

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 103. HEALTH AND SAFETY

SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING SAFE SCHOOLS

19 TAC §103.1209, §103.1211

The Texas Education Agency (TEA) adopts amendments to §103.1209 and §103.1211, concerning mandatory school drills and active threat exercises. The amendment to §103.1209 is adopted with changes to the proposed text as published in the June 23, 2023 issue of the *Texas Register* (48 TexReg 3380) and will be republished. The amendment to §103.1211 is adopted without changes to the proposed text as published in the June 23, 2023 issue of the *Texas Register* (48 TexReg 3380) and will not be republished. The adopted amendments reorganize definitions and provide clarifications in §103.1209 and add requirements for certain active threat exercises in §103.1211.

REASONED JUSTIFICATION: Section 103.1209 requires that school districts and open-enrollment charter schools conduct emergency safety drills in accordance with Texas Education Code (TEC), §37.114.

The adopted amendment to §103.1209(b) reorganizes the definitions to distinguish between general terms, terms defining levels of exercises, and terms defining types of drills. The changes ensure distinction between events that include persons role playing as active aggressors and circumstances designed to train for, assess, practice, and improve incident mitigation, prevention, preparedness, response, and recovery in a risk-free environment. Subsections (c)(4) and (5) and (d)(4) are amended to clarify existing language.

Based on public comment, references to open-enrollment charter schools were added throughout §103.1209.

Section 103.1211 defines the requirements a school district must meet if it elects to conduct active threat exercises.

The adopted amendment to §103.1211 adds new subsection (c) to delineate between discussion-based tabletop exercises and operations-based, functional, or full-scale exercises. Additionally, subsection (c)(2) clarifies that the notice requirements currently in rule apply to an operations-based, a functional, or a full-scale exercise.

Section 103.1211(c)(4)(A) is amended to require that input from law enforcement personnel be solicited in the design of an operations-based, a functional, or a full-scale exercise.

New §103.1211(c)(5) is added to ensure that operations-based, functional, or full-scale exercises are conducted during non-instructional time when non-participants are not present in a district facility. Further, subsection (c)(5)(A)-(C) outlines requirements for participants. More specifically, although student participation would be discouraged, age requirements are detailed for students who receive an educational benefit by participating in an exercise, and all participants are required to opt in rather than opt out of an exercise. In addition, subsection (c)(5)(D) ensures that any exercise conducted is overseen by first responders or emergency management personnel.

New §103.1211(c)(6) is added to ensure local education agencies conduct an after-action review of the exercise to determine the extent to which it achieved key planning objectives.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began June 23, 2023, and ended July 24, 2023. Following is a summary of public comments and agency responses.

Comment: An individual commented in favor of mandatory shelter-in-place drills being combined, requiring one drill for either hazmat or bad weather annually. Simultaneously, the commenter expressed concern related to these drills requiring separate protocols. Specifically, the commenter stated that if only one of the drills is practiced, people may not know how to handle the other situation.

Response: The agency provides the following clarification. In accordance with TEC, §37.114, TEA designates the number and type of mandatory school drills to be conducted each semester of the school year. Flexibility is provided for the type of shelter-in-place drill conducted, allowing for local determination of the hazard most likely to impact a school. This does not prevent school systems from conducting additional drills to better ensure the safety and security of students, staff, and visitors.

Comment: Texas Public Charter Schools Association (TPCSA) indicated that open-enrollment charter schools are referenced inconsistently in §103.1209. TPCSA stated that by leaving out "open-enrollment charter schools" in some parts of the rule, it is not abundantly clear to all stakeholders that public charter schools are included.

Response: The agency agrees and has modified §103.1209 at adoption to include additional references to open-enrollment charter schools.

Comment: TPCSA suggested that TEA make student participation requirements clear for every drill type outlined in §103.1209. TPCSA commented that it is clear students should not participate in "simulated active shooter" exercises, but it is not explicitly stated that students should participate in all other required drills.

Response: The agency disagrees and has determined that §103.1209 is sufficient as written.

Comment: The Texas State Teachers Association (TSTA) expressed support for the proposed amendments regarding mandatory drills and active threat exercises, specifically that the rule on active threat exercises discourages student participation, requires all participants to opt in versus opt out, and permits exercise participants to withdraw from the exercise at any time. TSTA commented that the proposed rules demonstrate commitment to Texas students.

Response: The agency agrees. TEA is committed to better ensuring the safety and security of students, staff, and visitors across the state.

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §37.114, which requires the commissioner of education to provide best practices for conducting emergency drills and exercises and to designate the number and type of mandatory school drills to be conducted each semester of the school year; and TEC, §37.1141, which provides guidelines before a school district may conduct an active threat exercise.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §37.114 and §37.1141.

§103.1209. *Mandatory School Drills.*

(a) Requirement. Each school district and open-enrollment charter school shall conduct emergency safety drills in accordance with Texas Education Code (TEC), §37.114. Drills do not include persons role playing as active aggressors or other simulated threats.

(b) Definitions and related terms. The following words and terms related to drills and exercises, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise. These definitions do not apply to an active threat exercise, which is defined in TEC, §37.1141, and associated rules, if any.

(1) General terms.

(A) Active aggressor--An individual actively engaged in killing or attempting to kill people in a confined and populated area.

(B) Drill--A set of procedures that test a single, specific operation or function. Drills do not include persons role playing as active aggressors or other simulated threats. Drill examples include evacuating for a fire or locking down from an internal threat.

(C) Exercise--An instrument to train for, assess, practice, and improve performance in mitigation, prevention, preparedness, response, and recovery in a risk-free environment. While drills and exercises may overlap in some aspects, discussion-based and operation-based exercises are often more in depth and multi-faceted.

(2) Terms defining the level of exercise.

(A) Full-scale exercise--Typically the most complex and resource-intensive type of exercise. It involves multiple agencies, organizations, and jurisdictions and validates many facets of preparedness. This exercise often includes many players operating under cooperative systems such as the Incident Command System (ICS) or Unified Command. Resources and staff are mobilized as needed. All actions are taken as if the emergency is real. A full-scale exercise is the most time-consuming activity in the exercise continuum and is a multi-agency, multijurisdictional effort in which all resources are deployed. A full-scale exercise tests collaborations among the agencies and participants, public information systems, communication systems, and equipment. An Emergency Operations Center is established by either

law enforcement or fire services, and the ICS is activated. Because of all the logistics and resources needed for a full-scale exercise, it often takes a year to plan and is not held often. Usually, a school district or an open-enrollment charter school is not the organizer of such an exercise, but the district or charter school would play a critical role in both function and potential facility use.

(B) Functional exercise--Designed to validate and evaluate capabilities, multiple functions and/or sub-functions, or interdependent groups of functions. A functional exercise is typically focused on exercising plans, policies, procedures, and staff members involved in management, direction, command, and control functions. It allows participants to practice their specific roles or functions in an emergency. This type of exercise is conducted in a realistic, real-time simulated environment and often includes simulators (individuals who assist with the facilitation of the exercise) and follows a master scenario events list that dictates additional information, occurrences, or activities that affect the exercise scenario.

(C) Seminar exercise--A discussion-based exercise designed to orient participants to new or updated plans, policies, or procedures through informal discussions. Seminar exercises are often used to impart new information and formulate new ideas.

(D) Tabletop exercise--A small group discussion that walks through a scenario and the courses of action a school will need to take before, during, and after an emergency to lessen the impact on the school community. Participants problem-solve together through a detailed discussion of roles, responsibilities, and anticipated courses of action. A tabletop exercise leverages a defined scenario to direct discussion and may need an experienced facilitator depending on the complexity and objectives of the exercise.

(E) Workshop exercise--A type of discussion-based exercise focused on increased participant interaction and achieving or building a product (e.g., plans or policies). A workshop exercise is typically used to test new ideas, processes, or procedures; train groups in coordinated activities; and obtain consensus. A workshop exercise often uses breakout sessions to explore parts of an issue with smaller groups.

(3) Terms defining the type of drill.

(A) Evacuation drill--A response action schools take to quickly move students and staff from one place to another. The primary objective of an evacuation is to ensure that all staff, students, and visitors can quickly move away from the threat. Evacuation examples include a bomb threat or internal gas leak.

(B) Fire evacuation drill--A method of practicing how a building would be vacated in the event of a fire. The purpose of fire drills in buildings is to ensure that everyone knows how to exit safely as quickly as possible.

(C) Lockdown drill--A response action schools take to secure (close, latch, and lock) interior portions of school buildings and grounds during incidents that pose an immediate threat of violence inside the school. The primary objective is to quickly ensure all school students, staff, and visitors are secured away from immediate danger.

(D) Secure drill--A response action schools take to secure (close, latch, and lock) the perimeter of school buildings and grounds during incidents that pose a threat or hazard outside of the school building. This type of drill uses the security of the physical facility to act as protection to deny entry.

(E) Shelter-in-place for hazardous materials (hazmat) drill--A response action schools take to quickly move students, staff, and visitors indoors, perhaps for an extended period of time, because

it is safer inside the building than outside. Affected individuals may be required to move to rooms without windows or to rooms that can be sealed. Examples of a shelter-in-place for hazmat drill include train derailment with chemical release or smoke from a nearby fire.

(F) Shelter for severe weather drill--A response action schools take to quickly move students, staff, and visitors indoors, perhaps for an extended period of time, because it is safer inside the building than outside. For severe weather, depending on the type and/or threat level (watch versus warning), affected individuals may be required to move to rooms without windows on the lowest floor possible or to a weather shelter.

(c) Frequency. TEC, §37.114(2), requires the commissioner of education to designate the number of mandatory school drills to be conducted each semester of the school year, not to exceed eight drills each semester and sixteen drills for the entire school year. Neither this rule, nor the law, precludes a school district or an open-enrollment charter school from conducting more drills as deemed necessary and appropriate by the district or charter school. Following is the required minimum frequency of drills by type.

- (1) Secure drill--One per school year.
- (2) Lockdown drill--Two per school year (once per semester).
- (3) Evacuation drill--One per school year.
- (4) Shelter-in-place drill (for either severe weather or hazmat) --One per school year.
- (5) Fire evacuation drill--School districts and open-enrollment charter schools should consult with the local authority having jurisdiction (e.g., fire marshal) and comply with its requirements and recommendations. If a district does not have a local authority, it shall conduct four per school year (two per semester).

(d) Best practices for conducting drills and exercises. This subsection highlights best practices for conducting drills and exercises. For more information about best practices, refer to Texas School Safety Center guidance.

(1) Drills and exercises should be designed and conducted in accordance with guidance and best practice resources provided by the Texas School Safety Center.

(2) Drill and exercise design should include purpose, goals, and objectives that are stated in plans for each type of drill. Purpose, goals, and objectives should be developed with input from all sectors of the school community. Input in planning should be sought from multiple stakeholder perspectives for each type of drill and exercise, including from:

- (A) the district or charter school School Safety and Security Committee;
- (B) first responders;
- (C) mental and behavioral health professionals;
- (D) students and families; and
- (E) staff, including non-traditional teachers, coaches, trade instructors, custodians, and food service workers.

(3) Drill and exercise design elements should include:

- (A) physical and psychological safety for all participants;
- (B) planning in a trauma-informed manner to maximize learning and to minimize potential trauma for students and staff;

(C) providing advance notification of drills and exercises;

(D) planning for post-drill or after-action reviews of each drill and exercise; and

(E) ensuring drills and exercises are age and developmentally appropriate with the understanding that more complex drills and exercises will require a hierarchy of learning to achieve or obtain more advanced goals or objectives.

(4) Exercises are more complex than drills. It is recommended that school systems start with discussion-based exercises and work up to operation-based exercises. Discussion-based exercises include seminar exercises, tabletop exercises, and workshop exercises. Operation-based exercises include functional exercises and full-scale exercises. Exercises can be used for:

(A) testing and validating policies, plans, procedures, training, equipment, and interagency agreements;

(B) clarifying and training personnel in roles and responsibilities;

(C) improving interagency coordination and communications;

(D) identifying gaps in resources;

(E) improving individual performance; and

(F) identifying opportunities for improvement.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 20, 2023.

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



TITLE 34. PUBLIC FINANCE

PART 9. TEXAS BOND REVIEW BOARD

CHAPTER 190. ALLOCATION OF STATE'S LIMIT ON CERTAIN PRIVATE ACTIVITY BONDS

SUBCHAPTER A. PROGRAM RULES

34 TAC §§190.1 - 190.6, 190.8

The Texas Bond Review Board (BRB) adopts amendments to Texas Administrative Code, Title 34, Part 9, Chapter 190, Subchapter A, §190.1 General Provisions; §190.2 Allocation and Reservation System; §190.3 Filing Requirements for Applications for Reservation; §190.4 Filing Requirements for Applications for Carryforward; §190.5 Consideration of Qualified

Applications by the Board; §190.6 Expiration Provisions; and §190.8 Notices, Filings, and Submissions. The amendments are adopted without changes as proposed in the August 18, 2023, issue of the *Texas Register* (48 TexReg 4476) and will not be republished.

Reasoned Justification for the Adoption of the Amendments

The BRB adopted updates and clarifications to its rules in Texas Administrative Code (TAC) Chapter 190 based on the passage of House Bill 1766 by the 88th Legislature (2023 Regular Session). HB 1766 updates sections of Chapter 1372 of the Texas Government Code to stretch the limited "state-ceiling-resource" of the Private Activity Bond (PAB) program and incorporates a new first-priority classification for qualified residential rental projects.

An overview of the adopted rule amendments is as follows:

- 1) Adopted rule amendment to §190.3(e)(11) extends the limited "state ceiling" by restricting the amount of allocation designated at closing to a residential rental project if the program is oversubscribed for a program year (the amount of residential rental requests submitted for the lottery exceeds the total available amount for SC4 and SC5) as required by HB 1766,
- 2) Adopted rule amendment to §190.2(d), and §190.3(e)(10) incorporate a new first priority classification and shifts the subsequent existing priority classifications down by one increment as required by HB 1766,
- 3) Adopted rule amendment to §190.1(c)(34), and §190.3(e)(4) provide uniformity among the timeframe requirements for all bond resolutions to make them valid for a period of 18 months,
- 4) Adopted rule amendment to §190.5(h), and §190.8(e) correct or eliminate any outdated language in order to conform to current practice, and
- 5) Adopted rule amendment to §190.2(d), §190.3(b)(13) - (16), §190.3(e)(7), §190.3(e)(9), §190.4(e)(5), §190.6(a), and §190.8(d) correct capitalization, punctuation, typographical, and other miscellaneous grammatical errors.

Public Comment and BRB Responses

The public comment period on the adopted amendments opened on August 18, 2023, and extended through midnight on Sunday, September 17, 2023. During the public comment period, one comment was received electronically from Dominion Development. Specific comments are addressed below.

The BRB held a public meeting to consider comments on the adopted rule changes on Thursday, September 21, 2023, at 10:00 a.m. in Capitol Extension Room E2.028, 1100 Congress Ave., Austin, Texas 78701, and via videoconference meeting.

Public Comment by Khayree Duckett from Dominion Development

COMMENT

Mr. Duckett offered the following comments in support of the proposed rule amendment to §190.3(e)(11):

"House Bill 1766 established a cap on the percentage of a project's costs that may be financed with private activity bonds will result in more vital housing projects being built with the limited state ceiling of available private activity bonds. By instituting a conditional 55 percent bond financing cap applicable in years when demand for these bonds is high, the Legislature sought to reverse trends that saw diluted effectiveness of private activity bond funding and a failure to maximize the number of projects ultimately built in Texas."

"While some language in HB 1766 has proven ambiguous, 34 TAC §§190.3(e)(11) seeks to extend the limited state ceiling of certain private activity bonds by restricting the amount of allocation designated at closing to a residential rental project if the program is oversubscribed for a program year. Dominion is pleased to see that BRB has determined that that 1372.037(b) is: always applicable throughout a program year; for all allocations of residential rental project bonds, regardless of subceilings; and does not exclude allocations of residential rental project bonds that close with traditional or non-traditional carryforward on or after January 1, 2024, thus fulfilling the 88th Legislature's intent."

RESPONSE

The BRB appreciates the supportive comment. BRB will continue to strive to administer the Private Activity Bond Program to achieve the intent of the Legislature.

Concise Restatement of Statutory Authority:

The amendments are adopted under Texas Government Code §1372.004, which authorizes the BRB to adopt rules relating to its administration of the PAB program. They are also adopted under Texas Government Code §1372.006, which authorizes the BRB to require fees, and Texas Government Code §1372.0321, which sets forth priorities for reservations among issuers of qualified residential rental project issues. The statutory basis that authorizes BRB to designate an unencumbered state ceiling to an issuer is Texas Government Code §1372.073.

No other statute, articles, or codes are affected by the adopted rule amendments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Rob Latsha

Executive Director

Texas Bond Review Board

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For further information, please call: (512) 463-1741

