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

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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 designated 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.

~~[(c) In accordance with Texas Government Code §2110.008, the commission establishes the following periods during which the advisory boards listed will continue in existence. The automatic abolishment date of each advisory board will be the date listed for that board unless the commission subsequently establishes a different date:]~~

~~[(1) Advisory Board 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

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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

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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 Occupations 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) ~~[(c)]~~ 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) [~~(c)~~] 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

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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) ~~[(c)]~~ 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

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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, 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

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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, 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

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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, 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 parimutuel 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.~~]

[~~(c) 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

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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, 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

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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 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 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, 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) [~~(c)~~] 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

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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 (FIIEs) 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 FIIE 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 FIIE 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 FIIEs. 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 FIIE 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 FIIE 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 FIIEs 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/. 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. 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.

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) [~~(c)~~] 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 [~~(c) 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 (c)(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) [~~(c) 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), [~~(c), 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) [~~(c)(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: Student 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.

~~*[(VI)* limited English proficiency.]~~

(C) As part of the evaluation described in subparagraph (B) of this paragraph and 34 CFR, §§300.304-300.311 [~~§§300.307-300.311~~], 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) [~~(c)~~] 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 duration 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

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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) [~~(c)~~] 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

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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/. 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. 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.

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

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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

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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 charters 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/.

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

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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 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

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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 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

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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 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

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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 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 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

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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 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) [~~(c)~~] 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

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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 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

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

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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 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 administrating 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

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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 tamper 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; and

(C) failure to receive the proper prescription drug.

(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

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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) [~~(1)~~] 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.~~]

[~~*(ii)* 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 beyond-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

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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@cprit.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 instantiations 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

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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@cprit.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.

§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 [~~tranche~~] 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

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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; 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.

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) [(c)] 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

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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, 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

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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 delivery 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) [~~(f)~~] 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

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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 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

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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 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

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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, 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

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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, 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

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