graduation level. Documentation from diploma mills is not acceptable.

(31) Home School Diploma--An earned diploma from a student who predominately receives instruction in a general elementary or secondary education program that is provided by the parent, or a person in parental authority, in or through the child's home. (Texas Education Code §29.916)

(32) Honorably Retired Peace Officer--An unappointed person with a Texas Peace Officer license who has a cumulative total of 15 years of full-time service as a Peace Officer. An Honorably Retired Peace Officer does not carry any Peace Officer authority.

(33) Individual--A human being who has been born and is or was alive.

(34) Jailer--A person employed or appointed as a jailer under the provisions of the Local Government Code, §85.005, or Texas Government Code §511.0092.

(35) Killed in the line of duty--A death that is the directly attributed result of a personal injury sustained in the line of duty.

(36) Law--Including, but not limited to, the constitution or a statute of this state, or the United States; a written opinion of a court of record; a municipal ordinance; an order of a county commissioners' court; or a rule authorized by and lawfully adopted under a statute.

(37) Law enforcement academy--A school operated by a governmental entity which may provide basic licensing courses and continuing education under contract with the commission.

(38) Law enforcement automobile for training--A vehicle equipped to meet the requirements of an authorized emergency vehicle as identified by Texas Transportation Code §546.003 and §547.702.

(39) Less lethal force weapon--A weapon designed or intended for use on individuals or groups of individuals which, in the course of expected or reasonably foreseen use, has a lower risk of causing death or serious injury than do firearms. Less-lethal force weapons do not include firearms or other weapons whose expected or reasonably foreseen use would result in life-threatening injuries. Less lethal force weapons may include police batons, hand-held chemical irritants, chemical irritants dispersed at a distance, conducted electrical weapons, kinetic impact projectiles, water cannons, and acoustic weapons and equipment. An officer provided or equipped with a less lethal force weapon should be trained, qualified, or certified in its use.

(40) [(39)] Lesson plan--A plan of action consisting of a sequence of logically linked topics that together make positive learning experiences. Elements of a lesson plan include: measurable goals and objectives, content, a description of instructional methods, tests and activities, assessments and evaluations, and technologies utilized.

(41) [(40)] License--A license required by law or a state agency rule that must be obtained by an individual to engage in a particular business.

(42) [(41)] Licensee--An individual holding a license issued by the commission.

(43) [(42)] Line of duty--Any lawful and reasonable action, which an officer identified in Texas Government Code, Chapter 3105 is required or authorized by rule, condition of employment, or law to perform. The term includes an action by the individual at a social, ceremonial, athletic, or other function to which the individual is assigned by the individual's employer.

(44) [(43)] Moral character--The propensity on the part of a person to serve the public of the state in a fair, honest, and open manner.

(45) [(44)] Officer--A peace officer or reserve identified under the provisions of the Texas Occupations Code, §1701.001.

(46) [(45)] Patrol rifle--Any magazine-fed repeating rifle with iron/open sights or with a frame mounted optical enhancing sighting device, 5 power or less, that is carried by the individual officer in an official capacity.

(47) Patrol vehicle--A vehicle equipped with emergency lights, siren, and the means to safely detain and transport a combative detainee.

(48) [(46)] Peace officer--A person elected, employed, or appointed as a peace officer under the provisions of the Texas Occupations Code, §1701.001.

(49) [(47)] Personal Identification Number (PID)--A unique computer-generated number assigned to individuals for identification in the commission's electronic database.

(50) [(48)] Placed on probation--Has received an adjudicated or deferred adjudication probation for a criminal offense.

(51) [(49)] POST--State or federal agency with jurisdiction similar to that of the commission, such as a peace officer standards and training agency.

(52) [(50)] Precision rifle--Any rifle with a frame mounted optical sighting device greater than 5 power that is carried by the individual officer in an official capacity.

(53) [(51)] Proprietary training contractor--An approved training contractor who has a proprietary interest in the intellectual property delivered.

(54) [(52)] Public security officer--A person employed or appointed as an armed security officer identified under the provisions of the Texas Occupations Code, §1701.001.

(55) [(53)] Reactivate--To make a license issued by the commission active after a license becomes inactive. A license becomes inactive at the end of the most recent unit or cycle in which the licensee is not appointed and has failed to complete legislatively required training.

(56) [(54)] Reinstate--To make a license issued by the commission active after disciplinary action or failure to obtain required continuing education.

(57) [(55)] Reserve--A person appointed as a reserve law enforcement officer under the provisions of the Texas Occupations Code, §1701.001.

(58) [(56)] School marshal--A person employed and appointed by the board of trustees of a school district, the governing body of an open-enrollment charter school, the governing body of a private school, or the governing board of a public junior college under Texas Code of Criminal Procedure, Article 2.127 and in accordance with and having the rights provided by Texas Education Code, §37.0811.

(59) [(57)] Self-assessment--Completion of the commission created process, which gathers information about a training or education program.

(60) [(58)] Separation--An explanation of the circumstances under which the person resigned, retired, or was terminated, reported on the form currently prescribed by the commission, in accordance with Texas Occupations Code, §1701.452.

(61) [(59)] SOAH--The State Office of Administrative Hearings.

(62) [(60)] Successful completion--A minimum of:

- (A) 70 percent or better; or
- (B) C or better; or
- (C) pass, if offered as pass/fail.

(63) Sustainable funding sources--Funding from an agency's governing body such as property tax, sales tax, use and franchise fees, and the issuance of traffic citations subject to section 542.402 of the Texas Transportation Code. Term limited sources, such as grants, are not sustainable funding sources.

(64) [(61)] TCLEDDS--Texas Commission on Law Enforcement Data Distribution System.

(65) [(62)] Telecommunicator--A person employed as a telecommunicator under the provisions of the Texas Occupations Code, §1701.001.

(66) [(63)] Training coordinator--An individual, appointed by a commission-recognized training provider, who meets the requirements of §215.9 of this title.

(67) [(64)] Training cycle--A 48-month period as established by the commission. Each training cycle is composed of two contiguous 24-month units.

(68) [(65)] Training hours--Classroom or distance education hours reported in one-hour increments.

(69) [(66)] Training program--An organized collection of various resources recognized by the commission for providing preparatory or continuing training. This program includes, but is not limited to, learning goals and objectives, academic activities and exercises, lesson plans, exams, skills training, skill assessments, instructional and learning tools, and training requirements.

(70) [(67)] Training provider--A governmental body, law enforcement association, alternative delivery trainer, or proprietary entity credentialed by or authorized under a training provider contract with the commission to provide preparatory or continuing training for licensees or potential licensees.

(71) Uniform--Dress that makes an officer immediately identifiable as a peace officer, to include a visible badge. Acceptable uniform dress must be defined in agency policy and consistent in its application and use across the agency.

(72) [(68)] Verification (verified)--The confirmation of the correctness, truth, or authenticity of a document, report, or information by sworn affidavit, oath, or deposition.

(b) The effective date of this section is June 1, 2024 [February 1, 2020].

§211.16. *Establishment or Continued Operation of an Appointing Entity.*

(a) To establish that an agency or a prospective agency meets the minimum standards for the creation or continued operation of a law

enforcement agency, the agency must provide evidence that the agency: [On or after September 1, 2009, an entity authorized by statute or by the constitution to create a law enforcement agency or police department and commission, appoint, or employ peace officers that first creates a law enforcement agency or police department and first begins to commission, appoint, or employ peace officers shall make application to the commission.]

(1) provides public benefit to the community;

(2) has sustainable funding sources that meet or exceed the continued operating expenses outlined in a line-item budget for the agency;

(3) has physical resources available to officers, including:

(A) at least one firearm per officer on duty, provided by either the officer or the agency;

(B) at least one less lethal force weapon per officer on duty;

(C) effective communications equipment, specifically:

(i) at least one radio communication device per officer on duty performing patrol, courtroom security, traffic enforcement, responding to calls for service, assigned to a controlled access point, acting as a visual deterrent to crime, surveillance, warrant execution, and service of civil process; and

(ii) at least one cell phone device per officer on duty who may have contact with the general public and is not performing any of the duties described in clause (i) of this subparagraph;

(D) at least one bullet-resistant vest per officer on duty with vest panels that:

(i) have been certified as compliant by the National Institute of Justice (NIJ);

(ii) are within the ballistic performance warranty period listed by the manufacturer on the affixed tags; and

(iii) have never been shot or otherwise compromised;

(E) at least one uniform per officer whose duties include any of the following:

(i) performing patrol;

(ii) courtroom security;

(iii) traffic enforcement;

(iv) responding to calls for service;

(v) assigned to a controlled access point;

(vi) acting as a visual deterrent to crime;

(vii) warrant execution; or

(viii) service of civil process;

(F) at least one motor vehicle owned and insured by the agency; and

(G) patrol vehicles owned, insured, and equipped by the agency and provided to officers whose duties include any of the following:

(i) performing patrol;

(ii) traffic enforcement; or

(iii) responding to calls for service;

(4) has physical facilities, including:

(A) an evidence room or other acceptable secure evidence storage for officers whose duties include any of the following:

- (i) performing patrol;
- (ii) traffic enforcement;
- (iii) criminal investigations;
- (iv) responding to calls for service; or
- (v) executing search or arrest warrants;

(B) a dispatch area for any agency appointing and employing telecommunicators; and

(C) a public area including written notices posted and visible 24 hours a day explaining:

(i) how to receive the most immediate assistance in an emergency;

(ii) how to make a nonemergency report of a crime; and

(iii) how to make a compliment or complaint on a member of the agency by mail, online, or by phone;

(5) has policies, including policies on:

- (A) use of force;
- (B) vehicle pursuit;
- (C) professional conduct of officers;
- (D) domestic abuse protocols;
- (E) response to missing persons;
- (F) supervision of part-time officers;
- (G) impartial policing;
- (H) medical and psychological examination of licensees;
- (I) active shooters;
- (J) barricaded subjects;
- (K) evidence collection and handling;
- (L) eyewitness identification;
- (M) misconduct investigations;
- (N) hiring a license holder;
- (O) personnel files;
- (P) uniform and dress code;
- (Q) training required to maintain licensure; and
- (R) outside and off-duty employment;

(6) has an established administrative structure, including:

(A) an organizational chart for the agency that illustrates the division and assignment of licensed and unlicensed personnel;

(B) a projection for the number of full-time peace officers, part-time peace officers, and unpaid peace officers that the agency would employ during the year if at full staffing; and

(C) the number of School Resource Officer (SRO) positions employed by the agency and working in schools if the agency is not an independent school district (ISD) police department;

(7) has liability insurance for the agency and its vehicles;

(8) has a defined process by which the agency will receive by mail, online, and by phone and document compliments and complaints on its employees; and

(9) any other information the commission requires.

(b) An entity authorized by law to establish a law enforcement agency and appoint licensees must first complete training offered and required by the commission on the establishment and continued operation of a new agency. The entity may then make application for an agency number by submitting the current agency number application form, any associated application fee, and evidence that they meet the requirements of this rule.

~~[(b) On creation of the law enforcement agency or police department, and as part of the application process, the entity shall submit to the commission the application form, any associated application fee, and information regarding:]~~

~~[(1) the need for the law enforcement agency or police department in the community;]~~

~~[(2) the funding sources for the law enforcement agency or police department;]~~

~~[(3) the physical resources available to officers;]~~

~~[(4) the physical facilities that the law enforcement agency or police department will operate, including descriptions of the evidence room, dispatch area, and public area;]~~

~~[(5) law enforcement policies of the law enforcement agency or police department, including policies on:]~~

~~[(A) use of force;]~~

~~[(B) vehicle pursuit;]~~

~~[(C) professional conduct of officers;]~~

~~[(D) domestic abuse protocols;]~~

~~[(E) response to missing persons;]~~

~~[(F) supervision of part-time officers;]~~

~~[(G) impartial policing; and]~~

~~[(H) fitness for duty.]~~

~~[(6) the administrative structure of the law enforcement agency or police department;]~~

~~[(7) liability insurance; and]~~

~~[(8) any other information the commission requires.]~~

(c) An entity authorized by Local Government Code, §361.022 to operate a correctional facility to house inmates, in this state, convicted of offenses committed against the laws of another state of the United States, and appoint jailers requiring licensure by the commission, may make application for an agency number by submitting the current agency number application form, any associated application fee, and a certified copy of the contract under which the facility will operate.

(d) A political subdivision wanting to establish a consolidated emergency telecommunications center and appoint telecommunicators, as required by Texas Occupations Code, §1701.405, may make application for an agency number by submitting the current agency number



application form, any associated application fee and a certified copy of the consolidation contract.

(e) The Texas Department of Criminal Justice - Pardon and Parole Division, a community supervision and corrections department, or a juvenile probation department may make application for an agency number if seeking firearms training certificates for parole officers, community supervision and corrections officers, or juvenile probation officers by submitting the current agency number application form and any associated application fee.

(f) All law enforcement agencies must complete and submit an annual report documenting their continued compliance with the requirements of this rule. An agency that does not complete a report by March 1st of any year will be placed in an inactive status until the report is completed. An agency that is inactive for five continuous years may only resume operation after reapplying as a new agency.

(g) ~~[(#)]~~ The effective date of this section is June 1, 2024 ~~[February 1, 2016]~~.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 8, 2024.

TRD-202401092

Gregory Stevens  
Executive Director

Texas Commission on Law Enforcement

Earliest possible date of adoption: April 21, 2024

For further information, please call: (512) 936-7700



## CHAPTER 217. ENROLLMENT, LICENSING, APPOINTMENT, AND SEPARATION

### 37 TAC §217.9

The Texas Commission on Law Enforcement (Commission) proposes new 37 Texas Administrative Code §217.9, Refusal by Licensee to Submit to Medical or Psychological Examination. This proposed new rule conforms with the addition of Texas Occupations Code §1701.167 made by Senate Bill 1445 (88R). The proposed new rule outlines the process for determining whether a licensee had good cause to refuse to submit to a requested medical or psychological examination following submission of a refusal report from a law enforcement agency to the Commission.

Mr. John P. Beauchamp, General Counsel, has determined that for each year of the first five years this proposed new rule will be in effect, there will be no foreseeable fiscal implications to state or local governments as a result of enforcing or administering the proposed amendment.

Mr. Beauchamp has determined that for each year of the first five years this proposed new rule will be in effect, there will be a positive benefit to the public by conforming with Texas Occupations Code §1701.167 to establish standards and procedures for the medical and psychological examination of a licensee. There will be no anticipated economic costs to persons required to comply with the proposed amendment.

Mr. Beauchamp has determined that for each year of the first five years this proposed new rule will be in effect, there will be no adverse economic effects to small businesses, microbusinesses,

or rural communities as a result of implementing the proposed amendment.

Mr. Beauchamp has determined that for each year of the first five years this proposed new rule will be in effect, there will be no effects to a local economy as a result of implementing the proposed amendment.

Mr. Beauchamp has determined the following:

(1) the proposed rule does not create or eliminate a government program;

(2) implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions;

(3) implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency;

(4) the proposed rule does not require an increase or decrease in fees paid to the agency;

(5) the proposed rule does not create a new regulation;

(6) the proposed rule does not expand, limit, or repeal an existing regulation;

(7) the proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and

(8) the proposed rule does not positively or adversely affect this state's economy.

The Commission will accept comments regarding the proposed new rule. The comment period will last 30 days following the publication of this proposal in the *Texas Register*. Comments may be submitted electronically to [public.comment@tcole.texas.gov](mailto:public.comment@tcole.texas.gov) or in writing to Mr. John P. Beauchamp, General Counsel, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The new rule is proposed pursuant to Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority. Texas Occupations Code §1701.151 authorizes the Commission to adopt rules for the administration of Occupations Code Chapter 1701.

The new rule as proposed affects or implements Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, and §1701.167, Policy Regarding Examination of License Holder or Applicant. No other code, article, or statute is affected by this proposal.

#### §217.9. Refusal by Licensee to Submit to Medical or Psychological Examination.

(a) After receiving a report of a refusal by a licensee to submit to a requested medical or psychological examination, the commission shall issue a show cause order requiring the licensee to show cause for the refusal at a contested case hearing before SOAH.

(b) The contested case hearing shall be scheduled not later than the 30th day after the date notice of the show cause order is served on the licensee, which shall be provided by personal service or by registered mail, return receipt requested.

(c) The licensee may appear at the contested case hearing in person and by counsel and present evidence to justify the licensee's refusal to submit to the requested examination.

(d) If it is determined that the licensee did not have good cause to refuse the medical or psychological examination, the commission

shall issue an order suspending indefinitely or otherwise restricting the licensee's license until the licensee submits to the requested examination. If it is determined that the licensee did have good cause to refuse the medical or psychological examination, the commission shall issue an order withdrawing the request for the examination.

(e) The commission's order is subject to judicial review under Chapter 2001, Government Code.

(f) The effective date of this section is June 1, 2024.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 8, 2024.

TRD-202401093

Gregory Stevens

Executive Director

Texas Commission on Law Enforcement

Earliest possible date of adoption: April 21, 2024

For further information, please call: (512) 936-7700



## CHAPTER 227. SCHOOL MARSHALS

### 37 TAC §§227.1, 227.4, 227.6

The Texas Commission on Law Enforcement (Commission) proposes amended 37 Texas Administrative Code §227.1, Appointing Entity Responsibilities, and new 37 Texas Administrative Code §227.4, Demonstration of Psychological Fitness, and §227.6, Fit for Duty Review. This proposed amended rule and these proposed new rules conform with the addition of Texas Occupations Code §1701.167 made by Senate Bill 1445 (88R). The proposed amended rule and proposed new rules outline the requirements and processes for the psychological examination and fit for duty review of school marshals and clarify reporting requirements for appointing entities.

Mr. John P. Beauchamp, General Counsel, has determined that for each year of the first five years this proposed amended rule and these proposed new rules will be in effect, there will be no foreseeable fiscal implications to state or local governments as a result of enforcing or administering the proposed amendments. This determination is based on existing reporting requirements and subject to the results of fit for duty reviews of school marshals, which may result in the suspension of a school marshal's license.

Mr. Beauchamp has determined that for each year of the first five years this proposed amended rule and these proposed new rules will be in effect, there will be a positive benefit to the public by conforming with Texas Occupations Code §1701.167 to establish standards and procedures for the psychological examination of a school marshal. There will be no anticipated economic costs to persons required to comply with the proposed amendments.

Mr. Beauchamp has determined that for each year of the first five years this proposed amended rule and these proposed new rules will be in effect, there will be no adverse economic effects to small businesses, microbusinesses, or rural communities as a result of implementing the proposed amendments.

Mr. Beauchamp has determined that for each year of the first five years this proposed amended rule and these proposed new

rules will be in effect, there will be no effects to a local economy as a result of implementing the proposed amendments.

Mr. Beauchamp has determined the following:

- (1) the proposed rules do not create or eliminate a government program;
- (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions;
- (3) implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency;
- (4) the proposed rules do not require an increase or decrease in fees paid to the agency;
- (5) the proposed rules do not create a new regulation;
- (6) the proposed rules do not expand, limit, or repeal an existing regulation;
- (7) the proposed rules do not increase or decrease the number of individuals subject to the rule's applicability; and
- (8) the proposed rules do not positively or adversely affect this state's economy.

The Commission will accept comments regarding the proposed amended rule and proposed new rules. The comment period will last 30 days following the publication of this proposal in the *Texas Register*. Comments may be submitted electronically to [public.comment@tcole.texas.gov](mailto:public.comment@tcole.texas.gov) or in writing to Mr. John P. Beauchamp, General Counsel, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amended rule and new rules are proposed pursuant to Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority. Texas Occupations Code §1701.151 authorizes the Commission to adopt rules for the administration of Occupations Code Chapter 1701.

The amended rule and new rules as proposed affect or implement Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, §1701.167, Policy Regarding Examination of License Holder or Applicant, and §1701.260, Training for Holders of License to Carry a Handgun; Certification of Eligibility for Appointment as School Marshal. No other code, article, or statute is affected by this proposal.

#### §227.1. *Appointing Entity Responsibilities.*

(a) A school district, open-enrollment charter school, public junior college, or private school shall:

- (1) submit and receive approval for an application to appoint a person as a school marshal;
- (2) upon authorization, notify the commission using approved format prior to appointment;
- (3) report to the commission, within seven days, when a person previously authorized to act as a school marshal is no longer employed with the appointing entity;
- (4) report to the commission, within seven days, when a person previously authorized to act as a school marshal is no longer authorized to do so by the appointing entity, commission standards, another state agency, or under other law; [~~and~~]

(5) immediately report to the commission a school marshal's violation of any commission standard, including the discharge of a firearm carried under the authorization of this chapter outside of a training environment; and[.]

(6) immediately report to the commission any indication, suspicion, or allegation that a school marshal is no longer psychologically fit to carry out the duties of a school marshal.

(b) An appointing entity shall not appoint or employ an ineligible person as a school marshal.

(c) For five years, the appointing entity must retain documentation that it has met all requirements under law in a format readily accessible to the commission. This requirement does not relieve an appointing entity from retaining all other relevant records not otherwise listed.

(d) The effective date of this section is June 1, 2024 [May 1, 2018].

#### *§227.4. Demonstration of Psychological Fitness.*

(a) In order for an individual to enroll in any school marshal licensing training, obtain a school marshal license, or renew or reapply for a school marshal license, they must first demonstrate psychological fitness through a psychological examination.

(b) The psychological examination shall be conducted by a professional selected by the appointing, employing entity. The professional shall be either a psychologist licensed by the Texas State Board of Examiners of Psychologists or a psychiatrist licensed by the Texas Medical Board. The psychologist or psychiatrist must be familiar with the duties of a school marshal.

(c) The examination must be conducted pursuant to professionally recognized standards and methods. The examination process must consist of:

(1) a review of the duties and responsibilities of a school marshal as developed by the commission;

(2) at least two instruments, one which measures personality traits and one which measures psychopathology; and

(3) a face-to-face interview conducted after the instruments have been scored.

(d) The individual must be declared by that professional, on a form prescribed by the commission, to be in satisfactory psychological and emotional health to carry out the duties of a school marshal in an emergency shooting or situation involving an active shooter.

(e) If, after examination, the professional declines to declare the individual as psychologically fit, the individual must report the outcome to the commission on a form prescribed by the commission.

(f) An examination for license renewal or reactivation must be conducted within 90 days of the date of the application for license renewal or reactivation.

(g) The effective date of this section is June 1, 2024.

#### *§227.6. Fit for Duty Review.*

(a) When the commission receives a report or other reliable information that a school marshal may no longer be psychologically fit to carry out the duties of a school marshal, the commission may:

(1) issue an emergency suspension order; or

(2) require a fit for duty review upon identifying factors that indicate the licensee may no longer be able to perform the duties of a school marshal safely and effectively.

(b) The commission shall provide written notice of the psychological examination to the license holder not later than the tenth business day before the deadline to submit to the examination. Written notice shall include the reasons for the examination.

(c) The examination shall be conducted by a psychiatrist or psychologist chosen by the licensee.

(d) To facilitate the examination of any licensee, the commission will provide all appropriate documents and available information.

(e) The examining practitioner will provide the commission with a report indicating whether the school marshal is fit for duty. If the school marshal is unfit for duty, the practitioner will include the reasons or an explanation why the individual is unfit for duty.

(f) A second examination may be ordered by the commission if the commission questions the practitioner's report. The examination will be conducted by a psychiatrist or psychologist appointed by the commission. If the report of the appointed practitioner disagrees with the report of the initial practitioner, the final determination as to the school marshal's fitness shall be decided by the Executive Director.

(g) A school marshal who fails a psychological examination shall have their license suspended until the Executive Director orders it reinstated.

(h) Any school marshal ordered to undergo a fit for duty review shall comply with the terms of the order and cooperate fully with the examining practitioner.

(i) The effective date of this section is June 1, 2024.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 8, 2024.

TRD-202401094

Gregory Stevens

Executive Director

Texas Commission on Law Enforcement

Earliest possible date of adoption: April 21, 2024

For further information, please call: (512) 936-7700



## **TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

### **PART 17. STATE PENSION REVIEW BOARD**

#### **CHAPTER 601. GENERAL PROVISIONS**

##### **40 TAC §601.70**

The Texas Pension Review Board (Board) proposes a new rule in Texas Administrative Code, Title 40, Part 17, Chapter 601, §601.70, related to employee leave pools. The proposed new rule implements statutory requirements for state agencies to adopt rules relating to the operation of the state employee sick leave and family leave pools. The board identified the need for these rules as part of its recent quadrennial review of rules in accordance with Texas Government Code §2001.039.

#### **BACKGROUND AND PURPOSE**

Chapter 661, Texas Government Code creates two leave pools for state employees.

The sick leave pool is intended to assist employees and their immediate families in dealing with catastrophic illnesses or injuries that force the employees to exhaust all of their available sick leave. Section 661.002(c), Texas Government Code requires state agencies to adopt rules for the operation of the sick leave pool.

The legislature passed H.B. 2063 in 2021, creating the family leave pool. The family leave pool is intended to provide eligible state employees more flexibility in bonding with and caring for children during a child's first year following birth, adoption, or foster placement and for caring for a seriously ill family member or the employee. Section 661.022(c), Texas Government Code requires the governing body of a state agency to adopt rules and prescribe procedures relating to the operation of the pool.

#### SUMMARY

The proposed new rule specifies that the executive director or designee serves as the administrator of both leave pools and must establish operating procedures and forms for administration of the leave pools, which must be consistent with Chapter 661, Texas Government Code.

#### FISCAL NOTE

The Board's director of business operations, Westley Allen, has determined that for each year of the first five-year period the proposed new rule is in effect there will be no fiscal implications for state or local government.

#### ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES.

There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the new rule as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis are not required because the proposed new rule will not have an adverse economic impact on small businesses, micro-businesses, or rural communities as defined in Texas Government Code §2006.001.

#### ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT.

There are no anticipated economic costs to persons who are required to comply with the new rule, as proposed. There is no effect on local economy for the first five years that the proposed new rule is in effect; therefore, no local employment impact statement is required under Government Code, §2001.022 and 2001.024(a)(6).

#### ENVIRONMENTAL IMPACT STATEMENT

The Board has determined that the proposed new rule does not require an environmental impact analysis because the rule is not a major environmental rule under Government Code, §2001.0225.

#### COSTS TO REGULATED PERSONS

The proposed new rule does not impose a cost on regulated persons, including another state agency, a special district, or a local government and, therefore, is not subject to Government Code, §2001.0045.

#### PUBLIC BENEFIT/COST NOTE

Mr. Allen has determined that for each year of the first five years the proposed new rule will be in effect the public benefit is consistency and clarity in the agency's sick leave pool and state employee family leave pool rules.

#### GOVERNMENT GROWTH IMPACT STATEMENT

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed new rule, 40 TAC §601.70. For each year of the first five years the proposed new rule is in effect, Mr. Allen has determined:

- (1) The proposed rule does not create or eliminate a government program.
- (2) Implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the Board.
- (4) The proposed rule does not require a decrease or increase in fees paid to the Board.
- (5) The proposed rule will create a new regulation, required by §§661.002(c) and 661.022(c), Texas Government Code.
- (6) The proposed rule will not expand or repeal existing rules.
- (7) The proposed rule does not decrease the number of individuals subject to the rule's applicability.
- (8) The proposed rule does not positively or adversely affect the state economy.

#### TAKINGS IMPACT ASSESSMENT

This proposed rulemaking will not impact private real property as defined by Texas Government Code §2007.003, so a takings impact assessment under Government Code §2007.043 is not required.

#### REQUEST FOR PUBLIC COMMENT

Comments on the proposed new rule may be submitted to Tamara Aronstein, General Counsel, Texas Pension Review Board, P.O. Box 13498, Austin, Texas 78711-3498, or via email: [rules@prb.texas.gov](mailto:rules@prb.texas.gov), no later than 30 days from the date that this proposed rule is published in the *Texas Register*. Please include the rule name and number in the subject line of any comments submitted by email.

#### STATUTORY AUTHORITY

The new rule is proposed under Government Code §661.022(c), which requires state agencies to adopt rules relating to the operation of the agency family leave pool, and Government Code, §661.002(c), which requires state agencies to adopt rules relating to the operation of the agency sick leave pool.

#### CROSS REFERENCE TO STATUTE

Chapter 661, Texas Government Code.

§601.70. State Employee Sick and Family Leave Pools.

(a) A sick leave pool is established to help alleviate hardship caused to an employee and the employee's immediate family if a catastrophic injury or illness forces the employee to exhaust all eligible leave time earned by that employee and to lose compensation from the state.

(b) A family leave pool is established to help alleviate hardship caused to provide eligible state employees more flexibility in bonding with and caring for children during a child's first year following birth, adoption, or foster placement and for caring for a seriously ill family member or the employee.

(c) The executive director or designee shall administer both pools.

(d) The executive director or designee will establish operating procedures and forms for the administration of this section for inclusion in the agency's personnel policies and procedures manual.

(e) Operation of both pools shall be consistent with Chapter 661, Texas Government Code.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 7, 2024.

TRD-202401033

Tamara Aronstein

General Counsel

State Pension Review Board

Earliest possible date of adoption: April 21, 2024

For further information, please call: (512) 463-1736



## CHAPTER 605. STANDARDIZED FORM

### 40 TAC §605.1, §605.3

The Texas Pension Review Board (Board) proposes amendments to 40 TAC §605.1, Adoption of Standard Forms, and §605.3, Submission of Forms. This rulemaking action was identified as part of the agency's four-year review of rules pursuant to Texas Government Code §2001.039.

#### BACKGROUND AND PURPOSE

Section 801.201(c), Texas Government Code requires the Board to adopt a standard form to assist the Board in determining the actuarial soundness and financial condition of each public retirement system. The purpose of the proposed amendments is to make minor technical corrections to the agency's rules.

The Board's senior actuary, David Fee, has determined that for each year of the first five-year period the proposed amendment is in effect there will be no fiscal implications for state or local government.

There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the amendment as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis are not required because the proposed amendment will not have an adverse economic impact on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fee has determined that for each year of the first five years the proposed amendment will be in effect the public benefit is to clarify the provisions in the current rule for ease of reference and understanding by the public.

#### SUMMARY

The proposed amendments to 40 TAC §605.1 reference the section of state law that requires the PRB to adopt these rules. The amendments also split one form currently required into two separate forms, creating an additional form for reporting benefit information. This change better reflects the way in which public retirement systems typically report information to the PRB. The proposed amendments also update the PRB's website address.

The proposed amendments to 40 TAC §605.3 reflect the change to create a new, separate form, the benefits report, and correct a typographical error.

#### FISCAL NOTE

Mr. Fee has determined that for each year of the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local government.

#### ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES.

There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the amendments as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis are not required because the proposed amendments will not have an adverse economic impact on small businesses, micro-businesses, or rural communities as defined in Texas Government Code §2006.001.

#### ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT.

There are no anticipated economic costs to persons who are required to comply with the amendments, as proposed. There is no effect on local economy for the first five years that the proposed amended rule is in effect; therefore, no local employment impact statement is required under Government Code, §2001.022 and 2001.024(a)(6).

#### ENVIRONMENTAL IMPACT STATEMENT

The board has determined that the proposed amendments do not require an environmental impact analysis because the rule is not a major environmental rule under Government Code, §2001.0225.

#### COSTS TO REGULATED PERSONS

The proposed amendments do not impose a cost on regulated persons, including another state agency, a special district, or a local government and, therefore, is not subject to Government Code, §2001.0045.

#### PUBLIC BENEFIT/COST NOTE

Mr. Fee has determined that for each year of the first five years the proposed amendments will be in effect the public benefit is clarity, efficiency, and effectiveness in certain reporting requirements for public retirement systems.

#### GOVERNMENT GROWTH IMPACT STATEMENT

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed amendments to 40 TAC §§605.1 and 605.3. For each year of the first five years the proposed amendment is in effect, Mr. Fee has determined:

- (1) The proposed amendments do not create or eliminate a government program.
- (2) Implementation of the proposed amendments do not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of the proposed amendments do not require an increase or decrease in future legislative appropriations to the Board.
- (4) The proposed amendments do not require a decrease or increase in fees paid to the Board.
- (5) The proposed amendments do not create a new regulation.
- (6) The proposed amendments will not expand or repeal existing rules.
- (7) The proposed amendments do not decrease the number of individuals subject to the rule's applicability.
- (8) The proposed amendments do not positively or adversely affect the state economy.

#### TAKINGS IMPACT ASSESSMENT

This proposed rulemaking will not impact private real property as defined by Texas Government Code §2007.003, so a takings impact assessment under Government Code §2007.043 is not required.

#### REQUEST FOR PUBLIC COMMENT

Comments on the proposed amendment may be submitted to Tamara Aronstein, General Counsel, Texas Pension Review Board, P.O. Box 13498, Austin, Texas 78711-3498, or via email: [rules@prb.texas.gov](mailto:rules@prb.texas.gov), no later than 30 days from the date that this proposed amendment is published in the *Texas Register*. Please include the rule name and number in the subject line of any comments submitted by email.

#### STATUTORY AUTHORITY

The amendments are proposed under Government Code §801.201(c), which requires the board to adopt standard forms to assist the board in efficiently determining the actuarial soundness and current financial condition of public retirement systems.

#### CROSS REFERENCE TO STATUTE

Section 801.201(c), Texas Government Code.

No other statutes or rules are affected by this proposed amendment.

#### §605.1. *Adoption of Standard Forms.*

(a) The Board hereby adopts by reference the standard forms identified under subsection (b) of this section to assist in efficiently

determining the actuarial soundness and current financial condition of public retirement systems and to assist in the conduct of the Board's business, pursuant to Section 801.201(c), Texas Government Code.

(b) The standard forms hereby adopted by the Board are the following:

- (1) Pension System Registration--Form Series PRB-100;
- (2) Benefits and Membership Report--Form Series PRB-200;
- (3) Financial Statement Report--Form Series PRB-300;
- (4) Actuarial Report--Form Series PRB-400;
- (5) Benefits Report--Form Series PRB-500;
- (6) ~~[(5)]~~ Investment Returns and Assumptions Report--Form Series PRB-1000.

(c) A public retirement system can obtain the most current version of these forms from the offices of the State Pension Review Board and from its web site at <http://www.prb.texas.gov> [~~http://www.prb.state.tx.us~~].

#### §605.3. *Submission of Forms.*

(a) A public retirement system must complete and submit to the Board the standard forms identified as Form numbers PRB-100, PRB-200, PRB-300, PRB-400, PRB-500, and PRB-1000 in §605.1 of this chapter relating to Adoption of Standard Forms.

(b) A public retirement system must submit the forms with the information the system submits to the Board as a result of reviews and studies conducted by the Board regarding the actuarial soundness and current financial condition of the fund the system administers.

(c) Defined contribution plans as defined by Texas Government Code, §802.001(1-a) and retirement systems consisting exclusively of volunteers organized under the Texas Local Fire Fighters' Retirement Act as defined by Texas Government Code, §802.002(d), are not required to submit to the Board Form PRB-1000.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 7, 2024.

TRD-202401034

Tamara Aronstein

General Counsel

State Pension Review Board

Earliest possible date of adoption: April 21, 2024

For further information, please call: (512) 463-1736



# WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

## TITLE 22. EXAMINING BOARDS

### PART 5. STATE BOARD OF DENTAL EXAMINERS

#### CHAPTER 115. EXTENSION OF DUTIES OF AUXILIARY PERSONNEL--DENTAL HYGIENE

##### 22 TAC §115.10

The State Board of Dental Examiners withdraws proposed new §115.10 which appeared in the December 15, 2023, issue of the *Texas Register* (48 TexReg 7284).

Filed with the Office of the Secretary of State on March 8, 2024.

TRD-202401067

Lauren Studdard

General Counsel

State Board of Dental Examiners

Effective date: March 8, 2024

For further information, please call: (512) 305-8910



### PART 34. TEXAS STATE BOARD OF SOCIAL WORKER EXAMINERS

## CHAPTER 781. SOCIAL WORKER LICENSURE

### SUBCHAPTER B. RULES OF PRACTICE

#### 22 TAC §781.323

The Texas State Board of Social Worker Examiners withdraws proposed amendments to §781.323 which appeared in the November 17, 2023, issue of the *Texas Register* (48 TexReg 6722).

Filed with the Office of the Secretary of State on March 7, 2024.

TRD-202401017

Darrel D. Spinks

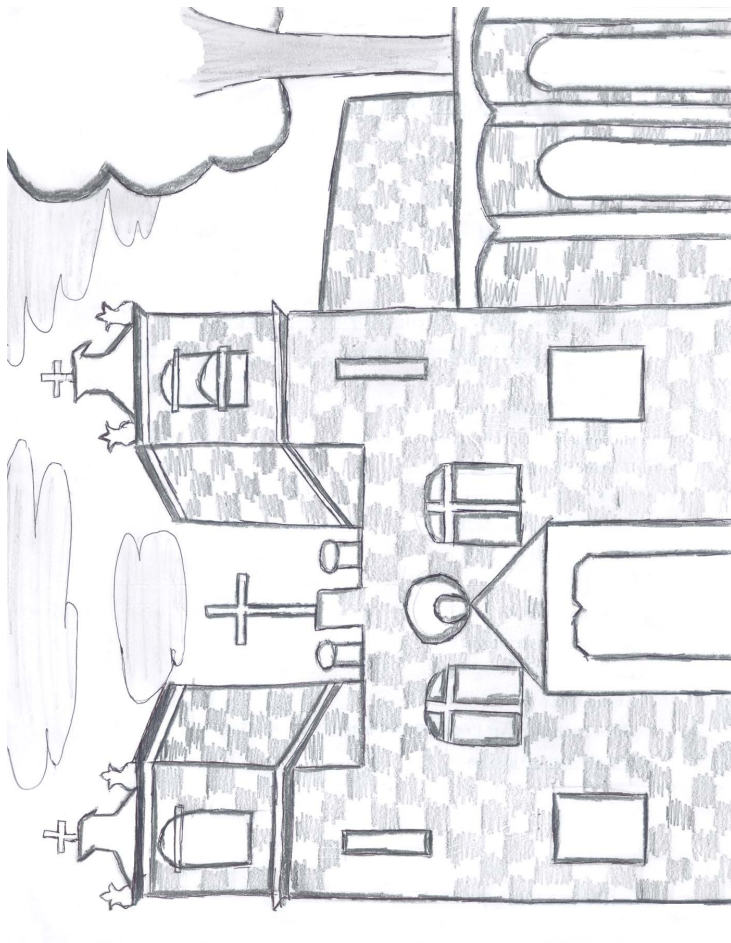
Executive Director

Texas State Board of Social Worker Examiners

Effective date: March 7, 2024

For further information, please call: (512) 305-7706







# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 10. COMMUNITY DEVELOPMENT

### PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

#### CHAPTER 1. ADMINISTRATION

##### SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

###### 10 TAC §1.23

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 1, Subchapter A, General Policies and Procedures, §1.23, State of Texas Low Income Housing Plan and Annual Report (SLIHP) without changes to the proposed text as published in the December 22, 2023, issue of the *Texas Register* (48 TexReg 7675). The rule will not be republished. The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action, in order to adopt by reference the 2024 SLIHP.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

###### a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal would be in effect:

1. The repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous adoption by reference the 2024 SLIHP, as required by Tex. Gov't Code 2306.0723.
2. The repeal does not require a change in work that would require the creation of new employee positions, nor is the repeal significant enough to reduce work load to a degree that any existing employee positions are eliminated.
3. The repeal does not require additional future legislative appropriations.
4. The repeal does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.
5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.
6. The action will repeal an existing regulation, but is associated with a simultaneous readoption in order to adopt by reference the 2024 SLIHP.
7. The repeal will not increase or decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively or positively affect this state's economy.

###### b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

###### c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

###### d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

###### e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson, has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be an updated more germane rule that will adopt by reference the 2024 SLIHP. There will not be economic costs to individuals required to comply with the repealed section.

###### f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period for the rule was held Friday, December 22, 2023, to Monday, January 22, 2024, to receive input on the repealed section. Written comments were submitted to the Texas Department of Housing and Community Affairs, Attn: Housing Resource Center, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or email [info@tdhca.state.tx.us](mailto:info@tdhca.state.tx.us). A public hearing for the draft 2024 SLIHP was held on January 9, 2024, in Austin, Texas. While the Department received public comment on the draft 2024 SLIHP, no comments were received specifically on the repeal and new rule.

STATUTORY AUTHORITY. The repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the repealed section affects no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 8, 2024.

TRD-202401040

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Effective date: March 28, 2024

Proposal publication date: December 22, 2023

For further information, please call: (512) 483-1148



## 10 TAC §1.23

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.23 State of Texas Low Income Housing Plan and Annual Report (SLIHP) without changes to the proposed text as published in the December 22, 2023, issue of the *Texas Register* (48 TexReg 7676). The rule will not be republished. The purpose of the new section is to provide compliance with Tex. Gov't Code §2306.0723 and to adopt by reference the 2024 SLIHP, which offers a comprehensive reference on statewide housing needs, housing resources, and strategies for funding allocations. The 2024 SLIHP reviews TDHCA's housing programs, current and future policies, resource allocation plans to meet state housing needs, and reports on performance during the preceding state fiscal year (September 1, 2022, through August 31, 2023).

Tex. Gov't Code §2001.0045(b) does not apply to the rule because it is exempt under item (c)(9) because it is necessary to implement legislation. Tex. Gov't Code §2306.0721 requires that the Department produce a state low income housing plan, and Tex. Gov't Code §2306.0722 requires that the Department produce an annual low income housing report. Tex. Gov't Code §2306.0723 requires that the Department consider the annual low income housing report to be a rule. This rule provides for adherence to that statutory requirement. Further no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

### a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the new rule would be in effect:

1. The new rule does not create or eliminate a government program, but relates to the adoption, by reference, of the 2024 SLIHP, as required by Tex. Gov't Code 2306.0723.
2. The new rule does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The new rule changes do not require additional future legislative appropriations.

4. The new rule changes will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The new rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.

6. The new rule will not expand, limit, or repeal an existing regulation.

7. The new rule will not increase or decrease the number of individuals subject to the rule's applicability.

8. The new rule will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code §2306.0723.

1. The Department has evaluated this rule and determined that none of the adverse affect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. There are no small or micro-businesses subject to the rule for which the economic impact of the rule is projected to be null. There are no rural communities subject to the rule for which the economic impact of the rule is projected to be null.

3. The Department has determined that because the rule will adopt by reference the 2024 SLIHP, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The rule does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the rule has no economic effect on local employment because the rule will adopt by reference the 2024 SLIHP; therefore, no local employment impact statement is required to be prepared for the rule.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that the rule will adopt by reference the 2024 SLIHP there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be an updated and more germane rule that will adopt by reference the 2024 SLIHP, as required by Tex. Gov't Code §2306.0723. There will not be any economic cost to any individuals required to comply with the new section because the adoption by reference of prior year SLIHP documents has already been in place through the rule found at this section being repealed.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments because the new rule will adopt by reference the 2024 SLIHP.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The public comment period for the new rule was held between Friday, December 22, 2023 and Monday, January 22, 2024. The public comment period for the draft 2024 SLIHP was also held between December 22, 2023 and January 22, 2024. A public hearing for the draft 2024 SLIHP was held on January 9, 2024, in Austin, Texas. Written comments were accepted by email and mail. While the Department received public comment on the draft 2024 SLIHP, no comments were received specifically on the repeal and new rule.

STATUTORY AUTHORITY. The new section is adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the new section affects no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 8, 2024.

TRD-202401041

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Effective date: March 28, 2024

Proposal publication date: December 22, 2023

For further information, please call: (512) 483-1148



## CHAPTER 2. ENFORCEMENT

*(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figures in 10 TAC §2.302 are not included in the print version of the Texas Register. The figures are available in the on-line version of the March 22, 2024, issue of the Texas Register.)*

The Texas Department of Housing and Community Affairs (the Department) adopts amended 10 TAC Chapter 2, Enforcement, Subchapter A General, Subchapter C Administrative Penalties, and Subchapter D, Debarment from Participation in Programs Administered by the Department, as proposed in the December 29, 2023, issue of the *Texas Register* (48 TexReg 8082). Sections 2.302 and 2.401 are adopted with changes and will be republished. The remaining sections are adopted without changes and will not be republished. The amendments will add reference to a new inspection protocol, NSPIRE, and brings this rule into consistency with changes recently made to Chapter 1, Subchapter C, relating to previous participation reviews and the removal of references to the now defunct Executive Award Review and Advisory Committee (EARAC).

FISCAL NOTE. Mr. Bobby Wilkinson, Executive Director, has determined that, for each year of the first five years the

amendment to the rule is in effect, enforcing or administering the amendment does not have any foreseeable implications related to costs or revenues of the state or local governments.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the rule action would be in effect, the actions do not create or eliminate a government program, but relate to changes to an existing activity, the enforcement of the Department's program rules.

2. The amendment to the rule will not require a change in the number of employees of the Department;

3. The amendment to the rule will not require additional future legislative appropriations;

4. The amendment to the rule will result in neither an increase nor a decrease in fees paid to the Department;

5. The amendment to the rule will not create a new regulation, but provides clarification to an existing regulation;

6. The amendment to the rule will not repeal an existing regulation;

7. The amendment to the rule will not increase or decrease the number of individuals subject to the rule's applicability; and

8. The amendment to the rule will neither positively nor negatively affect this state's economy.

PUBLIC BENEFIT/COST NOTE. Mr. Wilkinson also has determined that, for each year of the first five years the amendment to the rule is in effect, the public benefit anticipated as a result of the action will be the adding a new federally required inspection standard and bringing the rule into consistency with other Department rules. There will not be any economic cost to any individual required to comply with the amendment.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES. The Department has determined that there will be no economic effect on small or micro-businesses or rural communities.

SUMMARY OF PUBLIC COMMENT. Public comment was accepted from December 22, 2023, through January 22, 2024. Comment was received from two commenters: Texas Housers (1) and Disability Rights Texas (2). Response to the public comment is provided below.

General Comment

Comment Summary: Commenter 1 commented generally on the availability of information relating to penalties and enforcement. Though records of enforcement actions are included in board materials, those documents are hundreds of pages long and are not easily accessible for everyday Texans. The commenter recommends that TDHCA make records on penalties and enforcement actions (e.g., number of administrative penalties or enforcement orders) more publicly available, such as including a summary of such information in the SLIHP or reporting this information on TDHCA's website.

Staff Response: Enforcement actions are considered by the Board during an open meeting, and then copies of their decisions are posted online at <https://www.tdhca.texas.gov/tdhca-orders>. There is no need to create further summaries of that activity. No revision to the rule is needed.

§2.103(e), Evaluation of Persons in Control of Developments, Programs, or activities at the time the Event of Noncompliance occurred.

Comment Summary: Commenter 1 approves of the proposed addition. Owners who sell or lose their problematic properties should not be able to walk away from those issues and continue in the program. Given issues we have dealt with at properties that are sold with existing conditions concerns, the commenter recommends an enhanced probationary period for properties sold with existing Events of Noncompliance to ensure that tenants at those properties do not fall through the cracks.

Staff Response: Staff appreciates the support. No revisions are recommended.

§2.302(c), Administrative Penalty Process.

Comment Summary: Commenter 1 recommends that the Department define how often properties must report to the Enforcement Committee when a plan for correction is in place beyond stating that plan progress shall be "regularly reported."

Staff Response: While staff agrees with this conceptually, the length of time between when a property should report to the Committee varies based on the type of corrections being required. Staff may require a specific reporting frequency in the case of each enforcement action, but would be hindered (or potentially create unnecessary burdens) if this duration was standardized. No revisions are recommended.

§2.302(f)(3), Result of Informal Conference.

Comment Summary: Commenter 1 requests that the Department update the text to include a requirement for a clear timeline to hold property owners and managers accountable for timely repairs and corrections. "An agreement to resolve the matter through corrective action without penalty with a clear timeline..."

Staff Response: Staff concurs and the rule has been revised to reflect this addition.

§2.302(h), Issuance of Notice of Violation.

Comment Summary: Commenter 1 asked that the rule be updated to require notification to tenants. "Not later than fourteen (14) days after issuance of the report to the Board, the Executive Director will issue a Notice of Violation to the Responsible Party and tenants at the property." The commenter strongly advocates for notification of violations to tenants so they can be informed and involved in resolving issues. The rules around enforcement and debarment do not mention tenants at these properties even though they are the experts on property conditions and are directly impacted by violations.

Staff Response: Staff concurs that notification to tenants is fair and reasonable; however, since tenants are not a direct part of the compliance monitoring process or the contested case hearing process with the State Office of Administrative Hearings, and it is impractical for the Department to deliver notices to individual tenants when there is an enforcement action, a separate and more tenant-oriented Notice of Violation for Property Posting will accompany the Notice of Violation to the Responsible Party. The Responsible Party will be required to print and post this Notice of Violation for Property Posting in two prominent places on the property subject to the Notice, and provide photographic proof of the posting.

§2.302(k), Findings Related to Noncompliance with Required Accessibility Requirements:

Comment Summary: Commenters 1 and 2 both support penalty floors for accessibility and casualty loss violations to make administrative penalties for non-compliance less subjective. The penalty table should not allow TDHCA staff to waive penalties relating to serious health and safety violations and should prioritize timely repairs to prevent harm, such as displacement of residents. Commenter 2 referred to a specific case presented to the Department's Board in September 2023 in which a property took more than two years to correct 43 accessibility violations. They felt that there should not be a situation in which near total elimination of all penalties, even for those related to serious health and safety violations, is permissible. This harms the people TDHCA is meant to serve. The commenter felt that the situation did not merit the vast amount of financial penalty forgiveness it was allowed.

Both commenters specifically request that under the Finding related to Noncompliance with required accessibility requirements, that the maximum first time administrative penalty be revised from "Up to \$1,000 per violation, plus an optional \$100 per day for each accessibility deficiency that remains uncorrected 6 months from the corrective action deadline" to "Up to \$1,000 per violation, plus: a mandatory minimum \$50 per day per violation for each accessibility deficiency that remains uncorrected between 6 and 9 months from the corrective action deadline; a mandatory minimum \$75 per day per violation for each accessibility deficiency that remains uncorrected between 9 and 12 months from the corrective action deadline; and a mandatory minimum \$100 per day per violation for each accessibility deficiency that remains uncorrected more than 12 months from the corrective action deadline."

The commenters also recommend that for that same finding, the penalty for those with a previous penalty, be revised from "Up to \$1,000 per violation, plus an optional \$100 per day for each accessibility deficiency that remains uncorrected 6 months from the corrective action deadline" to "Up to \$1,000 per violation, plus: a mandatory \$50 per day per violation for each accessibility deficiency that remains uncorrected between 6 and 9 months from the corrective action deadline; a mandatory \$75 per day per violation for each accessibility deficiency that remains uncorrected between 9 and 12 months from the corrective action deadline; and a mandatory \$100 per day per violation for each accessibility deficiency that remains uncorrected more than 12 months from the corrective action deadline."

Staff Response: Staff understands these concerns, however, Tex. Gov't. Code §2306.042 requires TDHCA to consider the following factors for all administrative penalty assessments: seriousness of the violation, the history of previous violations, the amount necessary to deter future violations, efforts made to correct the violation, and any other matter that justice may require. The Department has a standardized penalty schedule for the maximum potential penalty amount, but individual factors must also be considered as they are not conducive to standardization. A minimum mandatory amount would result in a penalty being assessed without regard to the statutorily-required consideration of the enumerated factors. No changes are recommended to the rule.

§2.302(k), Findings Related to Casualty Loss.

Both commenters also had concerns with the Finding related to Casualty Loss. They feel it is critical that LIHTC properties are rebuilt quickly after a disaster to prevent tenants from being displaced. Low income Texans, including people with disabilities, do not have many options available to them when it comes to

secondary living arrangements. Ensuring that tenants have a safe place to live is too important for there to be significant flexibility when it comes to making the repairs necessary to prevent displacement of residents after a disaster. Timely repairs can help prevent the dangerous situations faced by people with disabilities during a disaster.

The commenters specifically suggest that under Finding related to Casualty loss not corrected during restoration period, that that maximum first time administrative penalty be revised from "Up to \$100 per unit per day" to "Up to \$100 per unit per day, including a mandatory minimum \$50 per unit per day for each casualty loss violation that remains uncorrected between 6 and 9 months from the restoration period; a mandatory minimum \$75 per unit per day for each casualty loss violation that remains uncorrected between 9 and 12 months from the corrective action deadline; and a mandatory \$100 per unit per day for each casualty loss violation that remains uncorrected more than 12 months from the corrective action deadline".

The commenters also recommend that for that same finding, that the penalty for those with a previous penalty, be revised from "Up to \$500 per unit per day" to "Up to \$500 per unit per day, including a mandatory minimum \$250 per unit per day for each casualty loss violation that remains uncorrected between 6 and 9 months from the corrective action deadline; a mandatory minimum \$400 per unit per day for each casualty loss violation that remains uncorrected between 9 and 12 months from the corrective action deadline; and a mandatory \$500 per unit per day for each casualty loss violation that remains uncorrected more than 12 months from the corrective action deadline."

Staff Response: Staff understands these concerns, however, Tex. Gov't. Code §2306.042 requires TDHCA to consider the following factors for all administrative penalty assessments: seriousness of the violation, the history of previous violations, the amount necessary to deter future violations, efforts made to correct the violation, and any other matter that justice may require. The Department has a standardized penalty schedule for the maximum potential penalty amount, but individual factors must also be considered as they are not conducive to standardization. A minimum mandatory amount would result in a penalty being assessed without regard to the statutorily-required consideration of the enumerated factors. No revisions are recommended.

§§2.401(d)(1), 2.401(e)(1)(B), and 2.401(e)(2)(B), Temporary reduction of NSPIRE score threshold.

Comment Summary: Commenter 1 requests that the rule remove the proposed text allowing the Compliance Division to temporarily decrease the NSPIRE score threshold below 50. Scores range from 0 to 100 and HUD considers a score below 60 to be failing; 50 is already a very low score. If this text remains, TDHCA should not allow the threshold to drop below 30, which is the score HUD has set as a threshold that triggers referral to HUD's Enforcement Center. The commenter also request that TDHCA update §2.401(e)(2)(B) to state that changes to the score threshold will be temporary to align with §§2.401(d)(1) and 2.401(e)(1)(B).

Staff Response: Staff declines to remove the temporary decrease language because NSPIRE is a new inspection standard and the Department does not yet have a large enough inspection sample to confirm whether this is the appropriate score threshold for mandatory debarment from future participation in Department programs. Staff agrees with the final sentence of

the comment, and has updated §2.401(e)(2)(B) to incorporate the temporary language from §§2.401(d)(1) and 2.401(e)(1)(B).

§2.401(e)(2)(A), Enforcement Committee threshold for referrals.

Comment Summary: Commenter 1 would like to see the Department remove the proposed text allowing the Enforcement Committee to increase the threshold for share of properties that have been referred to the Enforcement Committee above 50%. The proposed text would make it easier for the worst LIHTC owners to evade enforcement. If this text remains, the commenter suggests that TDHCA should update the language so that the change is temporary, in line with §§2.401(d)(1) and 2.401(e)(1)(B).

Staff Response: Staff understands the Commenter's position, however, it is important for the Department to retain discretion regarding the thresholds for automatic referral for debarment from its programs. Debarment is an extreme remedy, and this rule section establishes definitions for what is considered repeated noncompliance that justifies mandatory debarment, and this threshold has not been shown to assist "the worst" LIHTC owners to evade enforcement. No revisions are recommended.

## SUBCHAPTER A. GENERAL

### 10 TAC §§2.101 - 2.104

STATUTORY AUTHORITY. The amendments are made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the amendment affects no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 8, 2024.

TRD-202401037

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Effective date: March 28, 2024

Proposal publication date: December 29, 2023

For further information, please call: (512) 483-1148



## SUBCHAPTER C. ADMINISTRATIVE PENALTIES

### 10 TAC §2.301, §2.302

STATUTORY AUTHORITY. The amendments are made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the amendment affects no other code, article, or statute.

§2.302. *Administrative Penalty Process.*

(a) The Executive Director will appoint an Enforcement Committee, as defined in §2.102 of this chapter (relating to Definitions).

(b) The referring division will recommend the initiation of administrative penalty proceedings to the Committee by referral to the secretary of the Committee (Secretary). At the time of referral for a multifamily rental Development, the referral letter from the referring Division will require the Responsible Party who Controls the Develop-

ment to provide a listing of the Actively Monitored Developments in their portfolio. The Secretary will use this information to help determine whether mandatory Debarment should be simultaneously considered by the Enforcement Committee in accordance with §2.401(e)(2) of this section, related to repeated violations.

(c) The Secretary shall promptly contact the Responsible Party. If fully acceptable corrective action documentation is submitted to the referring division before the Secretary sends an informal conference notice, the referral shall be closed with no further action provided that the Responsible Party is not subject to consideration for Debarment and provided that the referring division does not wish to move forward with the referral based upon a pattern of repeated violations. If the Secretary is not able to facilitate resolution, but receives a reasonable plan for correction, such plan shall be reported to the Committee to determine whether to schedule an informal conference, modify the plan, or accept the plan. If accepted, plan progress shall be regularly reported to the Committee, but an informal conference will not be held unless the approved plan is substantively violated, or an informal conference is later requested by the Committee or the Responsible Party. Plan examples include but are not limited to: a rehabilitation plan with a scope of work or contracts already in place, plans approved by the Department as part of the Previous Participation Review process provided for in 10 TAC Subchapter C for an ownership transfer or funding application, plans approved by the Executive Director, plans approved by the Asset Management Division, and/or plans relating to newly transferred Developments with unresolved Events of Noncompliance originating under prior ownership. Should the Secretary and Responsible Party fail to come to, an agreement or closer of the referral, or if the Responsible Party or ownership group's prior history of administrative penalty referrals does not support closure, or if consideration of Debarment is appropriate, the Secretary will schedule an informal conference with the Responsible Party to attempt to reach an agreed resolution.

(d) When an informal conference is scheduled, a deadline for submitting Corrective Action documentation will be included, providing a final opportunity for resolution. If compliance is achieved at this stage, the referral will be closed with a warning letter provided that factors, as discussed below, do not preclude such closure. Closure with a warning letter shall be reported to the Committee. Factors that will determine whether it is appropriate to close with a warning letter include, but are not limited to:

- (1) Prior Enforcement Committee history relating to the Development or other properties in the ownership group;
- (2) Prior Enforcement Committee history regarding similar federal or state Programs;
- (3) Whether the deadline set by the Secretary in the informal conference notice has been met;
- (4) Whether the Committee has set any exceptions for certain finding types; and
- (5) Any other factor that may be relevant to the situation.

(e) If an informal conference is held:

- (1) Notwithstanding the Responsible Party's attendance or presence of an authorized representative, the Enforcement Committee may proceed with the informal conference;
- (2) The Responsible Party may, but is not required to be, represented by legal counsel of their choosing at their own cost and expense;
- (3) The Responsible Party may bring to the meeting third parties, employees, and agents with knowledge of the issues;

(4) Assessment of an administrative penalty and Debarment may be considered at the same informal conference; and

(5) In order to facilitate candid dialogue, an informal conference will not be open to the public; however, the Committee may include such other persons or witnesses as the Committee deems necessary for a complete and full development of relevant information and evidence.

(f) An informal conference may result in the following, which shall be reported to the Executive Director:

(1) An agreement to dismiss the matter with no further action;

(2) A compliance assistance notice issued by the Committee, available for Responsible Parties appearing for the first time before the Committee for matters which the Committee determines do not necessitate the assessment of an administrative penalty, but for which the Committee wishes to place the Responsible Party on notice with regard to possible future penalty assessment;

(3) An agreement to resolve the matter through corrective action without penalty with a clear timeline included. If the agreement is to be included in an order, a proposed agreed order will be prepared and presented to the Board for approval;

(4) An agreement to resolve the matter through corrective action with the assessment of an administrative penalty which may be probated in whole or in part, and may, where appropriate, include additional action to promote compliance such as requirements to obtain training. In this circumstance, a proposed agreed order will be prepared and presented to Department's Governing Board for approval;

(5) A recommendation by the Committee to the Executive Director to determine that a violation occurred, and to issue a report to the Board and a Notice of Violation to the Responsible Party, seeking the assessment of administrative penalties through a contested case hearing with the State Office of Administrative Hearings (SOAH); or

(6) Other action as the Committee deems appropriate.

(g) Upon receipt of a recommendation from the Committee regarding the issuance of a report and assessment of an administrative penalty under subsection (f)(5), the Executive Director shall determine whether a violation has occurred. If needed, the Executive Director may request additional information and/or return the recommendation to the Committee for further development. If the Executive Director determines that a violation has occurred, the Executive Director will issue a report to the Board in accordance with §2306.043 of the Texas Government Code.

(h) Not later than 14 days after issuance of the report to the Board, the Executive Director will issue a Notice of Violation to the Responsible Party, along with a Notice of Violation for Property Posting (which shall be printed and posted in two prominent places on the property subject to the Notice, and photographic proof of the posting shall be made). The Notice of Violation issued by the Executive Director will include:

(1) A summary of the alleged violation(s) together with reference to the particular sections of the statutes and rules alleged to have been violated;

(2) A statement informing the Responsible Party of the right to a hearing before the SOAH, if applicable, on the occurrence of the violation(s), the amount of penalty, or both;

(3) Any other matters deemed relevant, including the requirements regarding the Notice of Violation for Property Posting; and

(4) The amount of the recommended penalty. In determining the amount of a recommended administrative penalty, the Executive Director shall take into consideration the statutory factors at Tex. Gov't Code §2306.042 the penalty schedule shown in the tables in subsection (k) of this section and in the instance of a proceeding to assess administrative penalties against a Responsible Party administering the annual block grant portion of CDBG, CSBG, or LIHEAP, whether the assessment of such penalty will interfere with the uninterrupted delivery of services under such program(s). The Executive Director shall further take into account whether the Department's purposes may be achieved or enhanced by the use of full or partial probation of penalties subject to adherence to specific requirements and whether the violation(s) in question involve disallowed costs.

(i) Not later than 20 days after the Responsible Party receives the Notice of Violation, the Responsible Party may accept the requirements of the Notice of Violation or request a SOAH hearing.

(j) If the Responsible Party requests a hearing or does not respond to the Notice of Violation, the Executive Director, with the approval of the Board, shall cause the hearing to be docketed before a SOAH administrative law judge in accordance with §1.13 of this title (relating to Contested Case Hearing Procedures), which outlines the remainder of the process.

(k) Penalty schedules.

Figure 1: 10 TAC §2.302(k)

Figure 2: 10 TAC §2.302(k)

Figure 3: 10 TAC §2.302(k)

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 8, 2024.

TRD-202401038

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Effective date: March 28, 2024

Proposal publication date: December 29, 2023

For further information, please call: (512) 483-1148



## SUBCHAPTER D. DEBARMENT FROM PARTICIPATION IN PROGRAMS ADMINISTERED BY THE DEPARTMENT

### 10 TAC §2.401

**STATUTORY AUTHORITY.** The amendments are made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the amendment affects no other code, article, or statute.

§2.401. *General.*

(a) The Department may debar a Responsible Party, a Consultant and/or a Vendor who has exhibited past failure to comply with any condition imposed by the Department in the administration of its programs. A Responsible Party, Consultant or Vendor may be referred to the Committee for Debarment for any of the following:

(1) Refusing to provide an acceptable plan to implement and adhere to procedures to ensure compliant operation of the program after being placed on Modified Cost Reimbursement;

(2) Refusing to repay disallowed costs;

(3) Refusing to enter into a plan to repay disallowed costs or egregious violations of an agreed repayment plan;

(4) Meeting any of the ineligibility criteria referenced in §11.202 of this title (relating to Ineligible Applicants and Applications) or other ineligibility criteria outlined in a Program Rule, with the exception of: ineligibility related to conflicts of interest disclosed to the Department for review, and ineligibility identified in a previous participation review in conjunction with an application for funds or resources (unless otherwise eligible for Debarment under this Subchapter D);

(5) Providing fraudulent information, knowingly falsified documentation, or other intentional or negligent material misrepresentation or omission with regard to any documentation, certification or other representation made to the Department;

(6) Failing to correct Events of Noncompliance as required by an order that became effective after April 1, 2021, and/or failing to pay an administrative penalty as required by such order, within six months of a demand being issued by the Department. In this circumstance, if the Debarment process is initiated but the Responsible Party fully corrects the findings of noncompliance to the satisfaction of the referring division and pays the administrative penalty as required by the order before the Debarment is finalized by the Board, the Debarment recommendation may be cancelled or withdrawn by Committee recommendation and Executive Director concurrence. This type of referral would be initiated by the Secretary;

(7) Controlling a multifamily Development that was foreclosed after April 1, 2021, where the foreclosure or deed in lieu of foreclosure terminates a subordinate TDHCA LURA;

(8) Controlling a multifamily Development and allowing a change in ownership after April 1, 2021, without Department approval;

(9) Transferring a Development, after April 1, 2021, without regard for a Right of First Refusal requirement;

(10) Being involuntary removed, or replaced due to a default by the General Partner under the Limited Partnership Agreement, after April 1, 2021;

(11) Controlling a multifamily Development and failing to correct Events of Noncompliance before the expiration of a Land Use Restriction Agreement, after the effective date of this rule;

(12) Refusing to comply with conditions approved by the Board that were recommended by the Executive Award Review Advisory Committee after April 1, 2021;

(13) Having any Event of Noncompliance that occurs after April 1, 2021, that causes the Department to be required to repay federal funds to any federal agency including, but not limited to the U.S. Department of Housing and Urban Development; and/or

(14) Submitting a written certification that non-compliance has been corrected when it is determined that the Event of Noncompliance was not corrected. For certain Events of Noncompliance, in lieu of documentation, the Compliance Division accepts a written certification that noncompliance has been corrected. If it is determined that the Event of Noncompliance was not corrected, a Person who signed the certification may be recommended for debarment;

(15) Refusing to provide an amenity required by the LURA after April 1, 2021;

(16) Failing to reserve units for Section 811 PRA participants after April 1, 2021;

(17) Failing to notify the Department of the availability of 811 PRA units after April 1, 2021;

(18) Taking "choice limiting" actions prior to receiving HUD environmental clearance (24 CFR §58.22);

(19) Substandard construction, as defined by the Program, and repeated failure to conduct required inspections;

(20) Repeated failure to provide eligible match. 24 CFR §92.220, 24 CFR §576.201, and as required by NOFA;

(21) Repeated failure to report program income. 24 CFR §200.80, 24 CFR §570.500, 24 CFR §576.407(c), 24 CFR §92.503, (as applicable), and 10 TAC §20.9, or as defined by Program Rule;

(22) Participating in activities leading to or giving the appearance of "Conflict of Interest". As applicable, in 2 CFR Part 215 2 CFR Part 200. 24 CFR §93.353, §92.356 24 CFR, §570.489, 24 CFR §576.404, 10 TAC §20.9, or as defined by Program Rule;

(23) Repeated material financial system deficiencies. As applicable, 2 CFR Part 200, 24 CFR §§. 92.205, 92.206, 92.350, 92.505, and 92.508, 2 CFR Part 215, 2 CFR Part 225 (if applicable), 2 CFR Part 230 (, 10 TAC §20.9, Uniform Grant Management Standards, and Texas Grant Management Standards (as applicable), and as defined by Program Rule.

(24) Repeated violations of Single Audit or other programmatic audit requirements;

(25) Failure to remain a CHDO for Department committed HOME funds;

(26) Commingling of funds, Misapplication of funds;

(27) Refusing to submit a required Audit Certification Form, Single Audit, or other programmatic audit;

(28) Refusing to timely respond to reports/provide required correspondence;

(29) Failure to timely expend funds; and

(30) A Monitoring Event determines that 50% or more of the client or household files reviewed do not contain required documentation to support income eligibility or indicate that the client or household is not income eligible.

(b) The Department shall debar any Responsible Party, Consultant, or Vendor who is debarred from participation in any program administered by the United States Government.

(c) Debarment for violations of the Department's Multifamily Programs. The Department shall debar any Responsible Party who has materially or repeatedly violated any condition imposed by the Department in connection with the administration of a Department program, including but not limited to a material or repeated violation of a land use restriction agreement (LURA) or Contract. Subsection (d) of this section provides the criteria the Department will use to determine if there has been a material violation of a LURA. Subsections (e)(1) and (e)(2) of this section provide the criteria the Department shall use to determine if there have been repeated violations of a LURA.

(d) Material violations of a LURA. A Responsible Party will be considered to have materially violated a LURA, Program Agreement, or condition imposed by the Department and shall be referred to the committee for mandatory Debarment if they:

(1) Control a Development that has, on more than one occasion scored 50 or less on a UPCS inspection or has, on more than one occasion scored 50 or less on a NSPIRE inspection, or any combination thereof. The Compliance Division may temporarily decrease this NSPIRE score threshold with approval by the Executive Director, for a period of time not longer than one year, so long as the score threshold is applied evenly to all properties;

(2) Refuse to allow a monitoring visit when proper notice was provided or failed to notify residents, resulting in inspection cancellation, or otherwise fails to make units and records available;

(3) Refuse to reduce rents to less than the highest allowed under the LURA;

(4) Refuse to correct a UPCS, NSPIRE, or final construction inspection deficiency after the effective date of this rule;

(5) Fail to meet minimum set aside by the end of the first year of the credit period (HTC Developments only) after April 1, 2021; or

(6) Excluding an individual or family from admission to the Development solely because the household participates in the HOME Tenant Based Rental Assistance Program, the housing choice voucher program under Section 8, United States Housing Act of 1937 (42 U.S.C. §1-437), or other federal, state, or local government rental assistance program after April 1, 2021.

(e) Repeated Violations of a LURA that shall be referred to the Committee for Debarment.

(1) A Responsible Party shall be referred to the Committee for mandatory Debarment if they Control a Development that, during two Monitoring Events in a row is found to be out of compliance with the following Events of Noncompliance:

(A) No evidence of, or failure to certify to, material participation of a non-profit or HUB, if required by the Land Use Restriction Agreement;

(B) Any Uniform Physical Condition Standards Violations that result in a score of 70 or below in sequential UPCS inspections after April 1, 2021 or NSPIRE violations that result in a score of 50 or below in sequential inspections after the effective date of this rule, or any combination thereof. The Compliance Division may temporarily decrease this NSPIRE score threshold with approval by the Executive Director, for a period not to exceed one year, so long as the score threshold is applied evenly to all properties;

(C) Refuse to submit all or parts of the Annual Owner's Compliance Report for two consecutive years after April 1, 2021; or

(D) Gross rents exceed the highest rent allowed under the LURA or other deed restriction.

(2) Repeated violations in a portfolio. Persons who control five or more Actively Monitored Developments will be considered for Debarment based on repeated violations in a portfolio. A Person shall be referred to be committee if an inspection or referral, after April 1, 2021, indicates the following:

(A) 50% or more of the Actively Monitored Developments in the portfolio have been referred to the Enforcement Committee within the last three years. The Enforcement Committee may increase this threshold at its discretion. For example, if three properties in a five-property portfolio are monitored in the same month, and then referred to the Enforcement Committee at the same time, it may be appropriate to increase the 50% threshold; or,



(B) 50% or more of the Actively Monitored Developments in the portfolio score a 70 or less during a Uniform Physical Conditions Standards inspection or score 50 or less during a NSPIRE inspection, or any combination thereof. The Compliance Division may decrease this NSPIRE score threshold with approval by the Executive Director, for a period not to exceed one year, so long as the score threshold is applied evenly to all properties.

(f) Debarment for violations of Department Programs, with the exception of the Non-Discretionary funds in the Community Services Block Grant program. Material or repeated violations of conditions imposed in connection with the administration of Programs administered by the Department. Administrators, Subrecipients, Responsible Parties, contractors, multifamily owners, and related parties shall be referred to the Committee for consideration for Debarment for violations including but not limited to:

(1) 50% or more loan defaults in the first 12 months of the loan agreement after April 1, 2021;

(2) The following Davis Bacon Act Violations:

(A) Refusing to pay restitution (underpayment of wages). 29 CFR §5.31.

(B) Refusing to pay liquidated damages (overtime violations). 29 CFR §5.8.

(C) Repeated failure to pay full prevailing wage, including fringe benefits, for all hours worked. 29 CFR §5.31.

(3) The following violations of the Uniform Relocation Act and requirements of §104(d):

(A) Repeated failure to provide the General Information Notice to tenants prior to application. 49 CFR §24.203, 24 CFR §92.353, 24 CFR §93.352 and HUD Handbook 1378.

(B) Repeated failure to provide all required information in the General Information Notice. 49 CFR §24.203, 24 CFR §570.606, 24 CFR §92.353, 24 CFR §93.352, or HUD Handbook 1378.

(C) Repeated failure to provide the Notice of Eligibility and/or Notice of Non-displacement on or before the Initiation of Negotiations date. 49 CFR §24.203, 24 CFR §92.353, 24 CFR §93.352, or 24 CFR §570.606.

(D) Repeated failure to provide all required information in the Notice of Eligibility and/or Notice of Non-displacement. 49 CFR §24.203, 24 CFR §92.353, 24 CFR §93.352, or 24 CFR §570.606.

(E) Repeated failure to provide 90 Day Notices to all "displaced" tenants and/or repeated failure to provide 30 Day Notices to all "non-displaced" tenants. 49 CFR §24.203, 24 CFR §92.353, 24 CFR §93.352, or 24 CFR §570.606.

(F) Repeated failure to perform and document "decent, safe and sanitary" inspections of replacement housing. 49 CFR §24.203, 24 CFR §92.353, 24 CFR §93.352, or 24 CFR §570.606.

(G) Refusing to properly provide Uniform Relocation Act or §104(d) assistance. 49 CFR §24.203, 24 CFR §92.353, 24 CFR §570.606 and §104(d) of the Housing & Community Development Act of 1974 - 24 CFR Part 42.

(4) Refusing to reimburse excess cash on hand;

(5) Using Department funds to demolish a homeowner's dwelling and then refusing to rebuild;

(6) Drawing down Department funds for an eligible use and then refusing to pay a properly submitted request for payment to a subgrantee or vendor with the drawn down funds.

(g) The referring division shall provide the Responsible Party with written notice of the referral to the Committee, setting forth the facts and circumstances that justify the referral for Debarment consideration.

(h) The Secretary shall then offer the Responsible Party the opportunity to attend an Informal Conference with the Committee to discuss resolution of the. In the event that the Debarment referral was the result of a violated agreed order or a determination that 50% or more of the Actively Monitored Developments in their portfolio have been referred to the Enforcement Committee, the above written notice of the referral to the Committee and the informal conference notice shall be combined into a single notice issued by the Secretary.

(i) A Debarment Informal Conference may result in the following, which shall be reported to the Executive Director:

(1) A determination that the Department did not have sufficient information and/or that the Responsible Party does not meet any of the criteria for Debarment;

(2) An agreed Debarment, with a proposed agreed order to be prepared and presented to the Board for approval;

(3) A recommendation by the Committee to the Executive Director for Debarment;

(4) A request for further information, to be considered during a future meeting; or,

(5) If Debarment is not mandatory, an agreement to dismiss the matter with no further action, an agreement to dismiss the matter with corrective action being taken, or any other action as the Committee deems appropriate, which will then be reported to the Executive Director.

(j) The Committee's recommendation to the Executive Director regarding Debarment shall include a recommended period of Debarment. Recommended periods of Debarment will be based on material factors such as repeated occurrences, seriousness of underlying issues, presence or absence of corrective action taken or planned, including corrective action to install new responsible persons and ensure they are qualified and properly trained. Recommended periods of Debarment if based upon HUD Debarment, shall be for the period of the remaining HUD Debarment; or, if based upon criminal conviction, shall be up to ten (10) years or until fulfillment of all conditions of incarceration and/or probation, whichever is greater.

(k) The Executive Director shall accept, reject, or modify the Debarment recommendation by the Committee and shall provide written notice to the Responsible Party of the determination, and an explanation of the determination if different than the Committee's recommendation, including the period of Debarment, if any. The Responsible Party may appeal the Debarment determination in writing to the Board as described in §1.7 of this title (relating to Appeals Process).

(l) The Debarment recommendation will be brought to the next Board meeting for which the matter can be properly posted. The Board reserves discretion to impose longer or shorter Debarment periods than those recommended by staff based on its finding that such longer or shorter periods are appropriate when considering all factors and/or for the purposes of equity or other good cause. An action on a proposed Debarment of an Eligible Entity under the CSBG Act will not become final until and unless proceedings to terminate Eligible Entity status have occurred, resulting in such termination and all rights of appeal or review have run or Eligible Entity status has been voluntarily relinquished.

(m) Until the Responsible Party's Debarment referral is fully resolved, the Responsible Party may not participate in new Department financing and assistance opportunities.

(n) Any person who has been debarred is prohibited from participation as set forth in the final order of Debarment for the term of their Debarment. Unless specifically stated in the order of Debarment, Debarment does not relieve a Responsible Party from its current obligations, or prohibit it from continuing its participation in any existing engagements funded through the Department, nor limit its responsibilities and duties thereunder. The Board will not consider modifying the terms of the Debarment after the issuance of a final order of Debarment.

(o) If an Eligible Entity under the CSBG Act meets any of the criteria for Debarment in this rule, the Department may recommend the Eligible Entity for Debarment. However, that referral or recommendation shall not proceed until the termination of the Eligible Entity's status under the CSBG Act has concluded, and no right of appeal or review remains.

(p) All correspondence under this rule shall be delivered electronically.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 8, 2024.

TRD-202401039

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Effective date: March 28, 2024

Proposal publication date: December 29, 2023

For further information, please call: (512) 483-1148



## CHAPTER 20. SINGLE FAMILY PROGRAMS UMBRELLA RULE

### 10 TAC §§20.1 - 20.15

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 20, Single Family Programs Umbrella Rule, consisting of sections §§20.1 - 20.15, without changes to the proposed text as published in the December 22, 2023, issue of the *Texas Register* (48 TexReg 7678). The rules will not be republished. The purpose of the repeal is to eliminate an outdated rule, while adopting a new updated rule under separate action.

GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed repeal would be in effect:

1. The repeal does not create or eliminate a government program, but relates to making changes to an existing activity;
2. The repeal does not require a change in the number of employees of the Department;
3. The repeal does not require additional future legislative appropriations.

4. The repeal does not result in an increase or a decrease in fees paid to the Department;

5. The repeal will repeal an existing regulation;

6. The repeal will not increase or decrease the number of individuals subject to the rule's applicability; and

7. The repeal will not negatively or positively affect the state's economy.

ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department has evaluated this repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6). The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the proposed repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of the repealed chapter would be an updated and more germane rule. There will not be economic costs to individuals required to comply with the repealed chapter.

FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the proposed repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENT AND STAFF REASONED RESPONSE. The Department accepted public comment between December 22, 2023, and January 22, 2024. No comment was received.

The Board adopted the final order adopting the repeal on February 6, 2024.

STATUTORY AUTHORITY. The repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the repealed chapter affects no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 8, 2024.

TRD-202401046

Bobby Wilkinson  
Executive Director  
Texas Department of Housing and Community Affairs  
Effective date: March 28, 2024  
Proposal publication date: December 22, 2023  
For further information, please call: (512) 483-1148



## 10 TAC §§20.1 - 20.15

The Texas Department of Housing and Community Affairs (the Department) adopts, without changes to the proposed text as published in the December 22, 2023, issue of the *Texas Register* (48 TexReg 7679), the new 10 TAC Chapter 20, Single Family Programs Umbrella Rule, consisting of §§20.1 - 20.15. The rules will not be republished. The purpose of the new chapter is to implement a more germane rule and better align administration to state requirements.

GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed new rules would be in effect:

1. The new rules do not create or eliminate a government program, but relates to making changes to an existing activity;
2. The new rules do not require a change in the number of employees of the Department;
3. The new rules do not require additional future legislative appropriations;
4. The new rules do not result in an increase or a decrease in fees paid to the Department;
5. The new rules do not create a new regulation;
6. The new rules will not repeal an existing regulation;
7. The new rules will not increase or decrease the number of individuals subject to the rule's applicability; and
8. The new rules will not negatively or positively affect the state's economy.

ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department has evaluated these rules and determined that the proposed rules will not create an economic effect on small or micro-businesses or rural communities.

TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new rules do not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6). The Department has evaluated the rules as to their possible effects on local economies and has determined that for the first five years the rules will be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rules.

PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new rules are in effect, the public benefit anticipated as a result of the rules will be a more

germane rule that better aligns administration to state requirements. There will not be any economic cost to any individuals required to comply with the new rules.

FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson has also determined that for each year of the first five years the proposed new rules are in effect, enforcing or administering the rules does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENT AND STAFF REASONED RESPONSE. The Department accepted public comment between December 22, 2023, and January 22, 2024. No comment was received.

The Board adopted the final order adopting the new rule on March 7, 2024.

STATUTORY AUTHORITY. The new chapter is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed new rules affect no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 8, 2024.

TRD-202401047

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Effective date: March 28, 2024

Proposal publication date: December 22, 2023

For further information, please call: (512) 483-1148



## CHAPTER 23. SINGLE FAMILY HOME PROGRAM

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 23, Single Family HOME Program Rule, §§23.1, 23.2, 23.20 - 23.29, 23.30 - 23.32, 23.40 - 23.42, 23.50 - 23.52, 23.60 - 23.62 and 23.70 - 23.72, without changes to the proposed text as published in the December 22, 2023, issue of the *Texas Register* (48 TexReg 7690). The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action. The repeals will not be republished.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal would be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, administration of the HOME Program.

2. The repeal does not require a change in work that would require the creation of new employee positions, nor is the repeal

significant enough to reduce work load to a degree that any existing employee positions are eliminated.

3. The repeal does not require additional future legislative appropriations.

4. The repeal does not result in an increase in fees paid to the Department, nor a decrease in fees paid to the Department.

5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The action will repeal an existing regulation, but is associated with a simultaneous re-adoption making changes to an existing activity, the administration of the Single Family HOME Program.

7. The repeal will not increase or decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed chapter would be an updated and more germane rule. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson has also determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENT AND STAFF REASONED RESPONSE. The Department accepted public comment between December 22, 2023, and January 22, 2024. Comments regarding the repeal were accepted in writing and by e-mail.

The Board adopted the final order adopting the repeal on February 6, 2024.

## SUBCHAPTER A. GENERAL GUIDANCE

**10 TAC §§23.1, §23.2**

STATUTORY AUTHORITY. The repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the repealed chapter affects no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 8, 2024.

TRD-202401050

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Effective date: March 28, 2024

Proposal publication date: December 22, 2023

For further information, please call: (512) 483-1148



## SUBCHAPTER B. AVAILABILITY OF FUNDS, APPLICATION REQUIREMENTS, REVIEW AND AWARD PROCEDURES, GENERAL ADMINISTRATIVE REQUIREMENTS, AND RESALE AND RECAPTURE OF FUNDS

**10 TAC §§23.20 - 23.29**

STATUTORY AUTHORITY. The repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the repealed subchapter affects no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 8, 2024.

TRD-202401051

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Effective date: March 28, 2024

Proposal publication date: December 22, 2023

For further information, please call: (512) 483-1148



## SUBCHAPTER C. HOMEOWNER RECONSTRUCTION ASSISTANCE PROGRAM

**10 TAC §§23.30 - 23.32**

STATUTORY AUTHORITY. The repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the repealed subchapter affects no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 8, 2024.

TRD-202401052

Bobby Wilkinson  
Executive Director

Texas Department of Housing and Community Affairs

Effective date: March 28, 2024

Proposal publication date: December 22, 2023

For further information, please call: (512) 483-1148



## SUBCHAPTER D. CONTRACT FOR DEED PROGRAM

### 10 TAC §§23.40 - 23.42

STATUTORY AUTHORITY. The repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the repealed subchapter affects no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 8, 2024.

TRD-202401053

Bobby Wilkinson  
Executive Director

Texas Department of Housing and Community Affairs

Effective date: March 28, 2024

Proposal publication date: December 22, 2023

For further information, please call: (512) 483-1148



## SUBCHAPTER E. TENANT-BASED RENTAL ASSISTANCE PROGRAM

### 10 TAC §§23.50 - 23.52

STATUTORY AUTHORITY. The repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the repealed subchapter affects no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 8, 2024.

TRD-202401054

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Effective date: March 28, 2024

Proposal publication date: December 22, 2023

For further information, please call: (512) 483-1148



## SUBCHAPTER F. SINGLE FAMILY DEVELOPMENT PROGRAM

### 10 TAC §§23.60 - 23.62

STATUTORY AUTHORITY. The repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the repealed subchapter affects no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 8, 2024.

TRD-202401055

Bobby Wilkinson  
Executive Director

Texas Department of Housing and Community Affairs

Effective date: March 28, 2024

Proposal publication date: December 22, 2023

For further information, please call: (512) 483-1148



## SUBCHAPTER G. HOMEBUYER ASSISTANCE WITH NEW CONSTRUCTION (HANC)

### 10 TAC §§23.70 - 23.72

STATUTORY AUTHORITY. The repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the repealed subchapter affects no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 8, 2024.

TRD-202401056

Bobby Wilkinson  
Executive Director

Texas Department of Housing and Community Affairs

Effective date: March 28, 2024

Proposal publication date: December 22, 2023

For further information, please call: (512) 483-1148



## CHAPTER 23. SINGLE FAMILY HOME PROGRAM

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 23, Single Family HOME Program Rule, consisting of §§23.1, 23.2, 23.20 - 23.29, 23.30 - 23.32, 23.40 - 23.42, 23.50 - 23.52, 23.60 - 23.62 and 23.70 - 23.72, as proposed in the December 22, 2023, issue of the *Texas Register* (48 TexReg 7693). Section 23.51 is adopted with changes and will be republished. The remaining sections are adopted without changes and will not be republished. The purpose of the new chapter is to update the rule to implement a more germane rule and better align administration to state and federal requirements.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

### a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the new rule would be in effect:

1. The new rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to administration of the Department's Single Family HOME Program activities, including Homeowner Reconstruction Assistance, Contract for Deed, Tenant-Based Rental Assistance, Single Family Development, and Homebuyer Assistance with New Construction.
2. The new rule does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The new rule does not require additional future legislative appropriations.
4. The new rule will not result in an increase in fees paid to the Department, nor a decrease in fees paid to the Department.
5. The new rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.
6. The new rule will not expand or repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, the administration of the Department's Single Family HOME Program.
7. The new rule will not increase or decrease the number of individuals subject to the rule's applicability.
8. The new rule will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this new rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code §2306.111.

1. The Department has evaluated this new rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. There are approximately 60 rural communities currently participating in construction activities under the Single Family HOME Program that are subject to the new rule for which the no economic impact of the rule is projected during the first year the rule is in effect.

3. The Department has determined that because the new rule serves to clarify and update existing requirements and does not establish new requirements for which there would be an associated cost, there will be no economic effect on small or micro-businesses or rural communities

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new rule does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the new rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment because the rule serves to clarify and update existing requirements and does not establish new requirements or activities that may positively or negatively impact local economies.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that participation in the Single Family HOME Program is at the discretion of the local government or other eligible subrecipients, there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Bobby Wilkinson, Executive Director, has determined that, for each year of the first five years the new rule is in effect, the public benefit anticipated as a result of the rule will be an updated and more germane rule. There will not be any economic cost to any individuals required to comply with the new section because the HOME Program provides reimbursement to those entities whom are subject to the rule for the cost of compliance with the rule.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson has also determined that for each year of the first five years the new rule is in effect, enforcing or administering the rule does not have any foreseeable implications related to costs or revenues of the state or local governments because the Single Family HOME Program is a federally funded program, and no increase in the requirement to match federal funds is in the rule.

SUMMARY OF PUBLIC COMMENT AND STAFF REASONED RESPONSE. The Department accepted public comment between December 22, 2023 and January 22, 2024. Comments regarding the proposed repeal were accepted in writing and by e-mail with comment received from: (1) Phyllis McIntyre, a resident of Guadalupe County, (2) Karen Walker of Langford Community Management Services, and (3) Wade Bienski of Affordable Care Housing.

Section 23.20 Availability of Funds and Regional Allocation formula.

COMMENT SUMMARY: Commenter (1) expressed concern about challenges to navigating the Department website. Specifically noted was the Help for Texans website. Commenter suggested residents have the ability to apply for funds directly to the Department as opposed to working through an Administrator.

STAFF RESPONSE: Staff appreciates the comment and recognizes the challenges associated with navigating the Department website. However, staff feels these challenges will be mitigated with the recent launch of a more streamlined, user-friendly Department website.

Staff appreciates that the network of Administrators of HOME funds does cover all areas of the state, and actively reaches out to units of local government when a constituent residing in a non-Participating Jurisdiction contacts TDHCA; however, the Department is not able to effectively administer HOME funds directly, and our planning documents require that funds are distributed through local Administrators that are able to provide oversight of the HOME Program activities. No changes are recommended in response to this comment.

Section 23.31 Homeowner Reconstruction Assistance (HRA) General Requirements.

COMMENT SUMMARY: Commenter (2) expressed a preference for a greater increase in General Administrative costs than the one percent increase (to a total of five percent of project hard costs) by the Department. Commenter noted an administrative burden caused by the complex nature of managing a HOME Program, and noted a belief that more Administrators would participate should the increase of General Administrative cost be raised.

STAFF RESPONSE: Staff appreciates the comment and recognizes the detailed and complex administrative support required to successfully operate a HOME program. Greater percentage increases were proposed for Contract for Deed and Homebuyer Assistance with New Construction because usage of funds for these programs has not kept pace with their planned use; and they are more complex activities due to an acquisition component. The proposed increase in administrative funds for Homeowner Reconstruction Assistance (HRA) activities was made in recognition of rising costs and complexity; however, as the total amount of administrative funds also increases alongside construction costs increases, additional funds have been made available through proportional increase. Demand for these activities remains robust. Additionally, HOME funds have a statutory limit of ten percent on funds that may be used for Administration, and as a greater share of HOME funds overall are programmed for HRA, an additional increase may place the Department at risk of a shortfall of Administrative funding. No changes are recommended in response to this comment.

Section 23.51 Tenant-Based Rental Assistance (TBRA) General Requirements.

COMMENT SUMMARY: Commenter (3) expressed concern that the option to elect a combination of funds for soft costs alongside a reduced percentage of funds for Administration was proposed to be replaced with a greater percentage of funds available for Administration. Commenter expressed that funds available to their organization under the proposed model would decrease and cause a cost burden for their organization. Commenter pre-

dicts that this change will cause a decline in Administrator participation, who already struggle with staffing and time constraints during HOME program administration.

STAFF RESPONSE: Staff recognizes the importance of Administrators in the distribution of HOME funds to Texans. Staff appreciates the comment and recognizes the importance of administrative dollars to support Administrators, and appreciates that some Administrators in lower cost areas may be impacted negatively if soft costs are not eligible for reimbursement. Staff agrees with the commenter, and proposes to include eligibility of the prior mechanism which allowed for soft cost reimbursement and a reduced Administrative percentage, as well as maintaining the increase for Administrative costs for Administrators who elect to forgo soft cost reimbursement.

The Board adopted the final order adopting the new rule on March 7, 2024.

## SUBCHAPTER A. GENERAL GUIDANCE

### 10 TAC §23.1, §23.2

STATUTORY AUTHORITY. The new sections are adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described, herein the new rules affect no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 8, 2024.

TRD-202401057

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Effective date: March 28, 2024

Proposal publication date: December 22, 2023

For further information, please call: (512) 483-1148



## SUBCHAPTER B. AVAILABILITY OF FUNDS, APPLICATION REQUIREMENTS, REVIEW AND AWARD PROCEDURES, GENERAL ADMINISTRATIVE REQUIREMENTS, AND RESALE AND RECAPTURE OF FUNDS

### 10 TAC §§23.20 - 23.29

STATUTORY AUTHORITY. The new sections are adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described, herein the new rules affect no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 8, 2024.

TRD-202401058

Bobby Wilkinson  
Executive Director  
Texas Department of Housing and Community Affairs  
Effective date: March 28, 2024  
Proposal publication date: December 22, 2023  
For further information, please call: (512) 483-1148



## SUBCHAPTER C. HOMEOWNER RECONSTRUCTION ASSISTANCE PROGRAM

### 10 TAC §§23.30 - 23.32

STATUTORY AUTHORITY. The new sections are adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described, herein the new rules affect no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 8, 2024.

TRD-202401059  
Bobby Wilkinson  
Executive Director  
Texas Department of Housing and Community Affairs  
Effective date: March 28, 2024  
Proposal publication date: December 22, 2023  
For further information, please call: (512) 483-1148



## SUBCHAPTER D. CONTRACT FOR DEED PROGRAM

### 10 TAC §§23.40 - 23.42

STATUTORY AUTHORITY. The new sections are adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described, herein the new rules affect no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 8, 2024.

TRD-202401060  
Bobby Wilkinson  
Executive Director  
Texas Department of Housing and Community Affairs  
Effective date: March 28, 2024  
Proposal publication date: December 22, 2023  
For further information, please call: (512) 483-1148



## SUBCHAPTER E. TENANT-BASED RENTAL ASSISTANCE PROGRAM

### 10 TAC §§23.50 - 23.52

STATUTORY AUTHORITY. The new sections are adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described, herein the new rules affect no other code, article, or statute.

§23.51. *Tenant-Based Rental Assistance (TBRA) General Requirements.*

(a) Households assisted under the general set-aside must participate in a self-sufficiency program, as described in the Administrator's policies and procedures.

(b) The amount of assistance will be determined using the HUD Housing Choice Voucher method.

(c) A Household certifying to zero income must also complete a questionnaire that includes a series of questions regarding how basic hygiene, dietary, transportation, and other living needs are met.

(d) The minimum Household contribution toward gross monthly rent must be ten percent of the Household's adjusted monthly income. The maximum Household contribution toward gross monthly rent at initial occupancy is limited to 40 percent of the Household's gross monthly income.

(e) Activity funds are limited to:

(1) Rental subsidy: Each rental subsidy term is limited to no more than 24 months. Total lifetime assistance to a Household may not exceed 36 months cumulatively, except that a maximum of 24 additional months of assistance, for a total of 60 months cumulatively may be approved if:

(A) the Household has applied for a Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program, and is placed on a waiting list during their TBRA participation tenure; and

(B) the Household has not been removed from the waiting list for the Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program due to failure to respond to required notices or other ineligibility factors; or

(C) the Administrator submits documentation evidencing that:

(i) no Public Housing Authority within a 50 mile radius of the Household's address during their participation in TBRA has opened their waitlist during the term of the Household's participation in TBRA, or has excluded the Household's application for placement on the waiting list for any reason other than eligibility or failure to respond to required notices, such as a randomized drawing of applications that may be placed on the waitlist; and

(ii) no waiting list was opened during the term of the Household's participation in TBRA for any HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program located within a 50 mile radius of the Household's address during their participation in TBRA; or

(iii) the Household is not eligible for placement on a waiting list for any HUD Section 811 Supportive Housing for Persons



with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program located within a 50 mile radius of the Household's address during their participation in TBRA; and

(D) the Household has not been denied participation in the Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program while they were being assisted with HOME TBRA; and

(E) the Household did not refuse to participate in the Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program when a voucher was made available.

(2) Security deposit: no more than the amount equal to two month's rent for the unit.

(3) Utility deposit in conjunction with a TBRA rental subsidy.

(f) The payment standard is determined at the Date of Assistance. The payment standard utilized by the Administrator must be:

(1) For metropolitan counties and towns, the current U.S. Department of Housing and Urban Development (HUD) Small Area Fair Market Rent for the Housing Choice Voucher Program;

(2) For nonmetropolitan counties and towns, the current HUD Fair Market Rent for the Housing Choice Voucher Program;

(3) For a HOME assisted unit, the current applicable HOME rent; or

(4) The Administrator may submit a written request to the Department for approval of a different payment standard. The request must be evidenced by a market study or documentation that the PHA serving the market area has adopted a different payment standard. An Administrator may request a Reasonable Accommodation as defined in Section 1.204 of this Title for a specific Household if the Household, because of a disability, requires the features of a specific unit, and units with such features are not available in the Service Area at the payment standard.

(g) Administrators must select one method under which funds for administrative costs and Activity soft costs may be reimbursed prior to execution of an RSP agreement or at Application for an award of funds. All costs must be reasonable and customary for the Administrator's Service Area. Applicants and Administrators may choose from one of the following options, and in any case funds for Administrative costs may be increased by an additional one percent of Direct Activity Costs if Match is provided in an amount equal to five percent or more of Direct Activity Costs:

(1) Funds for Administrative costs are limited to four percent of Direct Activity Costs, excluding Match funds, and Activity soft costs are limited to \$1,200 per Household assisted. Activity soft costs may reimburse expenses for costs related to determining Household income eligibility, including recertification, and conducting Housing Quality Standards (HQS) inspections. All costs must be reasonable and customary for the Administrator's Service Area; or

(2) Funds for Administrative costs are limited to ten percent of Direct Activity Costs, excluding Match funds, and Administrator may not be reimbursed for Activity soft costs.

(h) Administrators must have a written agreement with Owner that the Owner will notify the Administrator within one month if a tenant moves out of an assisted unit prior to the lease end date.

(i) Administrator must not approve a unit if the owner is by consanguinity, affinity, or adoption the parent, child, grandparent, grandchild, sister, or brother of any member of the assisted Household, unless the Administrator determines that approving the unit would provide Reasonable Accommodation for a Household member who is a Person with Disabilities. This restriction against Administrator approval of a unit only applies at the time the Household initially receives assistance under a Contract or Agreement, but does not apply to Administrator approval of a recertification with continued tenant-based assistance in the same unit.

(j) Administrators must maintain Written Policies and Procedures established for the HOME Program in accordance with Section 10.802 of this Title, except that where the terms Owner, Property, or Development are used Administrator or Program will be substituted, as applicable. Additionally, the procedures in subsection (l) of this section (relating to the Violence Against Women Act (if in conflict with the provisions in Section 10.802 of this Title) will govern).

(k) Administrators serving a Household under a Reservation Agreement may not issue a Certificate of Eligibility to the Household prior to reserving funds for the Activity without prior written consent of the Department.

(l) Administrators are required to comply with regulations and procedures outlined in the Violence Against Women Act (VAWA), and provide tenant protections as established in the Act.

(1) An Administrator of Tenant-Based Rental Assistance must provide all Applicants (at the time of admittance or denial) and Households (before termination from the Tenant-Based Rental Assistance program or from the dwelling assisted by the Tenant-Based Rental Assistance Coupon Contract) the Department's "Notice of Occupancy Rights under the Violence Against Women Act", (based on HUD form 5380) and also provide to Households "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking" (HUD form 5382) prior to execution of a Rental Coupon Contract and before termination of assistance from the Tenant-Based Rental Assistance program or from the dwelling assisted by the Tenant-Based Rental Assistance coupon contract.

(2) Administrator must notify the Department within three days when tenant submits a Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and/or alternate documentation to Administrator and must submit a plan to Department for continuation or termination of assistance to affected Household members.

(3) Notwithstanding any restrictions on admission, occupancy, or terminations of occupancy or assistance, or any Federal, State or local law to the contrary, Administrator may "bifurcate" a rental coupon contract, or otherwise remove a Household member from a rental coupon contract, without regard to whether a Household member is a signatory, in order to evict, remove, terminate occupancy rights, or terminate assistance to any individual who is a recipient of TBRA and who engages in criminal acts of physical violence against family members or others. This action may be taken without terminating assistance to, or otherwise penalizing the person subject to the violence.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 8, 2024.  
TRD-202401061

Bobby Wilkinson  
Executive Director  
Texas Department of Housing and Community Affairs  
Effective date: March 28, 2024  
Proposal publication date: December 22, 2023  
For further information, please call: (512) 483-1148



## SUBCHAPTER F. SINGLE FAMILY DEVELOPMENT PROGRAM

### 10 TAC §§23.60 - 23.62

**STATUTORY AUTHORITY.** The new sections are adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described, herein the new rules affect no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 8, 2024.

TRD-202401062  
Bobby Wilkinson  
Executive Director  
Texas Department of Housing and Community Affairs  
Effective date: March 28, 2024  
Proposal publication date: December 22, 2023  
For further information, please call: (512) 483-1148



## SUBCHAPTER G. HOMEBUYER ASSISTANCE WITH NEW CONSTRUCTION (HANC)

### 10 TAC §§23.70 - 23.72

**STATUTORY AUTHORITY.** The new sections are adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described, herein the new rules affect no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 8, 2024.

TRD-202401064  
Bobby Wilkinson  
Executive Director  
Texas Department of Housing and Community Affairs  
Effective date: March 28, 2024  
Proposal publication date: December 22, 2023  
For further information, please call: (512) 483-1148



## CHAPTER 24. TEXAS BOOTSTRAP LOAN PROGRAM RULE

### 10 TAC §§24.1 - 24.12

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 24, Texas Bootstrap Loan Program Rule, §§24.1 - 24.12 without changes to the proposed text as published in the December 22, 2023, issue of the *Texas Register* (48 TexReg 7714). The rules will not be republished. The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

**GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.** Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal would be in effect:

1. The repeal does not create or eliminate a government program, but relates to making changes to an existing activity;
2. The repeal does not require a change in the number of employees of the Department;
3. The repeal does not require additional future legislative appropriations;
4. The repeal does not result in an increase or a decrease in fees paid to the Department;
5. The repeal will repeal an existing regulation;
6. The repeal will not increase or decrease the number of individuals subject to the rule's applicability; and
7. The repeal will not negatively or positively affect the state's economy.

**ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.** The Department has evaluated this repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

**TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043.** The repeal does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

**LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).** The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

**PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5).** Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed chapter would be an updated and more germane rule. There will not be economic costs to individuals required to comply with the repealed chapter.

**FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4).** Mr. Wilkinson has also determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable

implications related to costs or revenues of the state or local governments.

**SUMMARY OF PUBLIC COMMENT AND STAFF REASONED RESPONSE.** The Department accepted public comment between December 22, 2023, and January 22, 2024. No comment was received.

The Board adopted the final order adopting the repeal on March 7, 2024.

**STATUTORY AUTHORITY.** The repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the repealed chapter affects no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 8, 2024.

TRD-202401048

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Effective date: March 28, 2024

Proposal publication date: December 22, 2023

For further information, please call: (512) 483-1148



## 10 TAC §§24.1 - 24.12

The Texas Department of Housing and Community Affairs (the Department) adopts, without changes to the proposed text as published in the December 22, 2023, issue of the *Texas Register* (48 TexReg 7715), the new 10 TAC Chapter 24, Texas Bootstrap Loan Program Rule, §§24.1 - 24.12. The rules will not be republished. The purpose of the new chapter is to implement a more germane rule and better align administration to state requirements.

**GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.** Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the new rule would be in effect:

1. The new rule does not create or eliminate a government program, but relates to making changes to an existing activity;
2. The new rule does not require a change in the number of employees of the Department;
3. The new rule does not require additional future legislative appropriations;
4. The new rule does not result in an increase or a decrease in fees paid to the Department;
5. The new rule does not create a new regulation;
6. The new rule will not repeal an existing regulation;
7. The new rule will not increase or decrease the number of individuals subject to the rule's applicability; and
8. The new rule will not negatively or positively affect the state's economy.

**ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.** The Department has evaluated this rule and determined that the new rule will not create an economic effect on small or micro-businesses or rural communities.

**TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043.** The new rule does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

**LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).** The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

**PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5).** Mr. Wilkinson has determined that, for each year of the first five years the new rule is in effect, the public benefit anticipated as a result of the rule will be a more germane rule that better aligns administration to state requirements. There will not be any economic cost to any individuals required to comply with the new rule.

**FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4).** Mr. Wilkinson has also determined that for each year of the first five years the new rule is in effect, enforcing or administering the rule does not have any foreseeable implications related to costs or revenues of the state or local governments.

**SUMMARY OF PUBLIC COMMENT AND STAFF REASONED RESPONSE.** The Department accepted public comment between December 22, 2023, and January 22, 2024. No comment was received.

The Board adopted the final order adopting the new rule on March 7, 2024.

**STATUTORY AUTHORITY.** The new chapter is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the new rule affects no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 8, 2024.

TRD-202401049

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Effective date: March 28, 2024

Proposal publication date: December 22, 2023

For further information, please call: (512) 483-1148



## CHAPTER 26. TEXAS HOUSING TRUST FUND RULE

## SUBCHAPTER A. GENERAL GUIDANCE

### 10 TAC §§26.1 - 26.7

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 26, Texas Housing Trust Fund Rule, Subchapter A, General Guidance, consisting of §§26.1 - 26.7, without changes to the proposed text as published in the December 22, 2023, issue of the *Texas Register* (48 TexReg 7720). The rules will not be republished. The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

#### a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal would be in effect, the proposed repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, administration of the Texas Housing Trust Fund.

2. The repeal does not require a change in work that would require the creation of new employee positions, nor is the proposed repeal significant enough to reduce work load to a degree that any existing employee positions are eliminated.

3. The repeal does not require additional future legislative appropriations.

4. The repeal does not result in an increase in fees paid to the Department, nor a decrease in fees paid to the Department.

5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, the administration the Texas Housing Trust Fund.

7. The repeal will not increase or decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively or positively affect the state's economy.

#### b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

#### c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

#### d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed chapter would be an updated and more germane rule. There will not be economic costs to individuals required to comply with the repealed chapter.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson has also determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

**SUMMARY OF PUBLIC COMMENT AND STAFF REASONED RESPONSE.** The Department accepted public comment between December 22, 2023 and January 22, 2024 and no comment on the repeal was received.

The Board approved the final order adopting the repeal on March 7, 2024.

**STATUTORY AUTHORITY.** The repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the repealed chapter affects no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 8, 2024.

TRD-202401044

Bobby Wilkinson

Texas Department of Housing and Community Affairs

Effective date: March 28, 2024

Proposal publication date: December 22, 2023

For further information, please call: (512) 483-1148



### 10 TAC §§26.1 - 26.7

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 26, Texas Housing Trust Fund Rule, Subchapter A, consisting of §§26.1 - 26.7, without changes to the text as published in the December 22, 2023, issue of the *Texas Register* (48 TexReg 7721). The rules will not be republished. The purpose of the new chapter is to implement a more germane rule and better align administration to state requirements.

Tex. Gov't Code §2001.0045(b) does not apply to the new rule proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

#### a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the new rule would be in effect:

1. The new rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to administration of the Texas Housing Trust Fund.

2. The new rule does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.

3. The new rule changes do not require additional future legislative appropriations.

4. The new rule changes will not result in an increase in fees paid to the Department nor a decrease in fees paid to the Department.

5. The new rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.

6. The new rule will not expand or repeal an existing regulation.

7. The new rule will not increase or decrease the number of individuals subject to the rule's applicability.

8. The new rule will not negatively or positively affect the state's economy.

b. **ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.** The Department, in drafting this new rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306.111.

1. The Department has evaluated this new rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. There are approximately 20 rural communities currently participating in the Texas Housing Trust Fund that are subject to the new rule for which no economic impact of the rule is projected during the first year the rule is in effect.

3. The Department has determined that because the new rule serves to clarify and update existing requirements and does not establish new requirements for which there would be an associated cost, there will be no economic effect on small or micro-businesses or rural communities.

c. **TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043.** The new rule does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. **LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).**

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the new rule will be in effect the rule has no economic effect on local employment because the rule serves to clarify and update existing requirements and does not establish new requirements or activities that may positively or negatively impact local economies.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that participation in the programs funded with the Texas

Housing Trust Fund is at the discretion of the eligible subrecipients, there are no "probable" effects of the new rule on particular geographic regions.

e. **PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5).** Bobby Wilkinson, Executive Director, has determined that, for each year of the first five years the new rule is in effect, the public benefit anticipated as a result of the rule will be a more germane rule that better aligns administration to state requirements. There will not be any economic cost to any individuals required to comply with the new rule because the processes described by the rule have already been in place through the rule found at this chapter being repealed.

f. **FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4).** Mr. Wilkinson has also determined that for each year of the first five years the new rule is in effect, enforcing or administering the rule does not have any foreseeable implications related to costs or revenues of the state or local governments because the rule updates and clarifies existing requirements and does not impose new requirements.

**SUMMARY OF PUBLIC COMMENT AND STAFF REASONED RESPONSE.** The Department accepted public comment between December 22, 2023 and January 22, 2024. Comments regarding the rule were accepted in writing and by e-mail, and public comment was received from Tanya Lavelle of Disability Rights Texas. Staff has summarized the comment as well as staff's response in the preamble. Staff does not recommend changes in response to the public comment.

Section 26.3(c)(2) Allocation of Funds.

**COMMENT SUMMARY:** Commenter requested that, to ensure that persons with disabilities can benefit equally from Texas Housing Trust Fund (Texas HTF) projects, language be added to update the purpose of funds made available for housing to include accessibility alongside decent, safe, and sanitary housing.

**STAFF RESPONSE:** Staff has reviewed the comment, and the language included in §26.3(c)(2) mirrors the language regulating the use of the Texas HTF in Tex. Gov't Code §2306.202 related to decent, safe, and sanitary housing. Staff agrees that accessibility is also a statutory requirement and housing constructed with state or federal funds by the Department must meet the requirements of Tex. Gov't Code §2306.514; however, as the existing language mirrors the statute, no change is recommended in response to this comment.

The Board adopted the final order adopting the new rule on March 7, 2024.

**STATUTORY AUTHORITY.** The new chapter is adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the new chapter affects no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 8, 2024.

TRD-202401045

Bobby Wilkinson  
Executive Director  
Texas Department of Housing and Community Affairs  
Effective date: March 28, 2024  
Proposal publication date: December 22, 2023  
For further information, please call: (512) 483-1148

◆ ◆ ◆  
**TITLE 16. ECONOMIC REGULATION**

**PART 8. TEXAS RACING  
COMMISSION**

**CHAPTER 311. OTHER LICENSES  
SUBCHAPTER A. LICENSING PROVISIONS  
DIVISION 1. OCCUPATIONAL LICENSES**

**16 TAC §311.2**

The Texas Racing Commission (TXRC) adopts the amendment to 16 TAC §311.2, Application Procedure. Section 311.2 is adopted with changes to the text as proposed in the November 17, 2023, issue of the *Texas Register* (48 TexReg 6712). The changes to the rule removed the planning timeline of 21 days for an applicant to submit the application form as well as clarified the language to mirror the actual licensing processed used today. This rule will be republished.

**EXPLANATION AND JUSTIFICATION FOR THE AMENDMENT.**

The purpose of the adopted amendment is to address the changes in the Texas Racing Act made during the 88th Legislative Session. Effective September 1, 2023, the Texas Occupations Code § 2025.260, Temporary Licenses was repealed, and the statute was amended to conform with licensing standards found in Chapter 53, Texas Occupations Code, which, among other standards applies the requirements for a criminal background check before a license is issued. The adopted rule amends §311.2 to update the language to allow for online license submissions as well as provide notice that applicants must go through a qualification process including a criminal background check before they are licensed.

**PUBLIC COMMENTS**

The deadline for public comments and the 30-day comment period ended December 16, 2023. TXRC drafted and distributed the proposed rule to persons both internal and external to the agency. The proposed rule was published in the November 17, 2023, issue of the *Texas Register* (48 TexReg 6712). TXRC did not receive any comments from interested parties on the proposed rule during the 30-day public comment period.

**COMMISSION ACTION**

At its meeting on February 14, 2024, the Commission adopted the proposed rule amendment as recommended by the Rules Committee which held open meetings on October 30, 2023, and January 25, 2024.

**ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT.**

The Commission is exempt and not required to take further action under Texas Government Code §2001.0045. The Com-

mission is specifically exempt under Texas Government Code §2001.0045(c)(7).

**STATUTORY AUTHORITY**

The rule amendment is adopted under Texas Occupations Code §§ 2023.057; 2025.001 which authorize TXRC adopt rules as necessary to align the Texas Rules of Racing with the updated version of the Texas Racing Act which provides the authority to implement and administer the occupational licensing program.

The statutory provisions affected by the adopted rule amendment are those set forth in Texas Occupations Code §§ 2023.057; 2025.001.

*§311.2. Application Procedure.*

(a) General Requirements. To request a license from the Commission, a person must apply to the Commission on forms prescribed by the executive director.

(b) Application Submission.

(1) Except as provided in paragraphs (2) and (3) of this subsection, an applicant for an occupational license must file the appropriate application form and related documents at the licensing office at a licensed racetrack or through an online process established by the executive director. All applications must be submitted to the agency before the applicant engages in an activity that requires an occupational license under 16 TAC §311.1.

(2) Examinations. The Commission may require the applicant for an occupational license to demonstrate the applicant's knowledge, qualifications, and proficiency for the license applied for by an examination prescribed by the Commission.

(c) Issuance of License.

(1) The executive director may review any application to determine eligibility for an occupational license and deny a license based on eligibility factors set forth in the enabling statute or if the executive director or designee determines:

(A) grounds for denial of the license exist under §311.6 of this title (relating to Denial, Suspension, and Revocation of Licenses); or

(B) if the applicant or a member of the applicant's family or household currently holds a Commission license, after considering the nature of the licenses sought or held by the applicant, issuing a license to the applicant would create a conflict of interest that might affect the integrity of pari-mutuel racing.

(2) An occupational licensee may not act in any capacity other than that for which he or she is licensed.

(3) The executive director or designee may issue a license subject to the applicant satisfying one or more conditions which reasonably relate to the applicant's qualifications or fitness to perform the duties of the license sought.

(d) License Badge.

(1) The Commission shall issue a certificate identification card in the form of a license badge to each individual licensed under this subchapter.

(2) The badge must bear the seal of the Commission.

(3) The badge must contain:

(A) the licensee's full name;

(B) the licensee's photograph;

- (C) the category of license;
- (D) the month and year in which the license expires;
- (E) a color code that designates whether the licensee has access to the stable or kennel area; and
- (F) the license number assigned by the Commission.

(4) If a badge issued under this section is lost or stolen, the licensee shall immediately notify the Commission and may apply for a duplicate badge with the same terms as the original badge. To apply for a duplicate badge, the licensee must:

- (A) file a sworn affidavit stating that the badge was lost, stolen, or destroyed;
- (B) surrender any remaining portion of the badge; and
- (C) pay a duplicate badge fee in an amount set by the Commission.

(e) License provisions for military service members, military spouses, and military veterans.

(1) The terms "military service member," "military spouse," and "military veteran" shall have the same meaning as those terms are defined in Texas Occupations Code, Chapter 55.

(2) Credit for Military Service. Military service members and military veterans will receive credit toward any experience requirements for a license as appropriate for the particular license type and the specific experience of the military service member or veteran.

(3) Credit for holding a current license issued by another jurisdiction. Military service members, military spouses, and military veterans who hold a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the license in this state will receive credit toward any experience requirements for a license as appropriate for the particular license type.

(4) Supporting documentation must be submitted with the license application.

(5) The executive director may waive any prerequisite to obtaining a license for an applicant who is a military service member, military veteran, or military spouse, after reviewing the applicant's credentials.

(6) Expedited license procedure. As soon as practicable after a military service member, military veteran, or military spouse files an application for a license, the commission will process the application and issue the license to an applicant who qualifies under this section.

(7) License application and examination fees will be waived for the initial application of an applicant who qualifies under this subsection.

(8) Military spouse acting under out-of-state license. A military spouse who holds a racing license issued by another jurisdiction and who wishes to participate in racing in Texas under that license shall submit to the Commission the information required by Section 55.0041 of the Texas Occupations Code. Upon receipt of such information, the Commission shall determine whether the requirements of Section 55.0041 are satisfied and notify the military spouse that the person is authorized to act under that section if it confirms, through communication with the other jurisdiction or through other means, that:

- (A) the jurisdiction that issued the license on which the military spouse is relying to act in Texas has substantially equivalent license requirements; and

- (B) the military spouse is licensed in good standing in the other jurisdiction.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2024.

TRD-202401000

Amy F. Cook

Executive Director

Texas Racing Commission

Effective date: March 27, 2024

Proposal publication date: November 17, 2023

For further information, please call: (512) 833-6699



## SUBCHAPTER B. SPECIFIC LICENSEES

### 16 TAC §311.101

#### INTRODUCTION

The Texas Racing Commission (TXRC) adopts the amendment to 16 TAC §311.101, Horse Owners. Section 311.101 is adopted without changes to the text as proposed in the November 17, 2023, issue of the *Texas Register* (48 TexReg 6714). This rule will not be republished.

#### EXPLANATION AND JUSTIFICATION FOR THE AMENDMENT.

The purpose of the adopted amendment is to address the changes in the Texas Racing Act made during the 88th Legislative Session. Effective September 1, 2023, the Texas Occupations Code § 2025.260, Temporary Licenses was repealed, and the statute was amended to conform with licensing standards found in Chapter 53, Texas Occupations Code, which, among other standards applies the requirements for a criminal background check before a license is issued. The adopted rule amends §311.101 to update the language to allow for online license submissions as well as provide notice that applicants must go through a qualification process including a criminal background check before they are licensed.

#### PUBLIC COMMENTS

The deadline for public comments and the 30-day comment period ended December 16, 2023. TXRC drafted and distributed the proposed rule to persons both internal and external to the agency. The proposed rule was published in the *Texas Register* on November 17, 2023 (48 TexReg 6714). TXRC did not receive any comments from interested parties on the proposed rule during the 30-day public comment period.

#### COMMISSION ACTION

At its meeting on February 14, 2024, the Commission adopted the proposed rule amendment as recommended by the Rules Committee which held open meetings held on October 30, 2023, and January 25, 2024.

#### ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT.

The Commission is exempt and not required to take further action under Texas Government Code §2001.0045. The Commission is specifically exempt under Texas Government Code §2001.0045(c)(7).

## STATUTORY AUTHORITY

The adopted rule amendment is adopted under Texas Occupations Code §§ 2023.057; 2025.001 which authorize TXRC adopt rules as necessary to align the Texas Rules of Racing with the updated version of the Texas Racing Act which provides the authority to implement and administer the occupational licensing program.

The statutory provisions affected by the adopted rule amendment are those set forth in Texas Occupations Code §§ 2023.057; 2025.001.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2024.

TRD-202401001

Amy F. Cook

Executive Director

Texas Racing Commission

Effective date: March 27, 2024

Proposal publication date: November 17, 2023

For further information, please call: (512) 833-6699



## CHAPTER 313. OFFICIALS AND RULES OF HORSE RACING

### SUBCHAPTER E. TRAINING FACILITIES

#### 16 TAC §313.501

##### INTRODUCTION

The Texas Racing Commission (TXRC) adopts the amendment to 16 TAC §313.501, Training Facility License. Section 313.501 is adopted without changes to the text as proposed in the November 17, 2023, issue of the *Texas Register* (48 TexReg 6716). This rule will not be republished.

##### EXPLANATION AND JUSTIFICATION FOR THE AMENDMENT.

The purpose of this adopted rule is to reduce training facility licensing costs to offset any costs required by rule amendments to §313.504 and §313.505, which require increased safety protocols for equine and human athletes participating in Texas horseracing.

##### COMMISSION ACTION

At its meeting on February 14, 2024, the Commission adopted the proposed rule amendment as recommended by the Rules Committee which held open meetings held on October 30, 2023, and January 25, 2024.

##### ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT.

The Commission is exempt and not required to take further action under Texas Government Code §2001.0045. The Commission is specifically exempt under Texas Government Code §2001.0045(c)(7).

##### PUBLIC COMMENTS

The deadline for public comments and the 30-day comment period ended December 16, 2023. TXRC drafted and distributed

the proposed rule to persons both internal and external to the agency. The proposed rule was published in the *Texas Register* on November 17, 2023, (48 TexReg 6719). TXRC did not receive any comments from interested parties on the proposed rule during the 30-day public comment period.

## STATUTORY AUTHORITY

The adopted rule amendment is adopted under Texas Occupations Code § 2023.003; which authorizes the Commission to adopt rules as necessary to license Training Facilities that engage in activities designed to prepare equine and human athletes for live racing events.

The statutory provisions affected by the adopted rule amendment are those set forth in Texas Occupations Code §§ 2023.003.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2024.

TRD-202401002

Amy F. Cook

Executive Director

Texas Racing Commission

Effective date: March 27, 2024

Proposal publication date: November 17, 2023

For further information, please call: (512) 833-6699



#### 16 TAC §313.504

The Texas Racing Commission (TXRC) adopts the amendment to 16 TAC §313.504, Operational Requirements. Section 313.504 is adopted without changes to the text as proposed in the November 17, 2023, issue of the *Texas Register* (48 TexReg 6717). This rule will not be republished.

##### JUSTIFICATION

The adopted rule requires a comparable level of emergency response capabilities to address serious injuries that are currently required at licensed racetracks during live racing at training facilities when the activities performed, including schooling races, official works and exercise riding are performed in preparation for a live racing event. The requirement for an e-wagering plan to address the prohibition on wagering at training facilities is also included in the adopted rule. Additional language changes update the term "executive secretary" to "executive director" for consistency throughout the Texas Rules of Racing.

##### HOW THE RULE WILL FUNCTION

The adopted rule requires an increased presence of staff and safety protocols for activities conducted in preparation for live horse races to prevent and respond to injuries during periods where training facilities are operating.

##### SUMMARY OF COMMENTS

No comments were received by the agency during the period when the proposed rules were posted for public comment in the *Texas Register*.

## STATUTORY AUTHORITY



The adopted rule amendment is adopted under Texas Occupations Code § 2023.003; which authorizes the Commission to adopt rules as necessary to license Training Facilities that engage in activities designed to prepare equine and human athletes for live racing events.

The statutory provisions affected by the adopted rule amendment are those set forth in Texas Occupations Code §§ 2023.003.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2024.

TRD-202401003

Amy F. Cook

Executive Director

Texas Racing Commission

Effective date: March 27, 2024

Proposal publication date: November 17, 2023

For further information, please call: (512) 833-6699



## 16 TAC §313.505

### INTRODUCTION

The Texas Racing Commission (TXRC) adopts the amendment to 16 TAC §313.505, Workout Requirements. Section 313.505 is adopted without changes to the text as proposed in the November 17, 2023, issue of the *Texas Register* (48 TexReg 6719). This rule will not be republished.

### EXPLANATION AND JUSTIFICATION FOR THE AMENDMENT.

The purpose of this adopted rule is to reduce training facility licensing costs to offset any costs required by rule amendments to §313.504 and §313.505, which require increased safety protocols for equine and human athletes participating in Texas horseracing.

### PUBLIC COMMENTS

The deadline for public comments and the 30-day comment period ended December 16, 2023. TXRC drafted and distributed the proposed rule to persons both internal and external to the agency. The proposed rule was published in the *Texas Register* on November 17, 2023 (48 TexReg 6719). TXRC did not receive any comments from interested parties on the proposed rule during the 30-day public comment period.

### COMMISSION ACTION

At its meeting on February 14, 2024, the Commission adopted the proposed rule amendment as recommended by the Rules Committee which held open meetings held on October 30, 2023, and January 25, 2024.

### ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT.

The Commission is exempt and not required to take further action under Texas Government Code §2001.0045. The Commission is specifically exempt under Texas Government Code §2001.0045(c)(7).

### STATUTORY AUTHORITY

The adopted rule amendment is adopted under Texas Occupations Code § 2023.003; which authorizes the Commission to adopt rules as necessary to regulate Training Facilities that engage in activities designed to prepare equine and human athletes for live racing events.

The statutory provisions affected by the adopted rule amendment are those set forth in Texas Occupations Code §§ 2023.003.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2024.

TRD-202401028

Amy F. Cook

Executive Director

Texas Racing Commission

Effective date: March 27, 2024

Proposal publication date: November 17, 2023

For further information, please call: (512) 833-6699



## CHAPTER 321. PARI-MUTUEL WAGERING

### SUBCHAPTER A. MUTUEL OPERATIONS

#### DIVISION 1. GENERAL PROVISIONS

### 16 TAC §321.1

The Texas Racing Commission (TXRC) adopts the amendment to 16 TAC §321.1, Definitions and General Provisions. Section 321.1 is adopted with changes to the text to correct capitalization and alphabetization as proposed in the December 29, 2023, issue of the *Texas Register* (48 TexReg 8088). This rule will be republished.

### EXPLANATION AND JUSTIFICATION FOR THE AMENDMENT.

The purpose of this rule amendment is to modernize the language used to appropriately describe technology changes in wagering systems authorized in the Texas Occupations Code § 2027.002. The adopted rule more accurately describes the systems used to protect the betting public as well as modernizes the terms used to describe the totalisator systems in use at licensed racetracks.

### PUBLIC COMMENTS

The deadline for public comments and the 30-day comment period ended January 28, 2024. TXRC drafted and distributed the proposed rule to persons both internal and external to the agency. The proposed rule was published in the December 29, 2023, issue of the *Texas Register* (48 TexReg 8088). TXRC did not receive any comments from interested parties on the proposed rule during the 30-day public comment period.

### COMMISSION ACTION

At its meeting on February 14, 2024, the Commission adopted the proposed rule amendment as recommended by the Rules Committee which held open meetings held on October 30, 2023, and January 25, 2024.

### ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT.

The Commission is exempt and not required to take further action under Texas Government Code §2001.0045. The Commission is specifically exempt under Texas Government Code §2001.0045(c)(7).

#### STATUTORY AUTHORITY

The rule amendment is adopted under Texas Occupations Code § 2027.002; which authorizes the Commission to adopt rules as necessary to regulate pari-mutuel wagering activities to protect the betting public and to modernizes the terms used to describe the totalisator systems in use at licensed racetracks.

The statutory provisions affected by the adopted rule amendment are those set forth in Texas Occupations Code § 2027.002.

#### §321.1. Definitions and General Provisions.

(a) The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) ASCII formatted flat file--a data file containing structured data which is both record and field delimited containing only characters found in the American Standard Code for Information Interchange (ASCII) specification.

(2) Betting interest--a single race animal or a group of race animals coupled pursuant to the Rules which the totalisator system designates as an interest on which a patron may wager.

(3) Closed-loop subscriber-based system--a system with a minimum of a device or combination of devices authorized and operated for placing, receiving, or otherwise making a wager and by which a person must subscribe in order to be able to place, receive, or otherwise make a bet or wager that has an effective customer verification and age verification system; and appropriate data security standards to prevent unauthorized access to a person.

(4) Export simulcast--a race simulcast from a racetrack facility.

(5) Firmware--the system software permanently stored in a computer or ticket issuing machine's read-only memory or elsewhere in the circuitry that cannot be modified by the user.

(6) Guest racetrack--a racetrack facility at which a simulcast race is received and offered for wagering purposes; a receiving location, as defined in the Act, §2021.003.

(7) Host racetrack--a racetrack facility at which a race is conducted and simulcast for wagering purposes; a sending track, as defined in the Act, §2021.003.

(8) Import simulcast--a simulcast race received at a racetrack facility.

(9) Intelligent Terminal--a terminal or peripheral device which contains code extending beyond that which is necessary to allow the terminal to communicate with the central controlling device to which it is directly attached or to control the presentation of data on the display unit of the device.

(10) Log--an itemized list of each command, inquiry, or transaction given to a computer during operation.

(11) Major Revision--a specific release of a hardware or software product, including additional functionality, major user interface revisions, or other program changes that significantly alter the basic function of the application.

(12) Minor Revision--an incrementally improved version of hardware or software, usually representing an error (bug) fix, or a

minor improvement in program performance which does not alter basic functionality.

(13) Multi-leg wager--a wagering pool that involves more than one race.

(14) Player Tracking System--a system that provides detailed information about pari-mutuel play activity of patrons who volunteer to participate. The system can be used to customize highly specific promotions and tailor rewards to encourage incremental visits by patrons. The system should be able to produce customized informational reports based on such parameters as type of wager, type of race, favorite race meet, or other parameters deemed helpful by the association in supporting the patron.

(15) Remote site--a racetrack or other location at which wagering is occurring that is linked via the totalisator system to a racetrack facility for pari-mutuel wagering purposes.

(16) Report--a summary of betting activity.

(17) Resultant--the profit-per-dollar wagered in a pari-mutuel pool computation.

(18) Ticketless Electronic Wagering (E-wagering)--

(A) a form of pari-mutuel wagering in which wagers are placed and cashed through a licensed totalisator vendor via an electronic ticketless account system operated in accordance with §2021.002 of this Act; or

(B) a closed-loop subscriber-based system, which includes:

(i) a device or combination of devices authorized and operated for placing, receiving, or otherwise making a wager and by which a person must subscribe to be able to place, receive, or otherwise make a bet or wager;

(ii) an effective customer verification and age verification system; and

(iii) appropriate data security standards to prevent unauthorized access to a person:

(I) who seeks to make a bet or wager outside the racetrack's enclosure;

(II) who seeks to make a bet or wager on any live or simulcast race not available to other persons within the racetrack's enclosure; and

(III) who is a minor; and

(C) where wagers are automatically debited and credited to the account holder.

(19) TIM--ticket-issuing machine.

(20) TIM-to-Tote network--a wagering network consisting of a single central processing unit and the TIMs at any number of remote sites.

(21) Totalisator operator--the individual assigned to operate the totalisator system at a racetrack facility.

(22) Totalisator system--a computer system that registers and computes the wagering and payoffs in pari-mutuel wagering.

(23) Tote-to-tote network--a wagering network in which each wagering location has a central processing unit.

(24) User--a totalisator company employee authorized to use the totalisator system in the normal course of business.

(b) A reference in this chapter to the mutuel manager includes the mutuel manager's designee, in accordance with §313.53 of this title (relating to Mutuel Manager) or §315.36 of this title (relating to Mutuel Manager.)

(c) A request required to be made in writing under this chapter may be transmitted via hand delivery, e-mail, facsimile, courier service, or U.S. mail.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2024.

TRD-202401004

Amy F. Cook

Executive Director

Texas Racing Commission

Effective date: March 27, 2024

Proposal publication date: December 29, 2023

For further information, please call: (512) 833-6699



## 16 TAC §321.21

The Texas Racing Commission (TXRC) adopts the amendment to 16 TAC §321.21, Certain Wagers Prohibited. Section 321.21 is adopted without changes to the text as proposed in the December 29, 2023, issue of the *Texas Register* (48 TexReg 8090). This rule will not be republished.

### EXPLANATION AND JUSTIFICATION FOR THE AMENDMENT.

The purpose of this rule amendment is to modernize the language used to appropriately describe technology changes in wagering systems authorized in the Texas Occupations Code § 2027.002. The adopted rule incorporates the statutory authority under Texas Occupations Code § 2027.002 to clarify the limits of e-wagering systems.

### PUBLIC COMMENTS

The deadline for public comments and the 30-day comment period ended January 28, 2024. TXRC drafted and distributed the proposed rule to persons both internal and external to the agency. The proposed rule was published in the December 29, 2023, issue of the *Texas Register* (48 TexReg 8090). TXRC did not receive any comments from interested parties on the proposed rule during the 30-day public comment period.

### COMMISSION ACTION

At its meeting on February 14, 2024, the Commission adopted the proposed rule amendment as recommended by the Rules Committee which held open meetings on October 30, 2023, and January 25, 2024.

### ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT.

The Commission is exempt and not required to take further action under Texas Government Code §2001.0045. The Commission is specifically exempt under Texas Government Code §2001.0045(c)(7).

### STATUTORY AUTHORITY

The rule amendment is adopted under Texas Occupations Code § 2027.002; which authorizes the Commission to adopt rules as necessary to regulate pari-mutuel wagering activities to protect the betting public and to modernizes the terms used to describe the totalisator systems in use at licensed racetracks.

The statutory provisions affected by the adopted rule amendment are those set forth in Texas Occupations Code § 2027.002.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2024.

TRD-202401005

Amy F. Cook

Executive Director

Texas Racing Commission

Effective date: March 27, 2024

Proposal publication date: December 29, 2023

For further information, please call: (512) 833-6699



## SUBCHAPTER D. SIMULCAST WAGERING DIVISION 1. GENERAL PROVISIONS

### 16 TAC §321.413

The Texas Racing Commission (TXRC) adopts the amendment to 16 TAC §321.413, Duties of Guest Racetrack. Section 321.413 is adopted without changes to the text as proposed in the December 29, 2023, issue of the *Texas Register* (48 TexReg 8091). This rule will not be republished.

### EXPLANATION AND JUSTIFICATION FOR THE AMENDMENT.

The purpose of this rule amendment is to modernize the language used to appropriately describe systems, procedures and technology changes in wagering systems authorized in the Texas Occupations Code § 2027.002. The adopted rule more accurately describes the systems and processes used to protect the betting public and modernizes the terms used to describe the totalisator systems in use at licensed racetracks.

### PUBLIC COMMENTS

The deadline for public comments and the 30-day comment period ended January 28, 2024. TXRC drafted and distributed the proposed rule to persons both internal and external to the agency. The proposed rule was published in the December 29, 2023, issue of the *Texas Register* (48 TexReg 8091). TXRC did not receive any comments from interested parties on the proposed rule during the 30-day public comment period.

### COMMISSION ACTION

At its meeting on February 14, 2024, the Commission adopted the proposed rule amendment as recommended by the Rules Committee which held open meetings on October 30, 2023, and January 25, 2024.

### ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT.

The Commission is exempt and not required to take further action under Texas Government Code §2001.0045. The Com-

mission is specifically exempt under Texas Government Code §2001.0045(c)(7).

#### STATUTORY AUTHORITY

The rule amendment is adopted under Texas Occupations Code § 2027.002; which authorizes the Commission to adopt rules as necessary to regulate pari-mutuel wagering activities to protect the betting public and to modernizes the terms used to describe the totalisator systems in use at licensed racetracks.

The statutory provisions affected by the adopted rule amendment are those set forth in Texas Occupations Code § 2027.002.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2024.

TRD-202401006

Amy F. Cook

Executive Director

Texas Racing Commission

Effective date: March 27, 2024

Proposal publication date: December 29, 2023

For further information, please call: (512) 833-6699



### 16 TAC §321.417

The Texas Racing Commission (TXRC) adopts the amendment to 16 TAC §321.417, Emergency Procedures. Section 321.417 is adopted without changes to the text as proposed in the December 29, 2023, issue of the *Texas Register* (48 TexReg 8093). This rule will not be republished.

#### EXPLANATION AND JUSTIFICATION FOR THE AMENDMENT.

The purpose of this rule amendment is to modernize the language used to appropriately describe technology changes in wagering systems authorized in the Texas Occupations Code § 2027.002. The adopted rule more accurately describes the systems and procedures used to protect the betting public as well as modernizes the terms used to describe the totalisator systems in use at licensed racetracks.

#### PUBLIC COMMENTS

The deadline for public comments and the 30-day comment period ended January 28, 2024. TXRC drafted and distributed the proposed rule to persons both internal and external to the agency. The proposed rule was published in the December 29, 2023, issue of the *Texas Register* (48 TexReg 8093). TXRC did not receive any comments from interested parties on the proposed rule during the 30-day public comment period.

#### COMMISSION ACTION

At its meeting on February 14, 2024, the Commission adopted the proposed rule amendment as recommended by the Rules Committee which held open meetings on October 30, 2023, and January 25, 2024.

#### ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT.

The Commission is exempt and not required to take further action under Texas Government Code §2001.0045. The Com-

mission is specifically exempt under Texas Government Code §2001.0045(c)(7).

#### STATUTORY AUTHORITY

The rule amendment is adopted under Texas Occupations Code § 2027.002; which authorizes the Commission to adopt rules as necessary to regulate pari-mutuel wagering activities to protect the betting public and to modernizes the terms used to describe the totalisator systems in use at licensed racetracks.

The statutory provisions affected by the adopted rule amendment are those set forth in Texas Occupations Code § 2027.002.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2024.

TRD-202401007

Amy F. Cook

Executive Director

Texas Racing Commission

Effective date: March 27, 2024

Proposal publication date: December 29, 2023

For further information, please call: (512) 833-6699



## SUBCHAPTER E. TICKETLESS ELECTRONIC WAGERING

### DIVISION 1. CONDUCT OF E-WAGERING

#### 16 TAC §321.607

The Texas Racing Commission (TXRC) adopts the amendment to 16 TAC §321.607, E-Wagering Account Restrictions. Section 321.607 is adopted without changes to the text as proposed in the December 29, 2023, issue of the *Texas Register* (48 TexReg 8094). This rule will not be republished.

#### EXPLANATION AND JUSTIFICATION FOR THE AMENDMENT.

The purpose of this rule amendment is to modernize the language used to appropriately describe technology changes in wagering systems authorized in the Texas Occupations Code § 2027.002. The adopted rule more accurately describes the systems used to protect the betting public as well as modernizes the terms used to describe the totalisator systems in use at licensed racetracks.

#### PUBLIC COMMENTS

The deadline for public comments and the 30-day comment period ended January 28, 2024. TXRC drafted and distributed the proposed rule to persons both internal and external to the agency. The proposed rule was published in the December 29, 2023, issue of the *Texas Register* (48 TexReg 8094). TXRC did not receive any comments from interested parties on the proposed rule during the 30-day public comment period.

#### COMMISSION ACTION

At its meeting on February 14, 2024, the Commission adopted the proposed rule amendment as recommended by the Rules Committee which held open meetings on October 30, 2023, and January 25, 2024.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT.

The Commission is exempt and not required to take further action under Texas Government Code §2001.0045. The Commission is specifically exempt under Texas Government Code §2001.0045(c)(7).

STATUTORY AUTHORITY

The rule amendment is adopted under Texas Occupations Code § 2027.002; which authorizes the Commission to adopt rules as necessary to regulate pari-mutuel wagering activities to protect the betting public and to modernizes the terms used to describe the totalisator systems in use at licensed racetracks.

The statutory provisions affected by the adopted rule amendment are those set forth in Texas Occupations Code § 2027.002.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2024.

TRD-202401008

Amy F. Cook

Executive Director

Texas Racing Commission

Effective date: March 27, 2024

Proposal publication date: December 29, 2023

For further information, please call: (512) 822-6699



**TITLE 19. EDUCATION**

**PART 2. TEXAS EDUCATION AGENCY**

**CHAPTER 33. STATEMENT OF INVESTMENT OBJECTIVES, POLICIES, AND GUIDELINES OF THE TEXAS PERMANENT SCHOOL FUND**

**SUBCHAPTER A. STATE BOARD OF EDUCATION RULES**

**19 TAC §33.2**

The State Board of Education (SBOE) adopts an amendment to §33.2, concerning distributions to the Available School Fund (ASF). The amendment is adopted without changes to the proposed text as published in the December 22, 2023 issue of the *Texas Register* (48 TexReg 7733) and will not be republished. The adopted amendment reinserts information related to the Permanent School Fund (PSF) distribution policy that was mistakenly repealed when 19 TAC Chapter 33 was revised to implement Senate Bill (SB) 1232, 87th Texas Legislature, Regular Session, 2021.

REASONED JUSTIFICATION: SB 1232, 87th Texas Legislature, Regular Session, 2021, established the Texas PSF Corporation and transferred responsibilities to manage and invest the fund to the Texas PSF Corporation. As a result, SBOE rules in Chapter 33 were significantly revised and reorganized effective March 1, 2023.

The adopted amendment reinstates mistakenly repealed language in §33.2 that addresses the SBOE's responsibilities to determine a rate for PSF distributions to the ASF.

The SBOE approved the amendment for first reading and filing authorization at its November 17, 2023 meeting and for second reading and final adoption at its February 2, 2024 meeting.

In accordance with Texas Education Code, §7.102(f), the SBOE approved the amendment for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2024-2025 school year. The earlier effective date would ensure the reinstated provisions become effective as soon as possible. The effective date is 20 days after filing as adopted with the *Texas Register*.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began December 22, 2023, and ended at 5:00 p.m. on January 22, 2024. The SBOE also provided an opportunity for registered oral and written comments at its January-February 2024 meeting in accordance with the SBOE board operating policies and procedures. No public comments were received.

STATUTORY AUTHORITY. The amendment is adopted under Texas Constitution, Article VII, §5(a)(2), which authorizes the State Board of Education (SBOE) to make distributions from the Permanent School Fund (PSF) to the available school fund with certain limits; and Texas Constitution, Article VII, §5(f), which authorizes the SBOE to manage and invest the PSF according to the prudent investor standard and make investments it deems appropriate.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Constitution, Article VII, §5(a)(2) and (f).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 11, 2024.

TRD-202401108

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: March 31, 2024

Proposal publication date: December 22, 2023

For further information, please call: (512) 475-1497



**CHAPTER 67. STATE REVIEW AND APPROVAL OF INSTRUCTIONAL MATERIALS**

The State Board of Education (SBOE) adopts new §§67.21, 67.23, 67.25, 67.81, and 67.83, concerning state review and approval of instructional materials. Sections 67.21, 67.23, 67.25, and 67.83 are adopted with changes to the proposed text as published in the December 29, 2023, issue of the *Texas Register* (48 TexReg 8095) and will be republished. Section 67.81 is adopted without changes to the proposed text as published in the December 29, 2023 issue of the *Texas Register* (48 TexReg 8095) and will not be republished. The adopted new rules implement House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023, by defining the criteria to be used in the review and approval of instructional materials by the SBOE and the Texas Education Agency (TEA); defining requirements

for publisher participation in the instructional materials review and approval (IMRA) process; and establishing rules for the annual request for instructional materials for review and future proclamations, contracts for instructional materials, and criteria for publishers required to host parent portals.

**REASONED JUSTIFICATION:** Texas Education Code (TEC), Chapter 31, addresses instructional materials in public education and permits the SBOE to adopt rules for the adoption, requisition, distribution, care, use, and disposal of instructional materials. HB 1605, 88th Texas Legislature, Regular Session, 2023, significantly revised TEC, Chapter 31, including several provisions under SBOE authority. HB 1605 also added a new provision to TEC, Chapter 48, to provide additional funding to school districts and charter schools that adopt and implement SBOE-approved materials. In addition, the bill added requirements related to adoption of essential knowledge and skills in TEC, Chapter 28.

At the June 2023 SBOE meeting, the Committee of the Full Board held a work session to receive an overview presentation on HB 1605 from the commissioner of education and begin discussing preliminary decisions and next steps. The June 2023 SBOE HB 1605 Work Session Presentation shared during the work session is available on the TEA website at <https://tea.texas.gov/about-tea/leadership/state-board-of-education/sboe-2023/sboe-2023-june/sboe-hb1605-working-session-slidedeck-062223.pdf>.

At the August-September 2023 meeting, the Committee of the Full Board discussed the IMRA process and discussed the approach to developing the quality rubric criteria and process.

At the November 2023 SBOE meeting, the Committee of the Full Board discussed proposed new 19 TAC Chapter 67.

The adopted new sections implement HB 1605 and incorporate the feedback provided by the board.

The following changes were made to the rules since approved for first reading and filing authorization.

Section 67.21(d)(1) was modified at adoption to include the Texas Prekindergarten Guidelines and the English Language Proficiency Standards (ELPS).

Section 67.23(d)(1) was modified at adoption to include the Texas Prekindergarten Guidelines and the ELPS.

Section 67.25(1) was modified at adoption to include the Texas Prekindergarten Guidelines and the ELPS.

Section 67.83(c) was modified at adoption to clarify that a publisher must host an instructional materials parent portal.

In response to public comment, §67.83(c)(1) was modified at adoption to include a reference to the materials not allowed to be posted to the publisher parent portal outlined in TEC, §31.154(c).

In response to public comment, §67.83(c)(2) was modified at adoption to refer to a single-sign-on capability instead of using the term, "interoperable." Language was also added to include a 60-day period for publishers to come into compliance with the rule.

Section 67.83(c)(1)-(6) was modified at adoption to make non-substantive technical edits.

In response to public comment, new §67.83(e) was added at adoption to clarify the consequences of being out of compliance with the 60-day requirement in §67.83(c)(2).

The SBOE approved the new sections for first reading and filing authorization at its December 13, 2023 meeting and for second reading and final adoption at its February 2, 2024 meeting.

In accordance with TEC, §7.102(f), the SBOE approved the new sections for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2024-2025 school year. The earlier effective date would allow for the implementation of the IMRA process to occur in the summer of 2024 as planned by the SBOE. The effective date is 20 days after filing as adopted with the *Texas Register*.

**SUMMARY OF COMMENTS AND RESPONSES:** The public comment period on the proposal began December 29, 2023, and ended at 5:00 p.m. on January 29, 2024. The SBOE also provided an opportunity for registered oral and written comments at its January-February 2024 meeting in accordance with the SBOE board operating policies and procedures. Following is a summary of public comments received and corresponding responses.

#### *General Comments*

**Comment.** The National Parents Union commented that Texas has served as a "beacon for other states" in terms of setting high standards for quality education. The commenter expressed concern, however, regarding the suitability rubric, stating that it "may contribute to culture wars and distractions in our classrooms."

**Response.** The SBOE agrees that the new rules will support the board in setting high standards for quality educational materials. The comment related to the suitability rubric is outside the scope of the proposed rulemaking as the rubric is not adopted in rule.

**Comment.** A Texas parent expressed excitement at seeing the use of evidence-based strategies for teaching students. The parent also expressed a hope that the evaluation tools do not become an avenue for injecting politics and culture wars in the classroom.

**Response.** The SBOE agrees. The new rules will establish the use of rubrics to measure instructional materials using evidence-based strategies for teaching.

**Comment:** The Network of Concerned Citizens provided comments concerning content in science instructional materials.

**Response.** This comment is outside the scope of the proposed rulemaking.

#### *§67.81. Instructional Materials Contract*

**Comment.** Concerning §67.81(c)(1), The Commit Partnership requested that the rules clarify the provisions related to the standardization of contract term lengths and maintain a standard contract duration for all SBOE-approved instructional materials unless the SBOE anticipates making substantive changes to the Texas Essential Knowledge and Skills (TEKS) in a specified subject area/grade level. The commenter suggested that the contract term not exceed the IMRA cycle review for the applicable subject and grade to maintain district flexibility.

**Response.** The SBOE disagrees with the recommendation to change the standard term for an instructional materials contract. The review of materials will happen annually; therefore, the suggested language would limit instructional materials contracts executed by TEA on behalf of the SBOE and publishers to one year. There is still a cycle for instructional materials, but this cycle will now be determined by the TEKS revision schedule and approval of aligned rubrics for IMRA by the SBOE.

To address the commenter's concern for school district flexibility in setting an initial term for instructional materials procurement contracts, the proposed contract term would be standard for all approved materials and become the default maximum length of time a district could purchase materials on EMAT under the contract. School districts, under the new rule, are not obligated to execute a contract for the full initial term, but rather are able to set their own initial term within the bounds of the SBOE-determined contract.

**Comment.** Texas American Federation of Teachers stated the organization is opposed to any potential amendments to the rules requiring evidence of effectiveness of instructional materials to be considered for contract renewal.

**Response.** The SBOE agrees that the ability for TEA to consider implementation effectiveness would be difficult given the many factors that influence the effectiveness of instructional materials.

#### *§67.83. Publisher Parent Portal*

**Comment.** Concerning proposed new §67.83(d), Texas Classroom Teachers Association (TCTA) stated there are specific prohibitions missing that are mentioned in TEC, §31.154. TCTA also requested that proposed new §67.83(d) add language quoting TEC, §31.154(c), to provide clarity regarding the specific types of instructional materials that are explicitly prohibited from being included in the portal.

**Response.** The SBOE disagrees with replicating statute in administrative code rule since rules are meant to clarify where statute is not clear. However, the SBOE agrees that the rule could clarify the prohibition in statute and took action to amend §67.83(c)(1) at adoption to add, "excluding materials outlined in TEC, §31.154(c)."

**Comment.** Concerning proposed new §67.83(c)(1), Savvas Learning Company, Accelerate Learning, and Houghton Mifflin Harcourt expressed concerns that online access to exams in teaching materials in the parent portal would compromise the validity of those exams.

**Response.** The SBOE agrees that assessments should be excluded from the requirement and took action to amend §67.83(c)(1) at adoption to add, "excluding materials outlined in TEC, §31.154(c)."

**Comment.** Concerning proposed new §67.83(c)(2), Savvas Learning Company, Accelerate Learning, and Houghton Mifflin Harcourt expressed concerns that the interoperability requirements for publishers' materials in a parent portal are too broad. In addition, the commenters stated that, as publishers, they will not know if their materials are interoperable until a school district purchases their instructional materials. The commenters suggested specific rule text changes.

**Response.** The SBOE agrees that the use of the term "interoperable" could be open to interpretation. However, the SBOE disagrees that the recommended language from the commenters is the appropriate manner to address the concern. Instead, the SBOE has modified the rule at adoption to focus on the desired functionality over the method of implementation. Specifically, the rule was modified to clarify that the parent portal must be "capable of single-sign-on" with a school district's learning management system (LMS).

In addition, new language in §67.83(c)(2) was added at adoption to address the comment related to publishers knowing whether their materials are interoperable. Section 67.83(c)(2) will allow

a period for a publisher to come into compliance with the single-sign-on feature within 60 days of a school district purchase of materials. Section 67.83(e) was added at adoption to allow TEA to recommend to the SBOE the removal of a publisher's materials from the approved list of instructional materials if the publisher does not make their portal capable of single-sign-on with a school district's LMS unless the delay is due to a delay by the district or its LMS vendor.

**Comment.** Concerning §67.83(c)(2), Instructional Material Coordinators' Association of Texas (IMCAT) expressed concerns regarding the LMS interoperability and the possibility that an LMS vendor may refuse to comply or charge a school district an additional cost to comply.

**Response.** This comment is outside of the scope of the proposed rulemaking.

## SUBCHAPTER B. STATE REVIEW AND APPROVAL

### **19 TAC §§67.21, 67.23, 67.25**

**STATUTORY AUTHORITY.** The new sections are adopted under Texas Education Code (TEC), §26.006, as amended by House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023, which requires school districts and open-enrollment charter schools to make available access to instructional materials for parents via a parent portal if applicable; TEC, §31.003(a), as amended by HB 1605, 88th Texas Legislature, Regular Session, 2023, which permits the State Board of Education (SBOE) to adopt rules for the adoption, requisition, distribution, care, use, and disposal of instructional materials; TEC, §31.022, as amended by HB 1605, 88th Texas Legislature, Regular Session, 2023, which requires the SBOE to review instructional materials that have been provided to the board by the Texas Education Agency (TEA) under TEC, §31.023; TEC, §31.023, as amended by HB 1605, 88th Texas Legislature, Regular Session, 2023, which requires the commissioner of education to establish, in consultation with and with the approval of the SBOE, a process for the annual review of instructional materials by TEA. In conducting a review under this section, TEA must use a rubric developed by TEA in consultation with and approved by the SBOE; TEC, §31.151, as amended by HB 1605, 88th Texas Legislature, Regular Session, 2023, which permits the SBOE to determine the standard terms and conditions of instructional materials contracts; and TEC, §31.154, as added by HB 1605, 88th Texas Legislature, Regular Session, 2023, which requires the SBOE to adopt standards for entities that supply instructional materials reviewed by TEA to make instructional materials supplied by the entity available on a parent portal hosted by the entity.

**CROSS REFERENCE TO STATUTE.** The new sections implement Texas Education Code, §§26.006, 31.003(a), 31.022, 31.023, and 31.151, as amended by House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023, and 31.154, as added by HB 1605, 88th Texas Legislature, Regular Session, 2023.

*§67.21. Proclamations, Public Notice, and Requests for Instructional Materials for Review.*

(a) Upon the adoption of revised Texas Essential Knowledge and Skills (TEKS) or Texas Prekindergarten Guidelines (TPG), the State Board of Education (SBOE) shall determine if the extent of the revisions have created a need to remove instructional materials from the list approved under Texas Education Code, §31.022.

(b) The SBOE shall issue a proclamation calling for instructional materials if the determination in subsection (a) of this section results in a decision that a proclamation is necessary. The proclamation shall serve as notice to:

(1) all publishers to submit instructional material for review for the subject and grade level or course(s); and

(2) all publishers with approved instructional materials for the subject and grade level or course(s) that to remain on the list of approved materials, the publisher must submit new or revised materials or new information demonstrating alignment of current instructional materials to the revised TEKS or TPG.

(c) The Texas Education Agency shall issue an annual request for instructional materials to notify all publishers and the public that submissions of instructional materials aligned to quality rubrics and the suitability rubric approved by the SBOE are being invited for review.

(d) Each proclamation and annual request for instructional materials for review shall contain the following:

(1) information about and reference to applicable TEKS, TPG, and English Language Proficiency Standards in each subject for which submissions are being invited;

(2) the student enrollment of the courses or grade levels called for, to the extent that it is available, for the school year prior to the year in which the proclamation or annual request for instructional materials is issued;

(3) the requirement that a publisher grant electronic access to the instructional materials being submitted that complies to the specifications in the proclamation or annual request for instructional materials for review and may not submit a print copy;

(4) specifications for providing computerized files to produce accessible formats of approved instructional materials;

(5) specifications for ensuring that electronic instructional materials are fully accessible to students with disabilities; and

(6) a schedule of instructional materials review and approval procedures.

*§67.23. Requirements for Publisher Participation in Instructional Materials Review and Approval (IMRA).*

(a) A publisher with approved materials shall comply with product standards and specifications.

(b) Publishers participating in the adoption process are responsible for all expenses incurred by their participation.

(c) A publisher may not submit instructional materials for review that have been authored or contributed to by a current employee of the Texas Education Agency (TEA). This does not apply to open education resource instructional materials as developed by TEA in accordance with Texas Education Code, Chapter 31, Subchapter B-1.

(d) On or before the deadline established in the schedule of approval procedures, publishers shall submit correlations of instructional materials submitted for review in a format designated by the commissioner of education. Correlations shall be provided for materials designed for student use and materials designed for teacher use and include:

(1) evidence of coverage of each student expectation, in the context of the lesson, of the Texas Essential Knowledge and Skills or Texas Prekindergarten Guidelines and applicable English Language Proficiency Standards required by the proclamation or the request for instructional materials for review; and

(2) evidence of alignment to the quality rubric indicators.

(e) On or before the deadline established in the schedule of approval procedures, publishers shall certify that after exercising reasonable efforts, the submitted material complies with suitability standards and all applicable state laws.

(f) A publisher that intends to offer instructional materials for review and approval shall comply with additional requirements included in a proclamation or the annual request for instructional materials for review.

*§67.25. Consideration and Approval of Instructional Materials by the State Board of Education.*

The State Board of Education (SBOE) shall review the results of the instructional materials reviews completed by a review panel and submitted by the commissioner of education in accordance with Texas Education Code (TEC), §31.022 and §31.023. Instructional materials may be placed on the list of approved instructional materials only if they meet the following criteria:

(1) for full-subject and partial-subject tier one instructional materials for foundation subjects as defined by TEC, §28.002(a)(1), the product components cover 100% of the Texas Essential Knowledge and Skills (TEKS) and applicable English Language Proficiency Standards (ELPS) for the specific grade level and subject area when the proclamation or request for instructional materials was issued. In determining the percentage of the TEKS and ELPS covered by instructional materials, each student expectation shall count as an independent element of the standards;

(2) materials have been reviewed through the process required by TEC, §31.023;

(3) materials are free from factual error, defined as a verified error of fact or any error that would interfere with student learning, including significant grammatical or punctuation errors;

(4) materials meet the Web Content Accessibility Guidelines (WCAG) and meet the technical specifications of the Federal Rehabilitation Act, Section 508, as specified when a request for instructional materials or proclamation was issued;

(5) materials conform to or exceed in every instance the latest edition of the Manufacturing Standards and Specifications for Textbooks (MSST), developed by the State Instructional Materials Review Association, when the proclamation or request for instructional materials was issued;

(6) materials are compliant with the suitability standards adopted by the SBOE and are compliant with all applicable state laws; and

(7) materials provide access to a parent portal as required by TEC, §31.154.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 11, 2024.

TRD-202401109

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: March 31, 2024

Proposal publication date: December 29, 2023

For further information, please call: (512) 475-1497



◆   ◆   ◆

## SUBCHAPTER D. DUTIES OF PUBLISHERS AND MANUFACTURERS

### 19 TAC §67.81, §67.83

STATUTORY AUTHORITY. The new sections are adopted under Texas Education Code (TEC), §26.006, as amended by House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023, which requires school districts and open-enrollment charter schools to make available access to instructional materials for parents via a parent portal if applicable; TEC, §31.003(a), as amended by HB 1605, 88th Texas Legislature, Regular Session, 2023, which permits the State Board of Education (SBOE) to adopt rules for the adoption, requisition, distribution, care, use, and disposal of instructional materials; TEC, §31.022, as amended by HB 1605, 88th Texas Legislature, Regular Session, 2023, which requires the SBOE to review instructional materials that have been provided to the board by the Texas Education Agency (TEA) under TEC, §31.023; TEC, §31.023, as amended by HB 1605, 88th Texas Legislature, Regular Session, 2023, which requires the commissioner of education to establish, in consultation with and with the approval of the SBOE, a process for the annual review of instructional materials by TEA. In conducting a review under this section, TEA must use a rubric developed by TEA in consultation with and approved by the SBOE; TEC, §31.151, as amended by HB 1605, 88th Texas Legislature, Regular Session, 2023, which permits the SBOE to determine the standard terms and conditions of instructional materials contracts; and TEC, §31.154, as added by HB 1605, 88th Texas Legislature, Regular Session, 2023, which requires the SBOE to adopt standards for entities that supply instructional materials reviewed by TEA to make instructional materials supplied by the entity available on a parent portal hosted by the entity.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §§26.006, 31.003(a), 31.022, 31.023, and 31.151, as amended by House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023, and 31.154, as added by HB 1605, 88th Texas Legislature, Regular Session, 2023.

#### §67.83. *Publisher Parent Portal.*

(a) Standards under this section apply to any publisher that supplies instructional materials that are reviewed by a review panel under Texas Education Code (TEC), §31.022 and §31.023, and placed on the list of approved instructional materials by the State Board of Education (SBOE) as outlined in TEC, §31.022.

(b) Standards under this section apply to any instructional materials, including:

- (1) full-subject tier one instructional material;
- (2) open education resource instructional material;
- (3) partial-subject tier one instructional material; and
- (4) supplemental instructional material.

(c) A publisher must host an instructional materials parent portal that:

- (1) includes in the portal all components placed on the list of instructional materials approved by the SBOE, including teacher- and student-facing materials, excluding materials outlined in TEC, §31.154(c);

(2) for each school district or open-enrollment charter school that purchases the instructional materials, makes the parent portal capable of single-sign-on with the learning management system or online learning portal used by the district or charter school to assign, distribute, present, or make available instructional materials as defined by TEC, §31.002, to students. If a publisher is unable to make instructional materials operational at the time of purchase by a school district or open-enrollment charter school, the publisher has 60 days from the date of purchase to make its portal operational with the learning management system of the school district or charter school that purchased the materials;

(3) for instructional materials not available in a digital format, contains the instructional materials component International Standard Book Number (ISBN) or part number, title, edition, and author to allow a parent to locate a physical copy of the material;

(4) allows access beginning not later than 30 days before the school year begins and concluding not earlier than 30 days after the school year ends;

(5) optimizes the portal for viewing on large monitors, laptops, tablets, and smartphone devices; and

(6) meets Web Content Accessibility Guidelines (WCAG) identified in the associated proclamation or annual request for instructional materials for review and any technical standards required by the Federal Rehabilitation Act, Section 508.

(d) A publisher hosting an instructional materials parent portal may not:

(1) include any instructional materials as defined by TEC, §31.002, that were not reviewed and placed on the approved materials list; or

(2) include any instructional materials on the portal that would undermine, subvert, or impede any local education agency or open-enrollment charter school from complying with TEC, §31.1011.

(e) For instructional materials that do not meet the single-sign-on capability requirements within the time period established under subsection (c)(2) of this section, the Texas Education Agency shall recommend to the SBOE the removal of the publisher's instructional materials from the list of approved materials unless the failure to meet the functionality is due to inaction by the school district or charter school or the district's or school's learning management system provider. The SBOE may remove the publisher's material from the approved list.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 11, 2024.

TRD-202401110

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: March 31, 2024

Proposal publication date: December 29, 2023

For further information, please call: (512) 475-1497

◆   ◆   ◆

## CHAPTER 97. PLANNING AND ACCOUNTABILITY

SUBCHAPTER EE. ACCREDITATION  
STATUS, STANDARDS, AND SANCTIONS  
DIVISION 2. CONTRACTING TO PARTNER  
TO OPERATE A DISTRICT CAMPUS

**19 TAC §97.1075, §97.1079**

The Texas Education Agency (TEA) adopts amendments to §97.1075 and §97.1079, concerning contracting to partner to operate a district campus. The amendments are adopted without changes to the proposed text as published in the December 29, 2023 issue of the *Texas Register* (48 TexReg 8099) and will not be republished. The adopted amendments would remove language regarding the finality of decisions under §97.1075 and §97.1079 as a result of two court cases invalidating the provisions.

**REASONED JUSTIFICATION:** Section 97.1075 describes the requirements for contracting to partner to operate a campus under Texas Education Code (TEC), §11.174, including requirements related to conferred authorities, performance contracts, and ongoing monitoring. Section 97.1079 describes the criteria and determination processes for districts applying for benefits under TEC, §11.174(a)(2). Each rule includes a provision regarding the finality of the commissioner of education's decisions under the rule and the inability of districts to appeal those decisions. Due to recent court cases invalidating the provisions, the adopted amendments remove §97.1075(k) and §97.1079(f).

**SUMMARY OF COMMENTS AND AGENCY RESPONSES:** The public comment period on the proposal began December 29, 2023, and ended February 5, 2024. No public comments were received.

**STATUTORY AUTHORITY.** The amendments are adopted under Texas Education Code (TEC), §11.174, which requires the commissioner to adopt rules to administer the provisions for contracts regarding district campus operations; and TEC, §48.252, which requires the commissioner to adopt rules to administer the provisions for entitlements for district charter partnerships.

**CROSS REFERENCE TO STATUTE.** The amendments implement Texas Education Code, §11.174 and §48.252.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 6, 2024.

TRD-202400987

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: March 26, 2024

Proposal publication date: December 29, 2023

For further information, please call: (512) 475-1497



CHAPTER 109. BUDGETING, ACCOUNTING,  
AND AUDITING  
SUBCHAPTER C. ADOPTIONS BY  
REFERENCE

**19 TAC §109.41**

The State Board of Education (SBOE) adopts an amendment to §109.41, concerning budgeting, accounting, and auditing. The amendment is adopted without changes to the proposed text as published in the December 22, 2023, issue of the *Texas Register* (48 TexReg 7734) and will not be republished. The amendment adopts by reference the updated Financial Accountability System Resource Guide (FASRG), Version 19, which includes allowable costs for dyslexia and related disorders added by House Bill (HB) 3928, 88th Texas Legislature, Regular Session, 2023. Although no changes were made to §109.41 since published as proposed, the FASRG adopted by reference does include changes to Modules 1-6 at adoption.

**REASONED JUSTIFICATION:** The FASRG describes the rules of financial accounting for school districts, charter schools, and education service centers and is adopted by reference under §109.41. Revisions to the FASRG align the content with current governmental accounting and auditing standards, remove obsolete requirements, and remove descriptions and discussions of best practices and other non-mandatory elements.

Requirements for financial accounting and reporting are derived from generally accepted accounting principles (GAAP). School districts and charter schools are required to adhere to GAAP. Legal and contractual considerations typical of the government environment are reflected in the fund structure basis of accounting.

An important function of governmental accounting systems is to enable administrators to assure and report on compliance with finance-related legal provisions. This assurance and reporting means that the accounting system and its terminology, fund structure, and procedures must be adapted to satisfy finance-related legal requirements. However, the basic financial statements of school districts and charter schools should be prepared in conformity with GAAP.

School district and charter school accounting systems shall use the accounting code structure presented in the Account Code section of the FASRG (Module 1). Funds shall be classified and identified on required financial statements by the same code number and terminology provided in the Account Code section of the FASRG (Module 1).

The FASRG, Version 19, contains six modules on the following topics: Module 1, Financial Accounting and Reporting (FAR) and FAR Appendices; Module 2, Special Supplement - Charter Schools; Module 3, Special Supplement - Non-profit Charter Schools Chart of Accounts; Module 4, Auditing; Module 5, Purchasing; and Module 6, Compensatory Education, Guidelines, Financial Treatment, and an Auditing and Reporting System.

State law provides authority for both the SBOE and the commissioner of education to adopt rules on financial accounting. To accomplish this, the SBOE and the commissioner each adopt the FASRG by reference under separate rules. The SBOE adopts the FASRG by reference under §109.41, and the commissioner adopts the FASRG by reference under 19 TAC §109.5001.

The following changes were made to Modules 1-6 of the FASRG.

*Module 1, Financial Accounting and Reporting (FAR) and FAR Appendices*

Module 1 aligns with current governmental accounting standards. Module 1 includes the following changes. Updates were made to accounting codes and accounting guidance, which will

include allowable costs for dyslexia and related disorders added by House Bill 3928, 88th Texas Legislature, Regular Session, and previous guidance was clarified. School districts and charter schools will be required to maintain proper budgeting and financial accounting and reporting systems. In addition, school districts will be required to establish principles and policies to ensure uniformity in accounting in conformity with GAAP established by the Governmental Accounting Standards Board (GASB).

In response to public comment, Module 1, FAR Appendices, was modified at adoption to provide clearer guidance and add clarity through grammatical edits for the use of accounting codes.

In addition, all references to the Elementary and Secondary Act (ESEA) have been updated at adoption to the Every Student Succeeds Act (ESSA).

#### *Module 2, Special Supplement - Charter Schools*

Module 2 aligns with current financial accounting reporting standards. Module 2 includes the following significant changes. Updates were made to accounting codes and accounting guidance, including a requirement for the recording of Teacher Retirement System (TRS) on-behalf revenue and payments and the calculation for the amounts, and previous guidance would be clarified. The module establishes financial and accounting requirements for Texas public charter schools to ensure uniformity in accounting in conformity with GAAP. The module also includes current guidance that complements the American Institute of Certified Public Accountants (AICPA) *Audit and Accounting Guide, State and Local Governments* and supplements the *Government Auditing Standards* of the United States Government Accountability Office (GAO). These requirements will facilitate preparation of financial statements that conform to GAAP established by the Financial Accounting Standards Board (FASB).

At adoption, all references to the ESEA have been updated to the ESSA.

#### *Module 3, Special Supplement - Non-profit Charter Schools Chart of Accounts*

Module 3 aligns with current financial accounting standards. Module 3 includes the following changes. Updates were made to accounting codes and accounting guidance, which include allowable costs for dyslexia and related disorders added by House Bill 3928, 88th Texas Legislature, Regular Session, 2023, as well as the addition of accounting codes for TRS on-behalf payments, and previous guidance was clarified. Charter schools will be required to maintain proper budgeting and financial accounting and reporting systems that are in conformity with Texas Education Data Standards in the TSDS PEIMS. In addition, charter schools will be required to establish principles and policies to ensure uniformity in accounting in conformity with GAAP established by the FASB. The module also includes current auditing guidance that complements the AICPA *Audit and Accounting Guide, State and Local Governments* and supplements the *Government Auditing Standards* of the United States GAO. These requirements will facilitate preparation of financial statements that conform to GAAP established by the FASB.

In response to public comment, Module 3 was modified at adoption to provide clearer guidance and add clarity through grammatical edits for the use of accounting codes.

In addition, all references to the ESEA have been updated at adoption to the ESSA.

#### *Module 4, Auditing*

Module 4 aligns with current auditing standards. Module 4 includes the following changes. Updates were made to accounting codes and accounting guidance, and previous guidance was clarified. The module establishes auditing requirements for Texas public school districts and charter schools and includes current requirements from Texas Education Code (TEC), §44.008, as well as Code of Federal Regulations, Title 2, Part 200, Subpart F, Audit Requirements, that implement the federal Single Audit Act. The module also includes current auditing guidance that complements the AICPA *Audit and Accounting Guide, State and Local Governments* and supplements the *Government Auditing Standards* of the United States GAO. These requirements will facilitate preparation of financial statements that conform to GAAP established by the GASB.

At adoption, all references to the ESEA have been updated to the ESSA.

#### *Module 5, Purchasing*

Module 5 aligns with current purchasing laws and standards. Module 5 includes the following changes. Updates were made to purchasing guidance that has changed from previous legislation. Purchasing rules that needed additional explanation were clarified. School districts and charter schools will be required to establish procurement policies and procedures that align with their unique operating environment and ensure compliance with relevant statutes and policies.

In response to public comment, Module 5 was modified at adoption to provide clearer guidance and add clarity through grammatical edits.

#### *Module 6, Compensatory Education, Guidelines, Financial Treatment, and an Auditing and Reporting System*

Module 6 includes the following changes. Updates were made to clarify language that needed additional explanation, and other changes were made due to changes in law. School districts and charter schools will be required to maintain proper budgeting and financial accounting and reporting systems. The module provides information to assist local school officials' understanding of the numerous options for use of the state compensatory education allotment and provides current guidance for compliance.

In response to public comment, Module 6 was modified at adoption to add reference to the impact of HB 1416, 88th Texas Legislature, Regular Session, 2023, on the State Compensatory Education (SCE) program and to provide clearer guidance and add clarity through grammatical edits.

The FASRG is posted on the Texas Education Agency (TEA) website at <https://tea.texas.gov/finance-and-grants/financial-accountability/financial-accountability-system-resource-guide>.

The SBOE approved the amendment for first reading and filing authorization at its November 17, 2023 meeting and for second reading and final adoption at its February 2, 2024 meeting.

In accordance with Texas Education Code, §7.102(f), the SBOE approved the amendment for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2024-2025 school year. The earlier effective date would ensure the provisions of the FASRG align with current governmental accounting and auditing standards for school districts and charter schools as soon as possible. The effective date is 20 days after filing as adopted with the Texas Register.

**SUMMARY OF COMMENTS AND RESPONSES:** The public comment period on the proposal began December 22, 2023, and ended at 5:00 p.m. on January 22, 2024. The SBOE also provided an opportunity for registered oral and written comments at its January-February 2024 meeting in accordance with the SBOE board operating policies and procedures. Following is a summary of public comments received and corresponding responses.

*Module 1: Financial Accounting and Reporting (FAR) Appendices and Module 3: Special Supplement - Nonprofit Charter School Chart of Accounts*

**Comment:** Texas Council of Administrators of Special Education (TCASE) commented that some language stated for program intent code (PIC) 37 (Dyslexia or Related Disorders - Screening, Evaluation, and Identifications) and PIC 43 (Dyslexia or Related Disorders - Special Education) in Module 1: FAR Appendices, Section A.8.4 and Module 3: Special Supplement - Nonprofit Charter School Chart of Accounts, Section 3.8.4 could create confusion, and TCASE suggested clarification for the language. Specifically, TCASE requested clarification on the use of the term "tools for evaluation" in the list of allowed costs for PIC 37, as special education funds are used for evaluation; suggested adding reference to dyslexia certifications in addition to training as allowable costs for PIC 37; suggested clarifying that "services, such as instructional accommodations" include personnel costs, including those incurred through contracting with private providers, as allowed costs for PIC 37; suggested that the costs to exclude from PIC 43 be revised to be consistent with language in PIC 37 because the word "tools" is not referenced at exclusionary costs for PIC 43; commented that costs for more individuals with various certification should be included as allowed costs for PIC 43 in addition to licensed dyslexia therapists and certified academic language therapists; and commented that deleting language referring to contracts with private providers for both PIC 37 and 43 makes it unclear on how contracted costs should be coded.

**Response:** The SBOE agrees that amending language for costs to include in PIC 37 will clarify costs that are allowed to be coded to the PIC. The following changes have been made to the FASRG at adoption.

Language has been modified from "Dyslexia screening, progress monitoring, and/or evaluation tools" to "Tools and instruments used to screen, progress monitor, and/or evaluate for dyslexia and related disorders." PIC 37 is used for coding expenses from revenue received from the dyslexia allotment under TEC, §48.103. Any types of tools or instruments purchased by a local education agency with its dyslexia allotment to screen, progress monitor, or evaluate for dyslexia can be coded to this PIC.

Language has been modified from "Dyslexia identification training for evaluation personnel" to "Training in the identification of dyslexia for evaluation personnel," and "Costs related to certification, licensure, and/or training to become providers of dyslexia instruction" has been added to the list of costs to include in PIC 37.

To clarify that costs for contracted personnel can be coded to PIC 37, the following language has been added to the costs to include in PIC 37: "Personnel costs for the screening, evaluation, and identification of students with dyslexia."

The SBOE disagrees that revising the costs to exclude from PIC 43 regarding "tools" is necessary but agrees that amending language for the costs that are allowed to be coded to PIC

43 will provide clarification. Therefore, for PIC 43, the FASRG has been modified at adoption to replace "Salary for personnel providing dyslexia instruction to identified students" and "Licensed dyslexia therapist or certified academic language therapist positions and/or stipends for licensed dyslexia therapists or certified academic language therapists" with "Personnel costs for licensed, trained, or certified providers of dyslexia instruction." The amended language clarifies allowable providers as described in the SBOE's Dyslexia Handbook, which is adopted in 19 TAC §74.28.

*Module 3: Special Supplement - Nonprofit Charter School Chart of Accounts*

**Comment:** A certified public accountant commented that the word "finance" should be added after "right-of-use" in the inclusion chart for function code 71 (Debt Service) in Module 3 to specify that function code 71 should be used for interest on right-of-use finance leases.

**Response:** The SBOE agrees that function 71 should be used for interest on right-of-use finance leases. Language has been modified at adoption for function code 71 in Module 3, Section 3.3, to specify that it should be used for right-of-use finance leases.

*Module 5: Purchasing*

**Comment:** Texas Association of School Business Officials recommended that the word "local" be deleted from the definition of the purchase of newspaper advertising below the competitive procurement threshold in section 5.10 of Module 5 to state, "Newspaper Advertising. The purchasing of advertising from newspapers for the purpose of communicating with the general public of information concerning the district that is legally mandated, such as elections and procurement opportunities, when paid directly to the publisher."

**Response:** The SBOE agrees that the word "local" may be deleted to remove the specification for the purchase of advertising from local newspapers. However, language in Module 5, Section 5.10, has been modified at adoption to specify newspapers of general circulation in the geographic boundaries of the school district. The language has been updated to read, "Newspaper Advertising. The purchasing of advertising from newspapers of general circulation in the geographic boundaries of the school district for the purpose of communicating with the general public of information concerning the district that is legally mandated, such as elections and procurement opportunities, when paid directly to the publisher."

*Module 6: State Compensatory Education, Guidelines, Financial Treatment, and an Auditing and Reporting System*

**Comment:** An education service center representative requested that HB 1416, 88th Texas Legislature, Regular Session, 2023, be added to the part of section 6.1 of Module 6 that summarizes the impact of the SCE program as a result of HB 4545, 87th Texas Legislature, Regular Session, 2021. The representative also requested that the language "with the help of required stakeholders" be included in the part of section 6.1 of Module 6 that describes expenses related to reducing the dropout rate to the allowable use of SCE funds. Additionally, the representative recommended that the term "district comprehensive needs assessment" be replaced with "district improvement plan" in the last paragraph under section 6.2.2 of Module 6.

Response: The SBOE agrees and has modified the FASRG at adoption to update Module 6, sections 6.1 and 6.2.2, with the suggested language.

**STATUTORY AUTHORITY.** The amendment is adopted under Texas Education Code (TEC), §7.102(c)(32), which requires the State Board of Education (SBOE) to adopt rules concerning school district budgets and audits of school district fiscal accounts as required under TEC, Chapter 44, Subchapter A; TEC, §44.007(a), which requires the board of trustees of each school district to adopt and install a standard school fiscal accounting system that conforms with generally accepted accounting principles; TEC, §44.007(b), which requires the accounting system to meet at least the minimum requirements prescribed by the commissioner, subject to review and comment by the state auditor; TEC, §44.007(c), which requires a record to be kept of all revenues realized and of all expenditures made during the fiscal year for which a budget is adopted. A report of the revenues and expenditures for the preceding fiscal year is required to be filed with the agency on or before the date set by the SBOE; TEC, §44.007(d), which requires each district, as part of the report required by TEC, §44.007, to include management, cost accounting, and financial information in a format prescribed by the SBOE in a manner sufficient to enable the board to monitor the funding process and determine educational system costs by district, campus, and program; and TEC, §44.008(b), which requires the independent audit to meet at least the minimum requirements and be in the format prescribed by the SBOE, subject to review and comment by the state auditor. The audit must include an audit of the accuracy of the fiscal information provided by the district through the Texas Student Data System Public Education Information Management System.

**CROSS REFERENCE TO STATUTE.** The amendment implements Texas Education Code, §§7.102(c)(32), 44.007(a)-(d), and 44.008(b).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 11, 2024.

TRD-202401111

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: March 31, 2024

Proposal publication date: December 22, 2023

For further information, please call: (512) 475-1497



## SUBCHAPTER EE. COMMISSIONER'S RULES CONCERNING FINANCIAL ACCOUNTING GUIDELINES

### 19 TAC §109.5001

The Texas Education Agency (TEA) adopts an amendment to §109.5001, concerning budgeting, accounting, and auditing. The amendment is adopted without changes to the proposed text as published in the December 22, 2023, issue of the *Texas Register* (48 TexReg 7736) and will not be republished. The amendment adopts by reference the updated Financial Accountability System Resource Guide (FASRG), Version 19,

which includes allowable costs for dyslexia and related disorders added by House Bill (HB) 3928, 88th Texas Legislature, Regular Session, 2023. Although no changes were made to §109.41 since published as proposed, the FASRG adopted by reference does include changes to Modules 1-6 at adoption.

**REASONED JUSTIFICATION:** The FASRG describes the rules of financial accounting for school districts, charter schools, and education service centers and is adopted by reference under §109.5001. Revisions to the FASRG align the content with current governmental accounting and auditing standards, remove obsolete requirements, and remove descriptions and discussions of best practices and other non-mandatory elements.

Requirements for financial accounting and reporting are derived from generally accepted accounting principles (GAAP). School districts and charter schools are required to adhere to GAAP. Legal and contractual considerations typical of the government environment are reflected in the fund structure basis of accounting.

An important function of governmental accounting systems is to enable administrators to assure and report on compliance with finance-related legal provisions. This assurance and reporting process means that the accounting system and its terminology, fund structure, and procedures must be adapted to satisfy finance-related legal requirements. However, the basic financial statements of school districts and charter schools should be prepared in conformity with GAAP.

School district and charter school accounting systems shall use the accounting code structure presented in the Account Code section of the FASRG (Module 1). Funds shall be classified and identified on required financial statements by the same code number and terminology provided in the Account Code section of the FASRG (Module 1).

The FASRG, Version 19, contains six modules on the following topics: Module 1, Financial Accounting and Reporting (FAR) and FAR Appendices; Module 2, Special Supplement - Charter Schools; Module 3, Special Supplement - Non-profit Charter Schools Chart of Accounts; Module 4, Auditing; Module 5, Purchasing; and Module 6, Compensatory Education, Guidelines, Financial Treatment, and an Auditing and Reporting System.

State law provides authority for both the State Board of Education (SBOE) and the commissioner of education to adopt rules on financial accounting. To accomplish this, the SBOE and the commissioner each adopt the FASRG by reference under separate rules. The SBOE adopts the FASRG by reference under 19 TAC §109.41, and the commissioner adopts the FASRG by reference under §109.5001.

During the January-February 2024 SBOE meeting, the SBOE approved §109.41 for second reading and final adoption. At that time, the SBOE approved the following changes to the FASRG since published as proposed. These changes impact the FASRG adopted by reference in new §109.5001.

#### *Module 1, Financial Accounting and Reporting (FAR) and FAR Appendices*

Module 1 aligns with current governmental accounting standards. Module 1 includes the following changes. Updates were made to accounting codes and accounting guidance, which will include allowable costs for dyslexia and related disorders added by House Bill 3928, 88th Texas Legislature, Regular Session, and previous guidance was clarified. School districts and charter schools will be required to maintain proper budgeting and

financial accounting and reporting systems. In addition, school districts will be required to establish principles and policies to ensure uniformity in accounting in conformity with GAAP established by the Governmental Accounting Standards Board (GASB).

In response to public comment, Module 1, FAR Appendices, was modified at adoption to provide clearer guidance and add clarity through grammatical edits for the use of accounting codes.

In addition, all references to the Elementary and Secondary Act (ESEA) have been updated at adoption to the Every Student Succeeds Act (ESSA).

#### *Module 2, Special Supplement - Charter Schools*

Module 2 aligns with current financial accounting reporting standards. Module 2 includes the following significant changes. Updates were made to accounting codes and accounting guidance, including a requirement for the recording of Teacher Retirement System (TRS) on-behalf revenue and payments and the calculation for the amounts, and previous guidance would be clarified. The module establishes financial and accounting requirements for Texas public charter schools to ensure uniformity in accounting in conformity with GAAP. The module also includes current guidance that complements the American Institute of Certified Public Accountants (AICPA) *Audit and Accounting Guide, State and Local Governments* and supplements the *Government Auditing Standards* of the United States Government Accountability Office (GAO). These requirements will facilitate preparation of financial statements that conform to GAAP established by the Financial Accounting Standards Board (FASB).

At adoption, all references to the ESEA have been updated to the ESSA.

#### *Module 3, Special Supplement - Non-profit Charter Schools Chart of Accounts*

Module 3 aligns with current financial accounting standards. Module 3 includes the following changes. Updates were made to accounting codes and accounting guidance, which includes allowable costs for dyslexia and related disorders added by House Bill 3928, 88th Texas Legislature, Regular Session, 2023, as well as the addition of accounting codes for TRS on-behalf payments, and previous guidance was clarified. Charter schools will be required to maintain proper budgeting and financial accounting and reporting systems that are in conformity with Texas Education Data Standards in the TSDS PEIMS. In addition, charter schools will be required to establish principles and policies to ensure uniformity in accounting in conformity with GAAP established by the FASB. The module also includes current auditing guidance that complements the AICPA *Audit and Accounting Guide, State and Local Governments* and supplements the *Government Auditing Standards* of the United States GAO. These requirements will facilitate preparation of financial statements that conform to GAAP established by the FASB.

In response to public comment, Module 3 was modified at adoption to provide clearer guidance and add clarity through grammatical edits for the use of accounting codes.

In addition, all references to the ESEA have been updated at adoption to the ESSA.

#### *Module 4, Auditing*

Module 4 aligns with current auditing standards. Module 4 includes the following changes. Updates were made to account-

ing codes and accounting guidance, and previous guidance was clarified. The module establishes auditing requirements for Texas public school districts and charter schools and includes current requirements from Texas Education Code (TEC), §44.008, as well as Code of Federal Regulations, Title 2, Part 200, Subpart F, Audit Requirements, that implement the federal Single Audit Act. The module also includes current auditing guidance that complements the AICPA *Audit and Accounting Guide, State and Local Governments* and supplements the *Government Auditing Standards* of the United States GAO. These requirements will facilitate preparation of financial statements that conform to GAAP established by the GASB.

At adoption, all references to the ESEA have been updated to the ESSA.

#### *Module 5, Purchasing*

Module 5 aligns with current purchasing laws and standards. Module 5 includes the following changes. Updates were made to purchasing guidance that has changed from previous legislation. Purchasing rules that needed additional explanation were clarified. School districts and charter schools will be required to establish procurement policies and procedures that align with their unique operating environment and ensure compliance with relevant statutes and policies.

In response to public comment, Module 5 was modified at adoption to provide clearer guidance and add clarity through grammatical edits.

#### *Module 6, Compensatory Education, Guidelines, Financial Treatment, and an Auditing and Reporting System*

Module 6 includes the following changes. Updates were made to clarify language that needed additional explanation, and other changes were made due to changes in law. School districts and charter schools will be required to maintain proper budgeting and financial accounting and reporting systems. The module provides information to assist local school officials' understanding of the numerous options for use of the state compensatory education allotment and provides current guidance for compliance.

In response to public comment, Module 6 was modified at adoption to add reference to the impact of HB 1416, 88th Texas Legislature, Regular Session, 2023, on the State Compensatory Education (SCE) program and to provide clearer guidance and add clarity through grammatical edits.

The FASRG is posted on the TEA website at <https://tea.texas.gov/finance-and-grants/financial-accountability/financial-accountability-system-resource-guide>.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began December 22, 2023, and ended January 22, 2024. Following is a summary of public comments received and agency responses.

#### *Module 1: Financial Accounting and Reporting (FAR) Appendices and Module 3: Special Supplement - Nonprofit Charter School Chart of Accounts*

Comment: Texas Council of Administrators of Special Education (TCASE) commented that some language stated for program intent code (PIC) 37 (Dyslexia or Related Disorders - Screening, Evaluation, and Identifications) and PIC 43 (Dyslexia or Related Disorders - Special Education) in Module 1: FAR Appendices, Section A.8.4 and Module 3: Special Supplement - Nonprofit Charter School Chart of Accounts, Section 3.8.4 could create confusion, and TCASE suggested clarification for the language.

Specifically, TCASE requested clarification on the use of the term "tools for evaluation" in the list of allowed costs for PIC 37, as special education funds are used for evaluation; suggested adding reference to dyslexia certifications in addition to training as allowable costs for PIC 37; suggested clarifying that "services, such as instructional accommodations" include personnel costs, including those incurred through contracting with private providers, as allowed costs for PIC 37; suggested that the costs to exclude from PIC 43 be revised to be consistent with language in PIC 37 because the word "tools" is not referenced at exclusionary costs for PIC 43; commented that costs for more individuals with various certification should be included as allowed costs for PIC 43 in addition to licensed dyslexia therapists and certified academic language therapists; and commented that deleting language referring to contracts with private providers for both PIC 37 and 43 makes it unclear on how contracted costs should be coded.

Response: The agency agrees that amending language for costs to include in PIC 37 will clarify costs that are allowed to be coded to the PIC. The following changes have been made to the FASRG at adoption.

Language has been modified from "Dyslexia screening, progress monitoring, and/or evaluation tools" to "Tools and instruments used to screen, progress monitor, and/or evaluate for dyslexia and related disorders." PIC 37 is used for coding expenses from revenue received from the dyslexia allotment under TEC, §48.103. Any types of tools or instruments purchased by a local education agency with its dyslexia allotment to screen, progress monitor, or evaluate for dyslexia can be coded to this PIC.

Language has been modified from "Dyslexia identification training for evaluation personnel" to "Training in the identification of dyslexia for evaluation personnel," and "Costs related to certification, licensure, and/or training to become providers of dyslexia instruction" has been added to the list of costs to include in PIC 37.

To clarify that costs for contracted personnel can be coded to PIC 37, the following language has been added to the costs to include in PIC 37: "Personnel costs for the screening, evaluation, and identification of students with dyslexia."

The agency disagrees that revising the costs to exclude from PIC 43 regarding "tools" is necessary but agrees that amending language for the costs that are allowed to be coded to PIC 43 will provide clarification. Therefore, for PIC 43, the FASRG has been modified at adoption to replace "Salary for personnel providing dyslexia instruction to identified students" and "Licensed dyslexia therapist or certified academic language therapist positions and/or stipends for licensed dyslexia therapists or certified academic language therapists" with "Personnel costs for licensed, trained, or certified providers of dyslexia instruction." The amended language clarifies allowable providers as described in the SBOE's Dyslexia Handbook, which is adopted in 19 TAC §74.28.

#### *Module 3: Special Supplement - Nonprofit Charter School Chart of Accounts*

Comment: A certified public accountant commented that the word "finance" should be added after "right-of-use" in the inclusion chart for function code 71 (Debt Service) in Module 3 to specify that function code 71 should be used for interest on right-of-use finance leases.

Response: The agency agrees that function 71 should be used for interest on right-of-use finance leases. Language has been modified at adoption for function code 71 in Module 3, Section 3.3, to specify that it should be used for right-of-use finance leases.

#### *Module 5: Purchasing*

Comment: Texas Association of School Business Officials recommended that the word "local" be deleted from the definition of the purchase of newspaper advertising below the competitive procurement threshold in section 5.10 of Module 5 to state, "Newspaper Advertising. The purchasing of advertising from newspapers for the purpose of communicating with the general public of information concerning the district that is legally mandated, such as elections and procurement opportunities, when paid directly to the publisher."

Response: The agency agrees that the word "local" may be deleted to remove the specification for the purchase of advertising from local newspapers. However, language in Module 5, Section 5.10, has been modified at adoption to specify newspapers of general circulation in the geographic boundaries of the school district. The language has been updated to read, "Newspaper Advertising. The purchasing of advertising from newspapers of general circulation in the geographic boundaries of the school district for the purpose of communicating with the general public of information concerning the district that is legally mandated, such as elections and procurement opportunities, when paid directly to the publisher."

#### *Module 6: State Compensatory Education, Guidelines, Financial Treatment, and an Auditing and Reporting System*

Comment: An education service center representative requested that HB 1416, 88th Texas Legislature, Regular Session, 2023, be added to the part of section 6.1 of Module 6 that summarizes the impact of the SCE program as a result of HB 4545, 87th Texas Legislature, Regular Session, 2021. The representative also requested that the language "with the help of required stakeholders" be included in the part of section 6.1 of Module 6 that describes expenses related to reducing the dropout rate to the allowable use of SCE funds. Additionally, the representative recommended that the term "district comprehensive needs assessment" be replaced with "district improvement plan" in the last paragraph under section 6.2.2 of Module 6.

Response: The agency agrees and has modified the FASRG at adoption to update Module 6, sections 6.1 and 6.2.2, with the suggested language.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §7.055(b)(32), which requires the commissioner to perform duties in connection with the public school accountability system as prescribed by TEC, Chapters 39 and 39A; TEC, §44.001(a), which requires the commissioner to establish advisory guidelines relating to the fiscal management of a school district; TEC, §44.001(b), which requires the commissioner to report annually to the State Board of Education (SBOE) the status of school district fiscal management as reflected by the advisory guidelines and by statutory requirements; TEC, §44.007(a), which requires the board of trustees of each school district to adopt and install a standard school fiscal accounting system that conforms with generally accepted accounting principles; TEC, §44.007(b), which requires the accounting system to meet at least the minimum requirements prescribed by the commissioner, subject to review and comment by the state auditor; TEC, §44.007(c), which requires a record to be kept of

all revenues realized and of all expenditures made during the fiscal year for which a budget is adopted. A report of the revenues and expenditures for the preceding fiscal year is required to be filed with the agency on or before the date set by the SBOE; TEC, §44.007(d), which requires each district, as part of the report required by TEC, §44.007, to include management, cost accounting, and financial information in a format prescribed by the SBOE in a manner sufficient to enable the board to monitor the funding process and determine educational system costs by district, campus, and program; and TEC, §44.008(b), which requires the independent audit to meet at least the minimum requirements and be in the format prescribed by the SBOE, subject to review and comment by the state auditor. The audit must include an audit of the accuracy of the fiscal information provided by the district through the Texas Student Data System Public Education Information Management System.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code (TEC), §§7.055(b)(32), 44.001(a) and (b), 44.007(a)-(d), and 44.008(b).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 11, 2024.

TRD-202401113

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: March 31, 2024

Proposal publication date: December 22, 2023

For further information, please call: (512) 475-1497



## CHAPTER 112. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR SCIENCE SUBCHAPTER B. MIDDLE SCHOOL

### 19 TAC §112.26

The State Board of Education (SBOE) adopts an amendment to §112.26, concerning Grade 6 science. The amendment is adopted without changes to the proposed text as published in the December 22, 2023 issue of the *Texas Register* (48 TexReg 7738) and will not be republished. The adopted amendment corrects punctuation errors in the student expectation in §112.26(b)(11)(A).

REASONED JUSTIFICATION: In accordance with statutory requirements that the SBOE by rule identify the essential knowledge and skills of each subject in the required curriculum, the SBOE follows a board-approved cycle to review and revise the essential knowledge and skills for each subject.

At the September 2019 meeting, SBOE members were asked to designate content advisors for the review and revision of the science Texas Essential Knowledge and Skills (TEKS). In December 2019, applications to serve on science TEKS review work groups were posted on the Texas Education Agency (TEA) website. Additionally, in December 2019, TEA distributed a survey to collect information from educators regarding the review and revision of the science TEKS. TEA staff provided applications for the science review work groups to SBOE members on a monthly basis from December 2019 to June 2020 and in September, Oc-

tober, and December 2020. At the January 2020 SBOE meeting, the SBOE provided specific guidance for the TEKS review work groups.

Also in January 2020, science TEKS review content advisors met in a face-to-face meeting to develop consensus recommendations regarding revisions to the science TEKS to share with future work groups. At that time, the content advisors met with representatives from Work Group A to discuss the consensus recommendations. Work Group A convened in February 2020 to review survey results, content advisor consensus recommendations, and the SBOE's guidance to work groups to develop recommendations for how science TEKS review work groups can address these areas. Work Group B was convened virtually in June 2020 to develop recommendations for four high school science courses: Biology, Chemistry, Integrated Physics and Chemistry, and Physics. In November 2020, the SBOE approved for second reading and final adoption proposed new §§112.41-112.45 for implementation beginning in the 2023-2024 school year.

Work Group D was convened for monthly meetings from November 2020-February 2021 to develop recommendations for TEKS for five additional high school science courses: Aquatic Science, Astronomy, Earth and Space Science, Environmental Systems, and a new course Specialized Topics in Science. In June 2021, the board gave final approval to the additional high school science courses. Specialized Topics in Science was approved for implementation beginning in the 2022-2023 school year. Aquatic Science, Astronomy, Earth and Space Science, and Environmental Systems were approved for implementation beginning in the 2024-2025 school year.

Between August and November 2020, Work Group C convened for a series of virtual meetings to develop recommendations for the Grades 6-8 science TEKS. Work Group E was convened for monthly meetings between January and March 2021 to develop recommendations for the science TEKS for Kindergarten-Grade 5. Work Groups C and E were reconvened in May and June 2021 to address public feedback and revise their draft recommendations. Work Group F was convened for a series of virtual meetings in July 2021 to address SBOE feedback provided at the April and June 2021 SBOE meetings, vertically align the elementary and middle school standards, meet with content advisors, and finalize the draft recommendations for the Kindergarten-Grade 8 TEKS for science. At the September 2021 SBOE meeting, the board approved for first reading and filing authorization proposed new TEKS for Kindergarten-Grade 5 science. At the November 2021 SBOE meeting, the board approved for second reading and final adoption proposed new 19 TAC §§112.1-112.7 and 112.25-112.28.

Following adoption of the revised standards, an error was discovered in one Grade 6 student expectation. An additional comma changed the intended meaning of the student expectation. The adopted amendment removes the comma and makes a technical edit to punctuation at the end of the student expectation.

The SBOE approved the amendment for first reading and filing authorization at its November 17, 2023 meeting and for second reading and final adoption at its February 2, 2024 meeting.

In accordance with Texas Education Code, §7.102(f), the SBOE approved the amendment for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2024-2025 school year. The earlier effective date



would correct an error prior to the implementation of the new standards in the 2024-2025 school year. The effective date is 20 days after filing as adopted with the Texas Register.

**SUMMARY OF COMMENTS AND RESPONSES:** The public comment period on the proposal began December 22, 2023, and ended at 5:00 p.m. on January 22, 2024. The SBOE also provided an opportunity for registered oral and written comments at its January-February 2024 meeting in accordance with the SBOE board operating policies and procedures. No public comments were received.

**STATUTORY AUTHORITY.** The amendment is adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; and TEC, §28.002(c), which requires the SBOE to identify by rule the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments.

**CROSS REFERENCE TO STATUTE.** The amendment implements Texas Education Code, §7.102(c)(4) and §28.002(a) and (c).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 11, 2024.

TRD-202401112

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: March 31, 2024

Proposal publication date: December 22, 2023

For further information, please call: (512) 475-1497



## **TITLE 22. EXAMINING BOARDS**

### **PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS**

#### **CHAPTER 1. ARCHITECTS**

##### **SUBCHAPTER B. ELIGIBILITY FOR REGISTRATION**

###### **22 TAC §1.29**

The Texas Board of Architectural Examiners (Board) adopts amendments to 22 Texas Administrative Code §1.29. The amendments are adopted without changes to the proposed text published in the January 12, 2024, issue of the *Texas Register* (49 TexReg 115). The rule will not be republished.

**Reasoned Justification.** The adopted rules implement Senate Bill 422 (88th Regular Session, 2023), which amends provisions in Texas Occupations Code Chapter 55, relating to the licensure of military service members, military veterans, and military spouses.

Previously, the Texas Legislature enacted a procedure under Texas Occupations Code §55.0041 that allows certain military spouses licensed in other states to engage in a business or occupation without becoming licensed in Texas. Through Senate Bill 422, the legislature extended this provision to apply to military service members. Under amended §55.0041(a), a military service member may engage in a business or occupation for which a license is required without obtaining the applicable license if the military service member is currently licensed in good standing by another jurisdiction that has licensing requirements that are substantially equivalent to Texas requirements. A military service member seeking to practice under this provision is required to notify the licensing entity, submit proof of residency and military identification, and receive confirmation of qualification to practice from the state agency. See Tex. Occ. Code §55.0041(b). The law also authorizes state agencies to adopt rules to issue a temporary license to an individual who qualifies to practice their profession under §55.0041(a). In such a case, the agency cannot charge a fee for the issuance of the license.

Senate Bill 422 also amended the law to impose deadlines upon agencies in considering applications under Texas Occupations Code Chapter 55. Under these amendments, a licensing agency has no more than 30 days from the submission of required documentation to approve a qualifying military service member or military spouse seeking to practice under Tex. Occ. Code §55.0041. Additionally, an amendment to Tex. Occ. Code §55.005 requires a licensing agency to process and approve an application for licensure from a qualifying military service member, military veteran, or military spouse within 30 days.

In this rulemaking action the Board implements Senate Bill 422 by amending 22 Texas Administrative Code §1.29(b)(3) to adopt a 30-day processing deadline for the consideration of an application submitted by a military service member, military veteran, or military spouse.

Additionally, the Board implements Senate Bill 422 by amending §1.29(c). Previously, the Board adopted this rule to implement a temporary architectural registration procedure for qualifying military spouses pursuant to Tex. Occ. Code §55.0041. Because Senate Bill 422 expanded §55.0041 to apply to qualifying military service members, the Board amends §1.29(c) to do the same. The adopted rule implements two additional Senate Bill 422 amendments to §55.0041 by requiring the Board to issue a temporary registration to a qualifying military service member or military spouse within 30 days, and by clarifying that a military spouse's temporary registration is not impacted by a divorce or similar event.

Finally, the Board adopts non-substantive amendments to §1.29(c)(7) and §1.29(c)(8)(B) to improve the clarity of the rule.

###### **Summary of Comments and Agency Response.**

The Board did not receive any comments on the proposed rule.

**Statutory Authority.** Amendments to §1.29 are adopted under the authority of Tex. Occ. Code §1051.202, which authorizes the Board to adopt reasonable rules as necessary to regulate the practice of architecture. The amended rule implements Occupations Code §55.0041, which requires the Board to adopt the rule.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 8, 2024.

TRD-202401084

Lance Brenton

General Counsel

Texas Board of Architectural Examiners

Effective date: March 28, 2024

Proposal publication date: January 12, 2024

For further information, please call: (512) 305-8519



## CHAPTER 3. LANDSCAPE ARCHITECTS SUBCHAPTER B. ELIGIBILITY FOR REGISTRATION

### 22 TAC §3.29

The Texas Board of Architectural Examiners (Board) adopts amendments to 22 Texas Administrative Code §3.29. The amendments are adopted without changes to the proposed text published in the January 12, 2024, issue of the *Texas Register* (49 TexReg 117).

**Reasoned Justification.** The adopted rules implement Senate Bill 422 (88th Regular Session, 2023), which amends provisions in Texas Occupations Code Chapter 55, relating to the licensure of military service members, military veterans, and military spouses.

Previously, the Texas Legislature enacted a procedure under Texas Occupations Code §55.0041 that allows certain military spouses licensed in other states to engage in a business or occupation without becoming licensed in Texas. Through Senate Bill 422, the legislature extended this provision to apply to military service members. Under amended §55.0041(a), a military service member may engage in a business or occupation for which a license is required without obtaining the applicable license if the military service member is currently licensed in good standing by another jurisdiction that has licensing requirements that are substantially equivalent to Texas requirements. A military service member seeking to practice under this provision is required to notify the licensing entity, submit proof of residency and military identification, and receive confirmation of qualification to practice from the state agency. See Tex. Occ. Code §55.0041(b). The law also authorizes state agencies to adopt rules to issue a temporary license to an individual who qualifies to practice their profession under §55.0041(a). In such a case, the agency cannot charge a fee for the issuance of the license.

Senate Bill 422 also amended the law to impose deadlines upon agencies in considering applications under Texas Occupations Code Chapter 55. Under these amendments, a licensing agency has no more than 30 days from the submission of required documentation to approve a qualifying military service member or military spouse seeking to practice under Tex. Occ. Code § 55.0041. Additionally, an amendment to Tex. Occ. Code §55.005 requires a licensing agency to process and approve an application for licensure from a qualifying military service member, military veteran, or military spouse within 30 days.

In this rulemaking action the Board implements Senate Bill 422 by amending 22 Texas Administrative Code §3.29(b)(3) to adopt a 30-day processing deadline for the consideration of an application for registration as a landscape architect submitted by a military service member, military veteran, or military spouse.

Additionally, the Board implements Senate Bill 422 by amending §3.29(c). Previously, the Board adopted this rule to implement a temporary landscape architectural registration procedure for qualifying military spouses pursuant to Tex. Occ. Code §55.0041. Because Senate Bill 422 expanded §55.0041 to apply to qualifying military service members, the Board amends §3.29(c) to do the same. The adopted rule implements two additional Senate Bill 422 amendments to §55.0041 by requiring the Board to issue a temporary registration to a qualifying military service member or military spouse within 30 days, and by clarifying that a military spouse's temporary registration is not impacted by a divorce or similar event.

Finally, the Board adopts non-substantive amendments to §3.29(b)(2)(A), §3.29(c)(7) and §3.29(c)(8)(B) to improve the clarity of the rule.

### Summary of Comments and Agency Response.

The Board did not receive any comments on the proposed rule.

**Statutory Authority.** Amendments to §3.29 are adopted under the authority of Tex. Occ. Code §1051.202, which authorizes the Board to adopt reasonable rules as necessary to regulate the practice of landscape architecture. The amended rule implements Occupations Code §55.0041, which requires the Board to adopt the rule.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 8, 2024.

TRD-202401085

Lance Brenton

General Counsel

Texas Board of Architectural Examiners

Effective date: March 28, 2024

Proposal publication date: January 12, 2024

For further information, please call: (512) 305-8519



## CHAPTER 5. REGISTERED INTERIOR DESIGNERS SUBCHAPTER B. ELIGIBILITY FOR REGISTRATION

### 22 TAC §5.39

The Texas Board of Architectural Examiners (Board) adopts amendments to 22 Texas Administrative Code §5.39. The amendments are adopted without changes to the proposed text published in the January 12, 2024, issue of the *Texas Register* (49 TexReg 120). The rule will not be republished.

**Reasoned Justification.** The adopted rules implement Senate Bill 422 (88th Regular Session, 2023), which amends provisions in Texas Occupations Code Chapter 55, relating to the licensure of military service members, military veterans, and military spouses.

Previously, the Texas Legislature enacted a procedure under Texas Occupations Code §55.0041 that allows certain military spouses licensed in other states to engage in a business or occupation without becoming licensed in Texas. Through Senate Bill 422, the legislature extended this provision to apply to military

service members. Under amended §55.0041(a), a military service member may engage in a business or occupation for which a license is required without obtaining the applicable license if the military service member is currently licensed in good standing by another jurisdiction that has licensing requirements that are substantially equivalent to Texas requirements. A military service member seeking to practice under this provision is required to notify the licensing entity, submit proof of residency and military identification, and receive confirmation of qualification to practice from the state agency. See Tex. Occ. Code §55.0041(b). The law also authorizes state agencies to adopt rules to issue a temporary license to an individual who qualifies to practice their profession under §55.0041(a). In such a case, the agency cannot charge a fee for the issuance of the license.

Senate Bill 422 also amended the law to impose deadlines upon agencies in considering applications under Texas Occupations Code Chapter 55. Under these amendments, a licensing agency has no more than 30 days from the submission of required documentation to approve a qualifying military service member or military spouse seeking to practice under Tex. Occ. Code § 55.0041. Additionally, an amendment to Tex. Occ. Code §55.005 requires a licensing agency to process and approve an application for licensure from a qualifying military service member, military veteran, or military spouse within 30 days.

In this rulemaking action the Board implements Senate Bill 422 by amending 22 Texas Administrative Code §5.39(b)(3) to adopt a 30-day processing deadline for the consideration of an application for registration as a registered interior designer submitted by a military service member, military veteran, or military spouse.

Additionally, the Board implements Senate Bill 422 by amending §5.39(c). Previously, the Board adopted this rule to implement a temporary interior designer registration procedure for qualifying military spouses pursuant to Tex. Occ. Code §55.0041. Because Senate Bill 422 expanded §55.0041 to apply to qualifying military service members, the Board amends §5.39(c) to do the same. The adopted rule implements two additional Senate Bill 422 amendments to §55.0041 by requiring the Board to issue a temporary registration to a qualifying military service member or military spouse within 30 days, and by clarifying that a military spouse's temporary registration is not impacted by a divorce or similar event.

Finally, the Board adopts non-substantive amendments to §5.39(b)(2)(A), §5.39(c)(7) and §5.39(c)(8)(B) to improve the clarity of the rule.

#### Summary of Comments and Agency Response.

The Board did not receive any comments on the proposed rule.

**Statutory Authority.** Amendments to §5.39 are adopted under the authority of Tex. Occ. Code §1051.202, which authorizes the Board to adopt reasonable rules as necessary to regulate the practice of registered interior design. The amended rule implements Occupations Code §55.0041, which requires the Board to adopt the rule.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 8, 2024.

TRD-202401086

Lance Brenton  
General Counsel  
Texas Board of Architectural Examiners  
Effective date: March 28, 2024  
Proposal publication date: January 12, 2024  
For further information, please call: (512) 305-8519

## PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGIST

### CHAPTER 463. APPLICATIONS AND EXAMINATIONS

#### SUBCHAPTER B. LICENSING REQUIREMENTS

##### 22 TAC §463.9

The Texas Behavioral Health Executive Council adopts amended §463.9, relating to Licensed Specialist in School Psychology. Section 463.9 is adopted with changes to the proposed text as published in the September 22, 2023, issue of the *Texas Register* (48 TexReg 5435) and will be republished.

#### Reasoned Justification.

The adopted rule amendments allow applicants who were licensed in other states to provide school psychological services or applicants with graduate degrees in related disciplines to psychology to be eligible to apply for licensure as an LSSP so long as the applicant also meets the coursework, examinations, and internship requirements.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

Two commenters discussed the efforts by the Texas State Board of Examiners of Psychologists (TSBEP) to streamline and improve licensing processes, particularly in response to a directive from the Texas Legislature following the tragedy in Uvalde. The commenters advocate for utilizing National Association of School Psychologists (NASP) resources to inform licensing decisions, particularly for those from related fields seeking to become school psychologists. Specifically, the commenters proposed NASP's concept of respecialization and professional retraining which is a process by which an individual with experience or graduate preparation in a related field expands their current knowledge and skills through a formal program to achieve a credential as a school psychologist. The commenters highlight the shortage of school psychologists and the increasing number of educational diagnosticians in Texas, suggesting the need for alternative pathways like a school psychology associate credential. The commenters support the addition of paths for individuals credentialed in other jurisdictions and aligning coursework requirements with NASP standards. The commenters emphasize the complexity of the school psychologist shortage and the importance of innovative solutions.

List of interested groups or associations for the rule.

The Texas Association of School Psychologists.

Summary of comments for the rule.

Six commenters discussed the efforts by TSBEP to streamline and improve licensing processes, particularly in response to a directive from the Texas Legislature following the tragedy in Uvalde. The commenters advocate for utilizing NASP resources to inform licensing decisions, particularly for those from related fields seeking to become school psychologists. Specifically, the commenters proposed NASP's concept of respecialization and professional retraining which is a process by which an individual with experience or graduate preparation in a related field expands their current knowledge and skills through a formal program to achieve a credential as a school psychologist. The commenters highlight the shortage of school psychologists and the increasing number of educational diagnosticians in Texas, suggesting the need for alternative pathways like a school psychology associate credential. The commenters support the addition of paths for individuals credentialed in other jurisdictions and aligning coursework requirements with NASP standards. The commenters emphasize the complexity of the school psychologist shortage and the importance of innovative solutions.

A commenter stated that making it easier for people who are already experienced and knowledgeable in the field to come and work for schools if they so desire can only do good.

A commenter requests the allowance of certification for licensure to address a critical shortage of evaluators in Texas. The commenter highlights the need for more evaluators, and states that because of this shortage schools are increasingly forced to use outside vendors, with higher rates, to meet their needs for the assessment of students.

A commenter expressed overall support for specific changes in §463.9(d)(3)(B), (C), and (D) related to graduate degrees and reciprocity for practicing school psychology in another jurisdiction. Since the emphasis is placed on the importance of applicants providing evidence of graduate-level coursework in all specified areas. However, the commenter opposes a minor change proposed in §463.9(d)(3)(A), arguing that the proposed language uses the term "course" but the term "program" which is currently used in the rule, better aligns with the rule's intent. The commenter's opposition is grounded in the belief that fulfilling the requirements in subsection (e) necessitates applicants coming from a comprehensive program rather than completing just one course.

A commenter expressed that they appreciated the intent behind adding the "school-based" language to the rule, but the commenter expresses concerns that such a change may impose an undue burden on TSBEP staff in verifying course curriculum details. The commenter asserts that school psychologists already undergo extensive training during a 1200-hour internship in school settings, emphasizing the importance of establishing foundations in assessment and intervention practices and where their education is put into practice in a school setting.

Top of Form

Agency Response.

The Council thanks the commenters for their supportive comments.

The Council acknowledges that the commenters are correct, there is a shortage of LSSP or school psychologists in Texas. The Council, along with TSBEP, have attempted to take steps toward correcting this problem, and one such action is the adoption of this rule.

The rule, in §463.9(c), currently recognizes graduates from training programs accredited by NASP as having met all training and internship requirements for licensure as an LSSP. So, the rule already utilizes NASP resources to shape licensure requirements.

The change to §463.9(d)(3)(A), which accepts applicants that hold a certificate of completion from a graduate-level training program designed to train individuals from related disciplines in the practice of school psychology, appears to align with NASP's concept of respecialization and professional retraining so the Council does not see the need for any rule change regarding this issue.

Regarding the concept of issuing an LSSP-Associate license or certification for licensure, as some commenters have suggested, these concepts are far beyond the scope of what was originally proposed. Therefore any such alternative licensure concepts cannot be adopted at this time. Further research and development would be needed before any adoption and implementation of such alternative licensure ideas could be possible.

In response to the comment regarding the use of the term "course" in proposed §463.9(d)(3)(A), the Council agrees to adopt the rule with this change, to use the term "program" instead. Especially since the term "program" is currently the term used in the rule, and the Council agrees the term "program" best reflects the intent of the rule.

Council staff currently reviews coursework as part of the LSSP application process, so it is not anticipated that the addition of "school-based" to subsection (e) of the rule will increase the burden on staff reviewing applications.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §501.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Psychologists previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. The rule is specifically authorized by §501.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed the rule to the Executive Council. Therefore, the Executive Council has com-

plied with Chapters 501 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

*§463.9. Licensed Specialist in School Psychology.*

(a) License Requirements. An applicant for licensure as a specialist in school psychology must:

- (1) hold an appropriate graduate degree;
- (2) provide proof of specific graduate level coursework;
- (3) provide proof of an acceptable internship;
- (4) provide proof of passage of all examinations required by the Council; and
- (5) meet the requirements imposed under §501.2525(a)(3) - (9) of the Occupations Code.

(b) Applicants who hold active certification as a Nationally Certified School Psychologist (NCSP) are considered to have met all requirements for licensure under this rule except for passage of the Jurisprudence Examination. Applicants relying upon this subsection must provide the Council with their NCSP certification number.

(c) Applicants who graduated from a training program accredited or approved by the National Association of School Psychologists or accredited in School Psychology by the American Psychological Association are considered to have met all training and internship requirements for licensure under this rule. Applicants relying upon this subsection must submit an official transcript indicating the degree and date the degree was awarded or conferred.

(d) Appropriate Graduate Degrees.

(1) Applicants who do not hold active NCSP certification, or who did not graduate from a training program accredited or approved by the National Association of School Psychologists or accredited in School Psychology by the American Psychological Association, must have completed a graduate degree in psychology from a regionally accredited institution of higher education. For purposes of this rule, a graduate degree in psychology means the name of the candidate's major or program of study is titled psychology.

(2) Applicants applying under this subsection must have completed, either as part of their graduate degree program or after conferral of their graduate degree, at least 60 graduate level semester credit hours from a regionally accredited institution of higher education. A maximum of 12 internship hours may be counted toward this requirement.

(3) An applicant who holds a graduate degree that does not qualify under subsection (d)(1) but meets the requirements of subsection (d)(2) is considered to have an appropriate graduate degree if:

- (A) the applicant holds a certificate of completion from a graduate-level training program designed to train individuals from related disciplines in the practice of school psychology;
- (B) the applicant holds a graduate degree in a discipline related to psychology from a regionally accredited institution of higher education;
- (C) the applicant is licensed, certified, or registered in good standing to practice school psychology in another jurisdiction; or
- (D) the applicant was licensed, certified, or registered to practice school psychology in another jurisdiction within the previous

ten years before application for licensure and was not subject to any administrative or disciplinary actions during that same time period.

(e) Applicants applying under subsection (d) of this section must submit evidence of graduate level coursework as follows:

- (1) Psychological Foundations, including:
  - (A) biological bases of behavior;
  - (B) human learning;
  - (C) social bases of behavior;
  - (D) multi-cultural bases of behavior;
  - (E) child or adolescent development;
  - (F) psychopathology or exceptionalities;
- (2) Research and Statistics;
- (3) Educational Foundations, including any of the following:
  - (A) instructional design;
  - (B) organization and operation of schools;
  - (C) classroom management; or
  - (D) educational administration;
- (4) School-based Assessment, including:
  - (A) psychoeducational assessment;
  - (B) socio-emotional, including behavioral and cultural, assessment;
- (5) School-based Interventions, including:
  - (A) counseling;
  - (B) behavior management;
  - (C) consultation;
- (6) Professional, Legal and Ethical Issues; and
- (7) A School-based Practicum.

(f) Applicants applying under subsection (d) of this section must have completed an internship with a minimum of 1200 hours and that meets the following criteria:

- (1) At least 600 of the internship hours must have been completed in a public school.
- (2) The internship must be provided through a formal course of supervised study from a regionally accredited institution of higher education in which the applicant was enrolled; or the internship must have been obtained in accordance with Council §463.11(d)(1) and (d)(2)(C) of this title.
- (3) Any portion of an internship completed within a public school must be supervised by a Licensed Specialist in School Psychology, and any portion of an internship not completed within a public school must be supervised by a Licensed Psychologist.
- (4) No experience which is obtained from a supervisor who is related within the second degree of affinity or consanguinity to the supervisee may be utilized.
- (5) Unless authorized by the Council, supervised experience received from a supervisor practicing with a restricted license may not be utilized to satisfy the requirements of this rule.

(6) Internship hours must be obtained in not more than two placements. A school district, consortium, and educational co-op are each considered one placement.

(7) Internship hours must be obtained in not less than one or more than two academic years.

(8) An individual completing an internship under this rule must be designated as an intern.

(9) Interns must receive no less than two hours of supervision per week, with no more than half being group supervision. The amount of weekly supervision may be reduced, on a proportional basis, for interns working less than full-time.

(10) The internship must include direct intern application of assessment, intervention, behavior management, and consultation, for children representing a range of ages, populations and needs.

(g) Provision of psychological services in the public schools by unlicensed individuals.

(1) An unlicensed individual may provide psychological services under supervision in the public schools if:

(A) the individual is enrolled in an internship, practicum or other site based training in a psychology program in a regionally accredited institution of higher education; or

(B) the individual has completed an internship that meets the requirements of this rule, and has submitted an application for licensure as a Licensed Specialist in School Psychology to the Council that has not been denied or returned.

(2) An unlicensed individual may not provide psychological services in a private school setting unless the activities or services provided are exempt under §501.004 of the Psychologists' Licensing Act.

(3) An unlicensed individual may not engage in the practice of psychology under paragraph (1)(B) of this subsection for more than forty-five days following receipt of the application by the Council.

(4) The authority to practice referenced in paragraph (1)(B) of this subsection is limited to the first or initial application filed by an individual under this rule, but is not applicable to any subsequent applications filed under this rule.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2024.

TRD-202401009

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

Effective date: March 27, 2024

Proposal publication date: September 22, 2023

For further information, please call: (512) 305-7706



## PART 30. TEXAS STATE BOARD OF EXAMINERS OF PROFESSIONAL COUNSELORS

## CHAPTER 681. PROFESSIONAL COUNSELORS

### SUBCHAPTER C. APPLICATION AND LICENSING

#### 22 TAC §681.72

The Texas Behavioral Health Executive Council adopts amended §681.72, relating to Required Application Materials. Section 681.72 is adopted without changes to the proposed text as published in the November 17, 2023, issue of the *Texas Register* (48 TexReg 6720) and will not be republished.

Reasoned Justification.

The adopted amendments delete the requirement that an applicant must receive a passing score on either the NCE or NCMHCE within five years of the date of application. The licensure exams for other types of behavioral health licensees, such as psychologists and marriage and family therapists, do not have a time limit or expiration for their examination scores. Therefore, this five year expiration for a passing scores is deleted.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

Commenters voiced their support for this rule change. One commenter opined that the application process is already congested, and it is a waste of time for the agency and applicants to have associates reapply and retake the exam. If applicants only have to get approved to take and pass the exam once, then this will make a difference in the timeline of the process for everyone.

Agency Response.

The Council thanks the commenters for their supportive comments.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §503.2015 of the Tex. Occ. Code the Texas State Board of Examiners of Professional Counselors previously voted and, by a majority, approved to propose the adoption this rule to the Executive Council. The rule is specifically authorized by §503.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice,

standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council also adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2024.

TRD-202401010

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Professional Counselors

Effective date: March 27, 2024

Proposal publication date: November 17, 2023

For further information, please call: (512) 305-7706



## PART 34. TEXAS STATE BOARD OF SOCIAL WORKER EXAMINERS

### CHAPTER 781. SOCIAL WORKER LICENSURE

#### SUBCHAPTER C. APPLICATION AND LICENSING

##### 22 TAC §781.404

The Texas Behavioral Health Executive Council adopts amended §781.404, relating to Recognition as a Council-approved Supervisor and the Supervision Process. Section 781.404 is adopted with changes to the proposed text as published in the September 22, 2023, issue of the *Texas Register* (48 TexReg 5438) and will be republished.

##### Reasoned Justification.

The adopted amendments are intended to clarify the allowable fee arrangements between supervisor and supervisee.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

A commenter raises concerns about the potential for dual relationships in supervision and maintaining ethical boundaries in

supervisor-supervisee relationships, particularly when a supervisor is also the employer of a supervisee and the supervisee pays for the supervision. The commenter questions whether the proposed change may inadvertently allow supervisors in independent practice to accept payment from their employees for supervision. The commenter suggests that if the goal is to prevent supervisors from being paid twice (by both employer and supervisee), the rule should explicitly state this.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None

##### Agency Response.

The purpose of this rule amendment is to provide clarity in the rule, that a supervisor may not exploit their supervisees by being paid twice for the supervision they are providing. Therefore, in response to the comment, the Council adopts this rule with a change to make it clear that, a Council-approved supervisor who is otherwise compensated for supervisory duties may not charge or collect a fee or anything of value from the supervisee for the supervision services provided to the supervisee.

##### Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code the Texas State Board of Social Worker Examiners previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. The rule is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed the rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

§781.404. *Recognition as a Council-approved Supervisor and the Supervision Process.*

(a) Types of supervision include:

(1) administrative or work-related supervision of an employee, contractor or volunteer that is not related to qualification for licensure, practice specialty recognition, a disciplinary order, or a condition of new or continued licensure;

(2) clinical supervision of a Licensed Master Social Worker in a setting in which the LMSW is providing clinical services; the supervision may be provided by a Licensed Professional Counselor, Licensed Psychologist, Licensed Marriage and Family Therapist, Licensed Clinical Social Worker or Psychiatrist. This supervision is not related to qualification for licensure, practice specialty recognition, a disciplinary order, or a condition of new or continued licensure;

(3) clinical supervision of a Licensed Master Social Worker, who is providing clinical services and is under a supervision plan to fulfill supervision requirements for achieving the LCSW; a Licensed Clinical Social Worker who is a Council-approved supervisor delivers this supervision;

(4) non-clinical supervision of a Licensed Master Social Worker or Licensed Baccalaureate Social Worker who is providing non-clinical social work service toward qualifications for independent non-clinical practice recognition; this supervision is delivered by a Council-approved supervisor; or

(5) Council-ordered supervision of a licensee by a Council-approved supervisor pursuant to a disciplinary order or as a condition of new or continued licensure.

(b) A person who wishes to be a Council-approved supervisor must file an application and pay the applicable fee.

(1) A Council-approved supervisor must be actively licensed in good standing by the Council as an LBSW, an LMSW, an LCSW, or be recognized as an Advanced Practitioner (LMSW-AP), or hold the equivalent social work license in another jurisdiction. The person applying for Council-approved status must have practiced at his/her category of licensure for two years. The Council-approved supervisor shall supervise only those supervisees who provide services that fall within the supervisor's own competency.

(2) The Council-approved supervisor is responsible for the social work services provided within the supervisory plan.

(3) The Council-approved supervisor must have completed a 40-hour supervisor's training program acceptable to the Council.

(A) At a minimum, the 40-hour supervisor's training program must meet each of the following requirements:

(i) the course must be taught by a licensed social worker holding both the appropriate license classification, and supervisor status issued by the Council;

(ii) all related coursework and assignments must be completed over a time period not to exceed 90 days; and

(iii) the 40-hour supervision training must include at least:

(I) three (3) hours for defining and conceptualizing supervision and models of supervision;

(II) three (3) hours for supervisory relationship and social worker development;

(III) twelve (12) hours for supervision methods and techniques, covering roles, focus (process, conceptualization, and

personalization), group supervision, multi-cultural supervision (race, ethnic, and gender issues), and evaluation methods;

(IV) twelve (12) hours for supervision and standards of practice, codes of ethics, and legal and professional issues; and

(V) three (3) hours for executive and administrative tasks, covering supervision plan, supervision contract, time for supervision, record keeping, and reporting.

(B) Subparagraph (A) of this paragraph is effective September 1, 2023.

(4) The Council-approved supervisor must submit required documentation and fees to the Council.

(5) When a licensee is designated Council-approved supervisor, he or she may perform the following supervisory functions.

(A) An LCSW may supervise clinical experience toward the LCSW license, non-clinical experience toward the Independent Practice Recognition (non-clinical), and Council-ordered probated suspension;

(B) An LMSW-AP may supervise non-clinical experience toward the non-clinical Independent Practice Recognition; and Council-ordered probated suspension for non-clinical practitioners;

(C) An LMSW with the Independent Practice Recognition (non-clinical) who is a Council-approved supervisor may supervise an LBSW's or LMSW's non-clinical experience toward the non-clinical Independent Practice Recognition; and an LBSW or LMSW (non-clinical) under Council-ordered probated suspension;

(D) An LBSW with the non-clinical Independent Practice Recognition who is a Council-approved supervisor may supervise an LBSW's non-clinical experience toward the non-clinical Independent Practice Recognition; and an LBSW under Council-ordered probated suspension.

(6) The approved supervisor must renew the approved supervisor status in conjunction with the biennial license renewal. The approved supervisor may surrender supervisory status by documenting the choice on the appropriate Council renewal form and subtracting the supervisory renewal fee from the renewal payment. If a licensee who has surrendered supervisory status desires to regain supervisory status, the licensee must reapply and meet the current requirements for approved supervisor status.

(7) A supervisor must maintain the qualifications described in this section while he or she is providing supervision.

(8) A Council-approved supervisor who wishes to provide any form of supervision or Council-ordered supervision must comply with the following:

(A) The supervisor is obligated to keep legible, accurate, complete, signed supervision notes and must be able to produce such documentation for the Council if requested. The notes shall document the content, duration, and date of each supervision session.

(B) A social worker may contract for supervision with written approval of the employing agency. A copy of the approval must accompany the supervisory plan submitted to the Council.

(C) A Council-approved supervisor who is otherwise compensated for supervisory duties may not charge or collect a fee or anything of value from the supervisee for the supervision services provided to the supervisee.

(D) Before entering into a supervisory plan, the supervisor shall be aware of all conditions of exchange with the clients



served by her or his supervisee. The supervisor shall not provide supervision if the supervisee is practicing outside the authorized scope of the license. If the supervisor believes that a social worker is practicing outside the scope of the license, the supervisor shall make a report to the Council.

(E) A supervisor shall not be employed by or under the employment supervision of the person who he or she is supervising.

(F) A supervisor shall not be a family member of the person being supervised.

(G) A supervisee must have a clearly defined job description and responsibilities.

(H) A supervisee who provides client services for payment or reimbursement shall submit billing to the client or third-party payers which clearly indicates the services provided and who provided the services, and specifying the supervisee's licensure category and the fact that the licensee is under supervision.

(I) If either the supervisor or supervisee has an expired license or a license that is revoked or suspended during supervision, supervision hours accumulated during that time will be accepted only if the licensee appeals to and receives approval from the Council.

(J) A licensee must be a current Council-approved supervisor in order to provide professional development supervision toward licensure or specialty recognition, or to provide Council-ordered supervision to a licensee. Providing supervision without having met all requirements for current, valid Council-approved supervisor status may be grounds for disciplinary action against the supervisor.

(K) The supervisor shall ensure that the supervisee knows and adheres to Subchapter B, Rules of Practice, of this Chapter.

(L) The supervisor and supervisee shall avoid forming any relationship with each other that impairs the objective, professional judgment and prudent, ethical behavior of either.

(M) Should a supervisor become subject to a Council disciplinary order, that person is no longer a Council-approved supervisor and must so inform all supervisees, helping them to find alternate supervision. The person may reapply for Council-approved supervisor status by meeting the terms of the disciplinary order and having their license in good standing, in addition to submitting an application for Council-approved supervisor, and proof of completion of a 40-hour Council-approved supervisor training course, taken no earlier than the date of execution of the Council order.

(N) Providing supervision without Council-approved supervisor status is grounds for disciplinary action.

(O) A supervisor shall refund all supervisory fees the supervisee paid after the date the supervisor ceased to be Council-approved.

(P) A supervisor is responsible for developing a well-conceptualized supervision plan with the supervisee, and for updating that plan whenever there is a change in agency of employment, job function, goals for supervision, or method by which supervision is provided.

(9) A Council-approved supervisor who wishes to provide supervision towards licensure as an LCSW or towards specialty recognition in Independent Practice (IPR) or Advanced Practitioner (LMSW-AP), which is supervision for professional growth, must comply with the following:

(A) Supervision toward licensure or specialty recognition may occur in one-on-one sessions, in group sessions, or in a com-

bination of one-on-one and group sessions. Session may transpire in the same geographic location, or via audio, web technology or other electronic supervision techniques that comply with HIPAA and Texas Health and Safety Code, Chapter 611, and/or other applicable state or federal statutes or rules.

(B) Supervision groups shall have no fewer than two members and no more than six.

(C) Supervision shall occur in proportion to the number of actual hours worked for the 3,000 hours of supervised experience. No more than 10 hours of supervision may be counted in any one month, or 30-day period, as appropriate, towards satisfying minimum requirements for licensure or specialty recognition.

(D) The Council considers supervision toward licensure or specialty recognition to be supervision which promotes professional growth. Therefore, all supervision formats must encourage clear, accurate communication between the supervisor and the supervisee, including case-based communication that meets standards for confidentiality. Though the Council favors supervision formats in which the supervisor and supervisee are in the same geographical place for a substantial part of the supervision time, the Council also recognizes that some current and future technology, such as using reliable, technologically-secure computer cameras and microphones, can allow personal face-to-face, though remote, interaction, and can support professional growth. Supervision formats must be clearly described in the supervision plan, explaining how the supervision strategies and methods of delivery meet the supervisee's professional growth needs and ensure that confidentiality is protected.

(E) Supervision toward licensure or specialty recognition must extend over a full 3000 hours over a period of not less than 24 full months for LCSW or Independent Practice Recognition (IPR). Even if the individual completes the minimum of 3000 hours of supervised experience and minimum of 100 hours of supervision prior to 24 months from the start date of supervision, supervision which meets the Council's minimum requirements shall extend to a minimum of 24 full months.

(F) The supervisor and the supervisee bear professional responsibility for the supervisee's professional activities.

(G) If the supervisor determines that the supervisee lacks the professional skills and competence to practice social work under a regular license, the supervisor shall develop and implement a written remediation plan for the supervisee.

(H) Supervised professional experience required for licensure must comply with §781.401 of this title and §781.402 of this title and all other applicable laws and rules.

(10) A Council-approved supervisor who wishes to provide supervision required as a result of a Council order must comply with this title, all other applicable laws and rules, and/or the following.

(A) A licensee who is required to be supervised as a condition of initial licensure, continued licensure, or disciplinary action must:

(i) submit one supervisory plan for each practice location to the Council for approval by the Council or its designee within 30 days of initiating supervision;

(ii) submit a current job description from the agency in which the social worker is employed with a verification of authenticity from the agency director or his or her designee on agency letterhead or submit a copy of the contract or appointment under which the licensee intends to work, along with a statement from the potential su-

pervisor that the supervisor has reviewed the contract and is qualified to supervise the licensee in the setting;

(iii) ensure that the supervisor submits reports to the Council on a schedule determined by the Council. In each report, the supervisor must address the supervisee's performance, how closely the supervisee adheres to statutes and rules, any special circumstances that led to the imposition of supervision, and recommend whether the supervisee should continue licensure. If the supervisor does not recommend the supervisee for continued licensure, the supervisor must provide specific reasons for not recommending the supervisee. The Council may consider the supervisor's reservations as it evaluates the supervision verification the supervisee submits; and

(iv) notify the Council immediately if there is a disruption in the supervisory relationship or change in practice location and submit a new supervisory plan within 30 days of the break or change in practice location.

(B) The supervisor who agrees to provide Council-ordered supervision of a licensee who is under Council disciplinary action must understand the Council order and follow the supervision stipulations outlined in the order. The supervisor must address with the licensee those professional behaviors that led to Council discipline, and must help to remediate those concerns while assisting the licensee to develop strategies to avoid repeating illegal, substandard, or unethical behaviors.

(C) Council-ordered and mandated supervision timeframes are specified in the Council order.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2024.

TRD-202401018

Darrel D. Spinks

Executive Director

Texas State Board of Social Worker Examiners

Effective date: March 27, 2024

Proposal publication date: September 22, 2023

For further information, please call: (512) 305-7706



## 22 TAC §781.412

The Texas Behavioral Health Executive Council adopts amended §781.412, relating to Examination Requirement. Section 781.412 is adopted without changes to the proposed text as published in the November 17, 2023, issue of the *Texas Register* (48 TexReg 6723) and will not be republished.

### Reasoned Justification.

The adopted amendments eliminate the requirement that an applicant must receive a passing score on the ASWB national examination within two years prior to the initial or upgrade application. The rule as adopted will still require a passing score before the date of application, but examination scores older than two years will no longer expire for licensure purposes. The licensure exams for other types of behavioral health licensees, such as psychologists and marriage and family therapists, do not have a time limit or expiration for their examination scores. Therefore, this two year expiration for a passing scores has been deleted.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

A commenter questioned whether this rule change means LM-SWs who have spent their entire 3,000 hours in a clinical or therapeutic setting do not have to retest to upgrade their license to LCSW.

### Agency Response.

The rule amendment does not change the requirements for an LMSW to upgrade to an LCSW, an LMSW must complete the required supervised clinical hours of experience and receive a passing score on the ASWB national examination. What the rule amendment does is no longer require the applicant LMSW achieve a passing examination score within two years of the date of application. Which means, if the applicant has ever achieved a passing score on the required examination then the applicant is not required to retake the examination.

### Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code the Texas State Board of Social Worker Examiners previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. The rule is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed the rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2024.

TRD-202401019

Darrel D. Spinks

Executive Director

Texas State Board of Social Worker Examiners

Effective date: March 27, 2024

Proposal publication date: November 17, 2023

For further information, please call: (512) 305-7706



## 22 TAC §781.501

The Texas Behavioral Health Executive Council adopts amended §781.501, relating to Requirements for Continuing Education. Section 781.501 is adopted without changes to the proposed text as published in the September 22, 2023, issue of the *Texas Register* (48 TexReg 5441) and will not be republished.

### Reasoned Justification.

The adopted amendments correct a typographical error and allow field and practicum instructors to claim up to 10 hours of continuing education credit when providing instruction to social work students.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

A commenter voiced support for the rule amendments and thanked the agency for reinstating the ability to earn CE credit for serving as a practicum instructor. The commenter opined that the term "field" could be offensive to some and suggested a future change to remove the term. The commenter believed the term "practicum" is sufficient and using both is redundant.

### Agency Response.

The Executive Council thanks the commenter for their supportive comments but declines to amend the rule as requested. The Council has previously received comments from individuals identifying themselves as either practicum instructors or field instructors, and both expressed an interest in a rule amendment such as the one being adopted. Therefore, at this time, the Council chooses to keep both practicum instructors and field instructors included in the rule.

### Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code the Texas State Board of Social Worker Examiners previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. The rule is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed the rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2024.

TRD-202401020

Darrel D. Spinks

Executive Director

Texas State Board of Social Worker Examiners

Effective date: March 27, 2024

Proposal publication date: September 22, 2023

For further information, please call: (512) 305-7706



## PART 35. TEXAS STATE BOARD OF EXAMINERS OF MARRIAGE AND FAMILY THERAPISTS

### CHAPTER 801. LICENSURE AND REGULATION OF MARRIAGE AND FAMILY THERAPISTS

#### SUBCHAPTER A. GENERAL PROVISIONS

##### 22 TAC §801.2

The Texas Behavioral Health Executive Council adopts amended §801.2, relating to Definitions. Section 801.2 is adopted without changes to the proposed text as published

in the September 22, 2023, issue of the *Texas Register* (48 TexReg 5443) and will not be republished.

Reasoned Justification.

The adopted amendment adds a definition for independent practice for the purpose of providing greater clarity in the rules.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose the adoption this rule to the Executive Council. The rule is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council also adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2024.

TRD-2024001022

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Marriage and Family Therapists

Effective date: March 27, 2024

Proposal publication date: September 22, 2023

For further information, please call: (512) 305-7706



## SUBCHAPTER B. RULES OF PRACTICE

### 22 TAC §801.48

The Texas Behavioral Health Executive Council adopts amended §801.48, relating to Record Keeping, Confidentiality, Release of Records, and Required Reporting. Section 801.48 is adopted without changes to the proposed text as published in the September 22, 2023, issue of the *Texas Register* (48 TexReg 5446) and will not be republished.

Reasoned Justification.

The adopted amendment provides greater clarity in the rules, to make it clear that any licensee in private practice must establish a plan of custody and control for a client's records.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose the adoption this rule to the Executive Council. The rule is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules

regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council also adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2024.

TRD-202401023

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Marriage and Family Therapists

Effective date: March 27, 2024

Proposal publication date: September 22, 2023

For further information, please call: (512) 305-7706



## SUBCHAPTER C. APPLICATIONS AND LICENSING

### 22 TAC §801.142

The Texas Behavioral Health Executive Council adopts amended §801.142, relating to Supervised Clinical Experience Requirements and Conditions. Section 801.142 is adopted without changes to the proposed text as published in the September 22, 2023, issue of the *Texas Register* (48 TexReg 5447) and will not be republished.

Reasoned Justification.

The adopted amendment increases the number of hours that may be counted towards licensure that are provided by technology-assisted services from 500 hours to 750 hours.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

The Council received a comment in support of this rule change.

Agency Response.

The Council thanks the commenter for their supportive comment.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose the adoption this rule to the Executive Council. The rule is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council also adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2024.

TRD-202401024

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Marriage and Family Therapists

Effective date: March 27, 2024

Proposal publication date: September 22, 2023

For further information, please call: (512) 305-7706



### 22 TAC §801.143

The Texas Behavioral Health Executive Council adopts amended §801.143, relating to Supervisor Requirements. Section 801.143 is adopted without changes to the proposed text

as published in the September 22, 2023, issue of the *Texas Register* (48 TexReg 5449) and will not be republished.

Reasoned Justification.

The adopted amendments remove the 12 supervisee limit on supervisors, allowing supervisors to determine the appropriate number of supervisees that they can provide adequate supervision. Additionally, the adopted amendments make it clear that a supervisor must establish a plan of custody and control for records of supervision for their LMFT Associates.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose the adoption this rule to the Executive Council. The rule is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council also adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires

state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2024.

TRD-202401025

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Marriage and Family Therapists

Effective date: March 27, 2024

Proposal publication date: September 22, 2023

For further information, please call: (512) 305-7706



## SUBCHAPTER D. SCHEDULE OF SANCTIONS

### 22 TAC §801.305

The Texas Behavioral Health Executive Council adopts the repeal of §801.305, relating to Schedule of Sanctions. The repeal of §801.305 is adopted without changes to the proposed text as published in the September 22, 2023, issue of the *Texas Register* (48 TexReg 5451) and will not be republished.

Reasoned Justification.

This rule is repealed and replaced with a new schedule of sanctions that is adopted elsewhere in this issue of the *Texas Register*.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule repeal is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose the

adoption this rule repeal to the Executive Council. The rule repeal is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may adopt this rule repeal.

Lastly, the Executive Council also adopts this rule repeal under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2024.

TRD-202401026

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Marriage and Family Therapists

Effective date: March 27, 2024

Proposal publication date: September 22, 2023

For further information, please call: (512) 305-7706



## 22 TAC §801.305

The Texas Behavioral Health Executive Council adopts new §801.305, relating to Schedule of Sanctions. Section 801.305 is adopted without changes to the proposed text as published in the September 22, 2023, issue of the *Texas Register* (48 TexReg 5453) and will not be republished.

### Reasoned Justification.

The adopted new rule is necessary to correct a *Texas Register* submission error regarding the graphic chart. The same chart that was proposed in the August 5, 2022, issue of the *Texas Register* was re-proposed and now adopted, because unfortunately the chart adopted in the November 18, 2022 issue of the *Texas Register* was the previous chart. As stated previously in the preamble to the August 5th proposal, this adopted schedule of sanctions chart will more closely resemble the format used by the other behavioral health boards, which adopted this format to make their schedule of sanctions charts easier to use. There are some substantive changes being made to the current schedule of sanctions chart in effect, but again, these changes are the same as those proposed in the August 5, 2022 edition of the *Texas Register*; there are no changes being proposed that have not been reviewed and proposed by the member board. This

adopted schedule of sanctions chart will align with the changes made to §801.302, which reduced the amount of severity levels from five to four by combining the two previous suspension levels into one. Therefore, violations of §§801.44(t) and (v), 801.47, and 801.57(e) will no longer be split between two types of suspension levels. Additionally, the sanction for §801.47 is being split between subsection (a) and (b), which are a suspension and revocation respectively. Section 801.44(s) - (v) has been updated to correspond more accurately to the correct rule and sanction. Amendments have been made to §801.143(h) - (l) so corresponding amendments have been made to match those changes. Lastly, some typographical errors are being corrected.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose the adoption this rule to the Executive Council. The rule is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council also adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2024.

TRD-202401027

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Marriage and Family Therapists

Effective date: March 27, 2024

Proposal publication date: September 22, 2023

For further information, please call: (512) 305-7706



## PART 41. TEXAS BEHAVIORAL HEALTH EXECUTIVE COUNCIL

### CHAPTER 882. APPLICATIONS AND LICENSING

#### SUBCHAPTER B. LICENSE

##### 22 TAC §882.23

The Texas Behavioral Health Executive Council adopts amendments to §882.23, relating to License Required to Practice. Section 882.23 is adopted with changes to the proposed text as published in the November 17, 2023, issue of the *Texas Register* (48 TexReg 6725) and will be republished. The changes to the adopted rule are made in response to public comments.

Reasoned Justification.

The adopted amendments clarify when an individual is conducting a professional service in Texas, which is regulated by the Executive Council. The determining factor is, if the recipient of the professional service is physically located in Texas, then the individual is conducting the regulated practice of marriage and family therapy, professional counseling, psychology, or social work in Texas.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

A commenter opined that Texas has a provider crisis and cannot meet the needs of its own citizens. The commenter believes this rule change is evidence that NGOs are completely incognizant of the reality of mental healthcare in the 21st century, and the rule change is a veiled attempt to inadvertently worsen mental healthcare disparities that will negatively impact the entire nation. The commenter believes that access to mental healthcare should be a right and not a privilege.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

A commenter opined that they believed the rule change is helpful and provides necessary clarification, especially as Telehealth becomes more prominent.

A commenter, while agreeing with the change, requested a clarification or distinction be added to this rule change. The proposed change includes an interviewee in the definition of a client. Mental health professionals, especially forensic evaluators, often meet with consultants and interview collaterals for an evaluation. While the consultants and collaterals are not the recipients of services as it relates to being the person being evaluated, they are recipients of services as it relates to being an interviewee because they receive an interview which is a service as part of an evaluation. Therefore the commenter requested clarification as to whether collateral witnesses are included in the definition of client under this rule.

Agency Response.

The Council declines to amend the rule as requested by the commenter that is against this rule. The purpose of this rule change was not to address access to mental healthcare or disparities in mental healthcare. The purpose of this rule amendment is to clarify when a professional service, that is regulated by the Council, occurs in Texas. Previously, if a provider was physically present in Texas when services were provided to a client in another jurisdiction then that could have constituted the practice of a regulated profession in Texas, thereby requiring a Texas license. The mission of the Council is to protect the people of Texas. Requiring a license for an individual providing services to clients located in another state is not part of the Council's mission. The commenter's concern that his rule change somehow impacts access to or disparities in mental healthcare in Texas is not germane to this rule change. Therefore the Council declines to amend this rule as requested.

The Council thanks the commenters for their supportive comments.

The Council agrees to amend the rule as requested by the commenter asking for additional clarity regarding whether collateral witnesses are included in the definition of client under this rule. The purpose of the rule was to clarify when an individual is conducting a regulated service in Texas, which is when the recipient of the service is physically located in Texas. As the commenter correctly pointed out, the Council included the term interviewee as part of the definition of client. The intent of the rule change was always to include any type of recipient of services in the definition of a client, whether that includes the individual being evaluated or the collateral witnesses being interviewed as part of the evaluation. Therefore the Council adopts the rule with changes to make it clear that a client does include an individual or entity interviewed, examined, or evaluated for the purpose of services (e.g. a collateral witness or collateral sources of information).

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules nec-



essary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council also adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

§882.23. *License Required to Practice.*

(a) A person may not engage in or represent that the person is engaged in the practice of marriage and family therapy, professional counseling, psychology, or social work within this state, unless the person is licensed or otherwise authorized to practice by law.

(b) A person is engaged in the practice of marriage and family therapy within this state if any of the criteria set out in §502.002(6) of the Occupations Code occurs while a client is located in this state.

(c) A person is engaged in the practice of professional counseling within this state if any of the criteria set out in §503.003(a) of the Occupations Code occurs while a client is located in this state.

(d) A person is engaged in the practice of psychology within this state if any of the criteria set out in §501.003(b) of the Occupations Code occurs while a client is located in this state.

(e) A person is engaged in the practice of social work within this state if any of the criteria set out in §505.0025 of the Occupations Code occurs while a client is located in this state.

(f) In accordance with §113.002 of the Occupations Code, a licensee of the Executive Council may provide a mental health service, that is within the scope of the license, through the use of a telehealth service to a client who is located outside of this state, subject to any applicable regulation of the jurisdiction in which that client is located. Such conduct does not constitute the practice of marriage and family therapy, professional counseling, psychology, or social work in this state.

(g) For the purposes of this rule, the term "client" means:

(1) a recipient of marriage and family therapy, professional counseling, psychology, or social work services within the context of a professional relationship, including a child, adolescent, adult, couple, family, group, organization, community, or other populations, or other entities receiving services;

(2) an individual or entity requesting the services (e.g., an employer, a state, tribal, or federal court, an attorney acting on behalf of his or her client, an office or agency within local, state, or federal government), the recipient of those services (e.g., the subject of an evaluation, assessment, or interview), and an individual or entity interviewed, examined, or evaluated for the purpose of those services (e.g. a collateral witness or collateral sources of information);

(3) an organization such as a business, charitable, or governmental entity that receives services directed primarily to the organization, rather than to individuals associated with the organization;

(4) minors and wards in guardianships, as well as their legal guardians; and

(5) any related term for the recipient of services, such as a patient, evaluatee, examinee, interviewee, participant, or any other similar term.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2024.

TRD-202401011

Darrel D. Spinks

Executive Director

Texas Behavioral Health Executive Council

Effective date: March 27, 2024

Proposal publication date: November 17, 2023

For further information, please call: (512) 305-7706



**22 TAC §882.28**

The Texas Behavioral Health Executive Council adopts new §882.28, relating to Update to Degree on a License. Section 882.28 is adopted without changes to the proposed text as published in the November 17, 2023, issue of the *Texas Register* (48 TexReg 6726) and will not be republished.

Reasoned Justification.

The adopted new rule implements a process to update the degree listed on a license.

List of interested groups or associations against the rule.

AMHP-Association for Mental Health Professionals.

Summary of comments against the rule.

Two commenters voiced objections to the proposed new rule, which allows licensees to add a doctoral degree to their license. The commenters argue that no substantial reasons for the new rule have been provided, and no evidence of negative impact on the public has been demonstrated for not having such a rule. They highlight that a doctoral degree is not mandatory for licensure, deeming the proposal a poor use of regulatory resources. The commenters also emphasize existing rules allow licensees, such as counselors, to publicly market their educational achievements. The commenters believe the claim that displaying a doctoral degree on a license leads to higher insurance reimbursements is inaccurate, and that other documentation, such as a degree, could be provided to prove an individual's academic achievements. Overall, the commenters contend that the proposed new rule lacks justification, practical benefits, and is unnecessary.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

A commenter believed it would be appropriate to recognize an eligible and applicable doctoral degree on a license, and that it would be misleading and confusing to clients to not accurately display such qualifications on a license. The commenter further opined that there are many licenses already in existence with the acknowledgment of a doctorate degree, and it would be inequitable for licensees with a newly acquired doctoral degree to be excluded from this historical practice.

A commenter opined that new licensees with a doctoral degree have it listed but someone who earns their doctorate post licensure should also have the ability to have their doctoral degree added to their license. Further, the commenter stated that insurance companies compensate doctoral level mental health professionals at a higher rate and by not allowing the inclusion of a doctoral degree on a license it creates inequities for experienced counselors who deferred their doctoral studies.

Agency Response.

The Council declines to amend or not adopt the rule as requested by the commenters. Council and Board members voiced their support for this new rule and opined that it will provide greater notice to the public regarding a particular licensee's educational and academic background. Previously, when several of the underlying Boards were administered by the HHSC, licensees were allowed to add their doctoral degrees to their already issued license but there was no formal process in place to accomplish this task. This new rule establishes such a process, and with a corresponding amendment to the Council's fee rule, §885.1, allows for the collection of a fee to process such a request. The commenters are correct, that most licensing rules do not require a doctoral degree for the issuance of a license, except for licensed psychologists, but many of these same licensing rules will accept any type of relevant graduate degree, meaning a master's or doctoral degree, so a doctoral degree can qualify an individual for licensure. The additional public notice this rule will create is similar to other rules that allow for licensees to list a particular certification or designation on their license. For example, Council rule §463.25 allows psychologists to indicate they are certified as a Health Service Psychologist (HSP) and Council rule §681.73 allows LPCs to be licensed with an art therapy designation. Neither of these are required for licensure, but these certifications or designations get listed on a license to provide additional notice to the public regarding a licensee's educational and academic background. This new rule follows this same tradition, and therefore the Council declines to amend or not adopt the rule as requested by the commenters.

The Council thanks the commenters for their supportive comments.

#### Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council also adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2024.

TRD-202401012

Darrel D. Spinks

Executive Director

Texas Behavioral Health Executive Council

Effective date: March 27, 2024

Proposal publication date: November 17, 2023

For further information, please call: (512) 305-7706



## CHAPTER 883. RENEWALS

### SUBCHAPTER A. GENERAL PROVISIONS

#### 22 TAC §883.1

The Texas Behavioral Health Executive Council adopts amendments to §883.1, relating to Renewal of a License. Section 883.1 is adopted without changes to the proposed text as published in the November 17, 2023, issue of the *Texas Register* (48 TexReg 6727) and will not be republished.

Reasoned Justification.

The adopted amendments require licensees selected for audit during renewal to obtain and submit a National Practitioner Data Base self-query. Council rule §882.2 requires new applicants to submit an NPDB self-query with their application, but previously there was no Council rule that required current licensees to submit an NPDB self-query. In a recent audit conducted by the State Auditor's Office, the lack of any required NPDB self-query for licensure renewal was identified as an area of concern for the licensing functions of the Council. Section 507.258 of the Occupations Code requires the Council to establish a process to search a national practitioner database to determine whether another state has taken any disciplinary or other legal action against an applicant or license holder before issuing an initial or renewal license. Therefore, these rule amendments have been adopted to address this identified area of concern, and to further implement §507.258 of the Occupations Code.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

A commenter disagreed with this rule change, stating that there are too many fees for a licensee that holds multiple licenses issued by the Council and requests a reduction in fees for such individuals. The commenter opines that individuals that hold multiple licenses must comply with multiple requirements: jurisprudence exams, continuing education fees, license fees, and now multiple NPDB query fees. The commenter concludes that such individuals should not be penalized for holding multiple licenses.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

A commenter agreed with this proposed rule change.

Agency Response.

The Council declines to amend the rule as requested by the commenter. This rule change does not directly affect the fees charged to all licensees for the renewal of a license. Only those licensees selected for audit, which under Council rule §882.50 is 5% of licensees renewing, will be required to pay an additional fee. And the current fee for an NBDP self-query is approximately \$3.00, which is paid directly to NPDB. Only one NBDP self-query would be required to comply with this requirement, regardless of the number of licenses held by the individual, because the query pertains to the individual and not a particular license. The Council finds that an additional \$3.00 fee for 5% of licensees renewing biannually to be so nominal that it should have no economic impact on licensees, and therefore declines to amend the rule to make an exception for individuals with multiple licenses as requested by the commenter.

The Council thanks the commenter for their supportive comments.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council also adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

Lastly, the Executive Council adopts this rule pursuant to the authority found in §507.258 of the Tex. Occ. Code which requires the Executive Council to establish a process to search a national practitioner database to determine whether another state has taken any disciplinary or other legal action against an applicant or license holder before issuing an initial or renewal license.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2024.

TRD-202401013

Darrel D. Spinks

Executive Director

Texas Behavioral Health Executive Council

Effective date: March 27, 2024

Proposal publication date: November 17, 2023

For further information, please call: (512) 305-7706



## CHAPTER 884. COMPLAINTS AND ENFORCEMENT

### SUBCHAPTER A. FILING A COMPLAINT

#### 22 TAC §884.1

The Texas Behavioral Health Executive Council adopts amendments to §884.1, relating to Timeliness of Complaints. Section 884.1 is adopted without changes to the proposed text as published in the November 17, 2023, issue of the *Texas Register* (48 TexReg 6729) and will not be republished.

Reasoned Justification.

The adopted amendments provide notice and clarity that the rule of limitations for the timeliness of a complaint does not apply to applications for reinstatement.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

Christian Counselors of Texas

Summary of comments for the rule.

The commenter indicated it will publish this proposed rule change in its newsletters, in an effort to increase response and opportunity to speak on such changes.

Agency Response.

The Council thanks the commenter for their supportive comments.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council also adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2024.

TRD-202401015

Darrel D. Spinks

Executive Director

Texas Behavioral Health Executive Council

Effective date: March 27, 2024

Proposal publication date: November 17, 2023

For further information, please call: (512) 305-7706



## CHAPTER 885. FEES

#### 22 TAC §885.1

The Texas Behavioral Health Executive Council adopts amendments to §885.1, relating to Executive Council Fees. Section 885.1 is adopted with changes to the proposed text as published in the November 17, 2023, issue of the *Texas Register* (48 TexReg 6730) and will be republished. The changes to the adopted rule are made to correct typographical errors.

Reasoned Justification.

The adopted amendments provide additional notice to applicants and licensees of the potential disciplinary action that may result from attempting to refund fees paid to the Council. Additionally, a new rule has been adopted, §882.28, regarding updates to degrees on licenses, so a new fee of \$54.00 has been adopted for these types of applications.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council also adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

Lastly, the Executive Council adopts this rule amendment pursuant to the authority found in §507.154 of the Tex. Occ. Code which authorizes the Executive Council to set fees necessary to cover the costs of administering Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code.

§885.1. *Executive Council Fees.*

(a) General provisions.

(1) All fees are nonrefundable, nontransferable, and cannot be waived except as otherwise permitted by law. Any attempt to cancel, initiate a chargeback, or seek recovery of fees paid to the Council may result in the opening of a complaint against a licensee or applicant.

(2) Fees required to be submitted online to the Council must be paid by debit or credit card. All other fees paid to the Council must be in the form of a personal check, cashier's check, or money order.

(3) For applications and renewals the Council is required to collect fees to fund the Office of Patient Protection (OPP) in accordance with Texas Occupations Code §101.307, relating to the Health Professions Council.

(4) For applications, examinations, and renewals the Council is required to collect subscription or convenience fees to recover costs associated with processing through Texas.gov.

(5) All examination fees are to be paid to the Council's designee.

(b) The Executive Council adopts the following chart of fees:

(1) Fees effective through August 31, 2023.

Figure: 22 TAC §885.1(b)(1)

(2) Fees effective on September 1, 2023.

Figure: 22 TAC §885.1(b)(2)

(c) Late fees. (Not applicable to Inactive Status)

(1) If the person's license has been expired (i.e., delinquent) for 90 days or less, the person may renew the license by paying to the Council a fee in an amount equal to one and one-half times the base renewal fee.

(2) If the person's license has been expired (i.e., delinquent) for more than 90 days but less than one year, the person may renew the license by paying to the Council a fee in an amount equal to two times the base renewal fee.

(3) If the person's license has been expired (i.e., delinquent) for one year or more, the person may not renew the license; however, the person may apply for reinstatement of the license.

(d) Open Records Fees. In accordance with §552.262 of the Government Code, the Council adopts by reference the rules developed by the Office of the Attorney General in 1 TAC Part 3, Chapter 70 (relating to Cost of Copies of Public Information) for use by each governmental body in determining charges under Government Code, Chapter 552 (Public Information) Subchapter F (Charges for Providing Copies of Public Information).

(e) Military Exemption for Fees. All licensing and examination base rate fees payable to the Council are waived for the following individuals:

(1) military service members and military veterans, as those terms are defined by Chapter 55, Occupations Code, whose military service, training, or education substantially meets all licensure requirements; and

(2) military service members, military veterans, and military spouses, as those terms are defined by Chapter 55, Occupations Code, who hold a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements of this state.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2024.

TRD-202401016

Darrel D. Spinks

Executive Director

Texas Behavioral Health Executive Council

Effective date: March 27, 2024

Proposal publication date: November 17, 2023

For further information, please call: (512) 305-7706

◆ ◆ ◆  
**TITLE 31. NATURAL RESOURCES AND CONSERVATION**

**PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT**

**CHAPTER 51. EXECUTIVE SUBCHAPTER O. ADVISORY COMMITTEES**

**31 TAC §51.673**

The Texas Parks and Wildlife Commission in a duly noticed meeting on January 25, 2024, adopted new 31 TAC §51.673, concerning the Oyster Advisory Committee (OAC), without changes to the proposed text as published in the December 22, 2023, issue of the *Texas Register* (48 TexReg 7865). The rule will not be republished.

Parks and Wildlife Code, §11.0162, authorizes the Chairman of the Texas Parks and Wildlife Commission (the Commission) to "appoint committees to advise the commission on issues under its jurisdiction." Under Parks and Wildlife Code, Chapter 76, the legislature has designated the department as the primary regulatory agency for public oyster beds and certificates of location (oyster leases), including the taking, possession, purchase, and sale of oysters. Government Code, Chapter 2110, requires that rules be adopted regarding each state agency advisory committee. Unless otherwise provided by specific statute, the rules must state the purpose of the committee and describe the way the committee will report to the agency. The rules may also establish the date on which the committee will automatically be abolished, unless the advisory committee has a specific duration established by statute. Under this authority, the Commission has established a number of advisory committees to provide the department with informed opinion regarding various aspects and dimensions of the department's mission. These advisory committees perform a valuable service for the department and the people of Texas.

The department is the primary state agency responsible for the regulation and management of public and private oyster beds, including the taking, possession, purchase, and sale of oysters. Staff have determined that the creation of an advisory board for matters involving oysters would be helpful in assisting the department and the commission in determining and executing appropriate strategies to maximize the long-term health of oyster resources and the additional habitat and ecosystem services they provide.

The department received seven comments opposing adoption of the rule as proposed.

Four commenters opposed adoption and stated various preferences for the composition of the OAC membership. The department disagrees with the comments and responds that appointments to the OAC are at the sole discretion of the Chairman of the Parks and Wildlife Commission.

Three commenters provided statements addressing resource concerns, but they did not specifically address the substance of the rule as proposed and are, therefore, not germane. No changes were made as a result of the comments.

The department received 24 comments supporting adoption of the rule as proposed.

The new rule is adopted under Government Code, Chapter 2110, which requires the adoption of rules regarding state agency advisory committees.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 5, 2024.  
TRD-202400973

James Murphy  
General Counsel  
Texas Parks and Wildlife Department  
Effective date: March 25, 2024  
Proposal publication date: December 22, 2023  
For further information, please call: (512) 389-4775

◆ ◆ ◆

## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 16. COMPTROLLER GRANT PROGRAMS

##### SUBCHAPTER B. TEXAS BROADBAND DEVELOPMENT OFFICE

##### DIVISION 1. BROADBAND DEVELOPMENT MAP

#### 34 TAC §§16.21 - 16.24

The Comptroller of Public Accounts adopts new §16.21, concerning broadband development map; §16.22, concerning map challenges and criteria; §16.23, concerning challenge process and deadlines; and §16.24, concerning map challenge determinations, with changes to the proposed text as published in the October 13, 2023, issue of the *Texas Register* (48 TexReg 5957). The rules will be republished. These new sections implement changes to Government Code, §4901.0109, made by Senate Bill 1238, 88th Legislature, R.S., 2023. The new sections will be located in Subchapter B, in new Division 1 (Broadband Development Map).

The comptroller also renames Subchapter B as Texas Broadband Development Office.

The new sections replace §16.33, concerning designated area eligibility, and §16.34, concerning designated area reclassification, which the comptroller will repeal in a separate rulemaking.

Section 16.21 implements the requirement for the comptroller to create, and annually update, a broadband development map depicting the availability of broadband service for each broadband serviceable location in this state. As required by Senate Bill 1238, the new section updates the minimum information that must be displayed on the map regarding the availability of broadband service for each designated area. The section updates the scope of designated areas from a census block level to a county level perspective to provide a more relatable way to visualize broadband availability but retains the discretion of the comptroller to adjust the scope as needed if displaying the required information is not technically feasible or impractical at the county level.

Section 16.22 permits internet service providers and political subdivisions of this state to submit challenges to the broadband development map. Challengers will be permitted to challenge the classification of broadband serviceable locations as shown on the broadband development map. The section limits the reasons for which a challenge can be submitted and requires the office to publish the requirements and criteria for submitting a challenge on its website. The section will also limit the ability

to submit a challenge if the comptroller adopts the federal broadband map by imposing a preliminary requirement to first submit a challenge to the federal broadband map before submitting a challenge to the state broadband map.

Section 16.23 outlines the challenge process and deadlines. The section gives the office the discretion to reject a challenge without further action if the challenge does not comply with the requirements of the section or criteria established by the office. To ease administration, the section changes the manner that required notices may be provided to affected broadband service providers and political subdivisions.

Section 16.24 establishes the criteria the office must consider in making a map challenge determination, including: the availability of reliable broadband service; actual internet speed and reliability data; the existence or non-existence of existing federal commitments; and any other information the office determines may be useful in making a determination. The section tracks statutory language regarding when a location that is subject to an existing federal commitment for the deployment of broadband services may be reclassified as eligible to receive funds and re-adopts provisions for recapturing funds if, after making an award, the office later determines that a location was ineligible to receive funding.

The comptroller received comments from the following organizations, interest groups, and individuals: AARP Texas ("AARP"); AT&T; Cherokee County Electric Cooperative Association ("CCECA"); City of Austin ("Austin"); GVEC; Harris County Office of Broadband ("Harris County"); The Honorable Trent Ashby; Nextlink Internet; Tarana Wireless; Texas Cable Association ("TCA"); Texas Electric Cooperatives ("TEC"); Verizon; and Texas Telephone Association ("TTA").

The comptroller thanks Nextlink Internet for its comments expressing appreciation that the proposed rules more closely aligned with the Broadband Equity, Access, and Deployment (BEAD) Program requirements, while enhancing program flexibility and maintaining technology neutrality.

The comptroller also received comments from CCECA that did not address any specific proposed rules. CCECA stated its continuing issue with the lack of state funding being made available to providers bringing broadband to rural areas because those areas are already "locked up" due to existing federal programs like the Rural Digital Opportunity Fund. CCECA stated that it was notably concerned about the apparent strategy employed by some broadband providers to "lock up" areas through the use of existing federal commitments without any true plan on the part of those providers to expand service to those areas and requested that the comptroller provide more flexibility to allow state funding in those areas. While the comptroller appreciates these concerns, the comptroller is statutorily unable to award grant funding to locations that are subject to an existing federal commitment to deploy qualifying broadband service. The comptroller therefore lacks the authority to amend the proposed rules as suggested by these comments.

The comptroller also received general comments from TCA in which they expressed appreciation for the comptroller moving toward a location-based funding approach. At the same time, TCA argued against adoption of §§16.21-16.24. TCA suggested that the Federal Communications Commission ("FCC") map and challenge process should be the primary mapping data source that the BDO should rely upon and argued in favor of adopting the federal map. TCA noted that the FCC map

and challenge process were robust and ongoing and therefore questioned the need for a separate state map and challenge process. The comptroller thanks TCA for its comments on this important issue but notes that the BDO is statutorily required to create and update a broadband availability map. While the comptroller may adopt the federal map in lieu of creating its own map, the statute contemplates a state map challenge process regardless of whether or not the comptroller adopts the federal map. The proposed rules are needed to describe the mapping and challenge process consistent with statutory requirements. Therefore, the comptroller will not withdraw the proposed rules as suggested.

TCA submitted a comment on §16.21 in which they proposed amending the rule to make clear that the Broadband Development Office ("BDO") would be required to rely on the FCC broadband maps and its submission and challenge process. The comptroller disagrees with this comment because the rule is consistent with statutory language that permits, but does not require, the comptroller to adopt the federal broadband map. Amending the proposed rule as suggested would limit the comptroller's flexibility to use the best data available when creating or updating the broadband development map. Therefore, the comptroller declines to amend the rule as suggested.

The comptroller received several comments relating to the Broadband Development Map requirements contained in §16.21(b). The comments indicate there is some confusion about the purpose of the proposed mapping changes and how they affect the broadband development program. AARP questioned the reasoning behind the proposed change, noted that counties may be disproportionately large and asked whether the change was made to align with the federal map. Austin expressed a concern that widening the focus of the map to the county level would likely be technically inaccurate and therefore would not be practical in measuring the availability of broadband to all Texans. Austin therefore encouraged the comptroller to adopt the location level measurement that is being used by the FCC in their National Broadband Map. Harris County reiterated the same concerns in its comments regarding the proposed rule, arguing that using county level data would result in the elimination of urban un(der)served areas from program eligibility. In light of these concerns, both Austin and Harris County expressed support for adopting §16.21(c). Similar to the concerns raised by Austin and Harris County, TEC expressed doubt that a county level map would be workable because it would not accurately portray actual service availability. TEC further commented that a separate map representing designated areas by county may result in confusion around eligibility which it correctly identified as being based on granular locations.

The comptroller is adopting the change in focus from the census block level to the county level to better align with the changed purpose of the broadband development map. Under prior law, the comptroller was required to determine the scope of a designated area and for each designated area also determine and display on its map whether the area was eligible for funding under the program based on the percentage of unserved addresses within the area. However, under Senate Bill 1238, 88th Legislature, R.S., 2023, program eligibility is no longer based on designated areas but is instead based on whether individual *broadband serviceable locations* are un(der)served. In line with comments received by AT&T, the purpose of the change in the scope of a designated area is to make it easier to understand and reference the broadband serviceable locations appearing on the map and to provide the BDO an analysis tool for measuring the

availability of broadband in geographically recognizable areas. As outlined by §16.21(d), the BDO is required to display on its map each unserved, underserved, and served broadband serviceable location. Thus, the BDO has already proposed adopting the location level measurement urged by both Austin and Harris County and does not believe that the change in the scope of a designated area will negatively impact the eligibility of urban locations to receive funding under the program. For these reasons, the comptroller disagrees with the comments and adopts §16.21(b) without changes.

With respect to §16.21(b), AT&T further commented seeking confirmation that the proposed change in scope did not mean that project areas proposed by providers must encompass entire counties. The comptroller confirms that project areas proposed by providers will not be required to encompass entire counties as a result of this rule.

TTA commented on §16.21(d) encouraging the comptroller to replace the term "existing federal commitment to deploy" with a newly defined term for enforceable commitment which includes state and local commitments in addition to federal commitments. The comptroller disagrees with this comment because the rule mirrors statutory language which sets forth the *minimum* requirements for the broadband development map. Therefore, the comptroller adopts §16.21(d) without changes.

The comptroller received many comments regarding the map challenge process outlined in proposed §16.22.

TCA suggested that the FCC map and challenge process should be the primary mapping data source that the BDO should rely upon. TCA noted that the FCC map and challenge process were robust and ongoing and questioned the need for a separate state map and challenge process. TCA expressed concern that the proposed rule would result in confusion due to the existence of separate maps and therefore recommended that the rule either should not be adopted or should be modified to require coordination with BEAD processes. The comptroller disagrees with this comment because the proposed rule is consistent with statutory language permitting, but not requiring, the comptroller to adopt the federal broadband map. Amending the proposed rule as suggested would unnecessarily limit the comptroller's flexibility to use the best data available when creating or updating the broadband development map. Therefore, the comptroller declines to amend §16.22(a) to make use of the federal map and challenge processes mandatory.

Both TCA and TTA submitted comments suggesting amendments to §16.22(c). TCA requested that the comptroller consider permitting limited map challenges on a rolling basis based on newly built locations and locations that are not reflected on the then-current map. According to TCA, such a change would ensure the map was as up-to-date as possible to avoid overbuilding. While the comptroller agrees that having an up-to-date map is desirable, the comptroller does not believe that a rolling challenge process is practical due to limited comptroller resources and would be inconsistent with the current statutory scheme for map challenges. TCA also requested that the comptroller consider allowing challenges where there are pending challenges under the FCC's Broadband Data Collection challenge processes, there are unresolved challenges pending at the FCC, or there has been a successful map challenge in connection with the administration of NTIA's BEAD challenge process. For the reasons outlined above, the comptroller believes a rolling challenge process is impractical and inconsistent

with the current statutory scheme if the comptroller has not already adopted the FCC map. And while the comptroller agrees that its map should reflect the results of NTIA's BEAD challenge process, the comptroller already has the authority to update its map using the best available data, including data from the BEAD map challenge process. Therefore, the comptroller does not believe a change to the rule is needed based on this comment.

TTA requested that the time period for making reliable broadband service available at a location as outlined in §16.22(c)(1) should be clarified to be within 10 business days to remain consistent with the federal Broadband Data Act. The comptroller agrees with this comment and will adopt §16.22(c)(1) with changes.

TTA also commented that the term "reliable broadband service" should be expanded to include "qualifying broadband service" for the sake of clarity, noting that a location reclassification can be anything from an unserved, underserved, or served location and that the combined term would make that distinction. The comptroller disagrees with this comment because the proposed rule already considers the distinction between unserved, underserved and served broadband serviceable locations. Therefore, the comptroller declines to make a change to the proposed rule based on this comment.

TCA proposed that the comptroller amend §16.22(c)(2) to delete the reference to "actual" speeds of the fastest available service tier at the location when considering a map challenge. The comptroller disagrees with this suggestion because it is statutorily required to determine whether speed thresholds at broadband serviceable locations are met when determining the availability of broadband service at those locations. Divorcing a consideration of actual speeds and only allowing challenges based on theoretical, advertised speeds would not be consistent with statute. Therefore, the comptroller declines to make a change to the proposed rule based on this comment.

TCA opposed the inclusion in §16.22(c)(4) of a challenge based on existence of a data cap that results in actual speeds of the fastest available service tier falling below the broadband service speed thresholds established by Government Code, §4901.0105(a). TCA argued that nothing in state law permits the BDO to determine that a location is not served based on a data cap. TCA further stated that the status of a location should be determined solely on statutory criteria and that BDO should neither add nor subtract from the definition the legislature employed to determine whether a location is served or un(der)served. The comptroller disagrees that its proposed rule which includes consideration of a data cap exceeds its authority or deviates from the statutory scheme. Under Senate Bill 1238, the comptroller is required to classify each broadband serviceable location based on access to reliable broadband service. The plain, ordinary meaning of "access" includes the ability "to obtain or make use of something." See the definition of "Access" *Merriam-in Webster.com*. Merriam-Webster, 2023. In addition, the statute does not qualify or otherwise limit the term "access" to permit the conclusion that access to the internet at the required speeds need only be intermittent. The comptroller believes that imposition of a data cap that artificially restricts data speeds and which results in broadband service at a location falling below the statutorily imposed thresholds necessarily means that the location will not have access to the required broadband service. Thus, permitting a map challenge based on the existence of a data cap is consistent with the statutory guidelines.

TCA further argues that adding a requirement beyond the statutorily imposed thresholds would have the impermissible effect of regulating broadband service. For the reasons outlined above, the comptroller believes its interpretation is consistent with statutory language. However, the comptroller also disagrees with the comment that permitting a challenge based on the existence of a data cap amounts to impermissible regulation. The comptroller acknowledges that under Government Code, §4901.0103(c), it is not granted authority to regulate broadband services or broadband service providers. But nothing in the proposed rule imposes an external obligation upon or regulates the activities of broadband service providers. To the contrary, broadband service providers may or may not, at their sole discretion, choose to impose data caps and nothing in the proposed rule acts to regulate the ability of a broadband service provider to do so. For the foregoing reasons the comptroller declines to make changes to the proposed rule based on these comments.

TCA requested that the comptroller consider amending §16.22(c)(5) to add challenges based on the existence of state and local commitments to deploy qualifying broadband. TTA agreed with TCA that the inclusion of state and local commitments as a permissible challenge would be consistent with federal BEAD requirements and would reduce wasted funding on locations that are already going to be served by other means. In addition to existing federal, state and local commitments, TTA also urged the comptroller to consider permitting challenges based on a provider's "planned service" that is coupled with evidence of existing binding obligations to deploy broadband to a given location which would, in their estimation, obviate the need for funding to be expended in that location. TCA also proposed amending the proposed rule to allow challenges to be made based on "planned privately funded new deployments." The comptroller disagrees with these comments. While the comptroller agrees with the goal of maximizing the expansion of broadband service and avoiding duplicative spending, the comptroller is statutorily required to classify each broadband serviceable location based on access to reliable broadband service. With the exception of existing federal commitments to deploy broadband service which are statutorily prohibited from receiving program funds, the comptroller does not believe it has the authority to stretch the plain and ordinary meaning of "access" to include promises of future broadband availability when considering a map challenge. Therefore, the comptroller declines to amend the proposed rule based on these comments.

The comptroller received many comments related to the map challenge process outlined in §16.22(d) which is applicable in the event that the comptroller adopts the FCC National Broadband Map as permitted under Government Code, §4901.0105(q). TEC expressed concerns with adopting the FCC map and the requirement that an entity seeking to challenge the map must first successfully challenge the federal map. TEC stated that many of its members have expressed frustration at the length of the FCC challenge process and argued that the length of delay while awaiting federal action would hamper the ability to fix inaccuracies in the map as adopted by the BDO. TEC further noted its belief that broadband service providers within the state were more likely to be better informed about the actual status of service quality throughout the state than the FCC. Therefore, TEC requested that the comptroller maintain a challenge process that was not dependent on federal action. In addition, while acknowledging that adoption of the federal map is within the discretion of the comptroller, TEC urged the comptroller to consider a process for broadband service providers and oth-

ers to either challenge or provide input on the decision to adopt the federal map. TTA raised a concern that the prerequisite federal challenge imposes an unreasonable burden on smaller providers who do not have the resources to mount a successful challenge at the FCC. Therefore, TTA also urged the comptroller to modify the proposed rule to allow challenges irrespective of whether they were the subject of a successful challenge at the FCC. GVEC also commented unfavorably against the requirement that an entity seeking to challenge the map must first successfully challenge the federal map, arguing that the federal map challenge process should be managed by the BDO, with challenges from providers flowing through the BDO to the FCC.

The comptroller appreciates the many viewpoints raised by these comments. In the event that the comptroller adopts the federal map, the proposed rule is aimed at ensuring that the federal and state map challenge processes work in tandem to avoid inconsistencies between the FCC map and the federal map as adopted by the comptroller. Consequently, the comptroller respectfully disagrees with comments urging the comptroller to either not adopt the proposed rule or modify the proposed rule to allow challenges irrespective of whether they were the subject of a successful challenge at the FCC. Similarly, while the comptroller acknowledges the concerns raised by TTA and GVEC, the comptroller does not believe the requirement places a significant fiscal impact on providers and any potential burden is counterbalanced by the need to avoid inconsistencies between the state and federal broadband maps. Therefore, the comptroller declines to make changes to the proposed rule based on these comments.

Harris County also expressed concerns with the proposed rule, noting that the proposed challenge process would impose an inefficient and burdensome validation process. In their view, requiring a state challenge to the adopted federal map in addition to a challenge to the FCC map would likely hinder the speedy reclassification of broadband serviceable locations on the state map. Therefore, Harris County recommended simplifying the challenge process by requiring a single challenge to be made to the FCC and having the BDO adhere to the decision. Austin concurred and made the same recommendation. The comptroller appreciates the concerns raised by these comments but unfortunately is unable to implement this suggestion due to statutory constraints. Under Government Code, §4901.0105(l) et seq. providers are afforded the right to petition the BDO to reclassify broadband serviceable locations which then leads to a mandatory review process. Therefore, the comptroller declines to make changes to the proposed rule based on these comments.

GVEC raised a concern that the current state map and federal maps use different unique location identifiers and suggested that the comptroller consider an additional rule requiring the BDO to publish a cross index of the identifiers used in the Broadband Development Map and the FCC National Broadband Map to alleviate the burden placed on providers. The comptroller appreciates GVEC bringing this issue to its attention. The comptroller does not believe a rule is necessary to address this issue but will instead work to create future versions of the Broadband Development Map contain references to the location identifiers used in the FCC National Broadband Map.

The comptroller received several comments regarding §16.23 which outlines the challenge process and deadlines. As noted above, TCA expressed concerns that adoption of the proposed rules, including this section, would result in confusion due to the existence of separate maps and therefore recommended that the



rule should either not be adopted or should be modified to require coordination with BEAD processes. In line with their comments above suggesting the comptroller should consider both state and local commitments to deploy broadband, TCA suggested the comptroller adopt a process to gather information about local commitments. For the reasons outlined above, the comptroller may not take into account local commitments for the purpose of map challenges and therefore does not believe an additional rule to outline such a process is necessary.

TCA commented that §16.23(a) should be amended to clarify that challenges may be made after any update to the broadband development map and remarked that the current language implies that there is only one publication and challenge process despite the map being updated on a regular basis. TCA also suggested that challenges should be accepted on an ongoing or rolling basis noting that the maps will be updated regularly by the FCC and the state. As noted above, in the event the comptroller adopts the FCC map, several commenters expressed concern with the requirement to first successfully challenge the federal map before submitting a state challenge and the delays associated with that process. The comptroller notes that the deadline for submitting a challenge may be insufficient if a successful federal challenge is required before submitting a challenge to the federal map as adopted by the comptroller. The comptroller agrees that amending the proposed rule to clarify that challenges may be made after any update to the broadband development map would be useful. In addition, if the comptroller adopts the FCC map, then the comptroller believes extending the deadline for a map challenge is warranted. Therefore, the comptroller adopts the proposed rule with changes to clarify that challenges may be submitted after any update to the broadband development map is published, and extends the deadline for submitting a challenge subsequent to a successful federal challenge of the FCC map. However, the comptroller disagrees with the suggestion that challenges should be considered on an ongoing or rolling basis because doing so would be impractical. A rolling challenge process would result in a dynamic, rather than a static, map upon which neither the BDO or applicants for grant funding could reasonably rely.

The comptroller received two comments regarding §16.23(b). TCA remarked that the words "in this division" do not make sense in context. The comptroller disagrees with this comment because that phrase refers to the new sections that are proposed to be located in Subchapter B, in new Division 1 (Broadband Development Map). Therefore, the comptroller declines to make changes to the proposed rule based on this comment.

TEC noted that §16.23(b) permits the BDO to reject a challenge if the challenge is not submitted on the forms prescribed or if the challenge does not meet any other criteria adopted by the BDO, but requested that the comptroller consider requiring the BDO to state a reason for rejecting a challenge and provide for a reasonable cure period where the deficiency may be remedied by the challenger. TEC remarked that allowing a challenge to be rejected without an ability to cure or resubmit following a deficient filing could inadvertently defeat legitimate challenges that should be considered by BDO. The comptroller disagrees with this suggestion because it would extend an already lengthy challenge process and result in unreasonable delay in finalizing map updates. In addition, the map challenge has statutorily defined deadlines that the comptroller does not have authority to extend. For these reasons, the comptroller declines to make changes based on this comment.

The comptroller also received two comments about the notice requirements in §16.23(c). Due to the potential consequences associated with challenges, TEC expressed a concern that deemed notice of challenges may be insufficient. To alleviate this concern, TEC recommended that the comptroller include a written notice requirement for affected broadband service providers, with the date of notice being the date the written notice was delivered. TTA expressed a similar concern and observed that small businesses with limited staff would be unable to timely check the BDO's website every day for possible notices. At the same time, TTA recognized that, with the proposed rule, the BDO was seeking to streamline its notice procedures and suggested that the comptroller consider including an "opt-in" email distribution list to ensure that interested persons would receive actual notice of map challenges that may affect them. The comptroller agrees with the concern that under the proposed rule affected broadband service providers may not receive notice if the notice is limited to publication on the comptroller's website. At the same time, the comptroller appreciates TTA's recognition regarding the need to streamline the notice process and agrees with its compromise suggestion that the comptroller mandate the use of an "opt-in" email distribution list to provide the required notice to broadband service providers. The comptroller will adopt the proposed rule with changes accordingly.

The comptroller received many comments regarding §16.24. As noted above, TCA argued against adoption of the proposed rule for the reasons outlined above; but more specifically, TCA argues against mapping challenge criteria that are different from BEAD and FCC mapping challenge processes because of the risk of ending up with inconsistent data sets that would make coordination between BOOT and BEAD difficult. TCA also commented negatively about §16.24(a)(4), arguing in favor of adopting criteria permitted with BEAD or FCC challenges. The comptroller agrees with the concern raised in this comment but believes that the criteria adopted by the comptroller are either consistent with the federal mapping processes or permit the flexibility to maintain needed consistency between the state and federal maps. Therefore, the comptroller declines to make changes to the proposed rule based on these comments. TEC also commented on the map challenge criteria and advocated for the inclusion of criteria specifically aimed at assessing the feasibility of an ongoing project. TEC expressed the opinion that if an area is deemed to be served on the basis of an existing federal commitment to deploy qualifying broadband services, the proposed project should be analyzed for continued feasibility and, if determined unfeasible, the locations covered by the project should be reclassified. The comptroller disagrees with this comment as it is inconsistent with statute. Under Government Code, §4901.0106(d) and 4901.01061, the comptroller may not award a grant or other financial incentive for a location that is subject to an existing federal commitment unless the federal funding is forfeited. Consequently, the comptroller may only reclassify a location that is subject to an existing federal commitment only if the funding is forfeited and not because the project covered by the funding is unfeasible. Therefore, the comptroller declines to make a change to the proposed rule based on this comment.

Both TCA and TTA noted that §16.24(a) contains a reference to "designated areas" that should be amended due to changes implemented by Senate Bill 1238. The comptroller agrees with these comments and adopts the proposed rule with changes accordingly.

Several commenters including Representative Trent Ashby, AT&T, Austin, and Harris County requested the comptroller to provide a definition for "reliable broadband service." Representative Ashby provided comments urging the comptroller to adhere to the legislative purpose of Senate Bill 1238 by following federal guidance with respect to broadband reliability and enhanced speed requirements. Likewise, AT&T sought confirmation that the comptroller's proposed definition would be the same as that term is used in the BEAD Notice of Funding Opportunity which is limited to fiber-optic technology, cable modem/hybrid fiber-coaxial technology, digital subscriber line technology, or terrestrial fixed wireless technology utilizing entirely licensed spectrum or using a hybrid of licensed and unlicensed spectrum. Austin and Harris County urged the comptroller to provide a specific definition replete with technical specifications that include broadband download/upload speeds, consistency, quality of service and latency requirements. TTA also expressed the belief that the term "reliable broadband service" in §16.24(a)(1) was unclear and suggested it should be expanded to clarify that challenges may be made based on whether a location is unserved, underserved, or served. The comptroller appreciates these comments and agrees with the need to provide a definition for the term for the sake of clarity. The comptroller will add a definition for the term in a separate rulemaking that adopts amendments to §16.30, concerning definitions.

TCA advocated against the inclusion of speed data as a criterion the comptroller must consider when making map challenge determinations as provided under proposed §16.24(a)(2). TCA noted the difficulty of ensuring that speed tests contain accurate, verifiable information and noted that the FCC only relies upon speed tests as a supplemental source of information and not the sole basis for a challenge. TCA recommended that if the speed tests remain, §16.24(a)(2) be amended to require the speed tests submitted with a challenge to be subject to the same rigor that speed tests are subject to under BEAD program rules. While the comptroller agrees with the importance of ensuring that the information the BDO relies upon when making a challenge determination is accurate and verifiable, the rule does not require the comptroller to make a determination base solely on speed tests, nor does it require the comptroller to accept speed tests data results without evaluating their usefulness. Further, the challenge process itself provides third parties an opportunity to challenge any evidence, including speed tests, submitted by a challenger. For these reasons, the comptroller declines to amend the proposed rule based on this comment.

With respect to §16.24(a)(3) and §16.24(b), TTA reiterated its comments requesting the comptroller consider expanding its consideration of existing federal commitments to deploy broadband to also include state and local commitments. TCA also commented in favor of including state and local commitments when considering map challenges to ensure that all commitments for funding deployment to a location are taken into consideration. TTA also reiterated its comments requesting that the comptroller also consider privately funded planned service when evaluating map challenges. For the reasons previously discussed in the context of §16.22(c)(5), the comptroller declines to amend the proposed rule based on these comments.

The comptroller received several comments related to the claw back period contained in §16.24(d). AT&T, TCA and TTA supported the goal of the claw back provision but recommended that the comptroller limit the claw back to one year after award. AT&T commented that a provider's responsibility for proposing

a project area that does not include ineligible locations should be limited to the date upon which the provider submits its application stating that a provider should not be held accountable for locations that became ineligible after its application was submitted. TCA argued that recipients should be able to rely on maps as they exist at the time of award and should not be penalized due to a change of conditions beyond their control. TTA observed that an indefinite claw back period was unreasonable because it could place a provider's funding in jeopardy even after the provider expended the funds to build the broadband Texas need. In addition to limiting the claw back period to one year after award, TTA also requested that the BDO be required to consult with an award recipient before making a decision to allow the recipient to make its case for extenuating circumstances. The comptroller disagrees with AT&T's and TCA's comment that the proposed rule would result in claw backs based on changed conditions because the rule limits claw backs for funding that was awarded in error to locations that were not eligible for an award *at the time of making the award*. Nor does the comptroller believe that the proposed rule would lead to uncertainty or penalizing a provider long after they have expended the funds because the rule requires the BDO to reduce the amount of any claw backs if it determines that the grant funds were expended in good faith reliance on the award. At the same time, the comptroller agrees that defining a claw back period would reduce uncertainty. In addition, the comptroller agrees that providers should expressly be given an opportunity to provide feedback before a decision to rescind funding is made. Therefore, the comptroller adopts the proposed rule with changes accordingly.

The new sections are adopted under Government Code, §4901.0109, which permits the comptroller to adopt rules as necessary to implement Chapter 490I regarding the Texas Broadband Development Office.

The new sections implement Government Code, Chapter 490I.

*§16.21. Broadband Development Map.*

(a) The comptroller shall create, update annually, and publish on the comptroller's website a broadband development map depicting the availability of broadband service for each broadband serviceable location in this state. The office shall use the best available information, including information available from the Federal Communications Commission, political subdivisions, and broadband service providers, to create or update the map.

(b) Except as provided by subsection (c) of this section, for the purpose of developing the broadband development map, the scope of a designated area in this state shall consist of a county.

(c) If the comptroller determines that developing the broadband development map at the county level is not technically feasible or practical, the comptroller may develop the map using a smaller geographic unit for which information is available from the Federal Communications Commission.

(d) The comptroller shall, at a minimum, display for each designated area on the broadband development map:

(1) each unserved, underserved, and served broadband serviceable location;

(2) an indication of whether each broadband serviceable location is ineligible to receive funding on account of an existing federal commitment to deploy qualifying broadband service;

(3) the number of broadband service providers that serve the designated area;

(4) an indication of whether the designated area has access to internet service that is not broadband service, regardless of the technology used to provide the service;

(5) each public school campus with an indication of whether the public school campus has access to broadband service; and

(6) the number and percentage of unserved, underserved, and served broadband serviceable locations within the designated area.

*§16.22. Map Challenges; Criteria.*

(a) Subject to subsection (c) of this section, a broadband service provider or a political subdivision of this state may challenge the designation of a broadband serviceable location located in this state and petition the office to reclassify the location on the broadband development map.

(b) A challenge submitted under this section must be submitted on forms and contain the information prescribed by the office. The office shall publish on its website the requirements and criteria for submitting a challenge under this section.

(c) A challenge seeking reclassification of a broadband serviceable location may only be made on the following basis:

(1) that reliable broadband service at the location is or is not available within 10 business days of a request for service;

(2) that the actual speed of the fastest available service tier at the location does or does not meet the broadband service speed thresholds as established by Government Code, §490I.0105(a);

(3) that the actual round-trip latency of broadband service at the location exceeds 100 milliseconds;

(4) that the availability of reliable broadband service at the location is subject to a data cap that results in actual speeds of the fastest available service tier falling below the broadband service speed thresholds as established by Government Code, §490I.0105(a); or

(5) that the location is or is not subject to an existing federal commitment to deploy qualifying broadband service to the location.

(d) If the comptroller adopts a map produced by the Federal Communications Commission as provided under Government Code, §490I.0105(q), a challenge may only be submitted under this section if the person or entity submitting the challenge provides evidence that the person or entity previously submitted a successful challenge to the Federal Communications Commission for the broadband serviceable locations for which the entity is seeking a reclassification.

*§16.23. Challenge Process; Deadlines.*

(a) A challenge under this subchapter must be submitted to the office not later than the 60th day after the broadband development map is published or updated on the comptroller's website. If the comptroller adopts a map produced by the Federal Communications Commission as provided under Government Code, §490I.0105(q), a challenge under this subchapter must be submitted not later than the 30th day after the entity seeking to challenge a location submitted a successful challenge to the Federal Communications Commission.

(b) The office may reject a challenge without further action if the challenge is not submitted on forms prescribed by the office or does not otherwise comply with this division or any criteria established by the office as provided by this subchapter.

(c) The office shall provide notice of an accepted challenge to each affected political subdivision and broadband service provider by posting notice of the challenge on the comptroller's website. For the purposes of this section, an affected political subdivision or broadband

service provider shall be deemed to have received notice on the date the notice is posted on the comptroller's website.

(d) Not later than the 45th day after the date that the office posts the notice required under subsection (c) of this section, an impacted political subdivision or a broadband service provider may provide information to the office showing whether the broadband serviceable locations that have been challenged should or should not be reclassified.

(e) Not later than the 75th day after the date that the office posts the notice required under subsection (c) of this section, the office shall determine whether to reclassify the challenged broadband serviceable locations and shall update the map as necessary.

(f) In addition to the notice required under subsection (c) of this section, the office shall send written notice of the challenges that have been received under this subchapter to each political subdivision and broadband service provider that subscribes to an email distribution list managed by the office for the purpose of receiving notices from the office. Notwithstanding this subsection, the date the notice is received shall be deemed to be the date a notice issued under subsection (c) of this section is posted on the comptroller's website.

*§16.24. Challenge Determinations.*

(a) The office shall consider the following in making a determination of whether to reclassify a broadband serviceable location:

(1) the availability of reliable broadband service;

(2) an evaluation of actual Internet speed test and reliability data;

(3) the existence or non-existence of an existing federal commitment to deploy qualifying broadband service to a location; and

(4) any other information the office determines may be useful in determining whether a location should be reclassified.

(b) A broadband serviceable location that is classified as a served location solely because the location is subject to an existing federal commitment to deploy qualifying broadband service may be reclassified if:

(1) federal funding is forfeited or the recipient of the funding is disqualified from receiving the funding; and

(2) the location is otherwise eligible to receive funding under the program.

(c) A determination made by the office under this subsection is not a contested case for purposes of Government Code, Chapter 2001.

(d) If within one year after making an award the office determines that at the time of making the award a broadband serviceable location was not eligible to receive funding under this subchapter, the office may proportionately reduce the amount of the award and the grant recipient shall be required to return any grant funds that were awarded as a result of the classification error. Prior to making a decision to reduce the amount of the award, the office shall provide an opportunity to the award recipient to demonstrate cause for why the award should not be reduced. The office shall reduce the amount required to be returned under this subsection if the office determines, in its sole discretion, that the grant funds or any portion thereof were expended in good faith.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 4, 2024.

TRD-202400956



## DIVISION 2. BROADBAND DEVELOPMENT PROGRAM

### 34 TAC §§16.30, 16.31, 16.35 - 16.38, 16.40 - 16.42

The Comptroller of Public Accounts adopts amendments to §16.30, concerning definitions, §16.31, concerning notice of funds availability, §16.35, concerning program eligibility requirements, §16.36, concerning application process generally, §16.37, concerning overlapping applications or project areas, §16.38, concerning special rule for overlapping project areas in noncommercial applications, §16.40, concerning evaluation criteria, §16.41, concerning application protest process, and §16.42, concerning awards; grant agreement. Sections 16.30, 16.36, 16.37, 16.40 and 16.41 are adopted with changes to the proposed text as published in the October 13, 2023, issue of the *Texas Register* (48 TexReg 5959) and will be republished. Sections 16.31, 16.35, 16.38 and 16.42 are adopted without changes to the proposed text as published in the October 13, 2023, issue of the *Texas Register* (48 TexReg 5959) and will not be republished.

The comptroller renames Subchapter B as Texas Broadband Development Office, reorganizes it into two divisions, and moves all sections located in Subchapter B to Division 2 (Broadband Development Program).

The amendments to §16.30 add new definitions.

The amendments to §16.31 expand the methods by which the office may publish the required notice of funds availability.

The amendments to §16.35 make conforming changes required by Senate Bill 1238, 88th Legislature, R.S., 2023, by deleting the prohibition against making an award to a broadband service provider that does not report certain information to the office and renumbering accordingly.

The amendments to §16.36 provide the office with greater discretion to reject an application that does not comply with applicable program requirements on its face. The amendments also update the reasons for which an applicant may amend and resubmit an application after a protest has been upheld. The amendments also make conforming changes required by Senate Bill 1238, 88th Legislature, R.S., 2023, by prohibiting a broadband service provider from submitting an application protest if the provider has not provided certain information requested by the office.

The amendments to §16.37 revise and streamline the process by which overlapping project locations are resolved by removing the requirement allowing broadband service providers to collaboratively resolve project area overlaps and providing for the office to independently resolve the overlapping areas to avoid duplication. The amendments make changes to how the remaining project area is calculated after overlapping project areas are resolved by the office. The amendments also require the office to provide notice to applicants affected by the determination of the office.

The amendments to §16.38 revise the process by which overlapping project locations are resolved between applications from noncommercial broadband service providers and applications from commercial broadband service providers.

The amendments to §16.40 provide for a new process through which the office shall establish eligibility and award criteria and requires the office to provide notice of the criteria in a notice of funds availability. The amendments expand the mandatory criteria that the office must consider when establishing the eligibility and award criteria, including establishing a preference for fiber optic projects while also allowing the office to consider non-fiber optic projects for high-cost areas.

The amendments to §16.41 update the application protest process by requiring the office to publish on its website the criteria and requirements for submitting a protest. The amendments clarify the basis for which a protest may be submitted and eliminate specific documentation requirements set out by rule. The amendments provide additional notice requirements for applicants affected by a protest determination and make changes to when an affected applicant may submit an amended application if a protest is upheld.

The amendments to §16.42 clarify that the restriction on the use of grant funds only applies to grants for the deployment of broadband infrastructure.

The comptroller received comments from the following organizations, interest groups, and individuals: AT&T; Cherokee County Electric Cooperative Association ("CCECA"); City of Austin ("Austin"); GVEC; Harris County Office of Broadband ("Harris County"); The Honorable Trent Ashby; National Rural Telecommunications Cooperative ("NRTC"); Nextlink Internet; Tarana Wireless; Tekwav; Texas Cable Association ("TCA"); Texas Electric Cooperatives ("TEC"); Verizon; Texas Telephone Association ("TTA") and Wireless Internet Service Providers Association ("WISPA").

The comptroller received general comments in support of the proposed rules from organizations including Nextlink Internet, TCA, and Tarana Wireless. Nextlink Internet expressed appreciation that the proposed rules more closely aligned with the Broadband Equity, Access, and Deployment (BEAD) Program requirements, while enhancing program flexibility and maintaining technology neutrality. In addition to more specific comments, the comptroller also received general comments from TCA expressing support of the comptroller moving toward a location-based funding approach through the proposed rules. Tarana Wireless also commented favorably on the proposed rules noting that alignment with Senate Bill 1238 was a positive stride toward bridging the digital divide. Tarana Wireless specifically expressed its support for the increased discretion afforded the BDO in the application overlap process would strengthen the ability to prevent duplication. Tarana Wireless also supported the consideration of non-fiber technologies as an inclusive and pragmatic strategy that would guarantee the selection of the most suitable tools to address the broadband needs of Texans.

The comptroller received comments from CCECA that expressed concerns but were not directly focused at any specific proposed rule. CCECA raised its continuing concern with the lack of state funding being made available to providers bringing broadband to rural areas because those areas are already "locked up" due to existing funding commitments from federal programs like the Rural Digital Opportunity Fund. CCECA stated that it was notably concerned about the apparent strategy em-

ployed by some broadband providers to "lock up" areas through the use of existing federal commitments without any true plan on the part of those providers to expand service to those areas and requested that the comptroller provide more flexibility to allow state funding in those areas. While the comptroller appreciates these concerns, the statute does not allow the comptroller to award grant funding to locations that are subject to an existing federal commitment to deploy qualifying broadband service. The comptroller therefore lacks the authority to amend the proposed rules as suggested by these comments.

The comptroller received many comments regarding the proposed definitions contained in §16.30. TTA expressed its support for the proposed definition for "middle mile infrastructure" noting that the proposed definition was consistent with BEAD and excludes the provision of service to end-users. TTA also supported the proposed changes to the definition of "project area" because it focuses on individual locations and allows applicants to define their proposed project areas.

In line with its comments regarding §16.36(d), TCA requested the comptroller to change the definition of "application protest period" contained in §16.30(2) to extend the period to 45 days. The comptroller disagrees with this comment because the current 30-day period provides sufficient time to evaluate whether an application may be subject to protest. The comptroller therefore declines to make a change to the proposed definition based on this comment.

TTA provided a comment regarding the definition for "broadband serviceable location" contained in §16.30(5), remarking that the term "broadband internet service" as used in that section is not in the BDO's enabling statute and is already included in the definition of "broadband service." Therefore, TTA recommended removing the word "internet" as unnecessary. The comptroller agrees with this comment and will adopt the proposed definition with changes.

TTA also commented on §16.30(6) which outlines the definition of a "census tract" and noted that the term would no longer be used in the subchapter with the repeal of §16.33 and §16.34. Consequently, TTA recommended deletion of the term. The comptroller agrees with this comment and will delete the definition.

AT&T and TCA requested clarification regarding the meaning of "designated area" in renumbered §16.30(9) given the repeal and replacement of §16.33 in separate rulemakings and suggested revision of the definition. The comptroller agrees with these comments and adopts the proposed definition with changes.

TTA commented on the definition of "grant funds" contained in renumbered §16.30(10) noting that the concept of a designated area no longer applied in this context with enactment of Senate Bill 1238. The comptroller agrees with this comment and adopts the proposed rule with changes.

TTA urged the comptroller to expand the definition of a "served location" in §16.30(20) to include not only existing federal commitments, but also state and local commitments arguing that this proposed expansion would be consistent with BEAD guidelines. The comptroller disagrees with this comment because the comptroller is statutorily required to classify each broadband serviceable location based on access to reliable broadband service. With the exception of existing federal commitments to deploy broadband service which are statutorily prohibited from receiving program funds, the comptroller does not believe it has the authority to stretch the plain and ordinary meaning of "access" to

include commitments of future availability of broadband service when determining whether a location is served or not. Therefore, the comptroller declines to amend the proposed definition based on this comment. TTA similarly urged the comptroller to replace the term "reliable broadband service" as used in that section with a newly defined term they suggested for "qualifying broadband service" that would incorporate specific speed and latency requirements. The comptroller disagrees with this comment. While the comptroller agrees with adding a definition for the term "qualifying broadband service" is warranted for the sake of clarity, adopting specific speed and latency requirements would unnecessarily restrict the flexibility of the BDO to prescribe differing thresholds based on funding source or changing needs over time. Therefore, the comptroller declines to amend the proposed definition based on this comment.

In addition to commenting on the proposed definitions, some commenters advocated for the inclusion of new definitions. Many commenters, including Representative Trent Ashby, AT&T, Austin, GVEC, Harris County, TCA, TEC, and TTA, remarked on the need for the comptroller to define what constitutes "reliable broadband service." Representative Ashby provided comments urging the comptroller to adhere to the legislative purpose of Senate Bill 1238 by following federal guidance with respect to broadband reliability and enhanced speed requirements. Likewise, GVEC, TEC and TTA requested the comptroller to harmonize its definition with federal guidelines. TEC went further, urging the comptroller to specifically exclude both satellite and unlicensed fixed spectrum from the definition of reliable broadband service. AT&T sought confirmation that the comptroller's proposed definition would be the same as that term is used in the BEAD Program's Notice of Funding Opportunity (NOFO). Austin and Harris County urged the comptroller to provide a specific definition replete with technical specifications that include broadband download/upload speeds, consistency, quality of service and latency requirements. The comptroller agrees with commenters urging the comptroller to adopt a definition for reliable broadband service that more closely harmonizes state law with federal guidance. The comptroller believes that adopting a definition for reliable broadband service that is the same as that found in the BEAD Program's NOFO is needed to fulfill and comply with the legislative purpose of Senate Bill 1238. Therefore, the comptroller adopts the proposed rule with changes to reflect the addition of a definition for "reliable broadband service."

TEC also requested the comptroller to consider inclusion of a new definition for the term "broadband." While noting that a statutory definition exists for the term, TEC opined that a definition should be included in the proposed rules. The comptroller disagrees with this comment because the proposed rules already include the statutory definition of "broadband service."

GVEC noted that the proposed rules use the term "qualifying broadband service" multiple times and suggested that the comptroller adopt a definition for the term. GVEC pointed out that existing federal programs have differing thresholds for delivering internet service and urged the comptroller to adopt a definition that is closely aligned with the higher threshold used by the federal BEAD Program. NRTC and TTA similarly suggested the utility of the comptroller adopting a definition for "qualifying broadband service." TTA offered a proposed definition that incorporates both the speed and latency requirements and the reliability standards contained in the BEAD NOFO. The comptroller appreciates the concern raised by these comments and the need for additional clarity; however, because the threshold for

what constitutes qualified broadband service may be dependent on the funding source and may change over time, the comptroller does not believe adopting a defined threshold by rule is the right approach. Instead, to maintain flexibility, the comptroller believes that this threshold should be defined in each applicable Notice of Funds Availability (NOFA) issued by the office. Therefore, the comptroller will amend the proposed rule to add a definition for "qualifying broadband service" that permits the BDO to set the applicable standard as part of the criteria contained in each state-issued NOFA.

TTA also advocated for inclusion of a newly defined term "planned service commitment" for use in the context of map challenges. TTA argued that new term would allow a challenge based not only on the existence of a federal, state, or local commitment to deploy broadband service, but also on a provider's existing plans to provide reliable broadband service to the location within a reasonable time and without government grant funding. TTA further remarked that given the significant number of locations in Texas that do not have access to broadband and limited funding, that planned service commitments as defined by a newly adopted definition would prevent wasteful, duplicative spending by avoiding unnecessary funding of a location when that location would already be served using private investment. While the comptroller agrees with the goal of maximizing the expansion of broadband service and avoiding duplicative spending, the comptroller does not believe it has the authority to consider planned service because it is statutorily required to classify broadband serviceable locations based on their current access to reliable broadband service. Therefore, the comptroller declines to amend the proposed rule based on these comments.

The comptroller received several comments from TCA and TTA regarding §16.31 which provides notice requirements. TTA proposed the office make the publication of a NOFA on its website mandatory as a fundamental part of the process for consistent, fair notice to all applicants. While the comptroller agrees that consistent notice is a fundamental part of the application process, the comptroller does not believe that changing the rule to make publication on its website is necessary. The proposed rule already requires the comptroller to provide notice to interested applicants by publication in either the *Texas Register* or the comptroller's Electronic State Business Daily search website. Both TCA and TTA suggested that in addition to the publication requirement, the comptroller expand the methods of providing notice by requiring the BDO to provide notice through an email distribution list for interested parties. The comptroller disagrees with these comments because the comptroller's Electronic State Business Daily search website already includes the requested functionality that would allow interested parties to receive email notification of posted funding opportunities.

Both TCA and TTA also urged the comptroller to amend §16.31 to require the BDO to permit interested parties to submit comments on proposed NOFAs before they are finalized. TCA argued that many NOFA provisions are essentially rules with the same impact and effect as administrative rulemaking and therefore deserve the same public comment process. TCA opined that gathering input from interested parties would yield NOFAs that are clearer, fairer and more effective. Therefore, TCA recommended making draft NOFAs available 45-days before official issuance and allowing for informal comment for 30 days. TTA proposed a similar timeline for providing public comment, noting that the process would allow any errors to be corrected. The comptroller disagrees with comments that equate an invitation to

voluntarily enter into a contract or grant agreement with rulemaking. The comptroller believes that permitting applicants to shape the grant requirements prior to issuance could prevent open and fair competition. The comptroller notes that the question-and-answer process subsequent to issuance of a NOFA already allows the BDO to provide clarification and correct any errors identified. Therefore, the comptroller declines to make a change to the proposed rule based on these comments.

The comptroller received many comments regarding the application process found in §16.36. TCA submitted a comment requesting the comptroller to consider extending the application publication and protest period found in §16.36(d) to 45 days due to the number and complexity of projects that may be involved. TCA noted that an extended timeframe would allow for more thorough and accurate protests to be made and result in avoidance of frivolous protests. The comptroller disagrees with this comment because the current proposed rules narrow the ground on which a protest may be submitted and ultimately simplify the evaluation process. Therefore, the comptroller believes the current 30-day period provides sufficient time to evaluate whether an application may be subject to protest. TTA also commented on §16.36(d), requesting that the comptroller include broadband serviceable locations among the information the BDO is required to publish on its website. The comptroller notes that its current practice is to publish summary information regarding application protests on its website together with a link that allows interested parties to review the contents of an application protest. Therefore, the comptroller does not believe a change to the proposed rule is necessary based on this comment.

TTA also commented on §16.36(f) regarding the use of the term "location" in two places which they suggested should be preceded with the term "broadband serviceable" for the sake of clarity. The comptroller agrees with this comment and will adopt the proposed rule with changes accordingly.

TCA and TTA commented that the use of the term "designated area" in §16.36(h) should be replaced with "project area" to conform with changes made in Senate Bill 1238. The comptroller agrees with these comments and will adopt the proposed rule with changes accordingly. TTA further commented that the definition of "interested party" contained in §16.36(h) should include applicants. The comptroller notes that the definition for "interested party" is very expansive and already includes a broadband service provider who proposes to provide broadband services in the project area. Therefore, the comptroller does not believe a change to the proposed rule is needed based on this comment.

The comptroller received several comments regarding new §16.36(i). TEC and CCECA supported inclusion of the requirement for broadband service providers to submit required information regarding enforceable federal commitments under Government Code, §4901.01061(b), as a prerequisite for submitting a challenge of another applicant's application. TEC further remarked that while statutory language requires a broadband service provider to submit certain information, the statute is silent as to other consequences for failure to provide that information. TEC reiterated its concerns over the apparent strategy of some broadband providers to include areas that overlap with cooperative provider territories to garner additional funding without a true plan to actually serve customers in those areas. TEC noted that as a result, those areas are "locked up" and ineligible for further funding. TEC added that the information provided under Government Code, §4901.01061 is vital to prevent gaming the system and also ensure the equitable

expansion of service and allocation of funding. Therefore, TEC urged the comptroller to consider reclassifying those areas for which the comptroller does not receive the required information as eligible. The plain language of §4901.01061 prohibits the comptroller from awarding a grant to a location that is subject to an existing federal commitment and only provides for a limited exception if the federal funding is forfeited or the recipient is disqualified from receiving federal funding. Consequently, the comptroller does not have the authority to reclassify an area subject to an existing federal commitment based on noncompliance with §4901.01061 and therefore lacks the authority to amend the proposed rules as suggested by these comments.

Harris County opined that the new rule, which replaces language in repealed §16.35(c), does not make broadband service providers sufficiently accountable for their lack of compliance with requests for information under Government Code, §4901.0105 or §4901.01061. Under the previous rule, a broadband service provider that did not provide the requested information was barred from participating in the program. Harris County supported retaining language that bars noncompliant providers from participation in the program. TEC also recommended prohibiting entities that do not provide the requested information from receiving any funding from the broadband development program. CCECA echoed TEC's comments but went further by requesting that the comptroller consider a rule that would make it clear that any application submitted by a broadband service provider that does not provide the required information would be denied. The comptroller agrees with comments suggesting the comptroller has the discretion to impose sanctions for noncompliance that go beyond the limited sanction imposed by statute in which a noncomplying broadband service provider may not submit an application protest. That said, the comptroller does not have the authority to prohibit an *applicant* from participating in the program because the plain language of Government Code, §4901.01061 requires grant *recipients* to provide information regarding existing federal commitments. While the comptroller agrees with comments suggesting that a grant recipient that does not provide the required information should be subject to additional possible sanctions, the statute and rules already provide this authority. Therefore, the comptroller declines to make changes based on these comments.

The comptroller received two additional comments regarding §16.36(i). TEC advocated for greater transparency regarding existing federal commitments and recommended that the BDO should make public any information it receives regarding existing enforceable commitments. TEC noted that greater transparency regarding existing federal commitments and the timelines for deployment would assist broadband providers developing their own expansion plans and would provide consumers assurance that public funds will be appropriately leveraged. The comptroller agrees that transparency is needed to ensure that the public has information about the deployment plans of broadband service providers who have existing federal commitments. However, the comptroller notes that the requested information would already be subject to the Public Information Act. For these reasons, the comptroller declines to amend the rule based on this comment. TTA also commented on §16.36(i) requesting that the comptroller permit entities to use a representative to provide the required information. The comptroller does not believe a change to the proposed rule is necessary based on this comment because the rule does not prohibit an entity from using a third party to assist them in providing the required information.

The comptroller received several comments regarding how overlapping project areas would be deconflicted under §16.37. TTA commented generally that the rule should contain defined criteria for deciding between applicants and recommended factors such as past performance metrics, build out time frames, consumer satisfaction ratings, scalability, proven redundancy and reliability. TEC noted that using set criteria will provide transparency to the decision-making process and give applicants a sense of their standing while actively encouraging better performance by providers and rewarding those with better track records of service when separate applications contain overlapping territory. The comptroller agrees with the need for set criteria but notes under the proposed rule the deconfliction decision is not based on a subjective comparison between applicants but is instead based upon a detailed comparison of the proposed projects using the criteria contained in the applicable NOFA. Therefore, the comptroller does not believe a change to the proposed rule is needed based on this comment.

TCA commented unfavorably on §16.37(d) which gives the BDO the discretion to remove an application from consideration where area deconfliction resulted in more than half of the original project locations being removed. TCA advocated for removing this discretion in favor of allowing applicants to choose whether to proceed with a substantially reduced application. The comptroller disagrees with removing the BDO's discretion to remove an application from further consideration in circumstances where the scope of an application is substantially reduced; however, the comptroller agrees that before deciding to remove an application from further consideration the BDO should take into account whether an applicant would like to proceed with a substantially reduced application. The comptroller adopts the proposed rule with changes to require the comptroller to notify the applicant of a substantially reduced application before removal.

TTA commented on §16.37(e) recommending that the threshold for the size of an area after an overlapping location is removed should be clarified to be greater than 50 percent of the broadband serviceable locations in the original project area to make it clear that a geographic area is not being used for the calculation. The comptroller agrees with this comment and adopts the proposed rule with changes accordingly.

GVEC, TCA and TTA commented on the amendment period contained in §16.37(f). All three commenters requested that the comptroller extend the amendment period to allow applicants sufficient time to prepare and submit a revised application. While the comptroller believes 10 business days is sufficient time to submit an amended application without challenged locations as contemplated by the proposed rule, the comptroller recognizes that there may be circumstances in which additional time may be required. Therefore, the comptroller is withdrawing the proposed change that would make removing an application from consideration obligatory to allow the comptroller the discretion to extend the required deadline on a case-by-case basis.

In line with comments GVEC provided regarding §16.37(f), GVEC requested the comptroller to consider extending the amendment deadlines contained in §16.38(b). TTA also commented on §16.38 noting that the time required for non-commercial applicants to amend their applications to eliminate overlapping locations should be extended to 30 calendar days. The comptroller disagrees with this comment because it believes 10 business days is sufficient time to resubmit an application without overlapping locations. In addition, the current rule pro-

vides the necessary flexibility for the comptroller to extend the required deadline on a case-by-case basis because it permits, but does not require, the BDO to remove an application from consideration if the deadline is not met. As previously outlined in its response to comments regarding §16.37(f), the comptroller is withdrawing the proposed change to §16.37(f) to retain this flexibility. Finally, because the comptroller has not proposed amendments to that rule the comment is outside the scope of the current rulemaking. Therefore, the comptroller declines to make changes based on this comment.

The comptroller received many comments regarding the evaluation criteria contained in §16.40.

TTA commented that the term "broadband service" as used in §16.40(a) should be updated to be "qualifying broadband service" to be consistent with the objectives of the statute. TTA also recommended inclusion of specific, higher speed and latency requirements that should be applicable to applications that expand access to broadband in schools because, in their opinion, the preference was intended to be given to broadband service that is faster than qualifying broadband service to schools. The comptroller disagrees with these comments because the rule language closely follows the applicable statutory language, and the comptroller may not restrict a mandatory preference established by the legislature. Therefore, the comptroller declines to make a change to the proposed rule based on these comments.

TCA also commented that the language contained in §16.40(a)(3) afforded the BDO too much discretion to set speed, latency, reliability, consistency, scalability, and related criteria outside of rule noting that this negatively impacted certainty and confidence in the process. TCA therefore urged the comptroller to limit the criteria the office may consider to criteria established by rule. The comptroller disagrees with this comment. The text of the proposed rule mirrors the statutory language contained in Senate Bill 1238 which contemplates the need for the comptroller to establish applicable criteria in notices of funding availability. For this reason, the comptroller declines to make changes to the proposed rule based on this comment.

TCA and TTA commented generally on the use of the term "designated area" throughout §16.40(b) and recommended updating where needed to align with changes made in Senate Bill 1238. The comptroller disagrees with this comment as it relates to §16.40(b)(5). In that section, the rationale for using the term designated area (county) remains notwithstanding the map changes resulting from Senate Bill 1238, i.e., assessing the impact of a proposed project in a designated area. However, the comptroller agrees with this comment as it relates to §16.40(b)(6) and (8) and adopts the proposed rule with changes.

Several commenters including AT&T, TCA, TEC, and TTA commented on the evaluation criteria contained in §16.40(b). TEC commented that, given the underlying policy goal of delivering high speed internet and increasing coverage of reliable internet service across the state, it makes little sense to not make delivery of highspeed internet a mandatory consideration when evaluating a project for award. TEC therefore recommended making speed considerations a mandatory provision under subsection (a). The comptroller notes that the purpose of subsections (a) and (b) is to respectively outline the statutorily imposed criteria that the BDO must prioritize during the application evaluation process and the criteria for which the comptroller *may* provide a preference. The inclusion of broadband transmission speeds in §16.40(b)(2) is not intended to provide a preference for meeting required minimum broadband service speeds but instead to pro-

vide notice that the BDO may give a preference to applications in which the technical specifications exceed the required minimum. Therefore, the comptroller does not believe a change to the proposed rule is needed based on this comment.

TCA commented that §16.40(b)(5) should be amended to allow the prioritization to be based on the proportion of unserved and underserved locations in a proposed project area and not the proportion in the designated area (county) in which the project is located. The comptroller disagrees with this comment because the preference is intended to measure the cost effectiveness and impact of a proposed project - in this case the proportion of locations to be served by the project compared to the number of serviceable locations within the designated area(s) measures the percentage of increased coverage in the designated area. For this reason, the comptroller declines to make a change to the proposed rule based on this comment.

TCA strongly opposed inclusion of renumbered §16.40(b)(7) which permits the BDO to consider community, non-profit, or cooperative involvement or participation in a project. TCA observed that the enabling statutes do not contain such a preference and argued that inserting a preference for non-commercial projects runs contrary to the intent to prioritize commercial providers. As an alternative to repeal, TCA advocated for amending the rule to clarify that it reflects community "support" for a project rather than "involvement" in a project. The comptroller respectfully disagrees with the comment that a consideration of community participation conflicts with the commercial provider preference established by Government Code, §4901.0106(d)(2). The commercial provider preference is limited to a mandatory priority between commercial and non-commercial provider applications seeking funding for the same broadband serviceable locations. It neither requires the comptroller to provide a global preference for commercial provider applications, nor prohibits the comptroller from establishing additional, non-conflicting preferences. The comptroller believes local community participation and support of an application is a non-conflicting preference and is an important factor to consider when evaluating applications. Such participation is evidence that a proposed project considers the particular, local community broadband needs and is ostensibly designed to best meet the needs of the area. Therefore, the comptroller declines to repeal the proposed rule as recommended. However, the comptroller agrees with the suggestion that the rule should be clarified to also allow the comptroller to consider community *support* in addition to active community participation as a criterion. The comptroller will adopt the proposed rule with changes based on this comment.

AT&T commented that under §16.40(b)(8) it is unclear how affordability will be measured and how such a measurement will impact a provider's application. They further noted that the proposed rule provides no affordability standards upon which such a measurement would be based and cautioned that providing a better preference score for "affordability" based on lower rates may be considered, for all practical purposes, a form of rate regulation, which is not permitted on broadband services. The comptroller disagrees with the comment that providing a preference based on affordability is a form of rate regulation. As noted previously, participation in the grant program is entirely voluntary and setting a condition for receipt of a grant is not rate regulation. The comptroller notes that §16.40 merely provides notice of the factors the comptroller may include and provide a preference for in each applicable notice of funds availability. As such, the rule is not intended to either establish affordability standards or pro-



vide a definitive measure of how affordability will be measured. Instead, as contemplated by statute, those considerations, if applicable, will be left for each state-issued NOFA. Accordingly, the comptroller does not believe a change to the proposed rule is needed based on this comment.

AT&T raised similar concerns regarding affordability with respect to §16.40(b)(9) noting that preferences relating to consumer pricing could become a form of rate regulation. TCA also commented that care must be taken to avoid rules that morph preferences into price regulation. While acknowledging that evaluating affordability is an acceptable objective for the program, TCA reiterated its comments regarding Government Code, §4901.0103, which prohibits the comptroller from regulating broadband service providers. TCA further expounded on this theme, referencing Utilities Code, §52.002(d), which prohibits the state from directly or indirectly regulating the rates charged for any broadband-enabled service. TCA noted that courts have held in related contexts that statutory prohibitions against rate regulation apply where a state either (1) specifies the rates that must be charged for specific levels of service or (2) freezes prices or restricts providers from adjusting rates in certain ways. Consequently, TCA argued that adoption of any specific price point or setting any sort of price cap would amount to impermissible rate regulation under both analyses. Further, TCA recommended that the comptroller align any evaluation of affordability with the Affordable Connectivity Program, a federal subsidy program aimed to assist eligible households afford internet service, and to permit applicants to specify their own framework to meet affordability requirements. The comptroller disagrees with these comments to the extent that they suggest that the comptroller may not by rule establish a preference that considers affordability because doing so is, in effect, indirect rate regulation. The comptroller notes that the proposed rule neither sets specific rates that must be charged for specific levels of service nor sets a price cap. Further, the comptroller reiterates that participation in the broadband development program is voluntary and that setting a condition for receiving a grant through the program cannot be considered rate regulation. For these reasons, the comptroller declines to make changes to the proposed rule based on these comments.

TCA argued against §16.40(b)(12) which it believes provides the comptroller virtually unlimited discretion to apply preferences to application based on its own determinations. TCA suggested this language is unnecessarily redundant and would leave applicants without certainty or guardrails as to how proposals will be evaluated. They further suggested that if additional factors are to be considered, stakeholders should be given the opportunity to provide comments prior to issuance of a NOFA. The comptroller disagrees that the discretion provided by §16.40(b)(12) is unfettered. The proposed rule limits the discretion of the BDO to apply preferences based on its own determinations by requiring the office to publish criteria in a NOFA. And contrary to the assertion that the proposed rule will result in uncertainty as to how proposals will be evaluated, the publication requirement provides applicants with notice of the evaluation criteria the office will use. Finally, the comptroller does not agree with the suggestion that stakeholders should be given the opportunity to provide comments prior to issuance of a NOFA. The comptroller believes that permitting stakeholder participation may act to prevent open and fair competition by allowing potential grant recipients to participate in drafting grant requirements prior to issuance. The comptroller believes that the question and answer process following the issuance of a NOFA already allows stakeholders to request

clarification as to how proposals will be evaluated. For these reasons, the comptroller declines to make changes based on this comment.

The comptroller received several comments regarding §16.40(c) including comments from TCA, Tekwav, Verizon and WISPA. TCA disfavored adoption of a rule that allows consideration of alternative technologies that are proposed for high-cost areas and that may be deployed at a lower cost than fiber technology. TCA noted that under this provision there would be no definition for a high-cost area that would constrain the section. TCA also pointed out that federal programs do not require or encourage non-fiber projects and evidence a clear intent to support fiber-based projects. TCA further argued that adoption of a high-cost threshold would harm the ability of the BDO to maximize fiber deployment. Therefore, TCA encouraged the comptroller to coordinate the use of state funds with the federal BEAD program by pursuing a fiber-only goal for state funds and leaving non-fiber technology to be available only through the BEAD program for areas above the extremely high-cost threshold established under that program.

Contrarily, Verizon, Tekwav and WISPA supported adoption of §16.40(c). Verizon noted the importance of the rule in ensuring different technologies be employed to provide broadband coverage in Texas. WISPA recognized the proposed rule as a first step in preserving the BDO's ability to consider the benefits of these alternative technologies without sacrificing the prioritization of fiber projects. WISPA extolled the benefit of preserving the flexibility to consider alternative technologies, noting that fixed wireless could be built at a fraction of the capital costs over a shorter time span. However, these commenters suggested that the proposed rule should be expanded to fully meet the directives set out in Senate Bill 1238. Verizon commented that the proposed language fails to fully comport with Senate Bill 1238 because the proposed rule only allows an alternative technology application to be considered if it is both for a high-cost area and offered at a lower cost than fiber whereas the statutory language is written disjunctively. All three commenters also observed that the statutory language contemplates the use of alternative technologies where, in addition to being proposed for a high-cost area and available at a lower cost, the technologies also meet the technical criteria established by the office including speed, latency, reliability, consistency, and scalability. Therefore, these commenters recommended enumerating and including in the rule the criteria outlined in the statute that would further expand the office's scope to appropriately consider fiber alternatives.

The comptroller appreciates the important viewpoints raised in these comments. The comptroller respectfully disagrees with TCA's suggestion that the comptroller should not adopt §16.40(c). While Senate Bill 1238 establishes a clear mandate for fiber-based projects, it also contemplates the need to consider non-fiber projects and gives the comptroller the flexibility to consider alternative technologies in the appropriate circumstances. As other commenters observed, Texas is a large state with large swaths of rural land that make it hugely challenging to implement fiber connectivity. This difficulty necessitates the need to consider other types of technology capable of delivering high-speed and affordable broadband service. Therefore, the comptroller agrees with commenters who supported the proposed rule as preserving the ability to consider the benefits of alternative technologies in appropriate circumstances without sacrificing the prioritization of fiber projects. Similarly, the comptroller believes that pursuing, as TCA suggests, a fiber-only strategy for state funds runs counter to the legislative

intent to prioritize but not mandate fiber-based projects where a proposed project fulfills the circumstances contemplated by the legislature. The comptroller also agrees with commenters who urged the comptroller to more closely adhere to the statutory language and expand the flexibility to appropriately consider fiber alternatives. The comptroller adopts the proposed rule with changes to correct the conjunctive language used in the proposed rule and more closely track the statutory language regarding the technical criteria the office may prescribe to consider fiber alternatives.

TCA also advocated for the comptroller to replace the proposed §16.40(c) with a new rule to ensure that no eligibility criteria would be indirectly used to regulate the rates, terms, and conditions for broadband service offerings in a project area. TCA strongly expressed its opinion that the legislature has been clear that the BDO should not be an avenue for increased broadband regulation and urged the comptroller to adopt a rule that explicitly states its intent not to engage in regulation. The comptroller appreciates TCA for raising this important issue. The comptroller agrees that Government Code, §4901.0103, makes clear that the comptroller is not granted the authority to regulate broadband service and broadband service providers; however, for the reasons previously discussed, the comptroller does not believe that the setting of evaluation criteria for the receipt of grant funds either directly or indirectly regulates the rates, terms, and conditions for broadband service offerings because participation in the program is voluntary. The comptroller is entitled to set evaluation criteria for the application for public funds and broadband service providers are entitled to seek public funds if they are willing to be evaluated by those criteria. Broadband service providers who do not seek to fund projects with taxpayer dollars are in no way regulated by conditions outlined by the BDO within a NOFA. Because nothing in the rules purports to broadly regulate broadband services or broadband service providers and the statute is unambiguous that the comptroller is not granted such authority, the comptroller does not believe that it needs to clarify its intent to refrain from unauthorized industry regulation.

The comptroller also received comments from TCA and TTA regarding §16.41. TCA urged the comptroller to amend §16.41(a) to add pre-existing service as a basis for submitting an application protest to avoid spending limited resources to overbuild existing service. TCA also commented that the comptroller should amend the proposed rule to make clear that, in addition to the existence of federal commitments, challenges may also be submitted due to pre-existing state and local commitments to expand broadband service to a location. TTA also agreed that the comptroller should allow challenges based on pre-existing state and local commitments. TTA advocated for modifying the term "existing federal commitment" to encompass both state and local commitments to reduce wasted funding on locations that would be served by other means. In addition, TTA also recommended adding to the concept of federal, state, or local commitments to include private planned service commitments. TTA reiterated its comments regarding adding a new definition for "planned service commitment" that would allow a challenge based on another provider's existing plans to provide qualifying broadband service within a reasonable time to the location as indicated in construction contracts or similar documents or permits showing ongoing deployment, or as indicated in contracts or a similar binding agreement. While the comptroller agrees with the goal of avoiding duplicative spending, the comptroller disagrees with recommendations to allow interested parties to use application challenges for that purpose. For example, TCA urged the comptrol-

ler to add pre-existing service at a location as a basis for protest but the question of whether a broadband serviceable location is served or unserved is already subject to challenge through the map challenge process. The comptroller similarly disagrees with comments urging the comptroller to amend the rule based on state or local commitments and planned service. The comptroller is statutorily required to classify each broadband serviceable location based on its *current* access to reliable broadband service. Except for existing federal commitments to deploy broadband service which are statutorily prohibited from receiving program funds, the comptroller does not believe it has the authority stretch the plain and ordinary meaning of "access" to include promises or commitments of future availability of broadband service within that meaning. Therefore, the comptroller declines to amend the proposed rule based on these comments.

TCA also requested that the comptroller amend the language in §16.41(a)(3) to clarify that challenges may be raised based on criteria prescribed either by rule or in a NOFA. The comptroller agrees with this comment and adopts the proposed rule with changes accordingly.

The comptroller received comments from GVEC and TCA proposing that the comptroller amend §16.42(a) to extend the timeline to sign the grant agreement due to the complexity of the documents and factors that may be outside the control of the grant recipient. The comptroller does not believe extending the completion time across the board is warranted and notes that the rule currently permits the BDO to extend the deadline to fully execute the grant agreement on a case-by-case upon a showing of good cause by a grant recipient. Therefore, the comptroller declines to amend the proposed rule based on these comments.

TCA commented that §16.42(b) reflects language in Government Code, §4901.01069(h) which provides that awards may only be used "for capital expenses, purchase or lease of property, and other expenses, including backhaul and transport, that will facilitate the provision or adoption of broadband service." TCA requested, however, that explicitly including labor and make-ready costs in the list of allowable expenses would provide helpful certainty. The comptroller disagrees with this comment. The comptroller does not believe a change to the proposed rule is necessary because the cost accounting standards applicable to grants are dependent on the funding source and will be addressed in the applicable grant agreements. Accordingly, the comptroller declines to make changes to the proposed rule based on this comment.

TTA submitted a comment regarding §16.42(b) in which it reiterated its comments regarding usage of the term "broadband service" which it argued should be adjusted to its proposed definition for "qualifying broadband service." For the reasons previously discussed, the comptroller does not agree with this comment and declines to make changes to the proposed rule based on this comment.

The amendments are adopted under Government Code, §4901.0109, which permits the comptroller to adopt rules as necessary to implement Chapter 4901 regarding the Texas Broadband Development Office.

The amendments implement Government Code, Chapter 4901.

*§16.30. Definitions.*

As used in this subchapter and in these rules, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

(1) Applicant--A person that has submitted an application for an award under this subchapter.

(2) Application protest period--A period of at least thirty days beginning on the first day after an application is posted under §16.36(d) of this subchapter.

(3) Broadband development map--The map adopted or created under Government Code, §490I.0105.

(4) Broadband service--Internet service that delivers transmission speeds capable of providing:

(A) a download speed of not less than 25 Mbps; or

(B) an upload speed of not less than three Mbps; and

(C) network round-trip latency of less than or equal to 100 milliseconds based on the 95th percentile of speed measurements.

(5) Broadband serviceable location--A business or residential location in this state at which broadband service is, or can be, installed, including a community anchor institution.

(6) Census block--The smallest geographic area for which the U.S. Bureau of the Census collects and tabulates decennial census data as shown on the most recent on Census Bureau maps.

(7) Commercial broadband service provider--A broadband service provider engaged in business intended for profit, a telephone cooperative, an electric cooperative, or an electric utility that offers broadband service or middle-mile broadband service for a fare, fee, rate, charge, or other consideration.

(8) Community anchor institution--An entity such as a school, library, health clinic, health center, hospital or other medical provider, public safety entity, institution of higher education, public housing organization, or community support organization that facilitates greater use of broadband service by vulnerable populations, including, but not limited to, low-income individuals, unemployed individuals, children, the incarcerated, and aged individuals.

(9) Designated area--A census block or other area as determined under §16.21 of this subchapter.

(10) Grant funds--Grants, low-interest loans, and other financial incentives awarded to applicants under this subchapter for the purpose of expanding access to and adoption of broadband service.

(11) Grant recipient--An applicant who has been awarded grant funds under this subchapter.

(12) Mbps--Megabits per second.

(13) Middle mile infrastructure--Any broadband infrastructure that does not connect directly to an end-user location, including a community anchor institution. The term includes:

(A) leased dark fiber, interoffice transport, backhaul, carrier-neutral internet exchange facilities, carrier-neutral submarine cable landing stations, undersea cables, transport connectivity to data centers, special access transport, and other similar services; and

(B) wired or private wireless broadband infrastructure, including microwave capacity, radio tower access, and other services or infrastructure for a private wireless broadband network, such as towers, fiber, and microwave links.

(C) The term does not include provision of Internet service to end-use customers on a retail basis.

(14) Non-commercial broadband service provider--A broadband service provider that is not a commercial broadband service provider.

(15) Office--The Broadband Development Office created under Government Code, §490I.0102.

(16) Project area--The area, consisting of one or more broadband serviceable locations, identified by an applicant in which the applicant proposes to deploy broadband service or middle mile infrastructure.

(17) Public school--A school that offers a course of instruction for students in one or more grades from prekindergarten through grade 12 and is operated by a governmental entity.

(18) Qualifying broadband service--Broadband service that meets the minimum speed, latency and reliability thresholds prescribed by the office in each applicable notice of funds availability.

(19) Reliable broadband service--Broadband service that is accessible to a location via:

(A) fiber-optic technology;

(B) Cable Modem/ Hybrid fiber-coaxial technology;

(C) digital subscriber line (DSL) technology; or

(D) terrestrial fixed wireless technology utilizing entirely licensed spectrum or using a hybrid of licensed and unlicensed spectrum.

(20) Served location--A broadband serviceable location that has access to reliable broadband service that exceeds the minimum threshold for an underserved location or a location that is subject to an existing federal commitment to deploy qualifying broadband service.

(21) Underserved location--A broadband serviceable location that has access to reliable broadband service but does not have access to reliable broadband service with the capability of providing:

(A) a download speed of not less than 100 Mbps;

(B) an upload speed of not less than 20 Mbps; and

(C) a network round-trip latency of less than or equal to 100 milliseconds based on the 95th percentile of speed measurements as established under Government Code, §490I.0101.

(22) Unserved location--A broadband serviceable location that does not have access to reliable broadband service.

*§16.36. Application Process Generally.*

(a) No award for competitive grant funding will be disbursed by the office except pursuant to an application submitted in accordance with this subchapter.

(b) An application for funding under this subchapter shall be submitted on the forms and in the manner prescribed by the office. The office may require that applications be submitted electronically.

(c) Prior to publication of application information pursuant to Government Code, §490I.0106(e), the office may undertake an examination to determine whether the application appears on its face to comply with applicable program requirements. The office may reject and take no further action on an application that does not appear to comply with applicable program requirements on its face.

(d) The office shall for a period of at least 30 days publish on its website information from each accepted application, including the applicant's name, the project area targeted for expanded broadband service access or adoption by the application, and any other information the office considers relevant or necessary. The information will remain on the website for a period of at least 30 days before the office makes a decision on the application.

(e) During the 30-day application protest period described by subsection (d) of this section for an application, the office shall accept from any interested party a written protest of the application relating to whether the applicant or project is eligible for an award or should not receive an award based on the criteria prescribed by the office. A protest of an application must be submitted as provided under §16.41 of this subchapter.

(f) Notwithstanding any deadline for submitting an application, if the office upholds a protest on the grounds that one or more of the broadband serviceable locations in a project area is not eligible to receive funding, the applicant may resubmit an amended application as provided under §16.41 of this subchapter without the challenged broadband serviceable locations not later than 30 days after the date that the office upheld the protest. An amended application may not include additional areas or broadband serviceable locations not already included in the original application.

(g) If the office upholds a protest and the applicant resubmits an application in accordance with subsection (f) of this section, the resubmitted application is not subject to further protest.

(h) For the purposes of this section "interested party" means a person, including an individual, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity, that resides, is located, or conducts business in the project area subject to protest and also includes a broadband service provider that is not located in the project area but who proposes to provide broadband service in the project area.

(i) Notwithstanding subsection (e) of this section, a broadband service provider who has not provided information requested by the office under Government Code, §490I.0105 or §490I.01061, may not submit a protest of an application made under this subchapter.

#### §16.37. *Overlapping Applications or Project Areas.*

(a) Except as provided under §16.38 of this subchapter, if at the close of the application period the office has received multiple applications that propose to provide broadband service to the same broadband serviceable locations, the office shall, prior to publishing information regarding the applications as required by §16.36 of this subchapter, resolve the overlapping areas to ensure that the award of grant funds are not duplicated for a broadband serviceable location.

(b) The office shall resolve overlapping applications; by evaluating each impacted application independently; and the office shall:

(1) score each impacted application and the application receiving the highest score shall proceed to grant funding consideration with its project area locations intact; and

(2) remove the overlapping project locations from the lower scored applications and provide notice to the impacted applicants that the overlapping project locations have been removed from the application.

(c) The office shall provide notice of a determination made by the office under subsection (b) of this section to each affected applicant including notice of the right, if any, to submit an amended application under subsection (e) of this section.

(d) If removing overlapping project locations as provided under subsection (b) of this section results in the application retaining less than 50% of the broadband serviceable locations originally proposed for the project area, the office shall contact the applicant to determine whether the applicant wants to proceed with a substantially reduced application and the office shall take into account this preference when determining whether to remove the application from further considera-

tion. The office may, notwithstanding the preference of an applicant to proceed with a substantially reduced application, at its sole direction, remove the application from grant funding consideration.

(e) If the office removes an overlapping location from an application, an applicant may amend and resubmit an application without the overlapping location if:

(1) The remaining number of broadband serviceable locations in the project area is greater than 50% of the broadband serviceable locations originally proposed for the project area; or

(2) The remaining number of locations in the application is less than 50% of the broadband serviceable locations originally proposed for the project area and the application has not been removed from grant funding consideration under subsection (d) of this section.

(f) If an amended application without the overlapping locations is not received by the office by the 10th business day after an applicant receives notice that it may amend its application under subsection (c)(2) of this section, the office may remove the application from grant funding consideration.

#### §16.40. *Evaluation Criteria.*

(a) The office shall establish the eligibility and award criteria applicable for each round of competitive grant funding by publishing the criteria in a notice of funds availability as provided by §16.31 of this subchapter. In establishing eligibility and award criteria, the office shall:

(1) prioritize applications that expand access to and adoption of broadband service in designated areas in which the highest percentage of broadband serviceable locations are unserved or underserved locations;

(2) prioritize applications that expand access to broadband service in public and private primary and secondary schools and institutions of higher education;

(3) prioritize applications that connect end-user locations with end-to-end fiber optic facilities that meet speed, latency, reliability, consistency, scalability, and related criteria as the office shall determine;

(4) give preference to applicants that provide the information requested by the office under Government Code, §490I.0105 and §490I.01061; and

(5) take into consideration whether an applicant has forfeited federal funding for defaulting on a project to deploy qualifying broadband service.

(b) In addition to the evaluation criteria provided under subsection (a) of this section, the office may include and provide preferences for the following evaluation criteria in the notice of funds availability:

(1) application participant(s) experience;

(2) technical specifications including broadband transmission speeds (Mbps upload and download) that will be deployed as a result of the project;

(3) estimated project completion date;

(4) the availability of matching funds including amount, percentage, and source of matching funds;

(5) cost effectiveness and overall impact as measured by the total project cost, the total number of prospective broadband service locations to be served by the project, the proportion of unserved and underserved locations to be served by the project compared to the number

of serviceable locations within the designated area(s) the project is located, the proportion of recipients to be served by the project compared to the population of the designated area(s) in which the project is located, and the project cost per prospective broadband service recipient;

(6) geographic location including, but not limited to, rural areas where because of population density the cost of broadband expansion is characterized by disproportionately high capital and operational costs;

(7) community, non-profit, or cooperative support or participation in the project;

(8) affordability of broadband services in the areas in which the proposed project is located prior to the deployment of broadband services as a result of the project;

(9) consumer price of broadband services that applicant proposes to deploy as a result of the project;

(10) participation in federal programs that provide low-income consumers with subsidies for broadband services;

(11) small business and historically underutilized business involvement or subcontracting participation; and

(12) any additional factors the office may determine are necessary to further the expansion and adoption of broadband service.

(c) Notwithstanding subsection (a)(3) of this section, the office may consider an application for a broadband infrastructure project that does not employ end-to-end fiber optic facilities if the use of an alternative technology:

(1) is proposed for a high-cost area;

(2) may be deployed at a lower cost than deploying fiber optic technology; or

(3) meets the speed, latency, reliability, consistency, scalability, and related criteria as the office shall determine for each applicable notice of funds availability.

#### *§16.41. Application Protest Process.*

(a) The office shall publish on the office's website criteria and requirements for submitting a challenge under this section. An application protest may only be made on the following basis:

(1) the applicant is ineligible to receive an award;

(2) the application contains broadband serviceable locations that are not eligible to receive funding because of an existing federal commitment to deploy qualifying broadband service to the location; or

(3) the project is ineligible to receive or should not receive an award based on the criteria prescribed by the office as provided by §16.40(a) of this subchapter.

(b) A protest submitted under this section shall be submitted electronically in the manner and on the forms prescribed by the office and shall be accompanied by all relevant supporting documentation. The protesting party bears the burden to establish that an applicant or project should not receive or is ineligible for an award based on the criteria prescribed by the office.

(c) The office shall review the protest and make a determination as to whether the protest should be upheld. The office shall provide notice of its determination to each affected applicant, including the right, if any, to submit an amended application under subsection (d) of this section.

(d) If the office upholds a protest on the basis that one or more broadband serviceable locations are not eligible to receive funding under the criteria prescribed by the office, an applicant may amend and resubmit an application without the challenged locations and re-scope the application or project area if, after the protest is upheld:

(1) the remaining number of broadband serviceable locations in the project area is greater than 50% of the original number of locations in the project area; or

(2) the remaining number of broadband serviceable locations in the project area is less than 50% of the original number of locations in the project area and the office permits, at its sole discretion, the applicant to amend the application.

(e) If an amended application without the challenged locations is not received by the office by the 30th day after receiving notice of the determination under subsection (c) of this section, the office may remove the application from grant funding consideration.

(f) A determination made by the office under this section is not a contested case for purposes of Government Code, Chapter 2001.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 4, 2024.

TRD-202400957

Victoria North

General Counsel for Fiscal and Agency Affairs

Comptroller of Public Accounts

Effective date: March 24, 2024

Proposal publication date: October 13, 2023

For further information, please call: (512) 475-2220



## SUBCHAPTER B. BROADBAND DEVELOPMENT PROGRAM

### **34 TAC §16.33, §16.34**

The Comptroller of Public Accounts adopts the repeal of §16.33, concerning designated area eligibility, and §16.34, concerning designated area reclassification, without changes to the proposed text as published in the October 13, 2023, issue of the *Texas Register* (48 TexReg 5963). The rules will not be republished.

The comptroller will adopt new §16.21, concerning the broadband development map, §16.22, concerning map challenges and criteria, §16.23, concerning the challenge process and deadlines, and §16.24, concerning map challenge determinations, in a separate rulemaking to replace §16.33 and §16.34. These new sections will implement changes to Government Code, §4901.0109, made by Senate Bill 1238, 88th Legislature, R.S. 2023, and will be located in Subchapter B, in new Division 1 (Broadband Development Map).

The comptroller also renames Subchapter B as Texas Broadband Development Office.

The comptroller received a single comment from the Texas Cable Association expressing support for the repeal and replacement of §16.33 and §16.34.

The repeals are adopted under Government Code, §4901.0109, which permits the comptroller to adopt rules as necessary to im-

plement Chapter 490I regarding the Texas Broadband Development Office.

The repeals implement Government Code, Chapter 490I.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 4, 2024.

TRD-202400955

Victoria North

General Counsel for Fiscal and Agency Affairs

Comptroller of Public Accounts

Effective date: March 24, 2024

Proposal publication date: October 13, 2023

For further information, please call: (512) 475-2220



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT

#### CHAPTER 215. TRAINING AND EDUCATIONAL PROVIDERS

##### 37 TAC §215.13

The Texas Commission on Law Enforcement (Commission) adopts amended 37 Texas Administrative Code §215.13, Risk Assessment, with non-substantive changes to the proposed text as published in the December 22, 2023, issue of the *Texas Register* (48 TexReg 7879). The rule will be republished.

This adopted amended rule allows for a training provider's licensing examination passing rate to be calculated across all exam attempts, instead of only first attempts by students. This will encourage training providers to provide further educational support for students while continuing to maintain minimum standards for licensing examinations.

No comments were received regarding adoption of the amendment as proposed.

The amended rule is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority and §1701.254, Risk Assessment and Inspections. Texas Occupations Code §1701.151 authorizes the Commission to adopt rules for the administration of Occupations Code Chapter 1701. Texas Occupations Code §1701.254 requires the Commission to adopt rules to establish a system for placing a training provider on at-risk probationary status, which includes prescribing the criteria to be used by the Commission in determining whether to place a training provider on at-risk probationary status.

The amended rule as adopted affects or implements Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, and §1701.254, Risk Assessment and Inspections. No other code, article, or statute is affected by this adoption.

§215.13. *Risk Assessment.*

(a) A training provider may be found at risk and placed on at-risk probationary status if:

(1) for those providing licensing courses, the passing rate on a licensing exam for all attempts for any three consecutive state fiscal years is less than 80 percent of the students attempting the licensing exam;

(2) courses taught by academic alternative providers are not conducted in compliance with Higher Education Program Guidelines accepted by the commission;

(3) commission required learning objectives are not taught;

(4) lesson plans for classes conducted are not on file;

(5) examination and other evaluative scoring documentation is not on file;

(6) the training provider submits false reports to the commission;

(7) the training provider makes repeated errors in reporting;

(8) the training provider does not respond to commission requests for information;

(9) the training provider does not comply with commission rules or other applicable law;

(10) the training provider does not achieve the goals identified in its application for a contract;

(11) the training provider does not meet the needs of the officers and law enforcement agencies served; or

(12) the commission has received sustained complaints or evaluations from students or the law enforcement community concerning the quality of training or failure to meet training needs for the service area.

(b) A training provider may be found at risk and placed on at-risk probationary status if:

(1) the contractor provides licensing courses and fails to comply with the passing rates in subsection (a)(1) of this section;

(2) lesson plans for classes conducted are not on file;

(3) examination and other evaluative scoring documentation is not on file;

(4) the provider submits false reports to the commission;

(5) the provider makes repeated errors in reporting;

(6) the provider does not respond to commission requests for information;

(7) the provider does not comply with commission rules or other applicable law;

(8) the provider does not achieve the goals identified in its application for a contract;

(9) the provider does not meet the needs of the officers and law enforcement agencies served; or

(10) the commission has received sustained complaints or evaluations from students or the law enforcement community concerning the quality of training or failure to meet training needs for the service area.

(c) An academic alternative provider may be found at risk and placed on at-risk probationary status if:

(1) the academic alternative provider fails to comply with the passing rates in subsection (a)(1) of this section;

(2) courses are not conducted in compliance with Higher Education Program Guidelines accepted by the commission;

(3) the commission required learning objectives are not taught;

(4) the program submits false reports to the commission;

(5) the program makes repeated errors in reporting;

(6) the program does not respond to commission requests for information;

(7) the program does not comply with commission rules or other applicable law;

(8) the program does not achieve the goals identified in its application for a contract;

(9) the program does not meet the needs of the students and law enforcement agencies served; or

(10) the commission has received sustained complaints or evaluations from students or the law enforcement community concerning the quality of education or failure to meet education needs for the service area.

(d) If at risk, the chief administrator of the sponsoring organization, or the training coordinator, must report to the commission in writing within 30 days what steps are being taken to correct deficiencies and on what date they expect to be in compliance.

(e) The chief administrator of the sponsoring organization, or the training coordinator, shall report to the commission the progress toward compliance within the timelines provided in the management response as provided in subsection (d) of this section.

(f) The commission shall place providers found at-risk on probationary status for one year. If the provider remains at-risk after a 12-month probationary period, the commission shall begin the revocation process. If a provider requests a settlement agreement, the commission may enter into an agreement in lieu of revocation.

(g) A training or educational program placed on at-risk probationary status must notify all students and potential students of their at-risk status.

(h) The effective date of this section is April 1, 2024.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 8, 2024.

TRD-202401090

Gregory Stevens

Executive Director

Texas Commission on Law Enforcement

Effective date: April 1, 2024

Proposal publication date: December 22, 2023

For further information, please call: (512) 936-7700



## CHAPTER 217. ENROLLMENT, LICENSING, APPOINTMENT, AND SEPARATION

### 37 TAC §217.1

The Texas Commission on Law Enforcement (Commission) adopts amended 37 Texas Administrative Code §217.1, Minimum Standards for Enrollment and Initial Licensure, with non-substantive changes to the proposed text as published in the December 29, 2023 issue of the *Texas Register* (48 TexReg 8189). The rule will be republished.

This adopted amended rule conforms with the addition of Texas Occupations Code §1701.3095 and the amendment to Texas Occupations Code §1701.451 made by Senate Bill 252 (88R). Texas Occupations Code §1701.3095 requires the Commission to issue a license to an otherwise qualified legal permanent resident of the United States who is an honorably discharged veteran of the armed forces of the United States with at least two years of service before discharge and has applied for United States citizenship. Texas Occupations Code §1701.451(a)(3)(B)(x) requires law enforcement agencies, before hiring a licensee, to obtain and review proof that the licensee is a United States citizen or a legal permanent resident of the United States who is an honorably discharged veteran of the armed forces of the United States with at least two years of service before discharge and has applied for United States citizenship.

This adopted amended rule also conforms with the amendment to Texas Occupations Code §1701.310 made by House Bill 2183 (88R). Texas Occupations Code §1701.310(b)-(b-3) allows for a county jailer appointed on a temporary basis to have their temporary appointment extended for six months by the Commission under certain conditions and allows for a person whose county jailer license has become inactive to be appointed as a county jailer on a temporary basis.

One comment was received supporting the adoption of the amendment as proposed. State Senator Carol Alvarado, the author of Senate Bill 252 (88R), appreciates the Commission's diligent efforts to implement the bill.

The amended rule is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority. Texas Occupations Code §1701.151 authorizes the Commission to adopt rules for the administration of Occupations Code Chapter 1701.

The amended rule as adopted affects or implements Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, §1701.3095, Licensing of Certain Veterans Who Are Legal Permanent Residents, §1701.310, Appointment of County Jailer; Training Required, and §1701.451, Pre-employment Procedure. No other code, article, or statute is affected by this adoption.

#### *§217.1. Minimum Standards for Enrollment of Initial Licensure.*

(a) In order for an individual to enroll in any basic licensing course the provider must have on file documentation, acceptable to the Commission, that the individual meets eligibility for licensure.

(b) The commission shall issue a license to an applicant who meets the following standards:

(1) minimum age requirement:

(A) for peace officers and public security officers, is 21 years of age; or 18 years of age if the applicant has received:

(i) an associate's degree; or 60 semester hours of credit from an accredited college or university; or

(ii) has received an honorable discharge from the armed forces of the United States after at least two years of active service;

(B) for jailers and telecommunicators is 18 years of age;

(2) minimum educational requirements:

(A) has passed a general educational development (GED) test indicating high school graduation level;

(B) holds a high school diploma; or

(C) for enrollment purposes in a basic peace officer academy only, has an honorable discharge from the armed forces of the United States after at least 24 months of active duty service;

(3) is fingerprinted and is subjected to a search of local, state and U.S. national records and fingerprint files to disclose any criminal record;

(4) has never been on court-ordered community supervision or probation for any criminal offense above the grade of Class B misdemeanor or a Class B misdemeanor within the last ten years from the date of the court order;

(5) is not currently charged with any criminal offense for which conviction would be a bar to licensure;

(6) has never been convicted of an offense above the grade of a Class B misdemeanor or a Class B misdemeanor within the last ten years;

(7) has never been convicted or placed on community supervision in any court of an offense involving family violence as defined under Chapter 71, Texas Family Code;

(8) for peace officers, is not prohibited by state or federal law from operating a motor vehicle;

(9) for peace officers, is not prohibited by state or federal law from possessing firearms or ammunition;

(10) has been subjected to a background investigation completed by the enrolling or appointing entity into the applicant's personal history. A background investigation shall include, at a minimum, the following:

(A) An enrolling entity shall:

(i) require completion of the Commission-approved personal history statement; and

(ii) verify that the applicant meets each individual requirement for licensure under this rule based on the personal history statement and any other information known to the enrolling entity; and

(iii) contact all previous enrolling entities.

(B) In addition to subparagraph (A) of this paragraph, a law enforcement agency or law enforcement agency academy shall:

(i) require completion of the Commission-approved personal history statement; and

(ii) meet all requirements enacted in Occupations Code 1701.451, including submission to the Commission of a form confirming all requirements have been met. An in-person review of personnel records is acceptable in lieu of making the personnel records available electronically if a hiring agency and a previous employing law enforcement agency mutually agree to the in-person review.

(11) examined by a physician, selected by the appointing or employing agency, who is licensed by the Texas Medical Board. The physician must be familiar with the duties appropriate to the type of

license sought and appointment to be made. The appointee must be declared by that professional, on a form prescribed by the commission, within 180 days before the date of appointment by the agency to be:

(A) physically sound and free from any defect which may adversely affect the performance of duty appropriate to the type of license sought;

(B) show no trace of drug dependency or illegal drug use after a blood test or other medical test; and

(C) for the purpose of meeting the requirements for initial licensure, an individual's satisfactory medical exam that is conducted as a requirement of a basic licensing course may remain valid for 180 days from the individual's date of graduation from that academy, if accepted by the appointing agency;

(12) examined by a psychologist, selected by the appointing, employing agency, or the academy, who is licensed by the Texas State Board of Examiners of Psychologists. This examination may also be conducted by a psychiatrist licensed by the Texas Medical Board. The psychologist or psychiatrist must be familiar with the duties appropriate to the type of license sought. The individual must be declared by that professional, on a form prescribed by the commission, to be in satisfactory psychological and emotional health to serve as the type of officer for which the license is sought. The examination must be conducted pursuant to professionally recognized standards and methods. The examination process must consist of a review of a job description for the position sought; review of any personal history statements; review of any background documents; at least two instruments, one which measures personality traits and one which measures psychopathology; and a face to face interview conducted after the instruments have been scored. The appointee must be declared by that professional, on a form prescribed by the commission, within 180 days before the date of the appointment by the agency;

(A) the commission may allow for exceptional circumstances where a licensed physician performs the evaluation of psychological and emotional health. This requires the appointing agency to request in writing and receive approval from the commission, prior to the evaluation being completed; or

(B) the examination may be conducted by qualified persons identified by Texas Occupations Code § 501.004. This requires the appointing agency to request in writing and receive approval from the commission, prior to the evaluation being completed; and

(C) for the purpose of meeting the requirements for initial licensure, an individual's satisfactory psychological exam that is conducted as a requirement of a basic licensing course may remain valid for 180 days from the individual's date of graduation from that academy, if accepted by the appointing agency;

(13) has never received a dishonorable discharge from the armed forces of the United States;

(14) has not had a commission license denied by final order or revoked;

(15) is not currently on suspension, or does not have a surrender of license currently in effect;

(16) meets the minimum training standards and passes the commission licensing examination for each license sought;

(17) is a U.S. citizen or is a legal permanent resident of the United States, if the person is an honorably discharged veteran of the armed forces of the United States with at least two years of service before discharge and presents evidence satisfactory to the commission that the person has applied for United States citizenship.



(c) For the purposes of this section, the commission will construe any court-ordered community supervision, probation or conviction for a criminal offense to be its closest equivalent under the Texas Penal Code classification of offenses if the offense arose from:

- (1) another penal provision of Texas law; or
- (2) a penal provision of any other state, federal, military or foreign jurisdiction.

(d) A classification of an offense as a felony at the time of conviction will never be changed because Texas law has changed or because the offense would not be a felony under current Texas laws.

(e) A person must meet the training and examination requirements:

- (1) training for the peace officer license consists of:
  - (A) the current basic peace officer course(s);
  - (B) a commission recognized, POST developed, basic law enforcement training course, to include:
    - (i) out of state licensure or certification; and
    - (ii) submission of the current eligibility application and fee; or
  - (C) a commission approved academic alternative program, taken through a licensed academic alternative provider and at least an associate's degree.

(2) training for the jailer license consists of the current basic county corrections course(s) or training recognized under Texas Occupations Code §1701.310;

(3) training for the public security officer license consists of the current basic peace officer course(s);

(4) training for telecommunicator license consists of telecommunicator course; and

(5) passing any examination required for the license sought while the exam approval remains valid.

(f) The commission may issue a provisional license, consistent with Texas Occupations Code §1701.311, to an agency for a person to be appointed by that agency. An agency must submit all required applications currently prescribed by the commission and all required fees before the individual is appointed. Upon the approval of the application, the commission will issue a provisional license. A provisional license is issued in the name of the applicant; however, it is issued to and shall remain in the possession of the agency. Such a license may neither be transferred by the applicant to another agency, nor transferred by the agency to another applicant. A provisional license may not be reissued and expires:

- (1) 12 months from the original appointment date;
- (2) on leaving the appointing agency; or
- (3) on failure to comply with the terms stipulated in the provisional license approval.

(g) The commission may issue a temporary jailer license, consistent with Texas Occupations Code §1701.310. A jailer appointed on a temporary basis shall be enrolled in a basic jailer licensing course on or before the 90th day after their temporary appointment. An agency must submit all required applications currently prescribed by the commission and all required fees before the individual is appointed. Upon the approval of the application, the commission will issue a temporary jailer license. A temporary jailer license may not be renewed, except that the sheriff may petition the commission to extend the temporary

appointment for a period not to exceed six months. A temporary jailer license expires:

- (1) 12 months from the original appointment date;
- (2) at the end of a six-month extension, if granted; or
- (3) on completion of training and passing of the jailer licensing examination.

(h) A person who has previously been issued a temporary jailer license and separated from that position may be subsequently appointed on a temporary basis as a county jailer at the same or a different county jail only if the person was in good standing at the time the person separated from the position.

(i) A person who has cumulatively served as a county jailer on a temporary basis for two years may continue to serve for the remainder of that temporary appointment, not to exceed the first anniversary of the date of the most recent appointment. The person is not eligible for an extension of that appointment or for a subsequent appointment on a temporary basis as a county jailer at the same or a different county jail until the first anniversary of the date the person separates from the temporary appointment during which the person reached two years of cumulative service.

(j) A person whose county jailer license has become inactive may be appointed as a county jailer on a temporary basis.

(k) The commission may issue a temporary telecommunicator license, consistent with Texas Occupations Code §1701.405. An agency must submit all required applications currently prescribed by the commission and all required fees before the individual is appointed. Upon the approval of the application, the commission will issue a temporary telecommunicator license. A temporary telecommunicator license expires:

- (1) 12 months from the original appointment date; or
- (2) on completion of training and passing of the telecommunicator licensing examination. On expiration of a temporary license, a person is not eligible for a new temporary telecommunicator license for one year.

(l) A person who fails to comply with the standards set forth in this section shall not accept the issuance of a license and shall not accept any appointment. If an application for licensure is found to be false or untrue, it is subject to cancellation or recall.

(m) The effective date of this section is April 1, 2024.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 8, 2024.

TRD-202401088

Gregory Stevens

Executive Director

Texas Commission on Law Enforcement

Effective date: April 1, 2024

Proposal publication date: December 29, 2023

For further information, please call: (512) 936-7700



## CHAPTER 218. CONTINUING EDUCATION

### 37 TAC §218.3

The Texas Commission on Law Enforcement (Commission) adopts amended 37 Texas Administrative Code §218.3, Legislatively Required Continuing Education for Licensees, with non-substantive changes to the proposed text as published in the December 22, 2023, issue of the *Texas Register* (48 TexReg 7881). The rule will be republished.

This adopted amended rule conforms with the addition of Texas Occupations Code §1701.3525 made by Senate Bill 1852 (88R). Texas Occupations Code §1701.3525 requires that officers complete not less than 16 hours of training on responding to an active shooter as part of the officer's required 40 hours of continuing education every 24 months.

No comments were received regarding adoption of the amendment as proposed.

The amended rule is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority. Texas Occupations Code §1701.151 authorizes the Commission to adopt rules for the administration of Occupations Code Chapter 1701.

The amended rule as adopted affects or implements Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, §1701.351, Continuing Education Required for Peace Officers, and §1701.3525, Active Shooter Response Training Required for Officers. No other code, article, or statute is affected by this adoption.

*§218.3. Legislatively Required Continuing Education for Licensees.*

(a) Each licensee shall complete the legislatively mandated continuing education in this chapter. Each appointing agency shall allow the licensee the opportunity to complete the legislatively mandated continuing education in this chapter. This section does not limit the number or hours of continuing education an agency may provide.

(b) Each training unit (2 years)

(1) Peace officers shall complete at least 40 hours of continuing education, to include the corresponding legislative update for that unit. Peace officers shall complete not less than 16 hours of training on responding to an active shooter as developed by the Advanced Law Enforcement Rapid Response Training Center at Texas State University-San Marcos.

(2) Telecommunicators shall complete at least 20 hours of continuing education to include cardiopulmonary resuscitation training.

(c) Each training cycle (4 years)

(1) Peace officers who have not yet reached intermediate proficiency certification shall complete: Cultural Diversity (3939), Special Investigative Topics (3232), Crisis Intervention (3843) and De-escalation (1849).

(2) Individuals licensed as reserve law enforcement officers, jailers, or public security officers shall complete Cultural Diversity (3939), unless the person has completed or is otherwise exempted from legislatively required training under another commission license or certificate.

(d) Assignment specific training

(1) Police chiefs: individuals appointed as "chief" or "police chief" of a police department shall complete:

(A) For an individual appointed to that individual's first position as chief, the initial training program for new chiefs provided

by the Bill Blackwood Law Enforcement Management Institute, not later than the second anniversary of that individual's appointment or election as chief; and

(B) At least 40 hours of continuing education for chiefs each 24-month unit, as provided by the Bill Blackwood Law Enforcement Management Institute.

(2) Constables: elected or appointed constables shall complete:

(A) For an individual appointed or elected to that individual's first position as constable, the initial training program for new constables provided by the Bill Blackwood Law Enforcement Management Institute, not later than the second anniversary of that individual's appointment or election as constable; and

(B) Each 48 month cycle, at least 40 hours of continuing education for constables, as provided by the Bill Blackwood Law Enforcement Management Institute and a 20 hour course of training in civil process to be provided by a public institution of higher education selected by the Commission.

(3) Deputy constables: each deputy constable shall complete a 20 hour course of training in civil process each training cycle. The commission may waive the requirement for this training if the constable, in the format required by TCOLE, requests exemption due to the deputy constable not engaging in civil process as part of their assigned duties.

(4) New supervisors: each peace officer assigned to their first position as a supervisor must complete new supervisor training within one year prior to or one year after appointment as a supervisor.

(5) School-based Law Enforcement Officers: School district peace officers and school resource officers providing law enforcement services at a school district must obtain a school-based law enforcement proficiency certificate within 180 days of the officer's commission or placement in the district or campus of the district.

(6) Eyewitness Identification Officers: peace officers performing the function of eyewitness identification must first complete the Eyewitness Identification training (3286).

(7) Courtroom Security Officers/Persons: any person appointed to perform courtroom security functions at any level shall complete the Courtroom Security course (10999) within 1 year of appointment.

(8) Body-Worn Cameras: peace officers and other persons meeting the requirements of Occupations Code 1701.656 must first complete Body-Worn Camera training (8158).

(9) Officers Carrying Epinephrine Auto-injectors: peace officers meeting the requirements of Occupations Code 1701.702 must first complete epinephrine auto-injector training.

(10) Jailer Firearm Certification: jailers carrying a firearm as part of their assigned duties must first obtain the Jailer Firearms certificate before carrying a firearm.

(11) University Peace Officers, Trauma-Informed Investigation Training: each university or college peace officer shall complete an approved course on trauma-informed investigation into allegations of sexual harassment, sexual assault, dating violence, and stalking.

(e) Miscellaneous training

(1) Human Trafficking: every peace officer first licensed on or after January 1, 2011, must complete Human Trafficking (3270) within 2 years of being licensed.

(2) Canine Encounters: every peace officer first licensed on or after January 1, 2016, must take Canine Encounters (4065) within 2 years of being licensed.

(3) Deaf and Hard of Hearing Drivers: every peace officer licensed on or after March 1, 2016, must complete Deaf and Hard of Hearing Drivers (7887) within 2 years of being licensed.

(4) Civilian Interaction Training: every peace officer licensed before January 1, 2018, must complete Civilian Interaction Training Program (CITP) within 2 years. All other peace officers must complete the course within 2 years of being licensed.

(5) Crisis Intervention Training: every peace officer licensed on or after April 1, 2018, must complete the 40 hour Crisis Intervention Training within 2 years of being licensed.

(6) Mental Health for Jailers: all county jailers must complete Mental Health for Jailers not later than August 31, 2021.

(f) The Commission may choose to accept an equivalent course for any of the courses listed in this chapter, provided the equivalent course is evaluated by commission staff and found to meet or exceed the minimum curriculum requirements of the legislatively mandated course.

(g) The commission shall provide adequate notice to agencies and licensees of impending non-compliance with the legislatively required continuing education.

(h) The chief administrator of an agency that has licensees who are in non-compliance shall, within 30 days of receipt of notice of non-compliance, submit a report to the commission explaining the reasons for such non-compliance.

(i) Licensees shall complete the legislatively mandated continuing education in the first complete training unit, as required, or first complete training cycle, as required, after being licensed.

(j) All peace officers must meet all continuing education requirements except where exempt by law.

(k) The effective date of this section is April 1, 2024.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 8, 2024.

TRD-202401089

Gregory Stevens

Executive Director

Texas Commission on Law Enforcement

Effective date: April 1, 2024

Proposal publication date: December 22, 2023

For further information, please call: (512) 936-7700



## CHAPTER 221. PROFICIENCY CERTIFICATES

### 37 TAC §221.46

The Texas Commission on Law Enforcement (Commission) adopts new 37 Texas Administrative Code §221.46, Active Shooter Training for Public Schools and Institutions of Higher Education, with non-substantive changes to the proposed text as published in the December 22, 2023, issue of the *Texas Register* (48 TexReg 7883). The rule will be republished.

This adopted new rule conforms with the addition of Texas Occupations Code §1701.2515 made by Senate Bill 999 (88R). Texas Occupations Code §1701.2515 requires that individuals and legal entities that provide active shooter training to peace officers of students or employees at a public primary or secondary school or institution of higher education be certified by the Commission to provide the training.

No comments were received regarding adoption of the amendment as proposed.

The new rule is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, and §1701.2515, Certificate Required to Provide Active Shooter Training at Public Schools and Institutions of Higher Education. Texas Occupations Code §1701.151 authorizes the Commission to adopt rules for the administration of Occupations Code Chapter 1701. Texas Occupations Code §1701.2515 requires the Commission to establish a certification program for providers of active shooter training and adopt rules for the renewal of a certificate.

The new rule as adopted affects or implements Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, and §1701.2515, Certificate Required to Provide Active Shooter Training at Public Schools and Institutions of Higher Education. No other code, article, or statute is affected by this adoption.

§221.46. *Active Shooter Training for Public Schools and Institutions of Higher Education.*

(a) To qualify for an Active Shooter Training Instructor certificate under Texas Occupations Code § 1701.2515, an individual must possess a current TCOLE Instructor Proficiency Certificate, complete an active shooter training instructor course approved by the commission, and complete any required application. The certificate expires two years from the date of issuance. An individual may apply for renewal of the certificate by providing proof the applicant has completed eight hours of continuing education related to law enforcement response to active shooter events.

(b) To qualify as an Active Shooter Training Provider under Texas Occupations Code § 1701.2515, a training provider must complete an application and show proof that the training provider employs appropriate training staff that possess a current Active Shooter Training Instructor certificate described in §221.46(a). The certificate expires two years from the date of issuance.

(c) The effective date of this section is April 1, 2024.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 8, 2024.

TRD-202401091

Gregory Stevens

Executive Director

Texas Commission on Law Enforcement

Effective date: April 1, 2024

Proposal publication date: December 22, 2023

For further information, please call: (512) 936-7700





# REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039.

Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

## Proposed Rule Reviews

Texas Health and Human Services Commission

### Title 1, Part 15

The Texas Health and Human Services Commission (HHSC) proposes to review and consider for readoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 1, Part 15, of the Texas Administrative Code:

Chapter 377, Children's Advocacy Programs

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 377, Children's Advocacy Programs, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to [FHSPublicComments@hhs.texas.gov](mailto:FHSPublicComments@hhs.texas.gov). When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 377" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*.

The text of the chapter being reviewed will not be published, but may be found in Title 1, Part 15, of the Texas Administrative Code on the Secretary of State's website at ([www.sos.texas.gov](http://www.sos.texas.gov)).

TRD-202401102

Jessica Miller

Director, Rules Coordination Office

Texas Health and Human Services Commission

Filed: March 11, 2024



Department of State Health Services

### Title 25, Part 1

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of State Health Services (DSHS), proposes to review and consider for readoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 25, Part 1, of the Texas Administrative Code:

Chapter 31, Nutrition Services

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule con-

tinue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 31, Nutrition Services, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to [HHSCRulesCoordinationOffice@hhs.texas.gov](mailto:HHSCRulesCoordinationOffice@hhs.texas.gov). When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 31" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*.

The text of the rule sections being reviewed will not be published, but may be found in Title 25, Part 1, of the Texas Administrative Code or on the Secretary of State's website at State Rules and Open Meetings ([www.sos.texas.gov](http://www.sos.texas.gov)).

TRD-202401129

Jessica Miller

Director, Rules Coordination Office

Department of State Health Services

Filed: March 13, 2024



The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of State Health Services (DSHS), proposes to review and consider for readoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 25, Part 1, of the Texas Administrative Code:

Chapter 40, Stock Medication in Schools and Other Entities

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 40, Stock Medication in Schools and Other Entities, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to [hhsrulescoordinationoffice@hhs.texas.gov](mailto:hhsrulescoordinationoffice@hhs.texas.gov). When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 40" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*.

The text of the rule sections being reviewed will not be published, but may be found in Title 25, Part 1, of the Texas Administrative Code or on the Secretary of State's website at ([www.sos.texas.gov](http://www.sos.texas.gov)).

TRD-202401036

Jessica Miller  
Director, Rules Coordination Office  
Department of State Health Services  
Filed: March 8, 2024



The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of State Health Services, proposes to review and consider for readoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 25, Part 1, of the Texas Administrative Code:

Chapter 137, Birthing Centers

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 137, Birthing Centers, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to HCR\_PRU@hhs.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 137" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*.

The text of the rule sections being reviewed will not be published, but may be found in Title 25, Part 1, of the Texas Administrative Code or on the Secretary of State's website at State Rules and Open Meetings ([www.sos.texas.gov](http://www.sos.texas.gov)).

TRD-202401127  
Jessica Miller  
Director, Rules Coordination Office  
Department of State Health Services  
Filed: March 13, 2024



The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of State Health Services, proposes to review and consider for readoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 25, Part 1, of the Texas Administrative Code:

Chapter 140, Health Professions Regulation

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 140, Health Professions Regulation, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to HCR\_PRU@hhs.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 140" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*.

The text of the rule sections being reviewed will not be published, but may be found in Title 25, Part 1, of the Texas Administrative Code or on the Secretary of State's website at State Rules and Open Meetings ([www.sos.texas.gov](http://www.sos.texas.gov)).

TRD-202401128  
Jessica Miller  
Director, Rules Coordination Office  
Department of State Health Services  
Filed: March 13, 2024



The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of State Health Services (DSHS), proposes to review and consider for readoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 25, Part 1, of the Texas Administrative Code:

Chapter 217, Milk and Dairy

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 217, Milk and Dairy, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to milk\_regulatory@dshs.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 217" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*.

The text of the rule sections being reviewed will not be published, but may be found in Title 25, Part 1, of the Texas Administrative Code or on the Secretary of State's website at State Rules and Open Meetings ([www.sos.texas.gov](http://www.sos.texas.gov)).

TRD-202401131  
Jessica Miller  
Director, Rules Coordination Office  
Department of State Health Services  
Filed: March 13, 2024



The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of State Health Services (DSHS), proposes to review and consider for readoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 25, Part 1, of the Texas Administrative Code:

Chapter 300, Manufacture, Distribution, And Retail Sale of Consumable Hemp Products

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 300, Manufacture, Distribution, And Retail Sale of Consumable Hemp Products, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to dshshempprogram@dshs.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 300" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*.

The text of the rule sections being reviewed will not be published, but may be found in Title 25, Part 1, of the Texas Administrative Code or on the Secretary of State's website at State Rules and Open Meetings ([www.sos.texas.gov](http://www.sos.texas.gov)).

TRD-202401130

Jessica Miller

Director, Rules Coordination Office

Department of State Health Services

Filed: March 13, 2024



## Health and Human Services Commission

### Title 26, Part 1

The Texas Health and Human Services Commission (HHSC) proposes to review and consider for re-adoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 26, Part 1, of the Texas Administrative Code:

#### Chapter 743, Minimum Standards for Shelter Care

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 743, Minimum Standards for Shelter Care, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247 or by email to [CCRRules@hhs.texas.gov](mailto:CCRRules@hhs.texas.gov). When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 743" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*.

The text of the rule sections being reviewed will not be published, but may be found in Title 26, Part 1, of the Texas Administrative Code or on the Secretary of State's website at State Rules and Open Meetings ([www.sos.texas.gov](http://www.sos.texas.gov)).

TRD-202401134

Jessica Miller

Director, Rules Coordination Office

Health and Human Services Commission

Filed: March 13, 2024



The Texas Health and Human Services Commission (HHSC) proposes to review and consider for re-adoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 26, Part 1, of the Texas Administrative Code:

#### Chapter 747, Minimum Standards for Child-Care Homes

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 747, Minimum Standards for Child-Care Homes, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to [CCRRules@hhs.texas.gov](mailto:CCRRules@hhs.texas.gov). When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 747" in the subject line. The deadline for comments is on or before 5:00 p.m.

central time on the 31st day after the date this notice is published in the *Texas Register*.

The text of the rule sections being reviewed will not be published, but may be found in Title 26, Part 1, of the Texas Administrative Code or on the Secretary of State's website at State Rules and Open Meetings ([www.sos.texas.gov](http://www.sos.texas.gov)).

TRD-202401135

Jessica Miller

Director, Rules Coordination Office

Health and Human Services Commission

Filed: March 13, 2024



## Texas Commission on Fire Protection

### Title 37, Part 13

The Texas Commission on Fire Protection (the Commission) files this notice of intention to review and consider for re-adoption, revision, or repeal, of the Texas Administrative Code, Title 37, Part 13, Chapter 429, concerning Fire Inspector and Plan Examiner. Chapter 429 consists of Subchapter A, Minimum Standards for Fire Inspector Certification, §429.1, Minimum Standards for Fire Protection Inspector Personnel, §429.3, Minimum Standards for Basic Fire Protection Inspector Certification, §429.5, Minimum Standards for Intermediate Fire Protection Inspector Certification, §429.7, Minimum Standards for Advanced Fire Protection Inspector Certification, §429.9, Minimum Standards for Master Fire Protection Inspector Certification, §429.11, International Fire Service Accreditation Congress (IFSAAC) Seal, Subchapter B, Distance Training Provider, §429.201, Minimum Standards for Plan Examiner Personnel, §429.203, Minimum Standards for Plan Examiner I Certification, §429.205, International Fire Service Accreditation Congress (IFSAAC) Seal.

This review will be conducted according to Texas Government Code §2001.039. The commission will accept comments for 30 days following publication of this notice in the *Texas Register* as to whether the reason for the rule continues to exist.

The Texas Commission on Fire Protection, which administers these rules, believes that the reason for the rules contained in this chapter continues to exist. Any questions or written comments pertaining to this notice of intention to review should be directed to Mike Wisko, Agency Chief, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas, 78768-2286 or by email to [amanda.khan@tcfp.texas.gov](mailto:amanda.khan@tcfp.texas.gov). Any proposed changes to the rules as a result of the review will be published in the *Texas Register* in compliance with Texas Government Code, Chapter 2001, and will be open for the required public comment period prior to final adoption or repeal by the commission.

TRD-202401141

Mike Wisko

Agency Chief

Texas Commission on Fire Protection

Filed: March 13, 2024



The Texas Commission on Fire Protection (the Commission) files this notice of intention to review and consider for re-adoption, revision, or repeal, of the Texas Administrative Code, Title 37, Part 13, Chapter 445, concerning Administrative Inspections and Penalties. Chapter 445 consists of §445.1, Entity Inspections, §445.3, Right of Access, §445.5, Duty To Comply; Enforcement, §445.7, Procedures, §445.9, Minor Violations, §445.11, Major Violation, §445.13, Disciplinary

Hearings, §445.15, Judicial Enforcement, §445.17, Liability for Violations, §445.19, Inspection Forms.

This review will be conducted according to Texas Government Code §2001.039. The commission will accept comments for 30 days following publication of this notice in the *Texas Register* as to whether the reason for the rule continues to exist.

The Texas Commission on Fire Protection, which administers these rules, believes that the reason for the rules contained in this chapter continues to exist. Any questions or written comments about this notice of intention to review should be directed to Amanda Khan, Division Chief of Support Services, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or by email to amanda.khan@tcfp.texas.gov. Any proposed changes to the rules because of the review will be published in the *Texas Register* in compliance with Texas Government Code, Chapter 2001, and will be open for the required public comment period before final adoption or repeal by the commission.

TRD-202401154  
Mike Wisko  
Agency Chief  
Texas Commission on Fire Protection  
Filed: March 13, 2024



Department of Aging and Disability Services

#### **Title 40, Part 1**

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of Aging and Disability Services, proposes to review and consider for readoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 40, Part 1, of the Texas Administrative Code:

Chapter 77, Employment Practices

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 77, Employment Practices, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to hhsaskhr@hhs.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 77" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*.

The text of the chapter being reviewed will not be published, but may be found in Title 40, Part 1, of the Texas Administrative Code on the Secretary of State's website at State Rules and Open Meetings ([www.sos.texas.gov](http://www.sos.texas.gov)).

TRD-202401035  
Jessica Miller  
Director, Rules Coordination Office  
Department of Aging and Disability Services  
Filed: March 8, 2024



#### **Adopted Rule Reviews**

Department of State Health Services

#### **Title 25, Part 1**

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of State Health Services (DSHS), adopts the review of the chapter below in Title 25, Part 1, of the Texas Administrative Code:

Chapter 448, Standard of Care

Notice of the review of this chapter was published in the January 5, 2024, issue of the *Texas Register* (49 TexReg 61). HHSC received no comments concerning this chapter.

HHSC has reviewed Chapter 448 in accordance with §2001.039 of the Texas Government Code, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist. The agency determined that the original reasons for adopting all rules in the chapter continue to exist and readopts Chapter 448. Any amendments or repeals to Chapter 448 identified by HHSC in the rule review will be proposed in a future issue of the *Texas Register*.

This concludes HHSC's review of 25 TAC Chapter 448 as required by the Texas Government Code §2001.039.

TRD-202400999  
Jessica Miller  
Director, Rules Coordination Office  
Department of State Health Services  
Filed: March 7, 2024



Health and Human Services Commission

#### **Title 26, Part 1**

The Texas Health and Human Services Commission (HHSC) adopts the review of the chapter below in Title 26, Part 1, of the Texas Administrative Code (TAC): Chapter 554, Nursing Facility Requirements for Licensure and Medicaid Certification

Notice of the review of this chapter was published in the January 12, 2024, issue of the *Texas Register* (49 TexReg 149). HHSC received no comments concerning this chapter.

HHSC has reviewed Chapter 554 in accordance with §2001.039 of the Texas Government Code, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist. The agency determined that the original reasons for adopting all rules in the chapter continue to exist and readopts Chapter 554. Any amendments or repeals to Chapter 554 identified by HHSC in the rule review will be proposed in a future issue of the *Texas Register*.

This concludes HHSC's review of 26 TAC Chapter 554 as required by the Texas Government Code §2001.039.

TRD-202401118  
Jessica Miller  
Director, Rules Coordination Office  
Health and Human Services Commission  
Filed: March 11, 2024



Texas Commission on Environmental Quality

#### **Title 30, Part 1**

The Texas Commission on Environmental Quality (TCEQ) has completed its Rule Review of 30 Texas Administrative Code (TAC) Chapter 60, Compliance History, as required by Texas Government Code (TGC), §2001.039. TGC, §2001.039, requires a state agency to review



and consider for reoption, reoption with amendments, or repeal each of its rules every four years. TCEQ published its Notice of Intent to Review these rules in the September 8, 2023, issue of the *Texas Register* (48 TexReg 5074).

The review assessed whether the initial reasons for adopting the rules continue to exist and TCEQ has determined that those reasons exist. The rules in Chapter 60 are required because Chapter 60 requires TCEQ to rate the compliance history of every owner or operator of a facility that is regulated under any of these state environmental laws: water-quality laws (Texas Water Code (TWC), Chapter 26); laws for the installation and operation of injection wells (TWC, Chapter 27); Sub-surface Area Drip Dispersal Systems (TWC, Chapter 32); the Texas Solid Waste Disposal Act (Texas Health and Safety Code (THSC), Chapter 361); the Texas Clean Air Act (THSC, Chapter 382); Removal of Convenience Switches (THSC, Chapter 375); and the Texas Radiation Control Act (THSC, Chapter 401).

TWC, §5.753, concerning the Standard for Evaluating Compliance History, authorizes the agency to "develop standards for evaluating and using compliance history that ensure consistency" among regulated entities. Additionally, TWC, §5.754, concerning Classification and Use of Compliance History, authorizes the agency to establish a set of standards for the classification of a person's compliance history, establish methods of assessing the compliance history of regulated entities, and requires the use of compliance history when making decisions regarding the issuance, renewal, amendment, modification, denial, suspension or revocation of a permit, enforcement matters, the use of announced investigations, and participation in innovative programs. Chapter 60 establishes the rules the agency uses to meet these statutory mandates, including the components, formulas, and classifications that are used to measure regulated entities' performance.

#### Public Comment

The public comment period closed on October 9, 2023. TCEQ did not receive comments on the rules review of this chapter.

As a result of the review, TCEQ finds that the reasons for adopting the rules in 30 TAC Chapter 60 continue to exist and readopts these sections in accordance with the requirements of TGC, §2001.039.

TRD-202401100

Gitanjali Yadav

Deputy Director, Litigation Division

Texas Commission on Environmental Quality

Filed: March 8, 2024



The Texas Commission on Environmental Quality (TCEQ) has completed its Rule Review of Review 30 Texas Administrative Code (30 TAC) Chapter 213, Edwards Aquifer, as required by Texas Government Code (TGC), §2001.039. TGC, §2001.039, requires a state agency to review and consider for reoption, reoption with amendments, or repeal each of its rules every four years. TCEQ published its Notice of Intent to Review these rules in the September 8, 2023, issue of the *Texas Register* (48 TexReg 5074).

The review assessed whether the initial reasons for adopting the rules continue to exist and TCEQ has determined that those reasons exist. The rules in Chapter 213 remain necessary to regulate activities posing a threat to groundwater quality of the Edwards Aquifer and maintain Texas Surface Water Quality Standards in hydrologically-connected surface waters.

#### Public Comment

The public comment period closed on October 9, 2023. TCEQ did not receive comments on the rules review of this chapter.

As a result of the review TCEQ finds that the reasons for adopting the rules in 30 TAC Chapter 213 continue to exist and readopts these sections in accordance with the requirements of TGC, §2001.039.

TRD-202401096

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: March 8, 2024



The Texas Commission on Environmental Quality (TCEQ) has completed its Rule Review of 30 Texas Administrative Code (30 TAC) Chapter 230, Groundwater Availability Certifications for Platting, as required by Texas Government Code, §2001.039. TGC, §2001.039, requires a state agency to review and consider for reoption, reoption with amendments, or repeal each of its rules every four years. TCEQ published its Notice of Intent to Review these rules in the September 8, 2023, issue of the *Texas Register* (48 TexReg 5074).

The review assessed whether the initial reasons for adopting the rules continue to exist, and TCEQ has determined that those reasons exist. The rules in Chapter 230 are required because the rules in Chapter 230 contain the requirements if municipal and county authorities require certification in the plat application that adequate groundwater is available for a proposed subdivision if groundwater under that land is to be the source of the water supply. This chapter is necessary to implement the requirements related to the form and content of a certification of groundwater availability for platting by municipal and county authorities as provided by Texas Local Government Code, §212.0101 and §232.0032. TCEQ has previously recognized that these rules were adopted to protect consumer rights and to provide a tool to aid those municipal and county platting authorities that choose to use the rule to oversee development. When these rules were first adopted, TCEQ responded to public comments and stated that use of these rules was not mandatory unless the platting authority for municipal and county governments require the certification as specified in the Local Government Code. Platting authorities can use these rules to help assure adequate groundwater is available as part of the subdivision platting process.

#### Public Comment

The public comment period closed on October 9, 2023. TCEQ did not receive comments on the rules review of this chapter.

As a result of the review TCEQ finds that the reasons for adopting the rules in 30 TAC Chapter 230 continue to exist and readopts these sections in accordance with the requirements of TGC §2001.039.

TRD-202401097

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: March 8, 2024



The Texas Commission on Environmental Quality (TCEQ) has completed its Rule Review of 30 Texas Administrative Code (TAC) Chapter 307, Texas Surface Water Quality Standards (TSWQS), as required by Texas Government Code (TGC), §2001.039. TGC, §2001.039, requires a state agency to review and consider for reoption, reoption with amendments, or repeal each of its rules every four years. TCEQ published its Notice of Intent to Review these rules in the September 8, 2023, issue of the *Texas Register* (48 TexReg 5074).

The review assessed whether the initial reasons for adopting the rules continue to exist, and TCEQ has determined that those reasons exist. The rules in Chapter 307 are required because the TSWQS establish instream water quality requirements for all surface waters in the state. Almost all water-related program activities in Texas are based on the TSWQS, and these standards affect state, federal, and local programs. TCEQ is directed to establish water quality standards in Texas Water Code, §26.023.

Public Comment

The public comment period closed on October 9, 2023. TCEQ did not receive comments on the rules review of this chapter.

As a result of the review, TCEQ finds that the reasons for adopting the rules in 30 TAC Chapter 307 continue to exist and readopts these sections in accordance with the requirements of TGC, §2001.039.

TRD-202401101

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: March 8, 2024



Texas Commission on Fire Protection

**Title 37, Part 13**

The Texas Commission on Fire Protection (the Commission) adopts the review of the Texas Administrative Code, Title 37, Part 13, Chapter 427, concerning Training Facility Certification, published in the October 15, 2021, issue of the *Texas Register* (46 TexReg 7080). The review was conducted pursuant to the Texas Government Code, Chapter 2001, §2001.039.

The Commission received no comments on the proposed rule review.

The Commission has determined that the reasons for initially adopting the rule continue to exist and readopts the chapter without changes.

This concludes the review of the Texas Administrative Code, Title 37, Part 13, Chapter 427.

TRD-202401126

Mike Wisko

Agency Chief

Texas Commission on Fire Protection

Filed: March 13, 2024



The Texas Commission on Fire Protection (the Commission) adopts the review of the Texas Administrative Code, Title 37, Part 13, Chapter 459, concerning Fire and Life Safety Educator. The review was conducted according to the Texas Government Code, Chapter 2001, §2001.039.

The Commission received no comments on the proposed rule review, which was published in the December 23, 2022, issue of *Texas Register* (47 TexReg 8763).

The Commission has determined that the reasons for initially adopting the rule continue to exist and readopts the chapter without changes.

This concludes the review of the Texas Administrative Code, Title 37, Part 13, Chapter 459.

TRD-202401132

Mike Wisko

Agency Chief

Texas Commission on Fire Protection

Filed: March 13, 2024



The Texas Commission on Fire Protection (the Commission) adopts the review of the Texas Administrative Code, Title 37, Part 13, Chapter 461, concerning Incident Commander. The review was conducted according to the Texas Government Code, Chapter 2001, §2001.039.

The Commission received no comments on the proposed rule review, which was published in the December 23, 2022, issue of *Texas Register* (47 TexReg 8763).

The Commission has determined that the reasons for initially adopting the rule continue to exist and readopts the chapter without changes.

This concludes the review of the Texas Administrative Code, Title 37, Part 13, Chapter 461.

TRD-202401133

Mike Wisko

Agency Chief

Texas Commission on Fire Protection

Filed: March 13, 2024



The Texas Commission on Fire Protection (the Commission) adopts the review of the Texas Administrative Code, Title 37, Part 13, Chapter 491, concerning Voluntary Regulation of State Agencies and State Agency Employees. The proposed review appeared in the December 23, 2022, issue of the *Texas Register* (47 TexReg 8759). The review was conducted according to the Texas Government Code, Chapter 2001, §2001.039.

The Commission received no comments on the proposed rule review.

The Commission has determined that the reasons for initially adopting the rule continue to exist and readopts the chapter without changes.

This concludes the review of the Texas Administrative Code, Title 37, Part 13, Chapter 491.

TRD-202401136

Mike Wisko

Agency Chief

Texas Commission on Fire Protection

Filed: March 13, 2024



The Texas Commission on Fire Protection (the Commission) adopts the review of the Texas Administrative Code, Title 37, Part 13, Chapter 493, concerning Voluntary Regulation of Federal Agencies and Federal Fire Fighters. The proposed review appeared in the December 23, 2022, issue of the *Texas Register* (47 TexReg 8759). The review was conducted according to the Texas Government Code, Chapter 2001, §2001.039.

The Commission received no comments on the proposed rule review.

The Commission has determined that the reasons for initially adopting the rule continue to exist and readopts the chapter without changes.

This concludes the review of the Texas Administrative Code, Title 37, Part 13, Chapter 493.

TRD-202401137

Mike Wisko  
Agency Chief  
Texas Commission on Fire Protection  
Filed: March 13, 2024

◆ ◆ ◆

The Texas Commission on Fire Protection (the Commission) adopts the review of the Texas Administrative Code, Title 37, Part 13, Chapter 495, concerning Regulation of Nongovernmental Departments. The proposed review appeared in the December 23, 2022, issue of the *Texas Register* (47 TexReg 8759). The review was conducted according to the Texas Government Code, Chapter 2001, §2001.039.

The Commission received no comments on the proposed rule review.

The Commission has determined that the reasons for initially adopting the rule continue to exist and readopts the chapter without changes.

This concludes the review of the Texas Administrative Code, Title 37, Part 13, Chapter 495.

TRD-202401139  
Mike Wisko  
Agency Chief  
Texas Commission on Fire Protection  
Filed: March 13, 2024

◆ ◆ ◆

State Pension Review Board

**Title 40, Part 17**

The Texas Pension Review Board (Board) has completed its rule review of 40 Texas Administrative Code Chapter 601, concerning general provisions, in accordance with Texas Government Code §2001.039. Texas Government Code §2001.039 requires a state agency to review and consider for re-adoption, re-adoption with amendments, or repeal each of its rules every four years. The Board published its Notice of Intent to Review these rules in the October 6, 2023, issue of the *Texas Register* (48 TexReg 5830). The Board did not receive comments on the proposed rule review.

The review assessed whether the initial reasons for adopting the rules continue to exist and the Board has determined that those reasons exist. As a result of the review, the Board finds that the reasons for adopting the rules in 40 TAC §§601.1, 601.20, 601.30, 601.40, 601.50 and 601.60 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code §2001.039.

This concludes the Board's review of Chapter 601 as required by Texas Government Code §2001.039.

TRD-202401031  
Tamara Aronstein  
General Counsel  
State Pension Review Board  
Filed: March 7, 2024

◆ ◆ ◆

The Texas Pension Review Board (Board) has completed its rule review of 40 Texas Administrative Code Chapter 603, concerning officers and meetings, in accordance with Texas Government Code §2001.039. Texas Government Code §2001.039 requires a state agency to review and consider for re-adoption, re-adoption with amendments, or repeal each of its rules every four years. The Board published its Notice of Intent to Review these rules in the October 6, 2023, issue of the *Texas Register* (48 TexReg 5830). The Board did not receive comments on the proposed rule review.

The review assessed whether the initial reasons for adopting the rules continue to exist and the Board has determined that those reasons exist. As a result of the review, the Board finds that the reasons for adopting the rules in 40 TAC §603.1 continue to exist and readopts this section in accordance with the requirements of Texas Government Code §2001.039.

This concludes the Board's review of Chapter 603 as required by Texas Government Code §2001.039.

TRD-202401030  
Tamara Aronstein  
General Counsel  
State Pension Review Board  
Filed: March 7, 2024

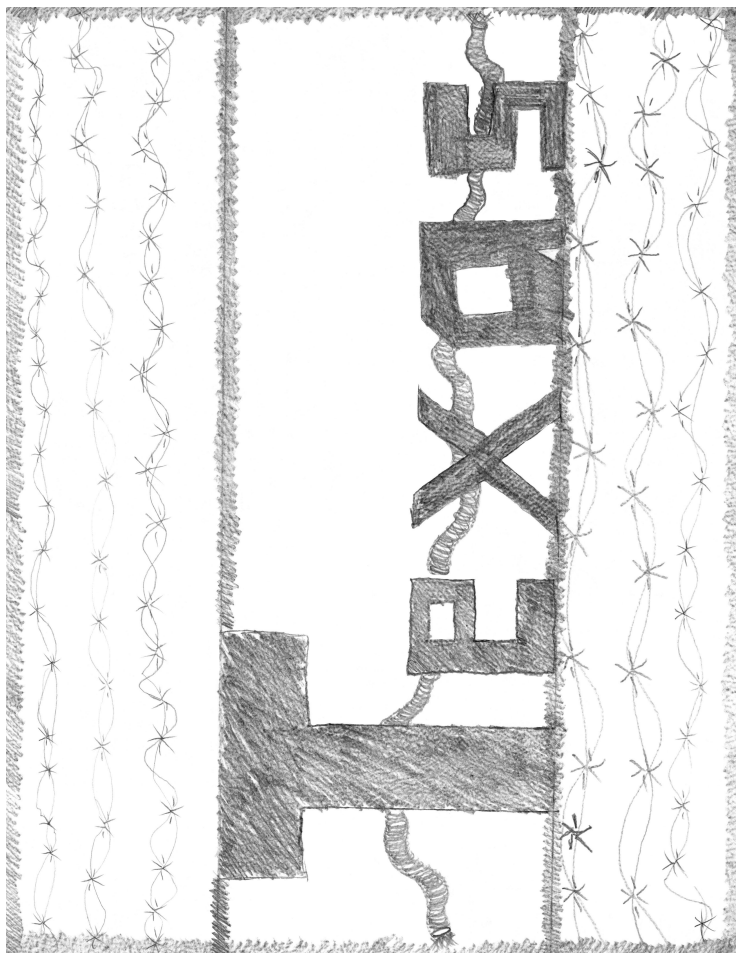
◆ ◆ ◆

The Texas Pension Review Board (Board) has completed its rule review of 40 Texas Administrative Code Chapter 604, concerning the Historically Underutilized Business Program, in accordance with Texas Government Code §2001.039. Texas Government Code §2001.039 requires a state agency to review and consider for re-adoption, re-adoption with amendments, or repeal each of its rules every four years. The Board published its Notice of Intent to Review these rules in the October 6, 2023, issue of the *Texas Register* (48 TexReg 5831). The Board did not receive comments on the proposed rule review.

The review assessed whether the initial reasons for adopting the rules continue to exist and the Board has determined that those reasons exist. As a result of the review, the Board finds that the reasons for adopting the rules in 40 TAC Chapter §604.1 continue to exist and readopts this section in accordance with the requirements of Texas Government Code §2001.039.

This concludes the Board's review of Chapter 604 as required by Texas Government Code §2001.039.

TRD-202401032  
Tamara Aronstein  
General Counsel  
State Pension Review Board  
Filed: March 7, 2024



# TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 22 TAC §102.1(a)		Board Fee	Texas Online	NPDB	PMP	Peer Assistance	Total Fee
<b>DENTIST</b>							
	Application by Exam	\$ 330.00	\$ 5.00		\$ 15.00	\$ 10.00	\$ 360.00
	Renewal	\$ 411.00	\$ 5.00	\$ 2.50	\$ 15.00	\$ 10.00	\$ 458.50
	Renewal - Late 1 to 90 days	\$ 687.75					\$ 687.75
	Renewal - Late 91 to 364 days	\$ 917.00					\$ 917.00
	Licensure by Credentials	\$ 2,915.00	\$ 5.00		\$ 15.00	\$ 10.00	\$ 2,945.00
	Temporary Licensure by Credentials	\$ 865.00	\$ 5.00		\$ 15.00	\$ 10.00	\$ 895.00
	Temporary Licensure by Credentials Renewal	\$ 261.00	\$ 4.00	\$ 2.50	\$ 15.00	\$ 10.00	\$ 292.50
	Provisional License	\$ 100.00					\$ 100.00
	Faculty Initial Application	\$ 230.00	\$ 3.00		\$ 15.00	\$ 10.00	\$ 258.00
	Faculty Renewal	\$ 305.00	\$ 5.00	\$ 2.50	\$ 15.00	\$ 10.00	\$ 337.50
	Faculty Renewal - Late 1 to 90 days	\$ 506.25					\$ 506.25
	Faculty Renewal - Late 91 to 364 days	\$ 675.00					\$ 675.00
	Conversion Fee - Faculty to Full Privilege	\$ 161.00	\$ 2.00	\$ 2.50	\$ 15.00	\$ 10.00	\$ 190.50
	Nitrous Oxide Permit	\$ 32.00					\$ 32.00
	Level 1 Permit	\$ 32.00					\$ 32.00
	Level 2 Permit	\$ 260.00					\$ 260.00
	Level 3 Permit	\$ 260.00					\$ 260.00
	Level 4 Permit	\$ 260.00					\$ 260.00
	Nitrous Level 1 Permit Renewal	\$ 10.00					\$ 10.00
	Level 2 Permit Renewal	\$ 60.00					\$ 60.00
	Level 3 Permit Renewal	\$ 60.00					\$ 60.00
	Level 4 Permit Renewal	\$ 60.00					\$ 60.00
	Application to Reactivate a Retired License	\$ 186.00	\$ 3.00		\$ 15.00	\$ 10.00	\$ 214.00
	Reinstatement of a Canceled Dental License	\$ 411.00	\$ 5.00		\$ 15.00	\$ 10.00	\$ 441.00
	Duplicate License / Renewal	\$ 25.00	\$ 2.00				\$ 27.00
	Conversion Fee - Full Privilege to Faculty	\$ 161.00	\$ 2.00	\$ 2.50	\$ 15.00	\$ 10.00	\$ 190.50
	Conversion Fee - Temporary Licensure by Credentials to Full Privilege	\$ 2,165.00	\$ 5.00	\$ 2.50	\$ 15.00	\$ 10.00	\$ 2,197.50
<b>DENTAL HYGIENIST</b>							
	Application by Exam	\$ 120.00	\$ 3.00			\$ 2.00	\$ 125.00
	Renewal	\$ 216.00	\$ 5.00	\$ 2.50		\$ 2.00	\$ 225.50
	Renewal - Late 1 to 90 days	\$ 338.25					\$ 338.25
	Renewal - Late 91 to 364 days	\$ 451.00					\$ 451.00
	Local Infiltration Anesthesia	\$ 32.00					\$ 32.00
	Licensure by Credentials	\$ 635.00	\$ 5.00			\$ 2.00	\$ 642.00
	Temporary Licensure by Credentials	\$ 225.00	\$ 5.00			\$ 2.00	\$ 232.00
	Temporary Licensure by Credentials renewal	\$ 101.00	\$ 3.00	\$ 2.50		\$ 2.00	\$ 108.50

	Board Fee	Texas Online	NPDB	PMP	Peer Assistance	Total Fee
Faculty Initial Application	\$ 120.00	\$ 3.00			\$ 2.00	\$ 125.00
Faculty Renewal	\$ 201.00	\$ 5.00	\$ 2.50		\$ 2.00	\$ 210.50
Faculty Renewal - Late 1 to 90 days	\$ 315.75					\$ 315.75
Faculty Renewal - Late 91 to 364 days	\$ 421.00					\$ 421.00
Conversion Fee - Faculty to Full Privilege	\$ 51.00	\$ 2.00	\$ 2.50		\$ 2.00	\$ 57.50
Application to Reactivate a Retired License	\$ 76.00	\$ 3.00			\$ 2.00	\$ 81.00
Reinstatement of a Canceled Dental Hygiene License	\$ 213.00	\$ 5.00			\$ 2.00	\$ 220.00
Duplicate License / Renewal	\$ 25.00	\$ 2.00				\$ 27.00
Nitrous Oxide Monitoring Application	\$ 25.00					\$ 25.00
Conversion Fee - Full Privilege to Faculty	\$ 55.00	\$ 2.00	\$ 2.50		\$ 2.00	\$ 61.50
Conversion Fee - Temporary Licensure by Credentials to Full Privilege	\$ 415.00	\$ 5.00	\$ 2.50		\$ 2.00	\$ 424.50
<b>DENTAL ASSISTANT</b>						
Initial Application	\$ 36.00	\$ 2.00			\$ 2.00	\$ 40.00
Renewal	\$ 63.00	\$ 4.00	\$ 2.50		\$ 2.00	\$ 71.50
Renewal - Late 1 to 90 days	\$ 107.25					\$ 107.25
Renewal - Late 91 to 364 days	\$ 143.00					\$ 143.00
Duplicate License / Renewal	\$ 25.00	\$ 2.00				\$ 27.00
Nitrous Oxide Monitoring Renewal	\$ 63.00	\$ 4.00	\$ 2.50			\$ 69.50
Nitrous Oxide Monitoring Late 1 to 90 days	\$ 104.25					\$ 104.25
Nitrous Oxide Monitoring Late 91 to 364 days	\$ 139.00					\$ 139.00
Nitrous Oxide Monitoring Application	\$ 25.00					\$ 25.00
Application to Reactivate a Retired Registration	\$ 26.00	\$ 2.00	\$ 2.50		\$ 2.00	\$ 32.50
Reinstatement of a Cancelled Registration	\$ 63.00	\$ 2.00	\$ 2.50		\$ 2.00	\$ 69.50
RDA Course Provider Fee	\$ 100.00					\$ 100.00
<b>DENTAL LABORATORIES</b>						
Application	\$ 125.00					\$ 125.00
Renewal	\$ 134.00	\$ 4.00				\$ 138.00
Renewal - Late 1 to 90 days	\$ 207.00					\$ 207.00
Renewal - Late 91 to 364 days	\$ 276.00					\$ 276.00
Duplicate Certificate	\$ 25.00	\$ 2.00				\$ 27.00
<b>OTHER</b>						
Mobile Application	\$ 121.00					\$ 121.00
Mobile Renewal	\$ 63.00	\$ 2.00				\$ 65.00
Mobile Renewal - 1 to 90 days	\$ 97.50					\$ 97.50
Mobile Renewal - 91 to 364 days	\$ 130.00					\$ 130.00
Duplicate Certificate Mobile Certificate	\$ 25.00	\$ 2.00				\$ 27.00
Dentist Intern / Resident Prescription Privileges	\$ 51.00			\$ 15.00	\$ 15.00	\$ 81.00
Jurisprudence	\$ 54.00					\$ 54.00
Licensure Verification with Seal	\$ 9.00	\$ 2.00				\$ 11.00
Criminal History Evaluation	\$ 25.00					\$ 25.00
Board Scores	\$ 25.00					\$ 25.00

Figure: 22 TAC §885.1(b)(1)

<b>Fees</b>	<b>Total Fee</b>	<b>Base</b>	<b>Texas.gov</b>	<b>OPP</b>	<b>eStrategy</b>
<b>APPLICATION FEES (Effective for applications submitted before 9/1/23)</b>					
<b>Social Workers</b>					
LBSW or LMSW Application	\$ 109.00	\$ 100.00	\$ 4.00	\$ 5.00	
LCSW Application (LMSW-AP applications no longer accepted)	\$ 129.00	\$ 120.00	\$ 4.00	\$ 5.00	
Upgrade from LBSW to LMSW	\$ 24.00	\$ 20.00	\$ 4.00		
Upgrade from LMSW to LCSW	\$ 24.00	\$ 20.00	\$ 4.00		
Independent Practice Recognition	\$ 20.00	\$ 20.00			
Supervisor Status Application	\$ 54.00	\$ 50.00	\$ 4.00		
Temporary License Application	\$ 30.00	\$ 30.00			
<b>Marriage and Family Therapists</b>					
Initial LMFT Associate Application	\$ 159.00	\$ 150.00	\$ 4.00	\$ 5.00	
Upgrade from LMFT Associate to LMFT	\$ 90.00	\$ 85.00	\$ 5.00		
LMFT by Endorsement Application	\$ 161.00	\$ 150.00	\$ 6.00	\$ 5.00	
Supervisor Status Application	\$ 54.00	\$ 50.00	\$ 4.00		
<b>Professional Counselors</b>					
LPC Associate/LPC/Provisional License Application	\$ 221.00	\$ 210.00	\$ 6.00	\$ 5.00	
Supervisor Status Application	\$ 54.00	\$ 50.00	\$ 4.00		
Art Therapy Designation	\$ 20.00	\$ 20.00			
<b>Psychologists/Psychological Associates/Specialists in School Psychology</b>					
LPA Application	\$ 333.00	\$ 320.00	\$ 8.00	\$ 5.00	
LP Application	\$ 460.00	\$ 445.00	\$ 10.00	\$ 5.00	
LP License Issuance Fee	\$ 391.00	\$ 381.00	\$ 10.00		
LSSP Application	\$ 288.00	\$ 275.00	\$ 8.00	\$ 5.00	
Temporary License Application	\$ 103.00	\$ 100.00	\$ 3.00		
<b>RENEWAL FEES</b>					
<b>Social Workers</b>					
LBSW/LMSW Renewal	\$ 141.00	\$ 135.00	\$ 4.00	\$ 2.00	

LMSW-AP/LCSW Renewal	\$ 163.00	\$ 155.00	\$ 6.00	\$ 2.00
Additional Renewal Fee for Independent Recognition	\$ 20.00	\$ 20.00		
Additional Renewal Fee for Supervisor Status	\$ 50.00	\$ 50.00		
<b>Marriage and Family Therapists</b>				
LMFT/LMFT Associate Renewal	\$ 141.00	\$ 135.00	\$ 4.00	\$ 2.00
Additional Renewal Fee for Supervisor Status	\$ 50.00	\$ 50.00		
LMFT Associate Extension	\$ 141.00	\$ 135.00	\$ 4.00	\$ 2.00
<b>Professional Counselors</b>				
LPC Renewal	\$ 141.00	\$ 135.00	\$ 4.00	\$ 2.00
Additional Renewal Fee for Supervisor Status	\$ 50.00	\$ 50.00		
<b>Psychologists/Psychological Associates/Specialists in School Psychology</b>				
LPA Renewal	\$ 238.00	\$ 230.00	\$ 6.00	\$ 2.00
LP Renewal	\$ 424.00	\$ 412.00	\$ 10.00	\$ 2.00
LSSP Renewal	\$ 141.00	\$ 135.00	\$ 4.00	\$ 2.00
Over 70 Renewal – Applicable only to licensees who turned 70 by 8/31/2020	\$ 26.00	\$ 20.00	\$ 4.00	\$ 2.00
Additional Renewal Fee for HSP Designation	\$ 40.00	\$ 40.00		
<b><u>EXAMINATION FEES</u></b>				
<b>Social Workers</b>				
Jurisprudence Exam	\$ 39.00	\$ 5.00		\$ 34.00
<b>Marriage and Family Therapists</b>				
Jurisprudence Exam	\$ 39.00	\$ 5.00		\$ 34.00
<b>Professional Counselor</b>				
Jurisprudence Exam	\$ 39.00	\$ 5.00		\$ 34.00
<b>Psychologists/Psychological Associates/Specialist in School Psychology</b>				
Jurisprudence Exam	\$ 39.00	\$ 5.00		\$ 34.00



<b>MISCELLANEOUS FEES</b>						
Duplicate Renewal Permit or License	\$ 10.00	\$ 8.00	\$ 2.00			
Written Verification of License	\$ 10.00					
Written State to State Verification of License	\$ 50.00	\$ 48.00	\$ 2.00			
Mailing List	\$ 10.00	\$ 8.00	\$ 2.00			
Returned Check Fee	\$ 25.00					
Criminal History Evaluation	\$ 150.00					
Reinstatement of License	\$ 510.00	\$ 500.00	\$ 10.00			
Request for Inactive Status	\$ 106.00	\$ 100.00	\$ 4.00	\$ 2.00		
Inactive Status Renewal (biennial)	\$ 106.00	\$ 100.00	\$ 4.00	\$ 2.00		
Request to Reactivate License from Inactive Status	equal to current renewal fee					
Late fee for license expired 90 days or less	equal to 1.5 times base renewal fee (plus applicable Texas.gov and OPP fees)					
Late fee for license expired more than 90 days, but less than one year	Equal to 2 times the base renewal fee (plus applicable Texas.gov and OPP fees)					

Figure: 22 TAC §885.1(b)(2)

<u>Fees</u>	<u>Total Fee</u>	<u>Base</u>	<u>Texas.gov</u>	<u>OPP</u>	<u>eStrategy</u>
<b><u>APPLICATION FEES (Effective for applications submitted after 8/31/23)</u></b>					
<b><u>Social Workers</u></b>					
LBSW or LMSW Application	\$ 109.00	\$ 100.00	\$ 4.00	\$ 5.00	
LCSW Application (LMSW-AP applications no longer accepted)	\$ 120.00	\$ 111.00	\$ 4.00	\$ 5.00	
Upgrade from LBSW to LMSW	\$ 24.00	\$ 20.00	\$ 4.00		
Upgrade from LMSW to LCSW	\$ 24.00	\$ 20.00	\$ 4.00		
Independent Practice Recognition	\$ 20.00	\$ 20.00			
Supervisor Status Application	\$ 54.00	\$ 50.00	\$ 4.00		
Temporary License Application	\$ 30.00	\$ 30.00			
<b><u>Marriage and Family Therapists</u></b>					
Initial LMFT Associate Application	\$ 159.00	\$ 150.00	\$ 4.00	\$ 5.00	
Upgrade from LMFT Associate to LMFT	\$ 90.00	\$ 85.00	\$ 5.00		
LMFT by Endorsement Application	\$ 161.00	\$ 150.00	\$ 6.00	\$ 5.00	
Supervisor Status Application	\$ 54.00	\$ 50.00	\$ 4.00		
<b><u>Professional Counselors</u></b>					
LPC Associate/LPC/Provisional License Application	\$ 165.00	\$ 154.00	\$ 6.00	\$ 5.00	
Supervisor Status Application	\$ 54.00	\$ 50.00	\$ 4.00		
Art Therapy Designation	\$ 20.00	\$ 20.00			
<b><u>Psychologists/Psychological Associates/Specialists in School Psychology</u></b>					
LPA Application	\$ 144.00	\$ 135.00	\$ 4.00	\$ 5.00	
LP Application	\$ 425.00	\$ 410.00	\$ 10.00	\$ 5.00	
LSSP Application	\$ 252.00	\$ 239.00	\$ 8.00	\$ 5.00	
Temporary License Application	\$ 103.00	\$ 100.00	\$ 3.00		
<b><u>RENEWAL FEES</u></b>					
<b><u>Social Workers</u></b>					
LBSW/LMSW Renewal	\$ 108.00	\$ 102.00	\$ 4.00	\$ 2.00	
LMSW-AP/LCSW Renewal	\$ 108.00	\$ 102.00	\$ 4.00	\$ 2.00	

Additional Renewal Fee for Independent Recognition	\$ 20.00	\$ 20.00				
Additional Renewal Fee for Supervisor Status	\$ 50.00	\$ 50.00				
<b><u>Marriage and Family Therapists</u></b>						
LMFT/LMFT Associate Renewal	\$ 141.00	\$ 135.00	\$ 4.00	\$ 2.00		
Additional Renewal Fee for Supervisor Status	\$ 50.00	\$ 50.00				
LMFT Associate Extension	\$ 141.00	\$ 135.00	\$ 4.00	\$ 2.00		
<b><u>Professional Counselors</u></b>						
LPC Renewal	\$ 141.00	\$ 135.00	\$ 4.00	\$ 2.00		
Additional Renewal Fee for Supervisor Status	\$ 50.00	\$ 50.00				
<b><u>Psychologists/Psychological Associates/Specialists in School Psychology</u></b>						
LPA Renewal	\$ 238.00	\$ 230.00	\$ 6.00	\$ 2.00		
LP Renewal	\$ 295.00	\$ 285.00	\$ 8.00	\$ 2.00		
LSSP Renewal	\$ 141.00	\$ 135.00	\$ 4.00	\$ 2.00		
Over 70 Renewal – Applicable only to licensees who turned 70 by 8/31/2020	\$ 26.00	\$ 20.00	\$ 4.00	\$ 2.00		
Additional Renewal Fee for HSP Designation	\$ 40.00	\$ 40.00				
<b><u>EXAMINATION FEES</u></b>						
<b><u>Social Workers</u></b>						
Jurisprudence Exam	\$ 39.00	\$ 5.00			\$ 34.00	
<b><u>Marriage and Family Therapists</u></b>						
Jurisprudence Exam	\$ 39.00	\$ 5.00			\$ 34.00	
<b><u>Professional Counselor</u></b>						
Jurisprudence Exam	\$ 39.00	\$ 5.00			\$ 34.00	
<b><u>Psychologists/Psychological Associates/Specialist in School Psychology</u></b>						
Jurisprudence Exam	\$ 39.00	\$ 5.00			\$ 34.00	
<b><u>MISCELLANEOUS FEES</u></b>						

Duplicate Renewal Permit or License	\$ 10.00	\$ 8.00	\$ 2.00	
Written Verification of License	\$ 10.00			
Written State to State Verification of Licensure	\$ 50.00	\$ 48.00	\$ 2.00	
Mailing List	\$ 10.00	\$ 8.00	\$ 2.00	
Returned Check Fee	\$ 25.00			
Criminal History Evaluation	\$ 150.00	\$ 150.00		
Reinstate of License	\$ 510.00	\$ 500.00	\$ 10.00	
Request for Inactive Status	\$ 106.00	\$ 100.00	\$ 4.00	\$ 2.00
Inactive Status Renewal (biennial)	\$ 106.00	\$ 100.00	\$ 4.00	\$ 2.00
Update Doctoral Degree on License	\$ 54.00	\$ 50.00	\$ 4.00	
Request to Reactivate License from Inactive Status	equal to current renewal fee			
Late fee for license expired 90 days or less	equal to 1.5 times base renewal fee (plus applicable Texas.gov and OPP fees)			
Late fee for license expired more than 90 days, but less than one year	Equal to 2 times the base renewal fee (plus applicable Texas.gov and OPP fees)			

# IN

# ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

## Comptroller of Public Accounts

Local Sales Tax Rate Changes Effective April 1, 2024

A 1 1/2 percent city sales and use tax will become effective April 1, 2024 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Callisburg (Cooke Co)	2049076	.020000	.082500

The city sales and use tax will be increased to 1 1/2 percent as permitted under Chapter 321 of the Texas Tax Code, effective April 1, 2024 in the cities listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
New Summerfield (Cherokee Co)	2037052	.020000	.082500
Nome (Jefferson Co)	2123100	.020000	.082500

The additional 1 percent city sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will be abolished effective March 31, 2024 and the city sales and use tax will be increased to 2 percent as permitted under Chapter 321 of the Texas Tax Code effective April 1, 2024 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Tool (Henderson Co)	2107084	.020000	.082500

The additional 1/2 percent city sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 505 of the Texas Local Government Code, Type B Corporations (4B) will be abolished effective March 31, 2024 and the city sales and use tax will be increased to 1 1/2 percent as permitted under Chapter 321 of the Texas Tax Code effective April 1, 2024 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Bartlett (Bell and Williamson Co)	2246077	.020000	.082500

The additional 1/2 percent city sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 504 of the Texas Local Government Code, Type A Corporations (4A) will be reduced to 1/4 percent effective March 31, 2024 and the city sales and use tax will be increased to 1 1/4 percent as permitted under Chapter 321 of the Texas Tax Code effective April 1, 2024 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Atlanta (Cass Co)	2034028	.020000	.082500

The additional 1/2 percent city sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 505 of the Texas Local Government Code, Type B Corporations (4B) will be reduced to 1/4 percent effective March 31, 2024 and an additional 1/4 percent city sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will become effective April 1, 2024 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Seven Points (Henderson Co)	2107048	.020000	.082500

An additional 1/4 percent city sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 505 of the Texas Local Government Code, Type B Corporations (4B) will become effective April 1, 2024 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
West Orange (Orange Co)	2181038	.020000	.082500

An additional 1/4 percent city sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 505 of the Texas Local Government Code, Type B Corporations (4B) and an additional 1/4 percent city sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will become effective April 1, 2024 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Bruceville Eddy (Falls and McLennan Co)	2161176	.020000	.082500

The 1/2 percent special purpose district sales and use tax will be increased to 1 percent effective April 1, 2024 in the special purpose district listed below.

SPD NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Fort Bend County Emergency Services District No. 7	5079578	.010000	.072500

A 1/2 percent special purpose district sales and use tax will become effective April 1, 2024 in the special purpose districts listed below.

SPD NAME	LOCAL CODE	NEW RATE	DESCRIPTION
Jefferson County Emergency Services District No. 4-A	5123547	.005000	SEE NOTE 1
Liberty County Emergency Services District No. 2-A	5146568	.005000	SEE NOTE 2
Pattison Municipal Development District	5237531	.005000	SEE NOTE 3
Rusk County Emergency Services District No. 1-B	5201542	.005000	SEE NOTE 4

A 3/4 percent special purpose district sales and use tax will become effective April 1, 2024 in the special purpose district listed below.

SPD NAME	LOCAL CODE	NEW RATE	DESCRIPTION
Wilson County Emergency Services District No. 4	5247548	.007500	SEE NOTE 5

A 1 percent special purpose district sales and use tax will become effective April 1, 2024 in the special purpose districts listed below.

SPD NAME	LOCAL CODE	NEW RATE	DESCRIPTION
Rusk County Emergency Services District No. 1-A	5201533	.010000	SEE NOTE 6
Uvalde County Emergency Services District No. 2	5232518	.010000	SEE NOTE 7
Williamson County Emergency Services District No. 6-A	5246647	.010000	SEE NOTE 8

A 1 1/2 percent special purpose district sales and use tax will become effective April 1, 2024 in the special purpose districts listed below.

SPD NAME	LOCAL CODE	NEW RATE	DESCRIPTION
Gregg County Emergency Services District No. 1-A	5092517	.015000	SEE NOTE 9
Jefferson County Emergency Services District No. 3	5123510	.015000	SEE NOTE 10
Jefferson County Emergency Services District No. 4	5123538	.015000	SEE NOTE 11
Liberty County Emergency Services District No. 2	5146559	.015000	SEE NOTE 12

A 2 percent special purpose district sales and use tax will become effective April 1, 2024 in the special purpose districts listed below.

SPD NAME	LOCAL CODE	NEW RATE	DESCRIPTION
Burnet County Emergency Services District No. 3	5027580	.020000	SEE NOTE 13
Gregg County Emergency Services District No. 1	5201515	.020000	SEE NOTE 14
Hardin County Emergency Services District No. 3	5100553	.020000	SEE NOTE 15
Rusk County Emergency Services District No. 1	5201524	.020000	SEE NOTE 16
Tarrant County Emergency Services District No. 1	5220763	.020000	SEE NOTE 17
Williamson County Emergency Services District No. 6	5246638	.020000	SEE NOTE 18

The combined area has been created to administer the local sales and use tax between overlapping local jurisdictions as permitted under Chapter 321 of the Texas Tax Code, effective April 1, 2024 in the entity listed below.

COMBINED AREA NAME	LOCAL CODE	NEW RATE	DESCRIPTION
Kountze /Hardin County Emergency Services District No. 1	6100615	.020000	SEE NOTE 19

NOTE 1: The Jefferson County Emergency Services District No. 4-A has the same boundaries as the Jefferson County Assistance District No. 4, which has a special purpose district sales and use tax. Contact the district representative at 409-796-3036 for additional boundary information.

NOTE 2: The Liberty County Emergency Services District No. 2-A has the same boundaries as the city of Daisetta. Contact the district representative at 409- 267-9386 for additional boundary information.

NOTE 3: The Pattison Municipal Development District has the same boundaries as the unincorporated extraterritorial jurisdiction of the city of Pattison. The district is entirely located in Waller-Harris Emergency Services District 200, which has a special purpose district sales and use tax. Contact the district representative at 281-934-3715 for additional boundary information.

NOTE 4: The Rusk County Emergency Services District No. 1-B is the portion of the district located in the Rusk County portion of the city of Tatum. Contact the district representative at 903-646-5917 for additional boundary information.

NOTE 5: The Wilson County Emergency Services District No. 4 is located in the southern portion of Wilson County. The district excludes, for sales tax purposes, the cities of Floresville and Poth. The unincorporated areas of Wilson County in ZIP Codes 78064, 78112, 78113, 78114 and 78147 are partially located in the Wilson County Emergency Services District No. 4. Contact the district representative at 830-393-3120 for additional boundary information.

NOTE 6: The Rusk County Emergency Services District No. 1-A is the portion of the district located in the Rusk County portions of the cities of Easton and Reklaw. Contact the district representative at 903-646-5917 for additional boundary information.

NOTE 7: The Uvalde County Emergency Services District No. 2 is located in the northern portion of Uvalde County, which has a county sales and use tax. The district is located entirely within the Uvalde County Health Services District, which has a special purpose district sales and use tax. The unincorporated areas of Uvalde County in ZIP Codes 78838, 78879 and 78881 are partially located within the Uvalde County Emergency Services District No. 2. Contact the district representative at 936-520-0585 for additional boundary information.

NOTE 8: The Williamson County Emergency Services District No. 6-A has the same boundaries as the city of Weir. Contact the district representative at 512-869-0464 for additional boundary information.

NOTE 9: The Gregg County Emergency Services District No. 1-A is located in the southeast portion of Gregg County, which has a county sales and use tax. The district excludes, for sales tax purposes, the city of Lakeport. The unincorporated areas of Gregg County in ZIP Codes 75603, 75652, 75662 and 75691 are partially located within the Gregg County Emergency Services District No. 1-A. Contact the district representative at 903-757-7500 for additional boundary information.

NOTE 10: The Jefferson County Emergency Services District No. 3 is located in the northwest portion of Jefferson County, which has a county sales and use tax. The district excludes, for sales tax purposes, the cities of China and Nome. The unincorporated areas of Jefferson County in ZIP Codes 77613, 77629 and 77713 are partially located within the Jefferson County Emergency Services District No. 3. Contact the district representative at 409-861-4353 for additional boundary information.

NOTE 11: The Jefferson County Emergency Services District No. 4 is located in the central portion of Jefferson County, which has a county sales and use tax. The unincorporated areas of Jefferson County in ZIP Codes 77705 and 77713 are partially located within the Jefferson County Emergency Services District No. 4. Contact the district representative at 409-796-3036 for additional boundary information.

NOTE 12: The Liberty County Emergency Services District No. 2 is located in the east central portion of Liberty County, which has a county sales and use tax. The unincorporated areas of Liberty County in ZIP Codes 77533, 77535, 77538, 77564 and 77582 are partially located within the Liberty County Emergency Services District No. 2. Contact the district representative at 409-267-9386 for additional boundary information.



NOTE 13: The Burnet County Emergency Services District No. 3 is located in the southwest portion of Burnet County. The district excludes the cities of Granite Shoals and Highland Haven. The unincorporated areas of Burnet County in ZIP Codes 778639 and 78654 are partially located within Burnet County Emergency Services District No. 3. Contact the district representative at 571-229-3438 for additional boundary information.

NOTE 14: The Gregg County Emergency Services District No. 1 is located in the northern portion of Rusk County. The unincorporated areas of Rusk County in ZIP Codes 75603, 75652, 75662 and 75691 are partially located within the Gregg County Emergency Services District No. 1. Contact the district representative at 903-757-7500 for additional boundary information.

NOTE 15: The Hardin County Emergency Services District No. 3 is located in the northwest portion of Hardin County. The unincorporated areas of Hardin County in ZIP Code 77585 are partially located within the Hardin County Emergency Services District No. 3. Contact the district representative at 409-880-3550 for additional boundary information.

NOTE 16: The Rusk County Emergency Services District No. 1 is located in the central and southern portions of Rusk County. The district excludes, for sales tax purposes, the city of Mount Enterprise. The unincorporated areas of Rusk County in ZIP Codes 75603, 75631, 75652, 75654, 75658, 75662, 75667, 75680, 75681, 75682, 75684, 75687, 75691 and 75784 are partially located within the Rusk County Emergency Services District No. 1. Contact the district representative at 903-646-5917 for additional boundary information.

NOTE 17: The Tarrant County Emergency Services District No. 1 has the same boundaries as unincorporated Tarrant County. The district excludes any incorporated areas. Contact the district representative at 817-838-4660 for additional boundary information.

NOTE 18: The Williamson County Emergency Services District No. 6 is located in the central portion of Williamson County. The unincorporated areas of Williamson County in ZIP Codes 76511, 76530, 78626, 78634, 78673 and 78674 are partially located in the Williamson County Emergency Services District No. 6. Contact the district representative at 512-869-0464 for additional boundary information.

NOTE 19: The Kountze/Hardin County Emergency Services District No. 1 combined area is the area within Hardin County Emergency Services District No. 1 annexed by the city of Kountze on or after January 18, 2024.

TRD-202401122  
Jenny Burleson  
Director, Tax Policy  
Comptroller of Public Accounts  
Filed: March 12, 2024



**Office of Consumer Credit Commissioner**

**Notice of Rate Ceilings**

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.008, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/18/24 - 03/24/24 is 18.00% for consumer<sup>1</sup> credit.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/18/24 - 03/24/24 is 18.00% for commercial<sup>2</sup> credit.

The quarterly ceiling as prescribed by §303.008 and §303.009 for the period of 04/01/24 - 06/30/24 is 18.00% for consumer<sup>1</sup> credit.

The quarterly ceiling as prescribed by §303.008 and §303.009 for the period of 04/01/24 - 06/30/24 is 18.00% for commercial<sup>2</sup> credit.

The annualized ceiling as prescribed by §303.008 and §303.009<sup>3</sup> for the period of 04/01/24 - 03/31/25 is 18.00% for consumer<sup>1</sup> credit.

The annualized ceiling as prescribed by §303.008 and §303.009<sup>3</sup> for the period of 04/01/24 - 03/31/25 is 18.00% for commercial<sup>2</sup> credit.

<sup>1</sup> Credit for personal, family, or household use.

<sup>2</sup> Credit for business, commercial, investment, or other similar purpose.

<sup>3</sup> Only for open-end credit as defined in §301.002(14), as provided by §303.007.

TRD-202401155

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: March 13, 2024

◆   ◆   ◆

## Texas Education Agency

### Announcement of Revised Request for Applications Concerning the 2024-2025 Charter School Program Grant (Subchapters C and D)

Filing Authority. The availability of grant funds under Request for Applications (RFA) #701-24-111 is authorized by Public Law 114-95, Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act of 2015, Title IV, Part C, Expanding Opportunity Through Quality Charter Schools; Texas Education Code (TEC), Chapter 12; and 19 Texas Administrative Code, Chapter 100, Subchapter AA.

The Texas Education Agency (TEA) published Request for Applications Concerning the 2024-2025 Charter School Program Grant (Subchapter C and D) in the March 1, 2024 issue of the *Texas Register* (49 TexReg 1301).

TEA has revised this grant opportunity with multiple updates, as follows.

Eligible Applicants. TEA is requesting applications under RFA #701-24-111 from eligible applicants, which include open-enrollment charter schools that meet the federal definition of a charter school, have never received funds under this grant program, and are one of the following. (1) An open-enrollment charter school campus designated by the commissioner of education, for the 2023-2024, 2024-2025, or 2025-2026 school year, as a high-quality campus pursuant to 19 TAC §100.1033(b)(9) and (13). (2) Open-enrollment charter schools submitting an expansion amendment request and corresponding application for high-quality campus designation for the 2024-2025 or 2025-2026 school year by April 1, 2024, are considered eligible to apply for the grant. However, the commissioner must approve the expansion amendment request and designate the campus as a high-quality campus prior to the charter receiving grant funding, if awarded. (3) An open-enrollment charter school authorized by the commissioner of education under the Generation 28 charter application pursuant to TEC, Chapter 12, Subchapter D, that has never received funds under this grant program. (4) A campus charter school authorized by the local board of trustees pursuant to TEC, Chapter 12, Subchapter C, on or before April 1, 2024, as a new charter school, or as a charter school that is designed to replicate a new charter school campus, based on the educational model of an existing high-quality charter school, and that submits all required documentation as stated in this RFA. A campus charter school must apply through its public school district, and the application must be signed by the district's superintendent or the appropriate designee.

Important: Any charter school that does not open prior to Wednesday, September 3, 2025, after having been awarded grant funds, may be

required to forfeit any remaining grant funds, and may be required to reimburse any expended amounts to TEA.

Description. The purpose of the Texas Quality Charter Schools Program Grant is to support the growth of high-quality charter schools in Texas, especially those focused on improving academic outcomes for educationally disadvantaged students. This will be achieved through administering the 2024-2025 Charter School Program Grant (Subchapters C and D) to assist eligible applicants in opening and preparing for the operation of newly-authorized charter schools and replicated high-quality schools.

Dates of Project. The 2024-2025 Charter School Program Grant (Subchapters C and D) will be implemented during the 2024-2025 and 2025-2026 school years. Applicants should plan for a starting date of no earlier than July 1, 2024, and an ending date of no later than September 30, 2025.

Project Amount. Approximately \$13.4 million is available for funding the 2024-2025 Charter School Program Grant (Subchapters C and D). It is anticipated that approximately 14 grants will be awarded up to \$900,000. This project is funded 100% with federal funds.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Applicants' Conference. A webinar will be held on Tuesday April 2, 2024, from 10:30 a.m. to 12:00 p.m. Register for the webinar at <https://zoom.us/meeting/register/tJwqdmrD0jH9PLfEstDq1WSd87m67xGmvS>. Questions relevant to the RFA may be emailed to Charlotte Nicklebur at [CharterSchools@tea.texas.gov](mailto:CharterSchools@tea.texas.gov) prior to 12:00 p.m. (noon) (Central Time) on Thursday, March 28, 2024. These questions, along with other information, will be addressed during the webinar. The applicants' conference webinar will be open to all potential applicants and will provide general and clarifying information about the grant program and the RFA.

Requesting the Application. The complete RFA will be posted on the TEA Grant Opportunities webpage at <https://tea4avalonzo.tea.state.tx.us/GrantOpportunities/forms/GrantProgramSearch.aspx> for viewing and downloading. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view and download all documents that pertain to this RFA.

Further Information. In order to make sure that no prospective applicant obtains a competitive advantage because of acquisition of information unknown to other prospective applicants, any and all questions must be submitted in writing to [CharterSchools@tea.texas.gov](mailto:CharterSchools@tea.texas.gov), the TEA email address identified in the Program Guidelines of the RFA, no later than 12:00 p.m. (noon) (Central Time) on April 17, 2024. All questions and the written answers thereto will be posted on the TEA Grant Opportunities webpage in the format of Frequently Asked Questions (FAQs) by April 23, 2024.

Deadline for Receipt of Applications. Applications must be submitted to [competitivegrants@tea.texas.gov](mailto:competitivegrants@tea.texas.gov). Applications must be received no later than 11:59 p.m. (Central Time), May 6, 2024, to be considered eligible for funding.

TRD-202401138

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: March 13, 2024

## Texas Commission on Environmental Quality

### Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **April 22, 2024**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **April 22, 2024**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: 7-ELEVEN, INCORPORATED dba 7 Eleven 20769; DOCKET NUMBER: 2023-0913-PST-E; IDENTIFIER: RN102011095; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: \$3,750; ENFORCEMENT COORDINATOR: Adriana Fuentes, (956) 425-6010; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(2) COMPANY: Acton Municipal Utility District; DOCKET NUMBER: 2022-1633-MWD-E; IDENTIFIER: RN102898459; LOCATION: Acton, Hood County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0014211001, Interim Effluent Limitations and

Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$8,250; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$6,600; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(3) COMPANY: Brookesmith Special Utility District; DOCKET NUMBER: 2023-0580-PWS-E; IDENTIFIER: RN107705154; LOCATION: Brownwood, Brown County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(q)(1)(A)(i), formerly 290.46(q)(2), by failing to institute special precautions as described in the flowchart found in 30 TAC §290.47(e) in the event of low distribution pressure and water outages; PENALTY: \$1,155; ENFORCEMENT COORDINATOR: Claudia Bartley, (512) 239-1116; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(4) COMPANY: Central Washington County Water Supply Corporation; DOCKET NUMBER: 2022-1061-PWS-E; IDENTIFIER: RN101389971; LOCATION: Brenham, Washington County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; PENALTY: \$1,250; ENFORCEMENT COORDINATOR: Claudia Bartley, (512) 239-1116; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(5) COMPANY: City of Arp; DOCKET NUMBER: 2021-1294-MWD-E; IDENTIFIER: RN101720498; LOCATION: Arp, Smith County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010511001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; and 30 TAC §305.125(1) and §319.5(b) and TPDES Permit Number WQ0010511001, Effluent Limitations and Monitoring Requirements Number 1, by failing to collect and analyze effluent samples at the intervals specified in the permit; PENALTY: \$81,375; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$81,375; ENFORCEMENT COORDINATOR: Samantha Smith, (512) 239-2099; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(6) COMPANY: City of Mathis; DOCKET NUMBER: 2022-0683-PWS-E; IDENTIFIER: RN101388130; LOCATION: Mathis, San Patricio County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; PENALTY: \$5,000; ENFORCEMENT COORDINATOR: Ronica Rodriguez Scott, (361) 881-6990; REGIONAL OFFICE: 500 North Shoreline Boulevard, Suite 500, Corpus Christi, Texas 78401, (361) 881-6900.

(7) COMPANY: ERICKSDAHL WATER SUPPLY CORPORATION; DOCKET NUMBER: 2023-0549-PWS-E; IDENTIFIER: RN101438877; LOCATION: Stamford, Jones County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; PENALTY: \$3,000; ENFORCEMENT COORDINATOR: Iliia Perez-Ramirez, (713) 767-3743; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: Fermin Venegas; DOCKET NUMBER: 2022-1145-PST-E; IDENTIFIER: RN101217800; LOCATION: Del Rio, Val Verde County; TYPE OF FACILITY: former convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks; PENALTY: \$3,000; ENFORCEMENT COORDINATOR: Tiffany Chu, (817) 588-5891; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: INEOS US Chemicals Company; DOCKET NUMBER: 2023-0121-AIR-E; IDENTIFIER: RN102536307; LOCATION: Texas City, Galveston County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(c), 116.715(a), and 122.143(4), Flexible Permit Numbers 1176 and PSDTX782, Special Conditions Number 1, Federal Operating Permit Number O1513, General Terms and Conditions and Special Terms and Conditions Number 20, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$10,800; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$4,320; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: INSTEEL WIRE PRODUCTS COMPANY; DOCKET NUMBER: 2022-0572-IHW-E; IDENTIFIER: RN100656370; LOCATION: Houston, Harris County; TYPE OF FACILITY: carbon steel strand manufacturing business; RULES VIOLATED: 30 TAC §335.2(b) and §335.4, by failing to not cause, suffer, allow, or permit the disposal of industrial solid waste at an unauthorized facility; 30 TAC §335.6(c), by failing to update the Notice of Registration; and 30 TAC §335.10(a) and 40 Code of Federal Regulations §262.20(a), by failing to include a waste code for each waste itemized on the manifest; PENALTY: \$37,200; ENFORCEMENT COORDINATOR: Stephanie McCurley, (512) 239-2607; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(11) COMPANY: Intercontinental Terminals Company LLC; DOCKET NUMBER: 2022-0460-AIR-E; IDENTIFIER: RN106119175; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: bulk liquid storage tank terminal; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 95754, Special Conditions Number 45.C., Federal Operating Permit Number O3785, General Terms and Conditions and Special Terms and Conditions Number 19, and Texas Health and Safety Code, §382.085(b), by failing to perform stack sampling no later than 180 days after initial start-up; PENALTY: \$10,500; ENFORCEMENT COORDINATOR: Desmond Martin, (512) 239-2814; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(12) COMPANY: Leedo Manufacturing Company, L.P.; DOCKET NUMBER: 2021-0772-AIR-E; IDENTIFIER: RN100542562; LOCATION: East Bernard, Wharton County; TYPE OF FACILITY: cabinet manufacturing plant; RULES VIOLATED: 30 TAC §§116.110(a), 116.315(a), and 122.143(4), Federal Operating Permit (FOP) Number O1788, General Terms and Conditions (GTC), and Texas Health and Safety Code (THSC), §382.0518(a) and §382.085(b), by failing to submit an application for renewal at least six months prior to the expiration of the permit; 30 TAC §122.143(4) and §122.145(2)(A), FOP Number O1788, GTC, and THSC, §382.085(b), by failing to report all instances of deviations; 30 TAC §122.143(4) and §122.145(2)(C), FOP Number O1788, GTC, and THSC, §382.085(b), by failing to submit a deviation report no later than 30 days after the end of each

reporting period; and 30 TAC §122.143(4) and §122.146(2), FOP Number O1788, GTC and Special Terms and Conditions Number 9, and THSC, §382.085(b), by failing to submit a permit compliance certification within 30 days of any certification period; PENALTY: \$39,250; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$15,700; ENFORCEMENT COORDINATOR: Mackenzie Mehlmann, (512) 239-2572; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(13) COMPANY: LGI HOMES-TEXAS, LLC; DOCKET NUMBER: 2023-0907-WQ-E; IDENTIFIER: RN111322921; LOCATION: Conroe, Montgomery County; TYPE OF FACILITY: construction site; RULES VIOLATED: 30 TAC §281.25(a)(4), TWC §26.121(a)(1), and Texas Pollutant Discharge Elimination System (TPDES) Construction General Permit Number TXR1582GJ, Part III, Section F.6(a) - (c), by failing to maintain best management practices in effective operating condition; and 30 TAC §281.25(a)(4), TWC §26.121(a)(1), and TPDES Construction General Permit Number TXR1582GJ, Part III, Section F.6(d), by failing to remove accumulations of sediment often enough to minimize further negative effects and prior to the next rain event; PENALTY: \$4,876; ENFORCEMENT COORDINATOR: Monica Larina, (361) 881-6965; REGIONAL OFFICE: 500 North Shoreline Boulevard, Suite 500, Corpus Christi, Texas 78401, (361) 881-6900.

(14) COMPANY: Los Botines Water Supply Corporation; DOCKET NUMBER: 2021-1011-PWS-E; IDENTIFIER: RN106716442; LOCATION: Laredo, Webb County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(b)(1)(B)(iii) and TCEQ Agreed Order Docket Number 2018-1113-PWS-E, Ordering Provision Number 2.d, by failing to provide two or more service pumps having a total capacity of 2.0 gallons per minute per connection; 30 TAC §290.45(b)(1)(B)(iv) and TCEQ Agreed Order Docket Number 2017-0846-PWS-E, Ordering Provision Number 2.g, by failing to provide a minimum pressure tank capacity of 20 gallons per connection; 30 TAC §290.46(e)(4)(A) and Texas Health and Safety Code, §341.033(a) and TCEQ Agreed Order Docket Number 2017-0846-PWS-E, Ordering Provision Number 2.a.i, by failing to operate the water system under the direct supervision of a water works operator who holds a Class D or higher license; 30 TAC §290.46(f)(2) and (3)(A)(i) and (ii)(III) and TCEQ Agreed Order Docket Number 2018-1113-PWS-E, Ordering Provision Number 2.a.i, by failing to maintain water works operation and maintenance records and make them readily available for review by the executive director (ED) upon request; 30 TAC §290.46(l) and TCEQ Agreed Order Docket Number 2018-1113-PWS-E, Ordering Provision Number 2.a.v, by failing to flush all dead-end mains at monthly intervals; 30 TAC §290.46(m)(1)(A) and TCEQ Agreed Order Docket Number 2018-1113-PWS-E, Ordering Provision Number 2.a.ii, by failing to inspect the facility's ground storage tank annually; 30 TAC §290.46(m)(4) and TCEQ Agreed Order Docket Number 2017-0846-PWS-E, Ordering Provision Number 2.e.i, by failing to maintain all water treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances in a watertight condition and free of excessive solids; 30 TAC §290.46(n)(1) and TCEQ Agreed Order Docket Number 2017-0846-PWS-E, Ordering Provision Number 2.e.ii, by failing to maintain at the public water system accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank until the facility is decommissioned; 30 TAC §290.46(n)(2) and TCEQ Agreed Order Docket Number 2018-1113-PWS-E, Ordering Provision Number 2.a.iii, by failing to maintain an accurate and up-to-date map of the distribution system so that valves and mains can be easily located during emergencies; 30 TAC §290.46(n)(3) and TCEQ Agreed Order

Docket Number 2017-0846-PWS-E, Ordering Provision Number 2.e.iii, by failing to keep on file copies of well completion data as defined in 30 TAC §290.41(c)(3)(A) for as long as the well remains in service; 30 TAC §290.46(s)(1), by failing to calibrate the facility's well meter at least once every three years; 30 TAC §290.46(t), by failing to post a legible sign at the facility's production, treatment, and storage facilities that contains the name of the facility and an emergency telephone number where a responsible official can be contacted; 30 TAC §290.51(a)(6) and TWC, §5.702, by failing to pay annual Public Health Service fees and/or any associated late fees for TCEQ Financial Administration Account Number 92400043 for Fiscal Years 2020 and 2021; 30 TAC §§290.106(e), 290.107(e), and 290.115(e) and TCEQ Agreed Order Docket Number 2017-0846-PWS-E, Ordering Provision Number 2.a.v, by failing to provide the results of nitrate, volatile organic chemical contaminants, and Stage 2 disinfection byproducts sampling to the ED for the January 1, 2019 - December 31, 2019, and January 1, 2020 - December 31, 2020, monitoring periods; 30 TAC §290.110(c)(4)(A) and TCEQ Agreed Order Docket Number 2018-1113-PWS-E, Ordering Provision Number 2.a.iv, by failing to monitor the disinfectant residual at representative locations throughout the distribution system at least once every seven days; 30 TAC §290.110(c)(4)(A) and TCEQ Agreed Order Docket Number 2018-1113-PWS-E, Ordering Provision Number 2.a.iv, by failing to monitor the disinfectant residual at representative locations throughout the distribution system at least once every seven days; 30 TAC §290.110(e)(4)(A) and (f)(3) and TCEQ Agreed Order Docket Number 2017-0846-PWS-E, Ordering Provision Number 2.e.iv, by failing to submit a Disinfection Level Quarterly Operating Report to the ED by the tenth day of the month following the end of each quarter for the first, second, and third quarters of 2019 through the first quarter of 2021; 30 TAC §290.117(c)(2)(A), (h), and (i)(1) and TCEQ Agreed Order Docket Number 2017-0846-PWS-E, Ordering Provision Number 2.a.ix, by failing to collect lead and copper tap samples at the required five sample sites, have the samples analyzed, and report the results to the ED for the January 1, 2019 - December 31, 2019, and January 1, 2020 - December 31, 2020, monitoring periods; 30 TAC §290.121(a) and (b) and TCEQ Agreed Order Docket Number 2017-0846-PWS-E, Ordering Provision Number 2.c.ii, by failing to maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; and 30 TAC §290.271(b) and §290.274(a) and (c) and TCEQ Agreed Order Docket Number 2017-0846-PWS-E, Ordering Provision Numbers 2.a.iii and 2.b.ii, by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1 of each year and failing to submit to the TCEQ by July 1 of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data for calendar years 2018 and 2019; PENALTY: \$143,830; ENFORCEMENT COORDINATOR: Ronica Rodriguez Scott, (361) 881-6990; REGIONAL OFFICE: 500 North Shoreline Boulevard, Suite 500, Corpus Christi, Texas 78401, (361) 881-6900.

(15) COMPANY: Maria Alvarado dba Alanis RV Park; DOCKET NUMBER: 2023-0312-PWS-E; IDENTIFIER: RN111472254; LOCATION: Midland, Midland County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(2) and Texas Health and Safety Code, §341.031(a), by failing to comply with the acute maximum contaminant level of ten milligrams per liter for nitrate; PENALTY: \$5,250; ENFORCEMENT COORDINATOR: Ilia Perez-Ramirez, (713) 767-3743; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(16) COMPANY: North Harrison Water Supply Corporation; DOCKET NUMBER: 2023-0214-PWS-E; IDENTIFIER: RN101181592; LOCATION: Marshall, Harrison County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for trihalomethanes, based on the locational running annual average; PENALTY: \$2,750; ENFORCEMENT COORDINATOR: Wyatt Throm, (512) 239-1120; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(17) COMPANY: Oxy Vinyls, LP; DOCKET NUMBER: 2021-0353-AIR-E; IDENTIFIER: RN100706803; LOCATION: Deer Park, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(2), 116.115(b)(2)(F) and (c), and 122.143(4), 40 Code of Federal Regulations (CFR) §63.1218(a)(6)(i), New Source Review (NSR) Permit Number 4943B, Special Conditions (SC) Numbers 1 and 8, Federal Operating Permit (FOP) Number O1369, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 27, and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with the maximum allowable emissions rate and concentration limit; 30 TAC §§101.20(2), 116.115(c), and 122.143(4), 40 CFR §63.1207(j)(1)(i), NSR Permit Number 4943B, SC Number 18.G, FOP Number O1369, GTC and STC Number 27, and THSC, §382.085(b), by failing to postmark a Notification of Compliance within 90 days of completion of a Comprehensive Performance Test; and 30 TAC §116.115(c) and §122.143(4), NSR Permit Number 4943B, SC Number 1, FOP Number O1369, GTC and STC Number 27, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$69,863; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$27,945; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(18) COMPANY: Quail Run Services, LLC; DOCKET NUMBER: 2023-0742-MWD-E; IDENTIFIER: RN110488442; LOCATION: Mentone, Reeves County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0015725002, Interim I Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$9,900; ENFORCEMENT COORDINATOR: Shane Glantz, (325) 698-6124; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(19) COMPANY: RJIN CORPORATION; DOCKET NUMBER: 2022-0184-AIR-E; IDENTIFIER: RN108525130; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: auto body repair and refinishing facility; RULES VIOLATED: 30 TAC §115.421(12) and Texas Health and Safety Code, §382.085(b), by failing to not cause, suffer, allow, or permit volatile organic compounds (VOC) emissions to exceed the VOC emissions limit from coatings and solvents as delivered to the application system; PENALTY: \$3,375; ENFORCEMENT COORDINATOR: Mackenzie Mehlmann, (512) 239-2572; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(20) COMPANY: Town of Windom; DOCKET NUMBER: 2021-1220-MWD-E; IDENTIFIER: RN103014619; LOCATION: Windom, Fannin County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010666001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with per-

mitted effluent limitations; PENALTY: \$51,750; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$51,750; ENFORCEMENT COORDINATOR: Samantha Smith, (512) 239-2099; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-202401120

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: March 12, 2024



## Combined Notice of Public Meeting and Notice of Application and Preliminary Decision for TPDES Permit for Municipal Wastewater New Permit No. WQ0016386001

**APPLICATION AND PRELIMINARY DECISION.** JC Water Resource Recovery Facility, LLC, 525 South Loop 288, Suite 105, Denton, Texas 76205, has applied to the Texas Commission on Environmental Quality (TCEQ) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016386001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 108,000 gallons per day. TCEQ received this application on August 7, 2023.

The facility will be located approximately 0.25 miles east of the intersection of U.S. Highway 67 and County Road 1226, near the city of Cleburne, in Johnson County, Texas 76033. The treated effluent will be discharged to an unnamed tributary, thence to Robinson Branch, thence to Lake Pat Cleburne in Segment No. 1228 of the Brazos River Basin. The unclassified receiving water use is limited aquatic life use for the unnamed tributary and Robinson Branch. The designated uses for Segment No. 1228 are primary contact recreation, public water supply, and high aquatic life use. In accordance with 30 Texas Administrative Code § 307.5 and the TCEQ's *Procedures to Implement the Texas Surface Water Quality Standards* (June 2010), an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. This review has preliminarily determined that no water bodies with exceptional, high, or intermediate aquatic life uses are present within the stream reach assessed; therefore, no Tier 2 degradation determination is required. No significant degradation of water quality is expected in water bodies with exceptional, high, or intermediate aquatic life uses downstream, and existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received. This link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice. For the exact location, refer to the application.

<https://gisweb.tceq.texas.gov/LocationMapper/?marker=-97.510833,32.3125&level=18>

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Cleburne Public Library, 302 West Henderson Street, Cleburne, Texas.

**ALTERNATIVE LANGUAGE NOTICE.** Alternative language notice in Spanish is available at <https://www.tceq.texas.gov/per>

mitting/wastewater/plain-language-summaries-and-public-notices. El aviso de idioma alternativo en español está disponible en <https://www.tceq.texas.gov/permitting/wastewater/plain-language-summaries-and-public-notices>.

**PUBLIC COMMENT / PUBLIC MEETING.** You may submit public comments about this application. The TCEQ will hold a public meeting on this application because it was requested by a local legislator.

The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all timely, relevant and material, or significant comments will be prepared by the Executive Director. All formal comments will be considered before a decision is reached on the permit application. A copy of the written response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

**The Public Meeting is to be held:**

**Monday, April 22, 2024 at 7:00 p.m.**

**Cleburne Conference Center (Cross Timbers Room)**

**1501 W. Henderson Street**

**Cleburne, Texas 76033**

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least one week prior to the meeting.

**OPPORTUNITY FOR A CONTESTED CASE HEARING.** After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material or significant public comments. **Unless the application is directly referred for a contested case hearing, the response to comments will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting a contested case hearing or reconsideration of the Executive Director's decision.** A contested case hearing is a legal proceeding similar to a civil trial in a state district court.

**TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and proposed permit number; the location and distance of your property/activities relative to the proposed facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; a list of all disputed issues of fact that you submit during the comment period; and the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or**

association, the request must designate the group's representative for receiving future correspondence; identify by name and physical address an individual member of the group who would be adversely affected by the proposed facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn. **If a hearing is granted, the subject of a hearing will be limited to disputed issues of fact or mixed questions of fact and law relating to relevant and material water quality concerns submitted during the comment period.**

**EXECUTIVE DIRECTOR ACTION.** The Executive Director may issue final approval of the application unless a timely contested case hearing request or request for reconsideration is filed. If a timely hearing request or request for reconsideration is filed, the Executive Director will not issue final approval of the permit and will forward the application and request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

**MAILING LIST.** If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

**All written public comments and public meeting requests must be submitted to the Office of the Chief Clerk, MC 105, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at [www.tceq.texas.gov/goto/comment](http://www.tceq.texas.gov/goto/comment) within 30 days from the date of newspaper publication of this notice or by the date of the public meeting, whichever is later.**

**INFORMATION AVAILABLE ONLINE.** For details about the status of the application, visit the Commissioners' Integrated Database at [www.tceq.texas.gov/goto/cid](http://www.tceq.texas.gov/goto/cid). Search the database using the permit number for this application, which is provided at the top of this notice.

**AGENCY CONTACTS AND INFORMATION.** Public comments and requests must be submitted either electronically at [www.tceq.texas.gov/goto/comment](http://www.tceq.texas.gov/goto/comment), or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC 105, P.O. Box 13087, Austin, Texas 78711-3087. Any personal information you submit to the TCEQ will become part of the agency's record; this includes email addresses. For more information about this permit application or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040 or visit their website at [www.tceq.texas.gov/goto/pep](http://www.tceq.texas.gov/goto/pep). Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from JC Water Resource Recovery Facility, LLC at the address stated above or by calling Mr. Jason Tuberville, General Partner, Orison Holdings, at (940) 305-3533.

Issuance Date: March 11, 2024

TRD-202401146

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: March 13, 2024



## Notice of Application and Opportunity to Request a Public Meeting for a New Municipal Solid Waste Facility

Notice mailed on March 12, 2024 Registration Application No. 40339

Application. Central Texas Refuse, LLC has applied to the Texas Commission on Environmental Quality (TCEQ) for proposed Registration No. 40339, to construct and operate a Type V municipal solid waste transfer station. The proposed facility, Central Texas Transfer Station, will be located at 1077 CR 118, Hutto, Texas 78634, in Williamson County. The Applicant is requesting authorization to process and transfer municipal solid waste that includes household waste, yard waste, Class 2 and Class 3 industrial waste, and construction and demolition waste. The registration application is available for viewing and copying at the Round Rock Public Library, 200 East Liberty Avenue, Round Rock, Texas 78664, and may be viewed online at <https://centraltexas-refuse.com/tceq/>. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: <https://arcg.is/0rvCuL0>. For exact location, refer to application.

Alternative Language Notice/ Aviso de idioma alternativo. Alternative language notice in Spanish is available at [www.tceq.texas.gov/goto/mswapps](http://www.tceq.texas.gov/goto/mswapps). El aviso de idioma alternativo en español está disponible en [www.tceq.texas.gov/goto/mswapps](http://www.tceq.texas.gov/goto/mswapps)

Public Comment/Public Meeting. You may submit public comments or request a public meeting on this application. Written public comments or written requests for a public meeting must be submitted to the Office of the Chief Clerk at the address included in the information section below. If a public meeting is held, comments may be made orally at the meeting or submitted in writing by the close of the public meeting. A public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the development is to be located, or if there is a substantial public interest in the proposed development. The purpose of the public meeting is for the public to provide input for consideration by the commission, and for the applicant and the commission staff to provide information to the public. A public meeting is not a contested case hearing. The executive director will review and consider public comments and written requests for a public meeting submitted during the comment period. The comment period shall begin on the date this notice is published and end 30 calendar days after this notice is published. The comment period shall be extended to the close of any public meeting. The executive director is not required to file a response to comments.

Executive Director Action. The executive director shall, after review of an application for registration, determine if the application will be approved or denied in whole or in part. If the executive director acts on an application, the chief clerk shall mail or otherwise transmit notice of the action and an explanation of the opportunity to file a motion to overturn the executive director's decision. The chief clerk shall mail this notice to the owner and operator, the public interest counsel, to adjacent landowners as shown on the required land ownership map and landowners list, and to other persons who timely filed public comment in response to public notice. Not all persons on the mailing list for this notice will receive the notice letter from the Office of the Chief Clerk.

Information Available Online. For details about the status of the application, visit the Commissioners' Integrated Database (CID) at [www.tceq.texas.gov/goto/cid](http://www.tceq.texas.gov/goto/cid). Once you have access to the CID using the above link, enter the registration number for this application, which is provided at the top of this notice.

Mailing List. If you submit public comments, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

Agency Contacts and Information. All public comments and requests must be submitted either electronically at [www14.tceq.texas.gov/epic/eComment/](http://www14.tceq.texas.gov/epic/eComment/) or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record. For more information about this registration application or the registration process, please call the TCEQ's Public Education Program, Toll Free, at (800) 687-4040 or visit their webpage, [www.tceq.texas.gov/goto/pep](http://www.tceq.texas.gov/goto/pep). General information regarding the TCEQ can be found on our website at [www.tceq.texas.gov/](http://www.tceq.texas.gov/). Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Central Texas Refuse, LLC at the mailing address 13630 Fondren Road, Houston, Texas 77085, or by calling Yasser Brenes at (206) 249-5381.

TRD-202401150

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: March 13, 2024



### Notice of District Petition

Notice issued March 8, 2024

TCEQ Internal Control No. D-02142024-018 LIT Lovett Park 130 Austin, LLC, a Delaware limited liability company, (Petitioner) filed a petition for creation of Travis County Municipal Utility District No. 34 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 179.38 acres located within Travis County, Texas; and (4) none of the land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any city. The petition further states that the proposed District will: (1) purchase, design, construct, acquire, maintain, own, operate, repair, improve and extend waterworks and sanitary wastewater system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain and operate works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the proposed District; and, (3) to control, abate and amend local storm water or other harmful excesses of waters, and such other purchase, con-

struction, acquisition, maintenance, ownership, operation, repair, improvement and extension of such additional facilities, including roads, systems, and enterprises as shall be consistent with all of the purposes for which the proposed District is created. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately \$22,020,000 (\$15,490,000 for water, wastewater, and drainage plus \$6,530,000 for roads).

### INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at [www.tceq.texas.gov/agency/cc/pub\\_notice.html](http://www.tceq.texas.gov/agency/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at [www.tceq.texas.gov](http://www.tceq.texas.gov).

TRD-202401148

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: March 13, 2024



### Notice of Opportunity to Comment on a Default Order of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Order (DO). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the proce-



duration followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **April 22, 2024**. The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of the proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on April 22, 2024**. The commission's attorney is available to discuss the DO and/or the comment procedure at the listed phone number; however, TWC, §7.075, provides that comments on the DO shall be submitted to the commission **in writing**.

(1) COMPANY: Billy Fenton; DOCKET NUMBER: 2021-1476-MSW-E; TCEQ ID NUMBER: RN111173001; LOCATION: 5844 United States Highway 69 South, Woodville, Tyler County; TYPE OF FACILITY: automotive shop; RULES VIOLATED: 30 TAC §328.56(d)(4), by failing to monitor tires stored outside for vectors and utilize appropriate vector control measures at least once every two weeks; and 40 Code of Federal Regulations §279.22(c)(1) and 30 TAC §324.6, by failing to mark or clearly label used oil storage containers with the words "Used Oil"; PENALTY: \$1,854; STAFF ATTORNEY: Allison Alt, Litigation, MC 175, (512) 239-6649; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-202401121

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: March 12, 2024



#### Notice of Public Meeting Air Quality Standard Permit for Concrete Batch Plants Proposed Registration No. 174858

**Application.** TOR Texas, LLC, has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit, Registration No. 174858, which would authorize construction of a permanent concrete batch plant located at 13001 Old Denton Road, Fort Worth, Tarrant County, Texas 76177. This application is being processed in an expedited manner, as allowed by the commission's rules in 30 Texas Administrative Code, Chapter 101, Subchapter J. **AVISO DE IDIOMA ALTERNATIVO.** El aviso de idioma alternativo en español está disponible en <https://www.tceq.texas.gov/permitting/air/newsourcereview/airpermits-pendingpermit-apps>. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. <https://gisweb.tceq.texas.gov/Location-Mapper/?marker=-97.300095,32.965418&level=13>. The proposed facility will emit the following air contaminants: particulate matter in-

cluding (but not limited to) aggregate, cement, road dust, and particulate matter with diameters of 10 microns or less and 2.5 microns or less.

This application was submitted to the TCEQ on December 11, 2023. The executive director has completed the administrative and technical reviews of the application and determined that the application meets all of the requirements of a standard permit authorized by 30 Texas Administrative Code §116.611, which would establish the conditions under which the plant must operate. The executive director has made a preliminary decision to issue the registration because it meets all applicable rules.

**Public Comment/Public Meeting.** You may submit public comments to the Office of the Chief Clerk at the address below. The TCEQ will consider all public comments in developing a final decision on the application. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application, and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. At the conclusion of the comment period, all formal comments will be considered before a decision is reached on the permit application. A written response to all formal comments will be prepared by the executive director and will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

#### The Public Meeting is to be held:

**Monday, April 15, 2024 at 6:00 p.m.**

**Timber Creek High School (Cafeteria)**

**12350 Timberland Boulevard**

**Fort Worth, Texas 76244**

**Information.** Members of the public are encouraged to submit written comments anytime during the public meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at <https://www14.tceq.texas.gov/epic/eComment/>. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. General information can be found at our Web site at [www.tceq.texas.gov](http://www.tceq.texas.gov). *Si desea información en español, puede llamar al (800) 687-4040.*

**Information Available Online.** For details about the status of the application, visit the Commissioners' Integrated Database (CID) at [www.tceq.texas.gov/goto/cid](http://www.tceq.texas.gov/goto/cid). Once you have access to the CID using the link, enter the permit number at the top of this form.

The application, executive director's preliminary decision, and standard permit will be available for viewing and copying at the TCEQ central office, the TCEQ Dallas/Fort Worth regional office, and at Golden Triangle Branch Library, 4264 Golden Triangle Boulevard, Fort Worth, Tarrant County, Texas 76244. The facility's compliance

file, if any exists, is available for public review at the TCEQ Dallas/Fort Worth Regional Office, 2309 Gravel Dr, Fort Worth, Texas. Visit [www.tceq.texas.gov/goto/cbp](http://www.tceq.texas.gov/goto/cbp) to review the standard permit. Further information may also be obtained from TOR Texas, LLC, 4825 Forest Hill Circle, Forest Hill, Texas 76140-1501 or by calling Mrs. Melissa Fitts, Senior Vice President, Westward Environmental, Inc. at (830) 249-8284.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least five business days prior to the meeting.

Notice Issuance Date: March 11, 2024

TRD-202401149

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: March 13, 2024



### Notice of Receipt of Application and Intent to Obtain Municipal Solid Waste Permit

Notice mailed on March 06, 2024 Proposed Permit No. 2420

Application. Lealco, Inc., has applied to the Texas Commission on Environmental Quality (TCEQ) for a permit to authorize a Municipal Solid Waste Transfer Station with a proposed transfer capacity of 2,500 tons per day. The facility is proposed to be located at 10244 Farm to Market Road 1346, Bexar County, Texas, 78101. The TCEQ received this application on January 22, 2024. The permit application is available for viewing and copying at the Schaefer Branch Library, 6322 US Highway 87 East, San Antonio, Texas 78222 in Bexar County and may be viewed online at <https://ftwweaverboos.com/>. The following link to an electronic map of the site or facility general location is provided as a public courtesy and is not part of the application or notice: <https://arcg.is/XPGHn0>. For exact location, refer to application.

Alternative Language Notice/Aviso de idioma alternativo. Alternative language notice in Spanish is available at [www.tceq.texas.gov/goto/mswapps](http://www.tceq.texas.gov/goto/mswapps). La notificación en otro idioma en español está disponible en [www.tceq.texas.gov/goto/mswapps](http://www.tceq.texas.gov/goto/mswapps).

Additional Notice. TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

Public Comment/Public Meeting. You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

Opportunity for a Contested Case Hearing. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and

the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

To Request a Contested Case Hearing, You Must Include The Following Items in Your Request: your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; a list of all disputed issues of fact that you submit during the comment period, and the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify by name and physical address an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn.

If a hearing is granted, the subject of a hearing will be limited to disputed issues of fact or mixed questions of fact and law that are relevant and material to the Commission's decision on the application submitted during the comment period.

Mailing List. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

Information Available Online. For details about the status of the application, visit the Commissioners' Integrated Database (CID) at [www.tceq.texas.gov/goto/cid](http://www.tceq.texas.gov/goto/cid). Once you have access to the CID using the above link, enter the permit number for this application, which is provided at the top of this notice.

Agency Contacts and Information. All public comments and requests must be submitted either electronically at [www14.tceq.texas.gov/epic/eComment/](http://www14.tceq.texas.gov/epic/eComment/) or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record. For more information about this permit application or the permitting process, please call the TCEQ's Public Education Program, Toll Free, at (800) 687-4040 or visit their website

at [www.tceq.texas.gov/goto/pep](http://www.tceq.texas.gov/goto/pep). Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Lealco, Inc. at the mailing address, 3 Hughes Landing, 8th Floor, The Woodlands, Texas 77381 or by calling Mr. Brett O'Connor at (620) 778-2039.

TRD-202401152

Laurie Gharis  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: March 13, 2024



### Notice of Water Quality Application

The following notice was issued on March 08, 2024:

The following notice does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087 WITHIN (10) DAYS FROM THE DATE THIS NOTICE IS ISSUED.

#### INFORMATION SECTION

Meritage Homes of Texas, LLC has applied for a minor amendment to the TCEQ permit to authorize to include an additional Interim phase with a daily average flow not to exceed 35,000 gallons per day via public access subsurface area drip dispersal system with a minimum area of 18.09 acres. The existing permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 78,800 gallons per day via public access subsurface drip irrigation system with a minimum area of 18.09 acres. This permit will not authorize a discharge of pollutants into water in the state. The wastewater treatment facility and disposal site are located northeast of the intersection of Highway 290 and Ranch Road 12, in Hays County, Texas 78620.

TRD-202401151

Laurie Gharis  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: March 13, 2024



### Notice of Water Quality Application

The following notice was issued on March 06, 2024:

The following notice does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711-3087 WITHIN (30) DAYS FROM THE DATE THIS NOTICE IS PUBLISHED IN THE *TEXAS REGISTER*.

#### INFORMATION SECTION

City of Celina has applied for a minor amendment to Texas Pollutant Discharge Elimination System Permit No. WQ0016068001 to authorize the decrease the Final phase flow from an annual average flow not to exceed 15,000,000 gallons per day (gpd) to 10,000,000 gpd. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 15,000 gallons per day. The facility will be located approximately 1,650 feet southeast of the intersection of County Line Road and West Farm-to-Market Road 455, in Collin County, Texas 75009.

TRD-202401153

Laurie Gharis

Chief Clerk  
Texas Commission on Environmental Quality  
Filed: March 13, 2024



### Revised Combined Notice of Public Meeting and Notice of Application and Preliminary Decision for TPDES Permit for Industrial Wastewater New Permit No. WQ0005289000

**APPLICATION AND PRELIMINARY DECISION.** City of Corpus Christi, P.O. Box 9277, Corpus Christi, Texas 78469, which proposes to operate the Inner Harbor Desalination Plant, a seawater desalination facility, has applied to the Texas Commission on Environmental Quality (TCEQ) for a new permit, Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0005289000, to authorize the discharge of water treatment waste at a daily average flow not to exceed 34,300,000 gallons per day (gpd) for the initial phase and 51,500,000 gpd for the final phase via Outfall 001. The TCEQ received this application on January 22, 2020.

**This notice has been revised to reflect the correct address of the facility. East Broadway has been changed to West Broadway.**

The facility will be located at the intersection of Nueces Bay Boulevard and West Broadway Street, in the City of Corpus Christi, Nueces County, Texas 78401. The treated effluent will be discharged from Outfall 001 directly to Corpus Christi Inner Harbor in Segment No. 2484 of the Bays and Estuaries. Outfall 001 is proposed to be located in the Inner Harbor Ship channel. The designated uses for Segment No. 2484 are non-contact recreation and intermediate aquatic life use. In accordance with Title 30 Texas Administrative Code §307.5 and TCEQ's *Procedures to Implement the Texas Surface Water Quality Standards* (June 2010), an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Corpus Christi Inner Harbor, which has been identified as having intermediate aquatic life use. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

This link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice. For the exact location, refer to the application. <https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-97.418055%2C27.8075&level=12>

The TCEQ Executive Director reviewed this action for consistency with the Texas Coastal Management Program (CMP) goals and policies in accordance with the regulations of the General Land Office and has determined that the action is consistent with the applicable CMP goals and policies.

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying online at <https://www.ctexas.com/government/city-secretary/agendas/misc>.

**ALTERNATIVE LANGUAGE NOTICE.** Alternative language notice in Spanish is available at <https://www.tceq.texas.gov/per->

mitting/wastewater/plain-language-summaries-and-public-notices. El aviso de idioma alternativo en español está disponible en <https://www.tceq.texas.gov/permitting/wastewater/plain-language-summaries-and-public-notices>.

**PUBLIC COMMENT / PUBLIC MEETING.** You may submit public comments or request a public meeting about this application. The TCEQ will hold a public meeting on this application because it was requested by a local legislator.

The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all timely, relevant and material, or significant comments will be prepared by the Executive Director. All formal comments will be considered before a decision is reached on the permit application. A copy of the written response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

**The Public Meeting is to be held:**

**Thursday, April 18, 2024 at 7:00 p.m.**

**American Bank Convention Center (Henry Garrett Ballroom B and C)**

**1901 N. Shoreline Boulevard**

**Corpus Christi, Texas 78401**

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least five business days prior to the meeting.

**OPPORTUNITY FOR A CONTESTED CASE HEARING.** After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. **Unless the application is directly referred for a contested case hearing, the response to comments will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting a contested case hearing or reconsideration of the Executive Director's decision.** A contested case hearing is a legal proceeding similar to a civil trial in a state district court.

**TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST:** your name, address, phone number; applicant's name and proposed permit number; the location and distance of your property/activities relative to the proposed facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; a list of all disputed

issues of fact that you submit during the comment period; and the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify by name and physical address an individual member of the group who would be adversely affected by the proposed facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn. **If a hearing is granted, the subject of a hearing will be limited to disputed issues of fact or mixed questions of fact and law relating to relevant and material water quality concerns submitted during the comment period.**

**EXECUTIVE DIRECTOR ACTION.** The Executive Director may issue final approval of the application unless a timely contested case hearing request or request for reconsideration is filed. If a timely hearing request or request for reconsideration is filed, the Executive Director will not issue final approval of the permit and will forward the application and request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

**MAILING LIST.** If you submit public comments, a request for a contested case hearing, or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

**All written public comments and public meeting requests must be submitted to the Office of the Chief Clerk, MC 105, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at [www.tceq.texas.gov/goto/comment](http://www.tceq.texas.gov/goto/comment) within 30 days from the date of newspaper publication of this notice or by the date of the public meeting, whichever is later.**

**INFORMATION AVAILABLE ONLINE.** For details about the status of the application, visit the Commissioners' Integrated Database at [www.tceq.texas.gov/goto/cid](http://www.tceq.texas.gov/goto/cid). Search the database using the permit number for this application, which is provided at the top of this notice.

**AGENCY CONTACTS AND INFORMATION.** Public comments and requests must be submitted either electronically at [www.tceq.texas.gov/goto/comment](http://www.tceq.texas.gov/goto/comment), or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC 105, P.O. Box 13087, Austin, Texas 78711-3087. Any personal information you submit to the TCEQ will become part of the agency's record; this includes email addresses. For more information about this permit application or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040 or visit their website at [www.tceq.texas.gov/goto/pep](http://www.tceq.texas.gov/goto/pep). Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from City of Corpus Christi at the address stated above or by calling Mr. Esteban Ramos at (361) 826-3294.

Issued: March 6, 2024

TRD-202401147

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: March 13, 2024

## Texas Health and Human Services Commission

### Public Notice - Amendments to the Texas State Plan for Medical Assistance

The Texas Health and Human Services Commission (HHSC) announces its intent to submit the following amendment: Transmittal number 24-0001 to amend the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed effective date of the amendment is January 1, 2024.

The purpose of this amendment is to provide children under age 19 with 12 months of continuous eligibility in Medicaid, in accordance with Section 1902(e)(12) of the Social Security Act, as amended by Section 5112 of the Consolidated Appropriations Act, 2023. Children under age 19 will remain continuously eligible for the full 12-month certification period, regardless of changes in circumstances with certain exceptions.

To obtain copies of or information relating to the proposed amendment, interested parties may contact Nicole Hotchkiss, State Plan Coordinator, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 438-5035; or by email at [Medicaid\\_Chip\\_SPA\\_Inquiries@hhsc.state.tx.us](mailto:Medicaid_Chip_SPA_Inquiries@hhsc.state.tx.us). Copies of the proposal will also be made available for public review at the local offices of the Texas Health and Human Services Commission.

TRD-202401144

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: March 13, 2024

## Texas Department of Insurance

### Company Licensing

Application for North American Insurance Company, a foreign life, accident, and/or health company, to change its name to Knighthead American Life Insurance Company. The home office is in Oklahoma City, Oklahoma.

Application for Metromile Insurance Company, a foreign fire and/or casualty company, to change its name to Lemonade Property and Casualty Insurance Company. The home office is in San Francisco, California.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of John Carter, 1601 Congress Ave., Suite 6.900, Austin, Texas 78711.

TRD-202401142

Justin Beam

Chief Clerk

Texas Department of Insurance

Filed: March 13, 2024

## Texas Commission on Law Enforcement

### State of Texas Model Policies

Pursuant to Texas Occupations Code §§1701.167, 1701.4522, and 1701.4535 as added by Senate Bill 1445 (88R), the Texas Commission on Law Enforcement (Commission) is proposing model policies regarding Misconduct Allegations, Hiring Procedures, Personnel Files, and the Medical and Psychological Examination of a Licensee. These proposed model policies were developed with input from advisory committees.

The Misconduct Investigation, Hiring Procedures, and Personnel Files Advisory Committee was charged under Texas Occupations Code §§1701.4522 and 1701.4535 with developing model policies establishing procedures applicable to a law enforcement agency investigating alleged misconduct by a license holder employed by the agency, hiring a license holder, and maintaining personnel files with respect to a license holder.

The Examination of a Licensee Advisory Committee was charged under Texas Occupations Code §1701.167 with developing a model policy prescribing standards and procedures for the medical and psychological examination of new licensees, existing licensees, and licensees whose employing agency has reason to believe that a new examination is necessary (fitness-for-duty examination) to ensure the individuals are able to perform the duties for which the license is required.

Each law enforcement agency in Texas will be required to adopt and submit to the Commission these proposed model policies, or a substantively similar policy, if these proposed model policies are adopted by the Commission at the next regularly scheduled public meeting of the Commission on April 29, 2024.

These proposed model policies can be accessed through the Commission's website at <https://www.tcole.texas.gov/>, selecting About Us, then selecting The TCOLE Commission and its Members, and navigating down the page to the Public Comment section, or by using the below links.

<https://www.tcole.texas.gov/document/model-policy-misconduct-allegations.pdf>

<https://www.tcole.texas.gov/document/model-policy-hiring-procedures.pdf>

<https://www.tcole.texas.gov/document/model-policy-personnel-files.pdf>

<https://www.tcole.texas.gov/document/model-policy-medical-and-psychological-examination-licensee.pdf>

The Commission will accept comments regarding these proposed model policies, including the date by which law enforcement agencies shall adopt the final model policies. The comment period will last 30 days following the publication of this proposal in the *Texas Register*. Comments may be submitted electronically to [public.comment@tcole.texas.gov](mailto:public.comment@tcole.texas.gov) or in writing to Mr. John P. Beauchamp, General Counsel, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

TRD-202401095

Gregory Stevens  
Executive Director  
Texas Commission on Law Enforcement  
Filed: March 8, 2024

◆ ◆ ◆  
**Texas Lottery Commission**

Scratch Ticket Game Number 2582 "\$250,000 50X Cashword"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2582 is "\$250,000 50X CASHWORD". The play style is "crossword".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2582 shall be \$10.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2582.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, BLACKENED SQUARE SYMBOL, 2X SYMBOL, 3X SYMBOL, 5X SYMBOL, 10X SYMBOL and 50X SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. Crossword and Bingo style games do not typically have Play Symbol captions. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2582 - 1.2D

PLAY SYMBOL	CAPTION
A	
B	
C	
D	
E	
F	
G	
H	
I	
J	
K	
L	
M	
N	
O	
P	
Q	
R	
S	
T	
U	
V	
W	
X	

Y	
Z	
BLACKENED SQUARE SYMBOL	
2X SYMBOL	DBL
3X SYMBOL	TRP
5X SYMBOL	WINX5
10X SYMBOL	WINX10
50X SYMBOL	WINX50

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2582), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 050 within each Pack. The format will be: 2582-0000001-001.

H. Pack - A Pack of the "\$250,000 50X CASHWORD" Scratch Ticket Game contains 050 Tickets, packed in plastic shrink-wrapping and fan-folded in pages of one (1). Ticket back 001 and 050 will both be exposed.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "\$250,000 50X CASHWORD" Scratch Ticket Game No. 2582.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "\$250,000 50X CASHWORD" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose three hundred thirteen (313) Play Symbols. \$250,000 50X CASHWORD PLAY INSTRUCTIONS: 1. A player completely scratches all of the YOUR 20 LETTERS Play Symbols. Then the player scratches all the letters found in GAME 1, GAME 2 AND GAME 3 that exactly match the YOUR 20 LETTERS Play Symbols. 2. If the player has scratched at least 2 complete WORDS within a GAME, the player wins the prize found in the corresponding PRIZE

LEGEND. WORDS revealed in one GAME cannot be combined with WORDS revealed in another GAME. Each GAME is played separately. 3. Only 1 prize paid per GAME. 4. Only letters within the same GAME that are matched with the YOUR 20 LETTERS Play Symbols can be used to form a complete WORD. 5. In each GAME, every lettered square within an unbroken horizontal (left to right) or vertical (top to bottom) sequence must be matched with the YOUR 20 LETTERS Play Symbols to be considered a complete WORD. Words revealed in a diagonal sequence are not considered valid WORDS. Words within WORDS are not eligible for a prize. Words that are spelled from right to left or bottom to top are not eligible for a prize. 6. A complete WORD must contain at least 3 letters. 7. GAME 1 and GAME 2 can win by revealing 2 to 11 complete WORDS on each GAME. GAME 3 can win by revealing 2 to 9 complete WORDS. MULTIPLIER: The player scratches the 2 MULTIPLIER SYMBOLS. If the player reveals 2 matching MULTIPLIER SYMBOLS, the player multiplies the total prize won in GAMES 1, 2 AND 3 by that multiplier and wins that amount. For example, revealing 2 "50X" MULTIPLIER SYMBOLS will multiply the total prize won by 50 TIMES. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly three hundred thirteen (313) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption. Crossword and Bingo style games do not typically have Play Symbol captions;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;



7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;
10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Scratch Ticket must be complete and not miscut, and have exactly three hundred thirteen (313) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;
14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;
15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the three hundred thirteen (313) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the three hundred thirteen (313) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

## 2.2 Programmed Game Parameters.

A. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of Play Symbols.

B. GENERAL: There is no correlation between any exposed data on a Ticket and its status as a winner or non-winner.

C. CROSSWORD GAMES: Each grid from GAME 1 and GAME 2 will contain exactly the same number of letters.

D. CROSSWORD GAMES: Each grid from GAME 1 and GAME 2 will contain exactly the same number of words.

E. CROSSWORD GAMES: There will be no matching words on a Ticket.

F. CROSSWORD GAMES: All words used will be from the TX APPROVED WORDS v.2.042321, dated April 23, 2021.

G. CROSSWORD GAMES: All words will contain a minimum of three (3) letters.

H. CROSSWORD GAMES: All words will contain a maximum of nine (9) letters.

I. CROSSWORD GAMES: There will be a minimum of three (3) vowels in the YOUR 20 LETTERS play area. Vowels are considered to be A, E, I, O, U.

J. CROSSWORD GAMES: No consonant will appear more than nine (9) times, and no vowel will appear more than fourteen (14) times in GAME 1 and GAME 2.

K. CROSSWORD GAMES: There will be no matching Play Symbols in the YOUR 20 LETTERS play area.

L. CROSSWORD GAMES: No consonant will appear more than seven (7) times, and no vowel will appear more than ten (10) times in GAME 3.

M. CROSSWORD GAMES: At least fifteen (15) of the letters in the YOUR 20 LETTERS play area will open at least one (1) letter in GAME 1 (11x11), GAME 2 (11x11) and GAME 3 (7x7) crossword grids combinations.

N. CROSSWORD GAMES: The presence or absence of any letter or combination of letters in the YOUR 20 LETTERS play area will not be indicative of a winning or Non-Winning Ticket.

O. CROSSWORD GAMES: Words from the TX PROHIBITED WORDS v.2.042321, dated April 23, 2021, will not appear horizontally in the YOUR 20 LETTERS play area when read left to right or right to left.

P. CROSSWORD GAMES: On Non-Winning Tickets, there will be one (1) completed word in GAME 1 and one (1) completed word in GAME 2.

Q. CROSSWORD GAMES: There will be a random distribution of all Play Symbols on the Ticket, unless restricted by other parameters, play action or prize structure.

R. CROSSWORD GAMES: GAME 1 and GAME 2 will have no more than eleven (11) complete words per grid.

S. CROSSWORD GAMES: GAME 3 will have no more than nine (9) complete words.

T. CROSSWORD GAMES: A Ticket can only win one (1) time per GAME and a total of up to three (3) times per Ticket in accordance with the prize structure.

U. CROSSWORD GAMES: Each Ticket in a Pack will have unique GAMES.

V. CROSSWORD GAMES: MULTIPLIER: Two (2) matching MULTIPLIER SYMBOLS Play Symbols of "2X" (DBL), "3X" (TRP), "5X"

(WINX5), "10X" (WINX10) or "50X" (WINX50) will only appear on winning Tickets, as dictated by the prize structure.

**W. CROSSWORD GAMES: MULTIPLIER:** Tickets that do not win in the "MULTIPLIER" play area will display two (2) different MULTIPLIER SYMBOLS Play Symbols.

### 2.3 Procedure for Claiming Prizes.

A. To claim a "\$250,000 50X CASHWORD" Scratch Ticket Game prize of \$10.00, \$20.00, \$30.00, \$50.00, \$80.00, \$100, \$200 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$30.00, \$50.00, \$80.00, \$100, \$200 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "\$250,000 50X CASHWORD" Scratch Ticket Game prize of \$1,000, \$10,000 or \$250,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "\$250,000 50X CASHWORD" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is \$1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
2. in default on a loan made under Chapter 52, Education Code;
3. in default on a loan guaranteed under Chapter 57, Education Code; or
4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "\$250,000 50X CASHWORD" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "\$250,000 50X CASHWORD" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

### 3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 22,080,000 Scratch Tickets in Scratch Ticket Game No. 2582. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2582 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$10.00	2,428,800	9.09
\$20.00	1,545,600	14.29
\$30.00	1,545,600	14.29
\$50.00	441,600	50.00
\$80.00	82,800	266.67
\$100	133,400	165.52
\$200	21,896	1,008.40
\$500	3,680	6,000.00
\$1,000	2,024	10,909.09
\$10,000	30	736,000.00
\$250,000	10	2,208,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.56. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2582 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2582, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202401145  
 Bob Biard  
 General Counsel  
 Texas Lottery Commission  
 Filed: March 13, 2024

◆ ◆ ◆  
**Middle Rio Grande Workforce Development Board**

RFQ for Legal Services

Workforce Solutions Middle Rio Grande Board (Board) is soliciting quotes from state certified administrative law attorneys to provide occasional legal advice and document review for workforce development programs and administration. The selected respondent will enter into a one-year contract for services on an "as needed" basis. The contract may be renewed for up to three additional years in one-year increments subject to successful performance of the requested services. Deadline is 12:00 noon, March 26, 2024.

The successful respondent will assist the Board Staff by providing counsel regarding various issues affecting the Board:

1. Personnel policies review
2. Administrative policy and procedures review
3. Representation of the Board in litigation proceedings
4. Representation of the Board in employment law matters

5. Interaction with the Executive Director and staff as needed to facilitate review of documents as needed.

The RFQ may be obtained on the Board's web page: [www.wfsmrg.org](http://www.wfsmrg.org) or by email at [marisa.cervantes1@wfsmrg.org](mailto:marisa.cervantes1@wfsmrg.org) or [rosalind.lozano@wfsmrg.org](mailto:rosalind.lozano@wfsmrg.org) or call (830) 591-0141.

TRD-202401119

Rosie Lozano

Assistant Executive Director

Middle Rio Grande Workforce Development Board

Filed: March 11, 2024

◆ ◆ ◆  
**North Central Texas Council of Governments**

Notice of Contract Award for Platform Available to Measure the Performance of the Traffic Signals in the Dallas-Fort Worth Region

Pursuant to the provisions of Government Code, Chapter 2254, the North Central Texas Council of Governments publishes this notice of contract award. The request appeared in the September 1, 2023, issue of the *Texas Register* (48 TexReg 4904). The selected entity will perform technical and professional work for the Platform Available to Measure the Performance of the Traffic Signals in the Dallas-Fort Worth Region

The entity selected for this project is INRIX, Inc., 10210 NE Points Drive, Suite 400, Kirkland, Washington 98033 for a contract amount not to exceed \$7,500,000 over a six-year term (initial term of three years, with three one-year optional renewals).

Issued in Arlington, Texas on March 6, 2024.

TRD-202400998

R. Michael Eastland

Executive Director

North Central Texas Council of Governments

Filed: March 6, 2024

◆ ◆ ◆  
Request for Qualifications for NCTCOG Traffic Incident Management Training Program (First Responder and Manager's Course and Executive Level Course)

The North Central Texas Council of Governments (NCTCOG) is requesting written qualifications from individuals interested in instructing the NCTCOG Traffic Incident Management Training Program (First Responder and Manager's Course and Executive Level Course). The purpose of this training program is to initiate a common, coordinated response to traffic incidents that will build partnerships, enhance safety for emergency personnel, reduce upstream traffic crashes, improve the efficiency of the transportation system, and improve air quality in the Dallas-Fort Worth region.

Qualifications must be received no later than 5:00 p.m., Central Time, on **Friday, April 19, 2024**, to Camille Fountain, Senior Transportation Planner, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011 and electronic submissions to [TransRFPs@nctcog.org](mailto:TransRFPs@nctcog.org). The Request for Qualifications will be available at [www.nctcog.org/rfp](http://www.nctcog.org/rfp) by the close of business on **Friday, March 22, 2024**.

NCTCOG encourages participation by disadvantaged business enterprises and does not discriminate on the basis of age, race, color, religion, sex, national origin, or disability.

TRD-202401140

R. Michael Eastland

Executive Director

North Central Texas Council of Governments

Filed: March 13, 2024

◆ ◆ ◆  
**Public Utility Commission of Texas**

Notice of Application for Recovery of Universal Service Funding

Notice is given to the public of an application filed with the Public Utility Commission of Texas (Commission) on March 11, 2024, for recovery of universal service funding under Public Utility Regulatory Act (PURA) § 56.025 and 16 Texas Administrative Code (TAC) §26.406.

Docket Style and Number: Application of Brazoria Telephone Company to Recover Funds from the Texas Universal Service Fund under PURA § 56.025 and 16 TAC §26.406 For Calendar Year 2022, Docket Number 56338.

The Application: Brazoria Telephone Company seeks recovery of funds from the Texas Universal Service Fund (TUSF) due to Federal Communications Commission actions resulting in a reduction in the Federal Universal Service Fund (FUSF) revenues available to Brazoria Telephone Company for 2022. Brazoria Telephone Company requests that the Commission allow recovery of funds from the TUSF in the amount of \$1,265,187.24 for 2022 to replace the projected reduction in FUSF revenue.

Persons wishing to intervene or comment on the action sought should contact the Commission by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 56338.

TRD-202401123

Andrea Gonzalez

Rules Coordinator

Public Utility Commission of Texas

Filed: March 12, 2024

◆ ◆ ◆  
Notice of Application to Transfer Load to ERCOT

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on February 1, 2024, by the City of Caldwell for approval of the transfer of its load into the Electric Reliability Council of Texas, Inc. (ERCOT) region.

Docket Title and Number: Application of City of Caldwell, Texas to Transfer Megawatts of Load to ERCOT, Docket Number 56164.

The City of Caldwell requests to transfer 14 megawatts, which constitutes all of the load associated with the City of Caldwell's municipal electric system, from the Midcontinent Independent System Operator region to the ERCOT region.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477 as a deadline to intervene may be imposed. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 56164.

TRD-202401063  
Andrea Gonzalez  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: March 8, 2024

◆ ◆ ◆  
**Workforce Solutions North Texas**

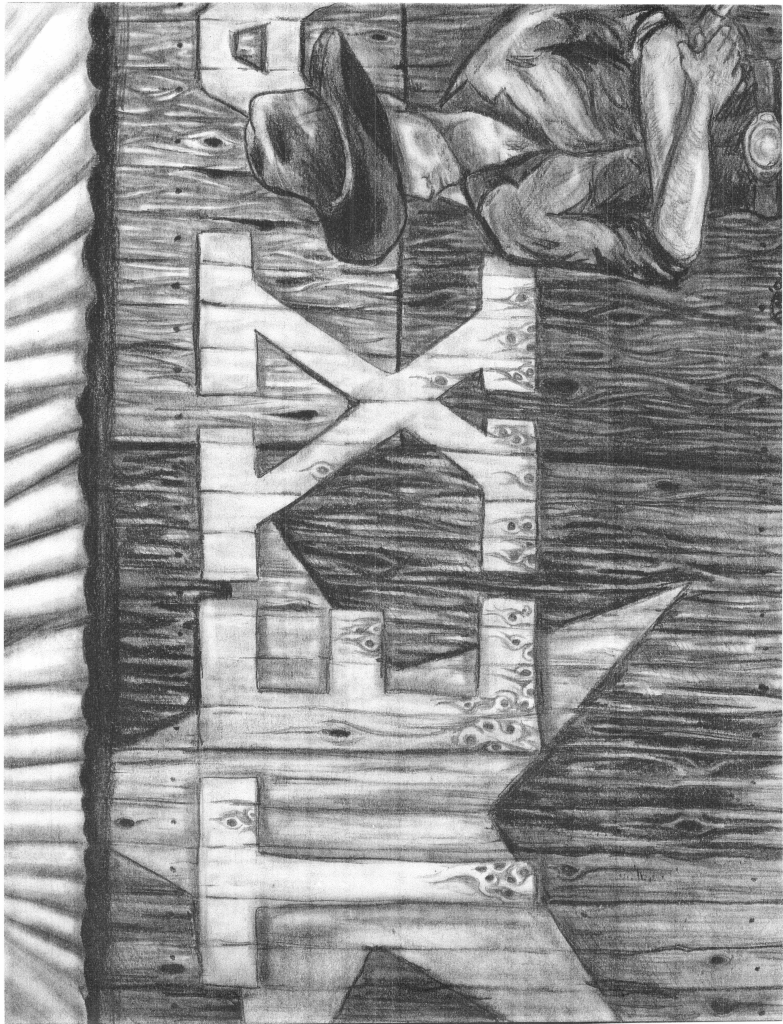
RFQ 2024-012 Real Estate Broker

The Workforce Resource, Inc., d.b.a. Workforce Solutions North Texas (WSNT) is seeking proposals from qualified real estate brokers/firms to provide real estate advisory services and commercial leasing agent representation on behalf of WSNT. WSNT serves the Texas Counties

of Archer, Baylor, Clay, Cottle, Foard, Hardeman, Jack, Montague, Wichita, Wilbarger, and Young. The RFP2024-012 is posted on website at <https://ntxworksolutions.org/business-opportunities/>. Deadline for questions is March 14, 2024 by 5 p.m. **Proposals are due no later than 4:00 p.m. (CDT) Tuesday, March 26, 2024 to email [wsb@ntxworksolutions.org](mailto:wsb@ntxworksolutions.org).**

TRD-202401021  
Sharon Hulcy  
Contract Manager  
Workforce Solutions North Texas  
Filed: March 7, 2024

◆ ◆ ◆



## How to Use the Texas Register

**Information Available:** The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules** - sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Review of Agency Rules** - notices of state agency rules review.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Transferred Rules** - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words “TexReg” and the beginning page number on which that document was published. For example, a document published on page 24 of Volume 49 (2024) is cited as follows: 49 TexReg 24.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written “49 TexReg 2 issue date,” while on the opposite page, page 3, in the lower right-hand corner, would be written “issue date 49 TexReg 3.”

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

## Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State’s website at <http://www.sos.state.tx.us/tac>.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite:** Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to Update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule’s *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

### TITLE 1. ADMINISTRATION Part 4. Office of the Secretary of State Chapter 91. Texas Register

1 TAC §91.1.....950 (P)

## SALES AND CUSTOMER SUPPORT

Sales - To purchase subscriptions or back issues, you may contact LexisNexis Sales at 1-800-223-1940 from 7 a.m. to 7 p.m., Central Time, Monday through Friday. Subscription cost is \$502 annually for first-class mail delivery and \$340 annually for second-class mail delivery.

Customer Support - For questions concerning your subscription or account information, you may contact LexisNexis Matthew Bender Customer Support from 7 a.m. to 7 p.m., Central Time, Monday through Friday.

Phone: (800) 833-9844

Fax: (518) 487-3584

E-mail: [customer.support@lexisnexis.com](mailto:customer.support@lexisnexis.com)

Website: [www.lexisnexis.com/printedsc](http://www.lexisnexis.com/printedsc)



**LexisNexis**