

# 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 1. ADMINISTRATION

### PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

#### CHAPTER 354. MEDICAID HEALTH SERVICES

##### SUBCHAPTER F. PHARMACY SERVICES

The Texas Health and Human Services Commission (HHSC) adopts amendments to §354.1832 and §354.1921, concerning Vendor Drug Program.

Section 354.1832 and §354.1921 are adopted without changes to the proposed text as published in the September 13, 2024, issue of the *Texas Register* (49 TexReg 7146). These rules will not be republished.

##### BACKGROUND AND JUSTIFICATION

The adopted rules implement House Bill (H.B.) 3286 and Senate Bill (S.B.) 241, 88th Legislature, Regular Session, 2023.

H.B. 3286 amended the Texas Government Code to add §531.0691, creating a new process for the Medicaid pharmacy benefit in which the Vendor Drug Program (VDP) will add drugs to the formulary on a provisional basis. H.B. 3286 also amended Texas Government Code Chapter 533 to add §533.071 which elaborates on an existing process in the Medicaid managed care program regarding Preferred Drug List (PDL) exceptions and when a non-preferred drug can be used by listing these exceptions. Section 533.071 also added new PDL exceptions.

S.B. 241 amended Texas Health and Safety Code Chapter 439 to add new Subchapter D, §439.102. Texas Health and Safety Code §439.102(a) requires a manufacturer of a brand name insulin prescription drug for which a generic or biosimilar prescription drug is not available and is included in the Medicaid VDP formulary, to submit to HHSC a written verification stating whether or not the unavailability of the generic or biosimilar prescription drug is the result, wholly or partly, (1) of a scheme by the manufacturer to pay a generic or biosimilar prescription drug manufacturer to delay manufacturing or marketing the generic or biosimilar drug; (2) a legal or business strategy to extend the life of a patent on the brand name prescription drug; (3) the manufacturer directly manipulating a patent on the brand name prescription drug; or (4) the manufacturer directly manipulating an action described in reasons (1)-(3) of this sentence on behalf of another entity.

Texas Health and Safety Code §439.102(b) requires HHSC to adopt rules that prescribe the form and manner for submission of the written verification required by §439.102(a). COMMENTS

The 31-day comment period ended October 14, 2024. During this period, HHSC received comments regarding the proposed rules from two commenters, the Texas Association of Health Plans and one individual. A summary of comments relating to the rules and HHSC's responses follows.

**Comment:** One commenter requested changes in proposed §354.1832(c) to include language to provide a denied formulary exception request for members who experience severe reactions to a medication for a rare genetic syndrome.

**Response:** This comment for requested changes is outside the scope of the proposed rule amendment. This project addresses prior authorization exceptions for drugs that exist on the formulary. This commenter is requesting a change regarding formulary exceptions, which is not addressed by this rule project. Therefore, HHSC declines to make changes to the proposed amendment based on the comment.

**Comment:** One commenter expressed support of the amendments to §354.1832 and §354.1921, stating that the rules provide essential patient protections that aim to reduce denials and enhance access to necessary medications for Medicaid patients, making a meaningful step towards better healthcare outcomes. The commenter also went into specifics about how the rule is clear about identifying exceptions for patients to maintain medication access.

**Response:** HHSC appreciates this stakeholder's support in the implementation of these rule amendments.

## DIVISION 2. ADMINISTRATION

### 1 TAC §354.1832

#### STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which requires the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties under Chapter 531; Texas Human Resources Code §32.021(c), which requires the executive commissioner to adopt rules necessary for the proper and efficient operation of the medical assistance program; and Texas Government Code §533.071, which requires the commission to adopt rules allowing exceptions to the preferred drug list under certain specified conditions.

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 January 10, 2025.

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For further information, please call: (512) 438-2910



## DIVISION 7. TEXAS DRUG CODE INDEX--ADDITIONS, RETENTIONS, AND DELETIONS

### 1 TAC §354.1921

#### STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which requires the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties under Chapter 531; Texas Human Resources Code §32.021(c), which requires the executive commissioner to adopt rules necessary for the proper and efficient operation of the medical assistance program; and Texas Government Code §533.071, which requires the commission to adopt rules allowing exceptions to the preferred drug list under certain specified conditions.

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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## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 67. STATE REVIEW AND APPROVAL OF INSTRUCTIONAL MATERIALS SUBCHAPTER B. STATE REVIEW AND APPROVAL

### 19 TAC §67.25

The State Board of Education (SBOE) adopts an amendment to §67.25, concerning state review and approval of instructional

materials. The amendment is adopted with changes to the proposed text as published in the October 11, 2024 issue of the *Texas Register* (49 TexReg 8304) and will be republished. The adopted amendment establishes a minimum threshold for standards alignment for instructional materials for enrichment subjects and courses and for supplemental instructional materials by defining the criteria to be used in the review and approval of instructional materials by the SBOE and the Texas Education Agency (TEA).

**REASONED JUSTIFICATION:** Texas Education Code (TEC), Chapter 31, addresses instructional materials in public education and permits the SBOE to adopt rules for the adoption, requisition, distribution, care, use, and disposal of instructional materials. House Bill 1605, 88th Texas Legislature, Regular Session, 2023, significantly revised TEC, Chapter 31, including several provisions under SBOE authority.

The adopted amendment establishes a minimum threshold for standards alignment for instructional materials for enrichment subjects and courses and for supplemental instructional materials by defining the criteria to be used in the review and approval of instructional materials.

At adoption, paragraph (2) was amended to modify the criteria for enrichment subjects by outlining the requirements for full-subject tier one instructional materials and partial-subject tier one instructional materials.

The SBOE approved the amendment for first reading and filing authorization at its September 13, 2024 meeting and for second reading and final adoption at its November 22, 2024 meeting.

In accordance with TEC, §7.102(f), the SBOE approved the amendment for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2025-2026 school year. The earlier effective date will allow the board to consider and review instructional materials for career and technical education courses and instructional materials for supplemental products in Instructional Materials Review and Approval (IMRA) Cycle 2025. The effective date is 20 days after filing as adopted with the Texas Register.

**SUMMARY OF COMMENTS AND RESPONSES:** The public comment period on the proposal began October 11, 2024, and ended at 5:00 p.m. on November 12, 2024. The SBOE also provided an opportunity for registered oral and written comments at its November 2024 meeting in accordance with the SBOE board operating policies and procedures. Following is a summary of the public comments received and corresponding responses.

**Comment.** A publisher expressed support for the proposed rule text for supplemental materials that would allow a publisher to indicate the standards covered by their product prior to review in the IMRA process.

**Response.** The SBOE agrees that the rule will support the wide array of supplemental materials in the marketplace and allow for a fair review of standards alignment.

**Comment.** Nine individuals commented in opposition to the materials under review for IMRA Cycle 2024.

**Response.** These comments are outside the scope of the proposed rulemaking.

**STATUTORY AUTHORITY.** The amendment is adopted under Texas Education Code (TEC), §28.002(a), which identifies the subjects of the required curriculum; TEC, §31.003(a), as amended by House Bill (HB) 1605, 88th Texas Legislature,

Regular Session, 2023, which permits the State Board of Education (SBOE) to adopt rules for the adoption, requisition, distribution, care, use, and disposal of instructional materials; TEC, §31.022, as amended by HB 1605, 88th Texas Legislature, Regular Session, 2023, which requires the SBOE to review instructional materials that have been provided to the board by the Texas Education Agency (TEA) under TEC, §31.023; and TEC, §31.023, as amended by HB 1605, 88th Texas Legislature, Regular Session, 2023, which requires the commissioner of education to establish, in consultation with and with the approval of the SBOE, a process for the annual review of instructional materials by TEA. In conducting a review under this section, TEA must use a rubric developed by TEA in consultation with and approved by the SBOE.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §28.002(a), and §§31.003(a), 31.022, and 31.023, as amended by House Bill 1605, 88th Texas Legislature, Regular Session, 2023.

§67.25. *Consideration and Approval of Instructional Materials by the State Board of Education.*

The State Board of Education (SBOE) shall review the results of the instructional materials reviews completed by a review panel and submitted by the commissioner of education in accordance with Texas Education Code (TEC), §31.022 and §31.023. Instructional materials may be placed on the list of approved instructional materials only if they meet the following criteria:

(1) for full-subject and partial-subject tier one instructional materials for foundation subjects as defined by TEC, §28.002(a)(1), the product components cover 100% of the Texas Essential Knowledge and Skills (TEKS) and applicable English Language Proficiency Standards (ELPS) for the specific grade level and subject area when the proclamation or request for instructional materials was issued. In determining the percentage of the TEKS and ELPS covered by instructional materials, each student expectation shall count as an independent element of the standards;

(2) for enrichment subjects as defined by TEC, §28.002(a)(2):

(A) the product components for full-subject tier one instructional materials cover 100% of the TEKS for the specific grade level and subject area when the proclamation or request for instructional materials was issued. In determining the percentage of the TEKS covered by instructional materials, each student expectation shall count as an independent element of the standards; and

(B) the product components for partial-subject tier one instructional materials cover 100% of the applicable TEKS for the specific grade level and subject area when the proclamation or request for instructional materials was issued. The agency will bring recommendations regarding which TEKS are applicable to the SBOE for approval. In determining the percentage of the TEKS covered by instructional materials, each student expectation shall count as an independent element of the standards;

(3) for supplemental instructional materials as defined by TEC, §31.002(3), the publisher will indicate which TEKS are applicable, and the product and its components cover 100% of the applicable student expectations in the TEKS for the specific subject or course for which the materials are designed;

(4) materials have been reviewed through the process required by TEC, §31.023;

(5) materials are free from factual error, defined as a verified error of fact or any error that would interfere with student learning, including significant grammatical or punctuation errors;

(6) materials meet the Web Content Accessibility Guidelines (WCAG) and meet the technical specifications of the Federal Rehabilitation Act, Section 508, as specified when a request for instructional materials or proclamation was issued;

(7) materials conform to or exceed in every instance the latest edition of the Manufacturing Standards and Specifications for Textbooks (MSST), developed by the State Instructional Materials Review Association, when the proclamation or request for instructional materials was issued;

(8) materials are compliant with the suitability standards adopted by the SBOE and are compliant with all applicable state laws; and

(9) materials provide access to a parent portal as required by TEC, §31.154.

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

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CHAPTER 120. OTHER TEXAS ESSENTIAL  
KNOWLEDGE AND SKILLS  
SUBCHAPTER B. ENGLISH LANGUAGE  
PROFICIENCY STANDARDS

19 TAC §120.20, §120.21

*(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figures in 19 TAC §120.20(e)(2) and §120.21(e)(2) are not included in the print version of the Texas Register. The figures are available in the on-line version of the January 24, 2025, issue of the Texas Register.)*

The State Board of Education (SBOE) adopts new §120.20 and §120.21, concerning English language proficiency standards (ELPS). The new sections are adopted with changes to the proposed text as published in the August 2, 2024 issue of the *Texas Register* (49 TexReg 5620) and will be republished. The new sections relocate the ELPS from 19 TAC §74.4 and update the standards to ensure they remain current and comply with federal requirements.

REASONED JUSTIFICATION: In 1998, standards for English as a second language (ESL) for students in Kindergarten-Grade 12 were adopted as part of 19 TAC Chapter 128, Texas Essential Knowledge and Skills for Spanish Language Arts and Reading

and English as a Second Language. In a subsequent Title III monitoring visit, the U.S. Department of Education (USDE) indicated that there was insufficient evidence demonstrating that the ESL standards outlined in 19 TAC Chapter 128 were aligned to state academic content and achievement standards in mathematics, as required by the No Child Left Behind Act (NCLB), §2113(b)(2). In November 2007, the SBOE adopted the ELPS as part of 19 TAC Chapter 74, Curriculum Requirements, to comply with NCLB requirements. The adopted ELPS in 19 TAC §74.4 clarified that state standards in English language acquisition must be implemented as an integral part of the instruction in each foundation and enrichment subject. Additionally, English language proficiency levels of beginning, intermediate, advanced, and advanced high in the domains of listening, speaking, reading, and writing were established as part of the ELPS, as required by NCLB. The superseded second language acquisition standards in 19 TAC Chapter 128 were also repealed in September 2008 during the process of revising the Texas Essential Knowledge and Skills (TEKS) in 19 TAC Chapters 110 and 128.

The SBOE began review and revision of the ELPS in 2019, in accordance with the SBOE's approved TEKS and instructional materials review schedule. Applications to serve on ELPS review work groups were posted on the Texas Education Agency (TEA) website in December 2018, and TEA distributed a survey to collect information from educators regarding the current ELPS. Work groups were convened in March, May, August, September, and October 2019. In September 2019, the USDE indicated that Texas only partially met the requirements of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act, and requested additional evidence that the ELPS are aligned to the state's academic content standards and contain language proficiency expectations needed for emergent bilingual students to demonstrate achievement of the state academic standards appropriate to each grade level/grade band in at least reading language arts, mathematics, and science.

In response to feedback from work group members and the USDE, TEA staff convened a panel of experts in second language acquisition from Texas institutions of higher education to complete an analysis of the work group recommendations and current research on English language acquisition. Based on the panel's findings and direction from the SBOE, TEA executed personal services contracts with the panel members and a representative of an education service center to prepare a draft of revisions to the ELPS. Text of the draft ELPS completed by the expert panel was presented to the SBOE at the June 2023 SBOE meeting.

Applications to serve on the 2023-2024 ELPS review work groups were collected by TEA from June 2023 through January 2024. TEA staff provided SBOE members with applications for approval to serve on ELPS work groups in July, September, and December 2023 and January 2024. ELPS review work groups were convened in August, September, and November 2023 and March 2024 with the charge of reviewing and revising the expert panel's draft. In April 2024, the SBOE held a discussion item on the proposed new ELPS, and in May and June 2024, TEA convened a final work group to complete the recommendations for the new ELPS.

The adopted new sections will be implemented in the 2026-2027 school year and will better align the ELPS for second language acquisition to ensure the standards are current and comply with federal requirements. To make the ELPS easier for the public to

locate and improve organization of the standards, they are being moved from 19 TAC §74.4 to Chapter 120, Subchapter B.

The following changes were made since published as proposed.

The general requirements in §120.20(b)(3) and §120.21(b)(3) were amended to read, "provide content-based instruction, including the cross-curricular second language acquisition essential knowledge and skills in subsection (d) of this section, in a manner that is linguistically accommodated to help the student acquire English language proficiency."

The introduction paragraphs in §120.20(c)(7)(B) and §120.21(c)(7)(B) were amended to read, "demonstrate targeted and intentional academic language skills to ensure content-area teachers are able to accurately evaluate the abilities of EB students and scaffold toward the increasingly complex English that students hear, speak, and are expected to read and write."

The student expectation in §120.21(d)(3)(E) was amended to read, "use pre-reading strategies, including previewing the text features, connecting to prior knowledge, organizing ideas, and making predictions, to develop comprehension."

*Figure: 19 TAC §120.20(e)(2)*

On each page, all proficiency level descriptor headings were amended by striking the numeric references "1 PRE-PRODUCTION," "2 BEGINNING," "3 INTERMEDIATE," "4 HIGH INTERMEDIATE," and "5 ADVANCED" for each level to read, "PRE-PRODUCTION," "BEGINNING," "INTERMEDIATE," "HIGH INTERMEDIATE," and "ADVANCED."

On each page, the pre-production proficiency level descriptor heading was amended to read, "With highly scaffolded instruction and linguistic support, the EB student may."

On page 1, related to ELPS Listening: General for Kindergarten-Grade 3, the fourth language pattern was amended to read, "Language Structures/Pragmatics."

On page 2, related to ELPS Listening: English Language Arts and Reading for Kindergarten-Grade 3, the pre-production proficiency level descriptor for Phonology was modified to remove the word "associations" and replace with the word "correspondence."

On page 3, related to ELPS Listening: Mathematics for Kindergarten-Grade 3, the beginning proficiency level descriptor for Language Structures/Pragmatics was modified to remove the semicolon between "descriptions" and "(attributes)."

On page 5, related to ELPS Listening: Science for Kindergarten-Grade 3, the pre-production proficiency level descriptor for Vocabulary was modified to remove the word "academic."

On page 5, related to ELPS Listening: Science for Kindergarten-Grade 3, the third language pattern was amended to read, "Language Structures/Pragmatics."

On page 6, related to ELPS Listening: Social Studies for Kindergarten-Grade 3, the second language pattern was amended to read, "Language Structures/Pragmatics."

On page 7, related to ELPS Speaking: General for Kindergarten-Grade 3, the third beginning proficiency level descriptor for Vocabulary was amended to read, "recite high-frequency, content-area words, including cognates."

On page 7, related to ELPS Speaking: General for Kindergarten-Grade 3, the third intermediate proficiency level descriptor for Vocabulary was amended to read, "speak using high-frequency,

content-area words in simple phrases with support from cognates."

On page 8, related to ELPS Speaking: General for Kindergarten-Grade 3, the intermediate proficiency level descriptor for Register was modified to remove the phrase "to increase" and replace with the phrase "with increasing."

On page 8, related to ELPS Speaking: General for Kindergarten-Grade 3, the second intermediate proficiency level descriptor for Discourse was modified to remove the phrase "with language supports."

On page 8, related to ELPS Speaking: General for Kindergarten-Grade 3, the first pre-production proficiency level descriptor for Respond to Information was amended to read, "respond with gestures or mimic simple, modeled responses."

On page 8, related to ELPS Speaking: General for Kindergarten-Grade 3, the first beginning proficiency level descriptor for Respond to Information was modified to remove the word "word" and replace with the word "words."

On page 8, related to ELPS Speaking: General for Kindergarten-Grade 3, the first advanced proficiency level descriptor for Respond to Information was modified to remove the word "in."

On page 8, related to ELPS Speaking: General for Kindergarten-Grade 3, the third intermediate proficiency level descriptor for Respond to Information was amended to read, "ask questions orally about content-area topics using question words and phrases."

On page 8, related to ELPS Speaking: General for Kindergarten-Grade 3, the third intermediate proficiency level descriptor for Respond to Information was amended to read, "ask questions orally about content-area topics using question words in simple sentences."

On page 9, related to ELPS Speaking for Kindergarten-Grade 3, the title of the page was amended to read, "ELPS Speaking: English Language Arts and Reading."

On page 9, related to ELPS Speaking: English Language Arts and Reading for Kindergarten-Grade 3, the second language pattern was amended to read, "Respond to Information."

On page 9, related to ELPS Speaking: English Language Arts and Reading for Kindergarten-Grade 3, the beginning proficiency level descriptor for Respond to Information was modified to remove the phrase "with language supports."

On page 9, related to ELPS Speaking: English Language Arts and Reading for Kindergarten-Grade 3, the intermediate proficiency level descriptor for Respond to Information was modified to remove the phrase "with language supports."

On page 10, related to ELPS Speaking: Mathematics for Kindergarten-Grade 3, the intermediate proficiency level descriptor for Language Structures/Syntax was amended to read, "speak using mathematical words or phrases about mathematical relationships, processes, problem-solving, or mathematical models."

On page 10, related to ELPS Speaking: Mathematics for Kindergarten-Grade 3, the high intermediate proficiency level descriptor for Discourse was amended to read, "use sentences to orally describe and justify mathematical ideas, reasoning, arguments, and application of multiple representations, including symbols, diagrams, or graphs."

On page 10, related to ELPS Speaking: Mathematics for Kindergarten-Grade 3, the advanced proficiency level descriptor for Discourse was amended to read, "use sentences and precise mathematical language to explain and justify mathematical ideas, reasoning, arguments, and application of multiple representations, including symbols, diagrams, or graphs."

On page 11, related to ELPS Speaking: Science for Kindergarten-Grade 3, the intermediate proficiency level descriptor for Discourse was amended to read, "justify or convey orally a proposed solution or hypothesis using phrases to include some ideas or opinions based on scientific data."

On page 12, related to ELPS Speaking: Social Studies for Kindergarten-Grade 3, the beginning proficiency level descriptor for Discourse was modified to remove the phrase "with language supports."

On page 13, related to ELPS Reading: General for Kindergarten-Grade 3, the advanced proficiency level descriptor for Vocabulary was amended to read, "demonstrate comprehension of familiar and unfamiliar content-area concepts found in text by responding orally or in writing using key vocabulary with accuracy."

On page 13, related to ELPS Reading: General for Kindergarten-Grade 3, the pre-production proficiency level descriptor for Print Concepts was amended to read, "imitate how others read a book from top to bottom and turn pages from left to right."

On page 14, related to ELPS Reading: General for Kindergarten-Grade 3, the pre-production proficiency level descriptor for Fluency was amended to read, "mimic word-by-word during shared or choral reading of familiar grade-level, content-area text."

On page 14, related to ELPS Reading: General for Kindergarten-Grade 3, the beginning proficiency level descriptor for Fluency was amended to read, "read word-by-word when reading familiar grade-level, content-area text."

On page 14, related to ELPS Reading: General for Kindergarten-Grade 3, the intermediate proficiency level descriptor for Fluency was amended to read, "read in two-word phrases with some three- or four-word groupings when reading familiar grade-level, content-area text."

On page 14, related to ELPS Reading: General for Kindergarten-Grade 3, the high intermediate proficiency level descriptor for Fluency was amended to read, "read in three- or four-word phrase groups up to simple sentences when reading familiar grade-level, content-area text."

On page 14, related to ELPS Reading: General for Kindergarten-Grade 3, the advanced proficiency level descriptor for Fluency was amended to read, "read in larger, meaningful phrase groups or sentences when reading familiar grade-level, content-area text."

On page 15, related to ELPS Reading for Kindergarten-Grade 3, the title of the page was amended to read, "ELPS Reading: English Language Arts and Reading."

On page 16, related to ELPS Reading: Mathematics for Kindergarten-Grade 3, the pre-production proficiency level descriptor for Language Structures: Semantics/Pragmatics was amended to read, "use pictures, manipulatives, or primary language to demonstrate an understanding of mathematical language structures and symbols read such as sum, equal, (=), greater than, (>), less than, and (<) in mathematical problems."

On page 16, related to ELPS Reading: Mathematics for Kindergarten-Grade 3, the beginning proficiency level descriptor for Language Structures: Semantics/Pragmatics was amended to read, "use pictures, manipulatives, or primary language to demonstrate an understanding of mathematical structures and symbols read such as sum, equal, (=), greater than, (>), less than, and (<) in mathematical problems."

On page 16, related to ELPS Reading: Mathematics for Kindergarten-Grade 3, the intermediate proficiency level descriptor for Language Structures: Semantics/Pragmatics was amended to read, "identify keywords or phrases that correspond to mathematical symbols such as sum, equal, (=), greater than, (>), less than, and (<) read in mathematical problems."

On page 16, related to ELPS Reading: Mathematics for Kindergarten-Grade 3, the high intermediate proficiency level descriptor for Language Structures: Semantics/Pragmatics was amended to read, "identify language structures that correspond to mathematical symbols such as sum, equal, (=), greater than, (>), less than, and (<) read in mathematical problems."

On page 16, related to ELPS Reading: Mathematics for Kindergarten-Grade 3, the advanced proficiency level descriptor for Language Structures: Semantics/Pragmatics was amended to read, "distinguish between language structures that correspond to mathematical symbols such as sum, equal, (=), greater than, (>), less than, and (<) read in mathematical problems."

On page 17, related to ELPS Reading: Science for Kindergarten-Grade 3, the high intermediate proficiency level descriptor for Language Structures: Semantics/Pragmatics was modified to remove the comma between "read" and "with."

On page 17, related to ELPS Reading: Science for Kindergarten-Grade 3, the advanced proficiency level descriptor for Language Structures: Semantics/Pragmatics was modified to remove the comma between "read" and "with."

On page 18, related to ELPS Reading: Social Studies for Kindergarten-Grade 3, the pre-production proficiency level descriptor for Language Structures: Semantics/Pragmatics was modified to add "scaffolded" before "social studies text."

On page 18, related to ELPS Reading: Social Studies for Kindergarten-Grade 3, the beginning proficiency level descriptor for Language Structures: Semantics/Pragmatics was modified to remove the word "scaffolded" before "social studies text."

On page 18, related to ELPS Reading: Social Studies for Kindergarten-Grade 3, the pre-production proficiency level descriptor for Comprehension: Monitor and Adjust was amended to read, "identify or point to text features such as maps, data charts, and images from historical narratives or informational texts in shared reading."

On page 19, related to ELPS Writing: General for Kindergarten-Grade 3, an advanced proficiency level descriptor, "write words by sounding out phonemes or letter clusters with increasing accuracy," was added for Encoding as there was no proficiency level descriptor for this level and language pattern.

On page 19, related to ELPS Writing: General for Kindergarten-Grade 3, the intermediate proficiency level descriptor for Phonology was amended to read, "connect sounds to letters, including letter clusters and different syllable patterns, with increasing consistency."

On page 21, related to ELPS Writing for Kindergarten-Grade 3, the title of the page was amended to read, "ELPS Writing: English Language Arts and Reading."

On page 21, related to ELPS Writing: English Language Arts and Reading for Kindergarten-Grade 3, the first language pattern was amended to read, "Encoding."

On page 21, related to ELPS Writing: English Language Arts and Reading for Kindergarten-Grade 3, the second language pattern was amended to read, "Phonology."

On page 24, related to ELPS Writing: Social Studies for Kindergarten-Grade 3, the high intermediate proficiency level descriptor for Vocabulary was amended to read, "write sentences using high-frequency social studies language related to cause and effect, chronology, or comparison with relevant details."

On page 24, related to ELPS Writing: Social Studies for Kindergarten-Grade 3, the advanced proficiency level descriptor for Vocabulary was amended to read, "write sentences using precise social studies language related to cause and effect, chronology, comparison, or perspective with relevant and accurate details."

*Figure: 19 TAC §120.21(e)(2)*

On each page, all proficiency level descriptor headings were amended by striking the numeric references "1 PRE-PRODUCTION," "2 BEGINNING," "3 INTERMEDIATE," "4 HIGH INTERMEDIATE," and "5 ADVANCED" for each level to read, "PRE-PRODUCTION," "BEGINNING," "INTERMEDIATE," "HIGH INTERMEDIATE," and "ADVANCED."

On each page, the pre-production proficiency level descriptor heading was amended to read, "With highly scaffolded instruction and linguistic support, the EB student may."

On page 1, related to ELPS Listening: General for Grades 4-12, the fourth language pattern was amended to read, "Language Structures/Pragmatics."

On page 2, related to ELPS Listening for Grades 4-12, the title of the page was amended to read, "ELPS Listening: English Language Arts and Reading."

On page 2, related to ELPS Listening: English Language Arts and Reading for Grades 4-12, the pre-production proficiency level descriptor for Phonology was modified to remove the word "associations" and replace with the word "correspondence."

On page 2, related to ELPS Listening: English Language Arts and Reading for Grades 4-12, the beginning proficiency level descriptor for Comprehension was amended to read, "use one- to two-word responses or short phrases to respond to oral prompts and questions about aural information or text read aloud."

On page 3, related to ELPS Listening: Mathematics for Grades 4-12, the pre-production proficiency level descriptor for Following Directions was modified to remove the comma between "simple" and "mathematical."

On page 3, related to ELPS Listening: Mathematics for Grades 4-12, the beginning proficiency level descriptor for Language Structures/Pragmatics was modified to remove the semicolon between "descriptions" and "(attributes)."

On page 3, related to ELPS Listening: Mathematics for Grades 4-12, the advanced proficiency level descriptor for Language Structures/Pragmatics was amended to read, "participate in mathematical discussions using unfamiliar and familiar lan-

guage structures such as comparative, descriptive, sequential, and operational structures modeled orally in the classroom."

On page 4, related to ELPS Listening: Science for Grades 4-12, the third language pattern was amended to read, "Language Structures/Pragmatics."

On page 5, related to ELPS Listening: Social Studies for Grades 4-12, the second language pattern was amended to read, "Language Structures/Pragmatics."

On page 6, related to ELPS Speaking: General for Grades 4-12, the intermediate proficiency level descriptor for Vocabulary was modified to remove the word "specific" and replace with the word "area."

On page 6, related to ELPS Speaking: General for Grades 4-12, the beginning proficiency level descriptor for Vocabulary was amended to read, "recite high-frequency, content-area words, including cognates and Greek and Latin prefixes, suffixes, and roots."

On page 6, related to ELPS Speaking: General for Grades 4-12, the beginning proficiency level descriptor for Vocabulary was amended to read, "speak in simple phrases using high-frequency, content-area words with support from cognates and Greek and Latin prefixes, suffixes, and roots."

On page 7, related to ELPS Speaking: General for Grades 4-12, the intermediate proficiency level descriptor for Register was modified to remove the phrase "to increase" and replace with the phrase "with increasing."

On page 7, related to ELPS Speaking: General for Grades 4-12, the second intermediate proficiency level descriptor for Discourse was modified to remove the phrase "with language supports."

On page 7, related to ELPS Speaking: General for Grades 4-12, the first pre-production proficiency level descriptor for Respond to Information was amended to read, "respond with gestures or mimic simple, modeled responses."

On page 7, related to ELPS Speaking: General for Grades 4-12, the first beginning proficiency level descriptor for Respond to Information was modified to remove the word "word" and replace with the word "words."

On page 7, related to ELPS Speaking: General for Grades 4-12, the third intermediate proficiency level descriptor for Respond to Information was amended to read, "ask questions orally about content-area topics using question words and phrases."

On page 7, related to ELPS Speaking: General for Grades 4-12, the third high intermediate proficiency level descriptor for Respond to Information was amended to read, "ask questions orally about content-area topics using question words in simple sentences."

On page 8, related to ELPS Speaking for Grades 4-12, the title of the page was amended to read, "ELPS Speaking: English Language Arts and Reading."

On page 8, related to ELPS Speaking: English Language Arts and Reading for Grades 4-12, the second language pattern was amended to read, "Respond to Information."

On page 8, related to ELPS Speaking: English Language Arts and Reading for Grades 4-12, the beginning proficiency level descriptor for Respond to Information was modified to remove the phrase "with language supports."

On page 8, related to ELPS Speaking: English Language Arts and Reading for Grades 4-12, the intermediate proficiency level descriptor for Respond to Information was modified to remove the phrase "with language supports."

On page 9, related to ELPS Speaking: Mathematics for Grades 4-12, the beginning proficiency level descriptor for Discourse was modified to remove the phrase "with support."

On page 9, related to ELPS Speaking: Mathematics for Grades 4-12, the high intermediate proficiency level descriptor for Discourse was amended to read, "use sentences often to describe and justify mathematical ideas, reasoning, arguments, and application of multiple representations, including symbols, diagrams, and graphs."

On page 9, related to ELPS Speaking: Mathematics for Grades 4-12, the advanced proficiency level descriptor for Discourse was amended to read, "use sentences and precise mathematical language to explain and justify mathematical ideas, reasoning, arguments, and application of multiple representations, including symbols, diagrams, and graphs."

On page 11, related to ELPS Speaking: Social Studies for Grades 4-12, the first beginning proficiency level descriptor for Discourse was modified to remove the phrase "with language supports."

On page 12, related to ELPS Reading: General for Grades 4-12, the advanced proficiency level descriptor for Vocabulary was modified to remove the comma between "vocabulary" and "with."

On page 12, related to ELPS Reading: General for Grades 4-12, the pre-production proficiency level descriptor for Print Concepts was amended to read, "imitate how others read a book from top to bottom and turn pages from left to right."

On page 12, related to ELPS Reading: General for Grades 4-12, the beginning proficiency level descriptor for Purpose for Reading was modified to remove the comma between "English" and "when."

On page 12, related to ELPS Reading: General for Grades 4-12, the intermediate proficiency level descriptor for Purpose for Reading was modified to remove the comma between "text" and "when."

On page 13, related to ELPS Reading: General for Grades 4-12, the pre-production proficiency level descriptor for Fluency was amended to read, "mimic word-by-word during shared or choral reading of familiar grade-level, content-area text."

On page 13, related to ELPS Reading: General for Grades 4-12, the beginning proficiency level descriptor for Fluency was amended to read, "read word-by-word when reading familiar grade-level, content-area text."

On page 13, related to ELPS Reading: General for Grades 4-12, the intermediate proficiency level descriptor for Fluency was amended to read, "read in two-word phrases with some three- or four-word groupings when reading familiar grade-level, content-area text."

On page 13, related to ELPS Reading: General for Grades 4-12, the high intermediate proficiency level descriptor for Fluency was amended to read, "read in three- or four-word phrase groups up to simple sentences when reading familiar grade-level, content-area text."

On page 13, related to ELPS Reading: General for Grades 4-12, the advanced proficiency level descriptor for Fluency was

amended to read, "read in larger, meaningful phrase groups or sentences when reading familiar grade-level, content-area text with expressive interpretation."

On page 14, related to ELPS Reading for Grades 4-12, the title of the page was amended to read, "ELPS Reading: English Language Arts and Reading."

On page 15, related to ELPS Reading: Mathematics for Grades 4-12, the pre-production proficiency level descriptor for Language Structures: Semantics/Pragmatics was amended to read, "use pictures, manipulatives, or primary language to demonstrate an understanding of mathematical language structures read in simple mathematical problems."

On page 15, related to ELPS Reading: Mathematics for Grades 4-12, the beginning proficiency level descriptor for Language Structures: Semantics/Pragmatics was amended to read, "use pictures, manipulatives, or primary language to demonstrate an understanding of mathematical language structures and symbols read in mathematical problems."

On page 16, related to ELPS Reading: Science for Grades 4-12, the high intermediate proficiency level descriptor for Comprehension: Monitor and Adjust was modified to remove the comma between "read" and "with."

On page 16, related to ELPS Reading: Science for Grades 4-12, the advanced proficiency level descriptor for Comprehension: Monitor and Adjust was modified to remove the comma between "read" and "with."

On page 17, related to ELPS Reading: Social Studies for Grades 4-12, the pre-production proficiency level descriptor for Comprehension: Monitor and Adjust was amended to read, "identify or point to features such as maps, data charts, and images from historical narratives or informational texts in shared reading."

On page 18, related to ELPS Writing: General for Grades 4-12, the intermediate proficiency level descriptor for Phonology was amended to read, "connect sounds to letters, including letter clusters and different syllable patterns, with increasing consistency."

On page 20, related to ELPS Writing for Grades 4-12, the title of the page was amended to read, "ELPS Writing: English Language Arts and Reading."

On page 20, related to ELPS Writing: English Language Arts and Reading for Grades 4-12, the first language pattern was amended to read, "Encoding."

On page 20, related to ELPS Writing: English Language Arts and Reading for Grades 4-12, the second language pattern was amended to read, "Phonology."

On page 21, related to ELPS Writing: Mathematics for Grades 4-12, the first beginning proficiency level descriptor for Vocabulary was modified to remove the phrase "and their meaning."

On page 21, related to ELPS Writing: Mathematics for Grades 4-12, the second high intermediate proficiency level descriptor for Vocabulary was amended to read, "write common mathematical abbreviations such as units of measurement and formulas with increasing accuracy."

On page 21, related to ELPS Writing: Mathematics for Grades 4-12, the second advanced proficiency level descriptor for Vocabulary was amended to read, "write common mathematical abbreviations such as units of measurement and formulas with accuracy."

On page 22, related to ELPS Writing: Science for Grades 4-12, the intermediate proficiency level descriptor for Vocabulary was amended to read, "write using high-frequency science and engineering terms and simple phrases with support from cognates and Greek and Latin prefixes, suffixes, and roots."

The SBOE approved the new sections for first reading and filing authorization at its June 28, 2024 meeting and for second reading and final adoption at its September 13, 2024 meeting.

In accordance with TEC, §7.102(f), the SBOE approved the new sections for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2025-2026 school year. The earlier effective date will enable districts to begin preparing for implementation of the new ELPS. The effective date is 20 days after filing as adopted with the Texas Register.

**SUMMARY OF COMMENTS AND RESPONSES:** The public comment period on the proposal began August 2, 2024, and ended at 5:00 p.m. on September 3, 2024. The SBOE also provided an opportunity for registered oral and written comments at its September 2024 meeting in accordance with the SBOE board operating policies and procedures. Following is a summary of the public comments received and corresponding responses.

**Comment.** One community member asked if there are plans or a timeline for the development of a crosswalk between the current ELPS and the proposed new ELPS to show changes between the two sets of standards.

**Response.** This comment is outside the scope of the proposed rulemaking.

**Comment.** One parent questioned why there are limited proficiency level descriptors (PLDs) in Grades 4-12 for English language arts and reading (ELAR) in the proposed new ELPS. The commenter stated that the proposed PLDs in the ELAR section for the speaking, reading, and writing domains do not address the following language patterns: vocabulary, language structures/pragmatics, following directions, discourse, print concepts, comprehension, encoding, and fluency.

**Response.** The SBOE provides the following clarification. The adopted PLDs for Grades 4-12 in Figure §120.21(e) consist of five sections that address general, ELAR, mathematics, science, and social studies. PLDs in the general section apply to every subject area, including ELAR, and address language patterns such as vocabulary, language structures/pragmatics, following directions, discourse, print concepts, comprehension, encoding, and fluency where they are applicable in the speaking, reading, and writing domains.

**Comment.** One community member asked if the proposed new ELPS will be used for the 2025 Instructional Materials Review and Approval (IMRA) process.

**Response.** This comment is outside the scope of the proposed rulemaking.

**Comment.** One administrator recommended adding the word "images" to the proposed student expectation in §120.20(d)(1)(A) in the listening domain for Kindergarten-Grade 3.

**Response.** The SBOE disagrees and has determined that the suggestion to add "images" to the student expectation in §120.20(d)(1)(A) is unnecessary.



Comment. One administrator recommended changing the word "follow" to "respond" in the proposed student expectation in §120.20(d)(1)(C) in the listening domain for Kindergarten-Grade 3.

Response. The SBOE disagrees and has determined that the word "follow" in the student expectation in §120.20(d)(1)(C) in the listening domain for Kindergarten-Grade 3 appropriately reflects how a student should respond to oral directions when listening.

Comment. One administrator recommended changing the term "connecting words" to "transition words" in the proposed student expectation in §120.20(d)(2)(C) in the speaking domain for Kindergarten-Grade 3.

Response. The SBOE disagrees and has determined that the term "connecting words" is appropriate for Kindergarten-Grade 3 as proposed.

Comment. One administrator recommended changing the term "classroom material" to "a variety of text" in the proposed student expectation in §120.20(d)(3)(D) in the reading domain for Kindergarten-Grade 3.

Response. The SBOE disagrees and has determined that the term "classroom material" in the student expectation in §120.20(d)(3)(H) is developmentally appropriate for Kindergarten-Grade 3 students.

Comment. One administrator recommended adding the word "prosody" to the proposed student expectation in §120.20(d)(3)(H) in the reading domain for Kindergarten-Grade 3.

Response. The SBOE disagrees and has determined that the suggestion to add the word "prosody" to the student expectation in §120.20(d)(3)(H) is unnecessary.

Comment. One administrator recommended changing the phrase "spell words" to "write text" in the proposed student expectation in §120.20(d)(4)(B) in the writing domain for Kindergarten-Grade 3.

Response. The SBOE disagrees and has determined that the phrase "spell words" is appropriately included in the student expectation in §120.20(d)(4)(B) as proposed.

Comment. One administrator recommended changing the term "connecting words" to "transition words" in the student expectation in §120.20(d)(4)(D) in the writing domain for Kindergarten-Grade 3.

Response. The SBOE disagrees and has determined that the term "connecting words" in the student expectation in §120.20(d)(4)(D) is appropriate for Kindergarten-Grade 3 as proposed.

Comment. One administrator recommended changing the word "details" to "supporting details and evidence" in the proposed student expectation in §120.20(d)(4)(F) in the writing domain for Kindergarten-Grade 3.

Response. The SBOE disagrees that the suggested change is necessary and has determined that the word "details" is developmentally appropriate in the student expectation in §120.20(d)(4)(F) for Kindergarten-Grade 3.

Comment. One administrator expressed concern that there is not a PLD at the advanced level in Figure §120.20(e), General - Writing (Encoding), and the missing PLD may cause confusion.

Response. The SBOE agrees and took action to add a PLD for the advanced level in Figure §120.20(e)(2), General - Writing (Encoding), to read, "write words by sounding out phonemes or letter clusters with increasing accuracy."

Comment. One administrator expressed concern that relocating the proposed new ELPS from 19 TAC Chapter 74 to 19 TAC Chapter 120 would further reduce the visibility and importance of the ELPS.

Response. The SBOE disagrees and has determined that the relocation of the ELPS from 19 TAC Chapter 74 to 19 TAC Chapter 120 is appropriate and will increase the visibility of the ELPS.

Comment. One teacher expressed support for the proposed new ELPS as they appropriately reflect developmental expectations for emergent bilingual students.

Response. The SBOE agrees and took action to adopt the proposed new ELPS as amended.

Comment. One teacher expressed support for the proposed new ELPS and stated that the proposed new ELPS focus more clearly on English language proficiency growth and seem easier to implement with the TEKS.

Response. The SBOE agrees and took action to adopt the proposed new ELPS as amended.

Comment. One administrator stated that the proposed new ELPS will require a change to the Texas English Language Proficiency Assessment System (TELPAS) and information about these changes will need to be shared prior to the new assessment. The commenter expressed concern that while there has been plenty of time given leading up to the revised State of Texas Assessments of Academic Readiness (STAAR®), there has been little information shared about changes to TELPAS.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. One administrator stated that schools have not yet received students' speaking responses from recent TELPAS administrations.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. One teacher asked if the TELPAS would measure the new proficiency levels in the proposed new ELPS.

Response. This comment is outside the scope of the proposed rulemaking.

STATUTORY AUTHORITY. The new sections are adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; and TEC, §29.051, which establishes bilingual education and special language programs in public schools and provides supplemental financial assistance to help school districts meet the extra costs of the programs.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §§7.102(c)(4), 28.002(a), and 29.051.

*§120.20. English Language Proficiency Standards, Kindergarten-Grade 3, Adopted 2024.*

(a) Implementation. The provisions of this section shall be implemented by school districts beginning with the 2026-2027 school year.

(b) General requirements. In fulfilling the requirements of this section, school districts and charter schools shall:

(1) identify the student's English language proficiency levels in the domains of listening, speaking, reading, and writing in accordance with the proficiency level descriptors for the pre-production, beginning, intermediate, high intermediate, and advanced levels delineated in subsection (e) of this section;

(2) provide instruction in the knowledge and skills of the foundation and enrichment curriculum in a manner that is linguistically accommodated (communicated, sequenced, and scaffolded) commensurate with the student's levels of English language proficiency to ensure that the student learns the knowledge and skills in the required curriculum;

(3) provide content-based instruction, including the cross-curricular second language acquisition essential knowledge and skills in subsection (d) of this section, in a manner that is linguistically accommodated to help the student acquire English language proficiency; and

(4) provide intensive and ongoing foundational second language acquisition instruction to emergent bilingual (EB) students in Kindergarten-Grade 12 who are at the pre-production, beginning, or intermediate level of English language proficiency in listening, speaking, reading, or writing as determined by the state's English language proficiency assessment system. These EB students require focused, targeted, and systematic second language acquisition instruction to provide them with the foundation of English language necessary to support content-based instruction and accelerated learning of English.

(c) Introduction.

(1) The English language proficiency standards (ELPS) outline student expectations and proficiency level descriptors for EB students in English. The ELPS are organized across four language domains: listening, speaking, reading, and writing.

(2) Language acquisition is a complex process that consists of several interrelated components, including phonetics, phonology, semantics, syntax, morphology, and pragmatics. As students develop proficiency in these language structures, they are able to make connections between their primary language and English.

(3) Classroom contexts foster social and academic registers, which are types of language appropriate for a situation or setting, to support language proficiency. Informal (social) language consists of English needed for students to effectively interact, exchange ideas, and engage in various settings and contexts. Formal (academic) language consists of oral and written language used to build knowledge, participate in content-specific discourse, and process complex academic material found in formal school settings and interactions.

(4) The progression of skills in the four language domains are developed simultaneously and can be divided into two categories: receptive skills and expressive skills. Listening and reading are the receptive (input) skills. Students' development in receptive skills is necessary for comprehension and attainment of the English language and content. Speaking and writing are the expressive (output) skills. Students' ability to express and share their personal ideas and content knowledge allow teachers the opportunity to check for understanding and adjust instruction. Effective content-based language instruction involves engaging EB students in scaffolded opportunities to listen, speak, read, and write at their current levels of proficiency while gradually increasing linguistic complexity.

(5) In order for EB students to be successful, educators must create an environment that welcomes and encourages students

to leverage their unique cultural and linguistic experiences as they develop English language skills and learn academic content. Educators must cultivate an approach that integrates students' and their families' funds of knowledge into the classroom instructional practices. Culturally and linguistically sustaining practices leverage and celebrate students' cultural heritage and backgrounds while elevating their cultural and linguistic identities. Teaching and learning cognates that connect both (or multiple) languages can also construct bridges between languages and increase confidence as English language acquisition progresses.

(6) The ELPS student expectations are the knowledge and skills students must demonstrate. They indicate what students should know and be able to do in order to meet academic content standards. Proficiency level descriptors describe behaviors EB students exhibit across five proficiency levels as they acquire English. EB students may exhibit different proficiency levels within and across the domains of listening, speaking, reading, and writing.

(7) The ELPS demonstrate an asset-based approach to address the affective, linguistic, and cognitive needs of EB students in accordance with §89.1210(b) of this title (relating to Program Content and Design) as follows:

(A) acknowledge and leverage the existing funds of knowledge students possess, including linguistic repertoire, cultural heritage, and background knowledge;

(B) demonstrate targeted and intentional academic language skills to ensure content-area teachers are able to accurately evaluate the abilities of EB students and scaffold toward the increasingly complex English that students hear, speak, and are expected to read and write; and

(C) provide an exact and incremental measure of the stages of English language acquisition with attention to the fact that EB students at all levels of proficiency can engage in cognitively demanding tasks and master the required essential knowledge and skills with appropriate language support.

(8) The proficiency level descriptors are organized into general proficiency level descriptors and content-area proficiency level descriptors. General proficiency level descriptors are descriptions of a broad scope of student behaviors that can be observed in a variety of educational settings and across content areas. Content-area proficiency level descriptors describe student behaviors and language associated with discipline-specific learning in English language arts and reading, mathematics, science, and social studies.

(d) Cross-curricular English language acquisition student expectations.

(1) Student expectations--listening. The EB student listens to a variety of speakers, including teachers, peers, and multimedia, to gain an increasing level of comprehension in all content areas. The EB student may be at the pre-production, beginning, intermediate, high intermediate, or advanced proficiency levels in listening. The student is expected to:

(A) distinguish sounds and intonation patterns by responding orally, in writing, or with gestures;

(B) demonstrate an understanding of content-area vocabulary when heard during formal and informal classroom interactions by responding with gestures or images, orally, or in writing;

(C) follow oral directions with accuracy;

(D) use context to construct the meaning of descriptive language, words with multiple meanings, register, or figurative lan-

guage such as idiomatic expressions heard during formal and informal classroom interactions;

(E) demonstrate listening comprehension from information presented orally during formal and informal classroom interactions by recalling, retelling, responding, or asking for clarification or additional details; and

(F) derive meaning from a variety of auditory multimedia sources to build and reinforce concepts and language acquisition.

(2) Student expectations--speaking. The EB student speaks using a variety of language structures for a variety of purposes with an awareness of different language registers (formal/informal) using vocabulary with increasing accuracy and fluency in all content areas. The EB student may be at the pre-production, beginning, intermediate, high intermediate, or advanced proficiency level of English language acquisition in speaking. The student is expected to:

(A) produce sounds of newly acquired vocabulary such as long and short vowels, silent letters, and consonant clusters to pronounce words with accuracy;

(B) speak using content-area vocabulary during formal and informal classroom interactions to demonstrate acquisition of new words and high-frequency words;

(C) speak using a variety of language and grammatical structures, sentence lengths and types, and connecting words;

(D) speak using appropriate register to convey a message during formal and informal classroom interactions with accuracy and fluency;

(E) narrate, describe, or explain information or persuade orally with increasing specificity and detail during formal and informal classroom interactions; and

(F) restate, ask questions about, or respond to information during formal and informal classroom interactions.

(3) Student expectations--reading. The EB student reads a variety of texts for different purposes with an increasing level of comprehension in all content areas. The EB student may be at the pre-production, beginning, intermediate, high intermediate, or advanced proficiency levels of English language acquisition in reading. For Kindergarten and Grade 1, certain student expectations apply to text read aloud for students not yet at the stage of decoding written text. The student is expected to:

(A) demonstrate awareness of print concepts and directionality of reading as left to right and top to bottom;

(B) decode words using relationships between sounds and letters;

(C) use high-frequency words, cognates, and content-area vocabulary to comprehend written classroom materials;

(D) use context to construct the meaning of figurative language such as idiomatic expressions, descriptive language, and words with multiple meanings to comprehend classroom materials;

(E) use pre-reading strategies, including previewing text features, connecting to prior knowledge, organizing ideas, and making predictions, to develop comprehension;

(F) derive meaning from and demonstrate comprehension of content-area texts using visual, contextual, and linguistic supports;

(G) demonstrate reading comprehension of content-area texts by making connections, retelling, or responding to questions; and

(H) read with fluency and demonstrate comprehension of content-area text.

(4) Student expectations--writing. The EB student writes using a variety of language structures with increasing accuracy to effectively address a variety of purposes (formal and informal) and audiences in all content areas. The EB student may be at the pre-production, beginning, intermediate, high intermediate, or advanced proficiency levels of English language acquisition in writing. For Kindergarten and Grade 1, certain student expectations do not apply until the student has reached the proficiency level of generating original written text using a standard writing system. The student is expected to:

(A) apply relationships between sounds and letters of the English language to represent sounds when writing;

(B) spell words following conventional spelling patterns and rules;

(C) write using high-frequency words and content-area vocabulary;

(D) write using a variety of grade-appropriate sentence lengths and types and connecting words;

(E) write formal or informal text using conventions such as capitalization and punctuation and grammatical structures such as subject-verb agreement and verb tense; and

(F) write to narrate, describe, explain, respond, or persuade with detail in the content areas.

(e) Proficiency level descriptors.

(1) The following five proficiency levels describe students' progress in English language acquisition.

(A) Pre-production. The pre-production level, also known as the silent period, is the early stage of English language acquisition when receptive language is developing. Students develop comprehension when highly scaffolded instruction and linguistic support are provided. Student responses are mostly non-verbal.

(B) Beginning. The beginning level is characterized by speech emergence (expressive language) using one word or two-to-three-word phrases. Students at this level require highly scaffolded instruction and linguistic support. Students at this level begin to consistently use present tense verbs and repeat keywords and familiar phrases when engaging in formal and informal interactions.

(C) Intermediate. The intermediate level is characterized by the ability to use receptive and expressive language with demonstrated literal comprehension. Students at this level need moderately scaffolded instruction and linguistic support. Additional visual and linguistic support is needed to understand unfamiliar or abstract concepts such as figurative language, humor, and cultural or societal references. Students at this level begin to consistently use short phrases and simple sentences or ask short questions to demonstrate comprehension during formal and informal interactions.

(D) High intermediate. Students at the high intermediate level begin to consistently use a variety of sentence types, express opinions, share thoughts, and ask for clarification. Students at this level have an increased level of literal and abstract comprehension. Students may need minimal scaffolded instruction and linguistic support to engage in formal and informal classroom interactions.

(E) Advanced. The advanced level is characterized by the ability of students to engage in formal and informal classroom interactions with little to no linguistic support. Students at this level engage in discourse using content-area vocabulary and a variety of grammatical structures with increasing accuracy.

(2) The Kindergarten-Grade 3 proficiency level descriptors are described in the figure provided in this paragraph. Figure: 19 TAC §120.20(e)(2)

§120.21. *English Language Proficiency Standards, Grades 4-12, Adopted 2024.*

(a) Implementation. The provisions of this section shall be implemented by school districts beginning with the 2026-2027 school year.

(b) General requirements. In fulfilling the requirements of this section, school districts and charter schools shall:

(1) identify the student's English language proficiency levels in the domains of listening, speaking, reading, and writing in accordance with the proficiency level descriptors for the pre-production, beginning, intermediate, high intermediate, and advanced levels delineated in subsection (e) of this section;

(2) provide instruction in the knowledge and skills of the foundation and enrichment curriculum in a manner that is linguistically accommodated (communicated, sequenced, and scaffolded) commensurate with the student's levels of English language proficiency to ensure that the student learns the knowledge and skills in the required curriculum;

(3) provide content-based instruction, including the cross-curricular second language acquisition essential knowledge and skills in subsection (d) of this section, in a manner that is linguistically accommodated to help the student acquire English language proficiency; and

(4) provide intensive and ongoing foundational second language acquisition instruction to emergent bilingual (EB) students in Kindergarten-Grade 12 who are at the pre-production, beginning, or intermediate level of English language proficiency in listening, speaking, reading, or writing as determined by the state's English language proficiency assessment system. These EB students require focused, targeted, and systematic second language acquisition instruction to support them with the foundation of English language necessary to provide content-based instruction and accelerated learning of English.

(c) Introduction.

(1) The English language proficiency standards (ELPS) outline student expectations and proficiency level descriptors for EB students in English. The ELPS are organized across four language domains: listening, speaking, reading, and writing.

(2) Language acquisition is a complex process that consists of several interrelated components, including phonetics, phonology, semantics, syntax, morphology, and pragmatics. As students develop proficiency in these language structures, they are able to make connections between their primary language and English.

(3) Classroom contexts foster social and academic registers, which are types of language appropriate for a situation or setting, to support language proficiency. Informal (social) language consists of English needed for students to effectively interact, exchange ideas, and engage in various settings and contexts. Formal (academic) language consists of oral and written language used to build knowledge, participate in content-specific discourse, and process complex academic material found in formal school settings and interactions.

(4) The progression of skills in the four language domains are developed simultaneously and can be divided into two categories: receptive skills and expressive skills. Listening and reading are the receptive (input) skills. Students' development in receptive skills is necessary for comprehension and attainment of the English language and content. Speaking and writing are the expressive (output) skills. Students' ability to express and share their personal ideas and content knowledge allow teachers the opportunity to check for understanding and adjust instruction. Effective content-based language instruction involves engaging EB students in scaffolded opportunities to listen, speak, read, and write at their current levels of proficiency while gradually increasing linguistic complexity.

(5) In order for EB students to be successful, educators must create an environment that welcomes and encourages students to leverage their unique cultural and linguistic experiences as they develop English language skills and learn academic content. Educators must cultivate an approach that integrates students' and their families' funds of knowledge into the classroom instructional practices. Culturally and linguistically sustaining practices leverage and celebrate students' cultural heritage and backgrounds while elevating their cultural and linguistic identities. Teaching and learning cognates that connect both (or multiple) languages can also construct bridges between languages and increase confidence as English language acquisition progresses.

(6) The ELPS student expectations are the knowledge and skills students must demonstrate. They indicate what students should know and be able to do in order to meet academic content standards. Proficiency level descriptors describe behaviors EB students exhibit across five proficiency levels as they acquire English. EB students may exhibit different proficiency levels within and across the domains of listening, speaking, reading, and writing.

(7) The ELPS demonstrate an asset-based approach to address the affective, linguistic, and cognitive needs of EB students in accordance with §89.1210(b) of this title (relating to Program Content and Design) as follows:

(A) acknowledge and leverage the existing funds of knowledge students possess, including linguistic repertoire, cultural heritage, and background knowledge;

(B) demonstrate targeted and intentional academic language skills to ensure content-area teachers are able to accurately evaluate the abilities of EB students and scaffold toward the increasingly complex English that students hear, speak, and are expected to read and write; and

(C) provide an exact and incremental measure of the stages of English language acquisition with attention to the fact that EB students at all levels of proficiency can engage in cognitively demanding tasks and master the required essential knowledge and skills with appropriate language support.

(8) The proficiency level descriptors are organized into general proficiency level descriptors and content-area proficiency level descriptors. General proficiency level descriptors are descriptions of a broad scope of student behaviors that can be observed in a variety of educational settings and across content areas. Content-area proficiency level descriptors describe student behaviors and language associated with discipline-specific learning in English language arts and reading, mathematics, science, and social studies.

(d) Cross-curricular English language acquisition student expectations.

(1) Student expectations--listening. The EB student listens to a variety of speakers, including teachers, peers, and multimedia, to

gain an increasing level of comprehension in all content areas. The EB student may be at the pre-production, beginning, intermediate, high intermediate, or advanced proficiency levels in listening. The student is expected to:

(A) distinguish sounds and intonation patterns by responding with gestures or images, orally, or in writing;

(B) use contextual factors or word analysis such as cognates, Greek and Latin prefixes, suffixes, and roots to comprehend content-specific vocabulary when heard during formal and informal classroom interactions by responding with gestures or images, orally, or in writing;

(C) respond with accuracy to oral directions, instructions, and requests;

(D) use context to construct the meaning of descriptive language, words with multiple meanings, register, and figurative language such as idiomatic expressions heard during formal and informal classroom interactions;

(E) demonstrate listening comprehension from information presented orally during formal and informal classroom interactions by restating, responding, paraphrasing, summarizing, or asking for clarification or additional details; and

(F) derive meaning from a variety of auditory multimedia sources to build and reinforce concepts and language acquisition.

(2) Student expectations--speaking. The EB student speaks using a variety of language structures for a variety of purposes with an awareness of different language registers (formal/informal) using vocabulary with increasing accuracy and fluency in all content areas. The EB student may be at the pre-production, beginning, intermediate, high intermediate, or advanced proficiency level of English language acquisition in speaking. The student is expected to:

(A) pronounce words, including high-frequency words, cognates, and increasingly complex syllable types, with accuracy;

(B) speak using content-area vocabulary during formal and informal classroom interactions to demonstrate acquisition of new words and high-frequency words;

(C) speak using a variety of language and grammatical structures, sentence lengths and types, and transition words;

(D) speak using appropriate register to convey a message during formal and informal classroom interactions with accuracy and fluency;

(E) narrate, describe, explain, justify, discuss, elaborate, or evaluate orally with increasing specificity and detail in academic context or discourse; and

(F) restate, ask questions about, or respond to information during formal and informal classroom interactions.

(3) Student expectations--reading. The EB student reads a variety of texts for different purposes with an increasing level of comprehension in all content areas. The EB student may be at the pre-production, beginning, intermediate, high intermediate, or advanced proficiency levels of English language acquisition in reading. The student is expected to:

(A) demonstrate awareness of print concepts and directionality of reading as left to right and top to bottom;

(B) decode words using the relationships between sounds and letters and identify syllable patterns, cognates, affixes, roots, or base words;

(C) use high-frequency words, contextual factors, and word analysis such as Greek and Latin prefixes, suffixes, and roots and cognates to comprehend content-area vocabulary in text;

(D) use context to construct the meaning of figurative language such as idiomatic expressions, descriptive language, and words with multiple meanings to comprehend a variety of text;

(E) use pre-reading strategies, including previewing the text features, connecting to prior knowledge, organizing ideas, and making predictions, to develop comprehension;

(F) derive meaning from and demonstrate comprehension of content-area texts using visual, contextual, and linguistic supports;

(G) demonstrate reading comprehension of content-area texts by retelling, paraphrasing, summarizing, and responding to questions; and

(H) read with fluency and prosody and demonstrate comprehension of content-area text.

(4) Student expectations--writing. The EB student writes using a variety of language structures with increasing accuracy to effectively address a variety of purposes (formal and informal) and audiences in all content areas. The EB student may be at the pre-production, beginning, intermediate, high intermediate, or advanced proficiency levels of English language acquisition in writing. The student is expected to:

(A) apply relationships between sounds and letters of the English language to represent sounds when writing;

(B) write text following conventional spelling patterns and rules;

(C) write using a combination of high-frequency words and content-area vocabulary;

(D) write content-area texts using a variety of sentence lengths and types and transition words;

(E) write content-area specific text using conventions such as capitalization, punctuation, and abbreviations and grammatical structures such as subject-verb agreement, verb tense, possessive case, and contractions; and

(F) write to narrate, describe, explain, respond, or justify with supporting details and evidence using appropriate content, style, register, and conventions for specific purpose and audience.

(e) Proficiency level descriptors.

(1) The following five proficiency levels describe students' progress in English language acquisition.

(A) Pre-production. The pre-production level, also known as the silent period, is the early stage of English language acquisition when receptive language is developing. Students develop comprehension when highly scaffolded instruction and linguistic support are provided. Student responses are mostly non-verbal.

(B) Beginning. The beginning level is characterized by speech emergence (expressive language) using one word or two-to-three-word phrases. Students at this level require highly scaffolded instruction and linguistic support. Students at this level begin to consistently use present tense verbs and repeat keywords and familiar phrases when engaging in formal and informal interactions.

(C) Intermediate. The intermediate level is characterized by the ability to use receptive and expressive language with demonstrated literal comprehension. Students at this level need mod-

erately scaffolded instruction and linguistic support. Additional visual and linguistic support is needed to understand unfamiliar or abstract concepts such as figurative language, humor, and cultural or societal references. Students at this level begin to consistently use short phrases and simple sentences or ask short questions to demonstrate comprehension during formal and informal interactions.

(D) High intermediate. Students at the high intermediate level begin to consistently use a variety of sentence types, express opinions, share thoughts, and ask for clarification. Students at this level have an increased level of literal and abstract comprehension. Students may need minimal scaffolded instruction and linguistic support to engage in formal and informal classroom interactions.

(E) Advanced. The advanced level is characterized by the ability of students to engage in formal and informal classroom interactions with little to no linguistic support. Students at this level engage in discourse using content-area vocabulary and a variety of grammatical structures with increasing accuracy.

(2) The Grades 4-12 proficiency level descriptors are described in the figure provided in this paragraph.  
Figure: 19 TAC §120.21(e)(2)

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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## CHAPTER 127. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR CAREER DEVELOPMENT AND CAREER AND TECHNICAL EDUCATION

### SUBCHAPTER J. HOSPITALITY AND TOURISM

#### 19 TAC §127.482

The State Board of Education (SBOE) adopts an amendment to §127.482, concerning Texas Essential Knowledge and Skills for career development and career and technical education. The amendment is adopted without changes to the proposed text as published in the August 2, 2024 issue of the *Texas Register* (49 TexReg 5625) and will not be republished. The adopted amendment makes technical adjustments to prerequisites to align with the recently revised career and technical education (CTE) programs of study.

**REASONED JUSTIFICATION:** The federal *Strengthening Career and Technical Education for the 21st Century Act*, commonly referred to as Perkins V, requires states that receive federal CTE funds to align CTE programs of study to high-wage, in-demand, and high-skill occupations. In fall 2023, the Texas Education

Agency engaged members of the workforce, secondary education, and higher education to advise on the development and refresh of programs of study, which include coherent course sequences, industry-based certifications, and work-based learning opportunities to ensure students are prepared for high-wage, in-demand, and high-skill careers in Texas.

The adopted amendment aligns language related to prerequisites to ensure alignment with the refreshed programs of study.

The SBOE approved the amendment for first reading and filing authorization at its June 28, 2024 meeting and for second reading and final adoption at its September 13, 2024 meeting.

In accordance with Texas Education Code, §7.102(f), the SBOE approved the amendment for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2025-2026 school year. The earlier effective date will allow for technical adjustments to be made to course titles, prerequisites, and corequisites at the earliest possible date to avoid confusion and ensure students have access to appropriate corequisite courses. The effective date is 20 days after filing as adopted with the Texas Register.

**SUMMARY OF COMMENTS AND RESPONSES:** The public comment period on the proposal began August 2, 2024, and ended at 5:00 p.m. on September 3, 2024. The SBOE also provided an opportunity for registered oral and written comments at its September 2024 meeting in accordance with the SBOE board operating policies and procedures. No public comments were received.

**STATUTORY AUTHORITY.** The amendment is adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; and TEC, §28.002(c), which requires the SBOE to identify by rule the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments.

**CROSS REFERENCE TO STATUTE.** The amendment implements Texas Education Code, §7.102(c)(4) and §28.002(a) and (c).

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

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## CHAPTER 130. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR CAREER AND TECHNICAL EDUCATION

The State Board of Education (SBOE) adopts amendments to §§130.30, 130.136, 130.137, 130.138, 130.143, 130.144, 130.445, and 130.446, concerning Texas Essential Knowledge and Skills for career and technical education. The amendments are adopted without changes to the proposed text as published in the August 2, 2024, issue of the *Texas Register* (49 TexReg 5627) and will not be republished. The adopted amendments make technical adjustments to course titles, prerequisites, and corequisites to align with the recently revised career and technical education (CTE) programs of study.

**REASONED JUSTIFICATION:** The federal *Strengthening Career and Technical Education for the 21st Century Act*, commonly referred to as Perkins V, requires states that receive federal CTE funds to align CTE programs of study to high-wage, in-demand, and high-skill occupations. In fall 2023, the Texas Education Agency engaged members of the workforce, secondary education, and higher education to advise on the development and refresh of programs of study, which include coherent course sequences, industry-based certifications, and work-based learning opportunities to ensure students are prepared for high-wage, in-demand, and high-skill careers in Texas.

The adopted amendments align existing CTE course titles and language related to prerequisites and corequisites to ensure alignment with the refreshed programs of study.

The SBOE approved the amendments for first reading and filing authorization at its June 28, 2024, meeting and for second reading and final adoption at its September 13, 2024, meeting.

In accordance with Texas Education Code, §7.102(f), the SBOE approved the amendments for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2025-2026 school year. The earlier effective date will allow for technical adjustments to be made to course titles, prerequisites, and corequisites at the earliest possible date to avoid confusion and ensure students have access to appropriate corequisite courses. The effective date is 20 days after filing as adopted with the Texas Register.

**SUMMARY OF COMMENTS AND RESPONSES:** The public comment period on the proposal began August 2, 2024, and ended at 5:00 p.m. on September 3, 2024. The SBOE also provided an opportunity for registered oral and written comments at its September 2024 meeting in accordance with the SBOE board operating policies and procedures. Following is a summary of the public comments received and corresponding responses.

**Comment.** One teacher and three administrators recommended maintaining the current course titles for §130.136, Business Information Management I, and §130.137, Business Information Management II, since the proposed new course names could cause confusion.

**Response.** The SBOE disagrees and has determined that the proposed new course titles are appropriate and better reflect the content and level of the courses.

**Comment.** One administrator stated that the proposed new course titles, Foundations of Business Communication and Technologies and Business Communication and Technologies, for Business Information Management I and II, respectively, do not reflect the Texas Essential Knowledge and Skills for the courses, which focus on application software.

**Response.** The SBOE disagrees and has determined that the proposed new course titles appropriately reflect the content and level of the courses.

**Comment.** Two administrators stated that the proposed amendments to certain course titles are necessary but are incomplete as they only address four courses in two career clusters. The commenter explained that there are more course titles with "I" and "II" used to designate two levels of related content rather than to indicate the level of a course within a program of study.

**Response.** The SBOE agrees that changes to CTE course titles are necessary and took action to adopt the proposed amendments to certain course titles as proposed. The SBOE has also determined that additional updates to CTE course titles may be necessary in the future to better reflect the level of the courses within program(s) of study.

**Comment.** One administrator stated that there are currently only two CTE courses that include the word "foundations" in their titles, while other course titles include "essentials," "fundamentals," "introduction," and "basic." The commenter recommended consistently using "foundations" and "advanced" respectively as replacements for "I" and "II" in CTE course titles.

**Response.** The SBOE disagrees that the term "foundations" is the only term that should be used in the titles of introductory level courses and has determined that terms such as "essentials," "fundamentals," "introduction," and "basic" may also be appropriate. The SBOE also disagrees that "I" and "II" should be replaced in all CTE courses and has determined that they are appropriate for Level 2 and Level 3 courses in a program of study.

## SUBCHAPTER A. AGRICULTURE, FOOD, AND NATURAL RESOURCES

### 19 TAC §130.30

**STATUTORY AUTHORITY.** The amendment is adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; and TEC, §28.002(c), which requires the SBOE to identify by rule the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments.

**CROSS REFERENCE TO STATUTE.** The amendments implement Texas Education Code, §7.102(c)(4) and §28.002(a) and (c).

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

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## SUBCHAPTER D. BUSINESS MANAGEMENT AND ADMINISTRATION

### 19 TAC §§130.136 - 130.138, 130.143, 130.144

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; and TEC, §28.002(c), which requires the SBOE to identify by rule the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §7.102(c)(4) and §28.002(a) and (c).

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## SUBCHAPTER P. TRANSPORTATION, DISTRIBUTION, AND LOGISTICS

### 19 TAC §130.445, §130.446

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; and TEC, §28.002(c), which requires the SBOE to identify by rule the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §7.102(c)(4) and §28.002(a) and (c).

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

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## TITLE 22. EXAMINING BOARDS

### PART 17. TEXAS STATE BOARD OF PLUMBING EXAMINERS

#### CHAPTER 361. ADMINISTRATION

##### SUBCHAPTER A. GENERAL PROVISIONS

###### 22 TAC §361.1

The Texas State Board of Plumbing Examiners (Board) adopts the amendment to 22 Texas Administrative Code, Chapter 361, §361.1(18) relating to the expansion of the definition of direct supervision to include remote virtual, real-time audio-visual communication in limited circumstances. The rule is adopted with a non-substantive change to the proposed text published in the August 30, 2024, issue of the *Texas Register* (49 TexReg 6698.) The rule will be republished.

###### REASONED JUSTIFICATION FOR THE RULE

The rules under 22 TAC, Chapter 361, implement Texas Occupations Code, Chapter 1301, Texas State Board of Plumbing Examiners.

The rule amendment expands the definition of direct supervision to include remote virtual supervision under limited conditions.

The Board recognizes that there are not enough plumbing professionals in Texas to serve its growing population and the expanding Texas economy. Homeowners in particular need more service plumbing professionals to do small jobs in a timely and cost-effective manner. This rule amendment aims to help provide greater regulatory flexibility to allow competent professionals, under the supervision of a Responsibility Master Plumber, to make such service calls.

The Board further recognizes that technology with the capability to visually stream or project the job site in real-time, such as Facetime, Zoom, etc., may be successfully utilized to perform on-the-job oversight and direct supervision of apprentices and licensees in the field. It is believed that given the pandemic and related, necessary social-distancing practices, virtual supervision was utilized in the plumbing industry since 2020 as a matter of necessity.

The proposed rule amendment creates the option for a Responsible Master Plumber (RMP) to choose to use remote virtual, audio-visual, real-time supervision in certain conditions to directly supervise work done under their authority and responsibility. Section 361.1(18) of the rules defines "Direct Supervision." On-the-job oversight and supervision is amended to show that direct supervision may include remote virtual audio-visual, real-time communication for registrants and licensees with 4000 hours of documented work and who hold Residential Utilities Installer and Drain Cleaner registrations performing repair and/or replacement of existing fixtures, not involving gas appliances, on one and two family dwellings.



No affirmative duty on or regulation is created by the rule amendment on registrants or licensees. The amended rule does not alleviate the responsibility of the RMP from adequate supervision or from ensuring that work is performed to the standards of the applicable code. It is in the Responsible Master Plumber's discretion to utilize optional technology as they deem it appropriate given their job sites, staff, and technological capacities. Should inspection or investigation be done on the job site, any present licensee or registrant must demonstrate that remote real-time, audio-visual communication is successful and effective.

#### SECTION BY SECTION SUMMARY

Section 361.1(18) Direct Supervision. On-the-job oversight and supervision is amended to show that direct supervision may include remote virtual audio-visual, real-time communication for registrants and licensees that hold at least 4000 hours of documented experience, a Residential Utilities Installer registration and a Drain Cleaner registration for performing repair and/or replacement of existing fixtures, not involving gas appliances, on one and two family dwellings.

#### SUMMARY OF COMMENT

Sixty-two comments were received to the posted rule. Two commentors commented in favor of the rule amendment. The remainder opposed the rule. The comment in opposition was largely duplicative and was addressed by the Board together.

On commentor in favor of the amendment stated that it would allow him greater flexibility to supervise. It would also allow him to keep record of dates and times for future reference. The plumbing industry should use new technology to improve the industry.

Response: The Board appreciated and agreed with the comment.

One commentor supported the amendment. He has qualified staff that can work under virtual supervision competently.

Response: The Board appreciated and agreed with the comment.

The comments in opposition largely repeated similar concerns. The summary of comments and the concerns raised are as follows:

PHCC Board of Directors provided comment in opposition to the rule amendment. Virtual Supervision is a poor substitute for in-person supervision and does not adequately train registrants. This rule will allow an untrained individual to do work they are not qualified to perform. PHCC has concerns that the rule change would increase liability to the master plumber who is responsible for the work performed by their apprentice. The amendment raised risk of loss of time and money to homeowners who are seeking repairs that may not be correctly performed. The industry's insurance cost will increase and plumbers' reputation will be damaged when virtually supervised individuals do not have their work supervised in person.

One comment identified that enforcement of the rule would be difficult. No incentive should be provided for a registrant to remain an apprentice and not proceed up the career ladder.

One comment raised the issue that virtual supervision would not work. Tight spaces in plumbing installations would make it difficult to work and hold a phone to show the area to a supervisor who was virtually supervising the remote individual. Additionally, some areas do not have cell service which would not allow vir-

tual supervision. The lack of in-person supervision would raise the risk of property damage or personal injury.

One commentor raised the issue of privacy to homeowners. Many homeowners would not want their homes videoed in a virtually supervised work.

One commentor felt the rule was ambiguous and advocates going back to an earlier rule draft.

One commentor opposed loosening regulation. The amendment provides a disincentive for apprentices to move up the career ladder.

One commentor opposed the rule as it will not have positive effects on the trade and could be potentially dangerous.

One commentor opposed the rule advocating that hands-on training is critical. Supervision should not cut corners with video calls.

One commentor remarked in opposition that virtual supervision will leave apprentices without support. They will make errors and be stressed without the safety net of in-person supervision. They will miss out on training and risk burn-out and leave the trade.

One commentor opposed the amendment because of the negative impact on customer trust and perception of the industry. This negatively impacts professionalism of the industry.

One commentor opposed the amendment because claims of negligence and property damage would increase if an apprentice could not perform or if cell service failed. Claims of discrimination would be made by an apprentice that was physically unable to manipulate a phone or iPad and tools at the same time. The stress caused by lack of in-person oversight would result in employee turnover. Lastly, insurance rates would increase due to increased property damaged caused by errors.

Response: The Board considered and appreciated the comment of all commentors but largely disagreed with the comments in opposition. The Board responded to all the comments in opposition by remarking that this is the third proposed rule effort made by the Board to address virtual supervision over the course of a year. The earlier rule proposals were not adopted, but proposed rule language rather was changed and narrowed in response to similar public input and comment which results in the narrowly crafted rule proposal considered for adoption at this meeting.

The rule draft being considered allows remote, virtual supervision of registrants and licensees that hold 4000 hours of training and two successfully tested endorsements. Additionally, the work that can be virtually supervised is limited to residential repair and replacement on non-gas appliances. This ensures that trained and tested professionals are the only individuals that can work under virtual supervision. Those trained and tested professionals can only work on limited jobs. The higher level of successfully completed training and testing ensures that a newly registered apprentice will not be supervised virtually.

The rule change will have limited impact because there are only approximately 1000 endorsement holders that meet the qualifications at this time. Among those qualified, the sponsoring and supervising Responsible Master Plumber must choose to use to utilize virtual supervision if they feel it their best professional judgement it is appropriate for the job. If they don't feel it is appropriate, they don't have to use it.

The rule amendment is a change in the definition of direct supervision. It does not create an affirmative duty on any individual to

engage or not engage in remote supervision. It is simply an option for a Responsible Master Plumber to choose to supervise individuals in a limited circumstance if they decide it is appropriate and beneficial to do so given the job site, staff, and technology available to them. New technology that allows virtual supervision is a modern benefit to the industry should a Responsible Master Plumber feel it is appropriate to use in their discretion.

Local jurisdictions are using virtual inspections of plumbing installations to help service their workload. As such, the use of the technology to review and inspect job sites and work has proven successful and efficient.

Virtual supervision's limited use allows trained and qualified individuals the opportunity to service residential service calls in a timely and cost-effective manner which better serves the public.

Two commentors provided comment that did not address the rule as posted.

#### BOARD ACTION

At its meeting on December 11, 2024, the Board adopted the proposed rule as published in the *Texas Register* with the non-substantive inclusion of the word "remote" to clarify the virtual supervision amendment.

#### STATUTORY AUTHORITY

The rule is adopted under the authority of § 1301.251(2) of the Occupations Code, which requires the Board to adopt and enforce rules necessary to administer and enforce the Plumbing License Law.

#### §361.1. Definitions.

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

(1) **APA**--The Administrative Procedure Act, Chapter 2001 of the Texas Government Code.

(2) **Adopted Plumbing Code**--A plumbing code, including a fuel gas code adopted by the Board or a political subdivision, in compliance with §1301.255 and §1301.551 of the Plumbing License Law.

(3) **Advisory Committee**--A committee appointed by the presiding officer of the board created to assist the board in exercising its powers and duties.

(4) **Appliance Connection**--An appliance connection procedure using only a code-approved appliance connector that does not require cutting into or altering the existing plumbing system.

(5) **Applicant**--An individual seeking to obtain a license, registration or endorsement issued by the Board.

(6) **Board**--The Texas State Board of Plumbing Examiners.

(7) **Board Member**--An individual appointed by the governor and confirmed by the senate to serve on the Board.

(8) **Building Sewer**--The part of the sanitary drainage system outside of the building, which extends from the end of the building drain to a public sewer, private sewer, private sewage disposal system, or other point of sewage disposal.

(9) **Certificate of Insurance**--A form submitted to the Board certifying that the Responsible Master Plumber carries insurance coverage as specified in the Plumbing License Law and Board Rules.

(10) **Chief Examiner**--An employee of the Board who, under the direction of the Executive Director, coordinates and supervises the activities of the Board examinations and registrations.

(11) **Cleanout**--A fitting, other than a p-trap, approved by the adopted plumbing code and designed to be installed in a sanitary drainage system to allow easy access for cleaning the sanitary drainage system.

(12) **Code-Approved Appliance Connector**--A semi-rigid or flexible assembly of tube and fittings approved by the adopted plumbing code and designed for connecting an appliance to the existing plumbing system without cutting into or altering the existing plumbing system.

(13) **Code-Approved Existing Opening**--For the purposes of drain cleaning activities described in §1301.002(3) of the Plumbing License Law, a code-approved existing opening is any existing cleanout fitting, inlet of any p-trap or fixture, or vent terminating into the atmosphere that has been approved and installed in accordance with the adopted plumbing code.

(14) **Complaint**--A written complaint filed with the Board against a person whose activities are subject to the jurisdiction of the Board.

(15) **Contested Case**--A proceeding in which the legal rights, duties, or privileges of a party are to be determined by the Board after an opportunity for adjudicative hearing.

(16) **Continuing Professional Education or CPE**--Approved courses/programs required for a licensee or registrant.

(17) **Director of Enforcement**--An employee of the Board who meets the definition of "Field Representative" and, under the direction of the Executive Director, coordinates and supervises the activities of the Field Representatives.

(18) **Direct Supervision**--

(A) The on-the-job oversight and direction of a registered Plumber's Apprentice or licensee performing plumbing work by a licensed plumber who is fulfilling his or her responsibility to the client and employer by ensuring the following:

(i) that the plumbing materials for the job are properly prepared prior to assembly according to the material manufacturers recommendations and the requirements of the adopted plumbing code; and

(ii) that the plumbing work for the job is properly installed to protect health and safety by meeting the requirements of the adopted plumbing code and all requirements of local and state ordinances, regulations and laws.

(iii) Direct supervision may include remote virtual audio-visual, real-time communication for repair and replacement of existing fixtures, not involving gas appliances, on one and two family dwellings performed only by licensees and registrants with:

(I) 4000 hours of documented experience;

(II) a current Residential Utilities Installer Registration; and

(III) a current Drain Cleaner registration.

(B) The on-the-job oversight and direction by a licensed Plumbing Inspector of an individual training to qualify for the Plumbing Inspector Examination.

(C) For plumbing work performed only in the construction of a new one-family or two-family dwelling in an unincorporated area of the state, a Responsible Master Plumber is not required to provide for the continuous or uninterrupted on-the-job oversight of a Reg-

istered Plumber's Apprentice's work by a licensed plumber, however, the Responsible Master Plumber must:

(i) provide for the training and management of the Registered Plumber's Apprentice by a licensed plumber;

(ii) provide for the review and inspection of the Registered Plumber's Apprentice's work by a licensed plumber to ensure compliance with subparagraph (A)(i) and (ii) of this paragraph; and

(iii) upon request by the Board, provide the name and plumber's license number of the licensed plumber who is providing on-the-job training and management of the Registered Plumber's Apprentice and who is reviewing and inspecting the Registered Plumber's Apprentice's work on the job, or the name and plumber's license number of the licensed plumber who trained and managed the Registered Plumber's Apprentice and who reviewed and inspected the Registered Plumber's Apprentice's work on a job.

(19) Endorsement--A certification issued by the Board as an addition to a Master Plumber, Plumbing Inspector, or Journeyman Plumber License or a Plumber's Apprentice Registration, including a Drain Cleaner Registration, a Drain Cleaner-Restricted Registration, and a Residential Utilities Installer Registration.

(20) Executive Director--The executive director of the Texas State Board of Plumbing Examiners who is employed by the Board as the executive head of the agency.

(21) Field Representative--An employee of the Board who is:

(A) knowledgeable of the Plumbing License Law and of municipal ordinances related to plumbing;

(B) qualified by experience and training in good plumbing practice and compliance with the Plumbing License Law;

(C) designated by the Board to assist in the enforcement of the Plumbing License Law and Board rules;

(D) licensed by the Board as a plumber; and

(E) hired to:

(i) make on-site license and registration checks to determine compliance with the Plumbing License Law;

(ii) investigate complaints; and

(iii) assist municipal plumbing inspectors in cooperative enforcement of the Plumbing License Law.

(22) Journeyman Plumber--An individual licensed under the Plumbing License Law who has met the qualifications for registration as a Plumber's Apprentice or for licensure as a Tradesman Plumber-Limited, who has completed at least 8,000 hours working under the supervision of a Responsible Master Plumber, who supervises, engages in, or works at the actual installation, alteration, repair, service and renovating of plumbing, and who has successfully fulfilled the examinations and requirements of the Board.

(23) License--A license, registration, certification, or endorsement issued by the Board.

(24) Licensing and Registering--The process of granting, denying, renewing, reinstating, revoking, or suspending a license, registration or endorsement.

(25) Maintenance Man or Maintenance Engineer--An individual who:

(A) is an employee, and not an independent contractor or subcontractor;

(B) performs plumbing maintenance work incidental to and in connection with other employment-related duties; and

(C) does not engage in plumbing work for the general public.

(D) For the purposes of paragraph 25(B), "incidental to and in connection with" includes the repair, maintenance and replacement of existing potable water piping, existing sanitary waste and vent piping, existing plumbing fixtures and existing water heaters. It does not include cutting into fuel gas plumbing systems and the installation of gas fueled water heaters.

(E) An individual who erects, builds, or installs plumbing not already in existence may not be classified as a maintenance man or maintenance engineer. Plumbing work performed by a maintenance man or maintenance engineer is not exempt from state law and municipal rules and ordinances regarding plumbing codes, plumbing permits and plumbing inspections.

(26) Master Plumber--An individual licensed under the Plumbing License Law who is skilled in the design, planning, superintending, and the practical installation, repair, and service of plumbing, who is knowledgeable about the codes, ordinances, or rules and regulations governing those matters, who alone, or through an individual or individuals under his supervision, performs plumbing work, and who has successfully fulfilled the examinations and requirements of the Board.

(27) Medical Gas Piping Installation Endorsement--

(A) A certification entitling the holder of a Master or Journeyman Plumber License to install piping that is used solely to transport gases used for medical purposes including, but not limited to, oxygen, nitrous oxide, medical air, nitrogen, or medical vacuum.

(B) A certification entitling the holder of a Plumbing Inspector License to inspect medical gas and vacuum system installations.

(28) Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement--

(A) A certification entitling the holder of a Master or Journeyman Plumber License to install a multipurpose residential fire protection sprinkler system in a one or two family dwelling.

(B) A certification entitling the holder of a Plumbing Inspector License to inspect a multipurpose residential fire protection sprinkler system.

(29) Military service member--A person who is currently serving in the armed forces of the United States, in a reserve component of the armed forces of the United States, including the National Guard, or in the state military service of any state.

(30) Military spouse--A person who is married to a military service member who is currently on active duty.

(31) Military veteran--A person who has served in the army, navy, air force, marine corps, or coast guard of the United States, or in an auxiliary service of one of those branches of the armed forces.

(32) One-Family Dwelling--A detached structure designed for the residence of a single family that does not have the characteristics of a multiple family dwelling, and is not primarily designed for transient guests or for providing services for rehabilitative, medical, or assisted living in connection with the occupancy of the structure.

(33) Party--A person or state agency named or admitted as a party to a contested case.

(34) Paid Directly--As related to §1301.255(e) of the Plumbing License Law, "paid" and "directly" have the common meanings and "paid directly" means that compensation for plumbing inspections must be paid by the political subdivision to the individual Licensed Plumbing Inspector who performed the plumbing inspections or the plumbing inspection business which utilized the plumbing inspector to perform the inspections.

(35) Person--An individual, partnership, corporation, limited liability company, association, governmental subdivision or public or private organization of any character other than an agency.

(36) Petitioner--A person requesting the Board to adopt, amend or repeal a rule pursuant to §2001.021 of the Texas Government Code and the Board Rules.

(37) Plumbing--

(A) All piping, fixtures, appurtenances, and appliances, including disposal systems, drain or waste pipes, multipurpose residential fire protection sprinkler systems or any combination of these that: supply, distribute, circulate, recirculate, drain, or eliminate water, gas, medical gasses and vacuum, liquids, and sewage for all personal or domestic purposes in and about buildings where persons live, work, or assemble; connect the building on its outside with the source of water, gas, or other liquid supply, or combinations of these, on the premises, or the water main on public property; and carry waste water or sewage from or within a building to the sewer service lateral on public property or the disposal or septic terminal that holds private or domestic sewage.

(B) The installation, repair, service, maintenance, alteration, or renovation of all piping, fixtures, appurtenances, and appliances on premises where persons live, work, or assemble that supply gas, medical gasses and vacuum, water, liquids, or any combination of these, or dispose of waste water or sewage. Plumbing includes the treatment of rainwater to supply a plumbing fixture or appliance. The term "service" includes, but is not limited to, cleaning a drain or sewer line using a cable or pressurized fluid.

(38) Plumbing Company--A person who engages in the plumbing business.

(39) Plumbing Inspection--Any of the inspections required in the Plumbing License Law, including any check of multipurpose residential fire protection sprinkler systems, pipes, faucets, tanks, valves, water heaters, plumbing fixtures and appliances by and through which a supply of water, gas, medical gasses or vacuum, or sewage is used or carried that is performed on behalf of any political subdivision, public water supply, municipal utility district, town, city or municipality to ensure compliance with the adopted plumbing and gas codes and ordinances regulating plumbing.

(40) Plumbing Inspector--Any individual who is employed by a political subdivision or state agency, or who contracts as an independent contractor with a political subdivision or state agency, for the purpose of inspecting plumbing work and installations in connection with health and safety laws, ordinances, and plumbing and gas codes, who has no financial or advisory interests in any plumbing company, and who has successfully fulfilled the examinations and requirements of the Board.

(41) Plumbing License Law or PLL--Chapter 1301 of the Texas Occupations Code.

(42) Pocket Card--A card issued by the Board which:

(A) certifies that the holder has a Responsible Master Plumber License, Master Plumber License, Journeyman Plumber License, Tradesman Plumber-Limited License, Plumbing Inspector License, or a Plumber's Apprentice Registration; and

(B) lists any Endorsements obtained by the holder.

(43) Political Subdivision--A political subdivision of the State of Texas that includes a:

- (A) city;
- (B) county;
- (C) school district;
- (D) junior college district;
- (E) municipal utility district;
- (F) levee improvement district;
- (G) drainage district;
- (H) irrigation district;
- (I) water improvement district;
- (J) water control improvement district;
- (K) water control preservation district;
- (L) freshwater supply district;
- (M) navigation district;
- (N) conservation and reclamation district;
- (O) soil conservation district;
- (P) communication district;
- (Q) public health district;
- (R) river authority; and
- (S) any other governmental entity that:

(i) embraces a geographical area with a defined boundary;

(ii) exists for the purpose of discharging functions of government; and

(iii) possesses authority for subordinate self-government through officers selected by it.

(44) P-Trap--A fitting connected to the sanitary drainage system for the purpose of preventing the escape of sewer gasses from the sanitary drainage system and designed to be removed to allow for cleaning of the sanitary drainage system. For the purposes of drain cleaning activities described in §1301.002(2) of the Plumbing License Law, a p-trap includes any integral trap of a water closet, bidet, or urinal.

(45) Public Water System--A system for the provision to the public of water for human consumption through pipes or other constructed conveyances. Such a system must have at least 15 service connections or serve at least 25 individuals at least 60 days out of the year. Two or more systems with each having a potential to serve less than 15 connections or less than 25 individuals, but owned by the same person, firm, or corporation and located on adjacent land will be considered a public water system when the total potential service connections in the combined systems are 15 or greater or if the total number of individuals served by the combined systems total 25 or greater, at least 60 days out of the year. Without excluding other meanings of the terms "individual" or "served," an individual shall be deemed to be served by a water system if the individual lives in, uses as the individual's place of employment, or works in a place to which drinking water is supplied from the water system.

(46) Respondent--A person charged in a complaint filed with the Board.

(47) Responsible Master Plumber or RMP--A licensed Master Plumber who:

(A) allows the person's Master Plumber License to be used by only one plumbing company for the purpose of offering and performing plumbing work;

(B) is authorized to obtain permits for plumbing work;

(C) assumes responsibility for plumbing work performed under the person's license;

(D) has submitted a certificate of insurance as required by the Plumbing License Law and Board Rules; and

(E) When used in Board forms, applications or other communications by the Board, the abbreviation "RMP" shall mean Responsible Master Plumber.

(48) Registration--A document issued by the Board to certify that the named individual fulfilled the requirements of the PLL and Board Rules to register as a Plumber's Apprentice.

(49) Rule--An agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the agency. The term includes the amendment or repeal of a prior rule but does not include statements concerning only the internal management or organization of the agency and not affecting private rights or procedures.

(50) Supervision--The general oversight, direction and management of plumbing work and individuals performing plumbing work by a Responsible Master Plumber, or licensed plumber designated by the RMP.

(51) System--An interconnection between one or more public or private end users of water, gas, sewer, or disposal systems that could endanger public health if improperly installed.

(52) Tradesman Plumber-Limited Licensee--An individual who has completed at least 4,000 hours working under the direct supervision of a Journeyman or Master Plumber as a registered Plumber's Apprentice, who has passed the required examination and fulfilled the other requirements of the Board, or successfully completed a career and technology education program, who constructs, installs, changes, repairs, services, or renovates plumbing for one-family or two-family dwellings under the supervision of a Responsible Master Plumber, and who has not met or attempted to meet the qualifications for a Journeyman Plumber License.

(53) Two-Family Dwelling--A detached structure with separate means of egress designed for the residence of two families ("duplex") that does not have the characteristics of a multiple family dwelling and is not primarily designed for transient guests or for providing services for rehabilitative, medical, or assisted living in connection with the occupancy of the structure.

(54) Water Supply Protection Specialist--A Master or Journeyman Plumber who holds the Water Supply Protection Specialist Endorsement issued by the Board to engage in customer service inspections, as defined by rule of the Texas Commission on Environmental Quality, and the installation, service, and repair of plumbing associated with the treatment, use, and distribution of rainwater to supply a plumbing fixture or appliance.

(55) Water Treatment--A business conducted under contract that requires experience in the analysis of water, including the ability to determine how to treat influent and effluent water, to alter or

purify water, and to add or remove a mineral, chemical, or bacterial content or substance. The term also includes the installation and service of potable water treatment equipment in public or private water systems and making connections necessary to complete installation of a water treatment system. The term does not include treatment of rainwater or the repair of systems for rainwater harvesting.

(56) Yard Water Service Piping--The building supply piping carrying potable water from the water meter or other source of water supply to the point of connection to the water distribution system at the building.

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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For further information, please call: (512) 936-5216

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## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

#### CHAPTER 56. AGENCY DECISION TO REFUSE LICENSE OR PERMIT ISSUANCE OR RENEWAL AND AGENCY DECISION TO SUSPEND OR REVOKE AFFECTED LICENSE OR PERMIT

##### 31 TAC §56.7

The Texas Parks and Wildlife Commission in a duly noticed meeting on November 7, 2024, adopted an amendment to 31 TAC §56.7, concerning Permits and Licenses Affected, without change to the proposed text as published in the October 4, 2024, issue of the *Texas Register* (49 TexReg 8056). The rule will not be republished.

The amendment adds cultured oyster mariculture permits (COM) issued by the department under 31 TAC Chapter 58, Subchapter E, to the list of permits and licenses to which the provisions of Chapter 56 apply.

In 2022, the department promulgated Chapter 56 to comply with recommendations of the Texas Sunset Advisory Commission to establish a uniform process to govern department decisions to refuse issuance or renewal of non-recreational licenses and permits for which such processes are not prescribed by statute. The Sunset Commission also recommended a similar process for agency decisions to suspend or revoke such licenses and permits.

In another rulemaking published elsewhere in this issue regarding COM rules, the department adopts the repeal of §58.359, concerning Agency Decision to Refuse to Issue or Renew Permit; Review of Agency Decision. The department has determined that the COM permits are a type of permit to which the Texas Sunset Advisory Commission recommendation applies, and the rule as adopted adds COM permits to the list of permits to which the chapter applies.

The department received no comments opposing adoption of the rule as proposed.

The amendment is adopted under Parks and Wildlife Code, §12.001, which authorizes the department to collect and enforce the payment of all taxes, licenses, fines, and forfeitures due to the department; §12.508, which authorizes the department to refuse to issue or transfer an original or renewal license, permit, or tag if the applicant or transferee has been finally convicted of a violation under the Parks and Wildlife Code or rule adopted or a proclamation issued under the Parks and Wildlife Code; and Chapter 75, which requires the commission to adopt rules to establish a program governing cultivated oyster mariculture, which may establish requirements for the taking, possession, transport, movement, and sale of cultivated oysters; the taking, possession, transport, and movement of broodstock oysters; fees and conditions for use of public resources, including broodstock oysters and public water, and any other matter necessary implement and administer Parks and Wildlife Code, Chapter 75; and Parks and Wildlife Code, §75.0101, which requires the commission to adopt rules to establish requirements for permit applications and application fees; criteria for the approval, transfer, revocation, and suspension of permits; and procedures for hearings related to a permit.

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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For further information, please call: (512) 389-4775



## CHAPTER 58. OYSTERS, SHRIMP, AND FINFISH

### SUBCHAPTER A. STATEWIDE OYSTER FISHERY PROCLAMATION

#### 31 TAC §58.21

The Texas Parks and Wildlife Commission in a duly noticed meeting on November 7, 2024, adopted an amendment to 31 TAC §58.21, concerning Taking or Attempting to Take Oysters from Public Oyster Beds: General Rules, without changes to the proposed text as published in the October 4, 2024, issue of the *Texas Register* (49 TexReg 8057). The rule will not be republished.

Under Parks and Wildlife Code, §76.115, the department may close an area to the taking of oysters when the commission finds that the area is being overworked or damaged or the area is to be reseeded or restocked. Oyster reefs in Texas have been impacted due to drought, flooding, and hurricanes (Hurricane Ike, September 2008 and Hurricane Harvey, August 2017), as well as high harvest pressure. To date, the department has restored approximately 800 acres of oyster habitat with cultch placement techniques similar to those that will be employed in the areas closed by this rulemaking.

The amendment temporarily prohibits the harvest of oysters for two years within the boundary of the restoration area on two reefs in Conditionally Approved Area TX-6 in Galveston Bay (approximately 529 acres on Dollar Reef and approximately 14 acres on Desperation Reef). The Texas Department of State Health Services (DSHS) regulates shellfish sanitation and designates specific areas where oysters may be harvested for human consumption. The designation of "Conditionally Approved" or "Approved" is determined by DSHS.

The temporary closures are intended to provide sufficient time, following the planting of oyster cultch in the affected areas, for oysters to reach legal size for harvest. Oyster cultch is the material to which oyster spat (juvenile oysters) attach in order to create an oyster bed. The restoration activities also will establish stable substrate and provide suitable conditions for spat settlement and oyster bed development.

The amendment closes 14 acres on Desperation Reef in Galveston Bay for cultch placement through funding generated through H.B. 51 (85th Legislature, 2017), which included a requirement that certified oyster dealers re-deposit department-approved cultch materials in an amount equal to thirty percent of the total volume of oysters purchased in the previous license year. Additionally, construction associated with the Houston Ship Channel (HSC) Expansion Improvement Project resulted in unavoidable adverse impacts to oyster reefs. As a result of the Final Interagency Feasibility Report-Environmental Impact Statement, mitigation efforts to restore oyster reef in Galveston Bay were initiated to compensate for the loss of habitat. In coordination with resources agencies, the United States Corps of Engineers selected areas on Dollar Reef and San Leon Reef for restoration. Both sites were impacted by Hurricane Ike and this area has been the focus of recent department efforts to restore oyster reef. This mitigation project includes restoration on seven separate areas ranging in size from 13 acres to 20 acres. The closure of 529 acres includes this network of seven restoration areas. The closure area is a perimeter surrounding the totality of the restoration areas because the individual areas are close to one another and the department seeks to eliminate potential confusion that could result from closing restoration areas individually. Parts of this area were closed in 2022 and that closure would have expired in 2024 under the terms of current rule; however, due to the additional restoration efforts, the proposed amendment expands the closure area and extends the period of closure for another two years.

The department received no comments opposing adoption of the rule as proposed.

The department received seven comments supporting adoption of the rule as proposed.

The amendment is adopted under Parks and Wildlife Code, §76.301, which authorizes the commission to regulate the taking, possession, purchase and sale of oysters, including pre-

scribing the times, places, conditions, and means and manner of taking oysters.

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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For further information, please call: (512) 389-4775



## CHAPTER 58. OYSTERS, SHRIMP, AND FINFISH

### SUBCHAPTER E. CULTIVATED OYSTER MARICULTURE

The Texas Parks and Wildlife Commission in a duly noticed meeting on November 7, 2024, adopted the repeal of §§58.354, 58.359, and 58.360, and amendments to §§58.352, 58.353, 58.355, and 58.356, concerning Cultivated Oyster Mariculture. The amendment to §58.353, concerning General Provisions, is adopted with changes to the proposed text as published in the October 4, 2024, issue of the *Texas Register* (49 TexReg 8059) and will be republished. The repeals and amendments to §§58.352, 58.355, and 58.356 are adopted without change and will not be republished.

The change to §58.353, concerning General Provisions, alters subsection (n)(4) to specify re-submergence is required for oysters intended to head directly to market, retail establishments, or restaurants for raw consumption. As proposed, the rule required all oysters that have been out of the water for a time period exceeding the parameters specified by the Department of State Health Services (DSHS) to be re-submerged for a minimum of 14 days prior to harvest. However, both DSHS rules and national shellfish sanitation program standards provide a qualified exception under certain circumstances for oysters for restricted use (such as freezing or other post-harvest processing to ensure they are safe for human consumption). The change acknowledges that exception in order to make such conduct legal.

The 86th Texas Legislature in 2019 enacted House Bill 1300, which added new Chapter 75 to the Texas Parks and Wildlife Code and delegated to the Parks and Wildlife Commission the authority to regulate the process of growing oysters in captivity. In turn, the Texas Parks and Wildlife Commission in 2020 adopted the current regulations governing oyster mariculture (45 TexReg 5916). In brief, those rules established various types of COM permit(s) and the general provisions governing permit privileges and obligations, as well as provisions governing administrative processes such as permit application, issuance, renewal, amendment, and denial, and reporting and recordkeeping requirements. The department was aware at that time that there would be a need to refine and modify the rules, as cultivated oyster mariculture did not exist in Texas prior to that time. In the time since the rules have been in effect, the department and the regulated community have communicated extensively to

identify and develop improvements, which form the substantive basis for much of the rulemaking.

One goal of the rulemaking is to more explicitly denote compliance with applicable requirements of the National Shellfish Sanitation Plan (NSSP), a program administered by United States Food and Drug Administration (FDA) to ensure that molluscan shellfish (oysters, clams, mussels and scallops) moving in interstate commerce are safe for human consumption. Compliance with the NSSP is required for all oysters grown and harvested in Texas to enter interstate commerce.

The amendment to §58.352, concerning Definitions, adds definitions for "Approved area" and "Conditionally Approved area" to clearly articulate that those terms have the meaning assigned by the Texas Health and Safety Code. The amendment also creates new definitions for "Cultivated Oyster Mariculture Harvest Authorization" and "Hatchery." The amendment defines a "Cultivated Oyster Mariculture Harvest Authorization (harvest authorization)" as "a yearly authorization to allow the harvest of mariculture oysters." The stipulation of an annual authorization more clearly aligns with NSSP guidelines that require harvest authorizations be valid only for a one-year period. The authorization will be issued annually to each permit holder and will not result in any additional fees. The amendment defines "hatchery" as "a facility that spawns oyster broodstock," which is intended to explicitly acknowledge that such activities are authorized under a permit issued under this subchapter. The amendment also defines "oyster seed" as "any oyster 1 inch or less in size," which identifies a particular stage of oyster development rather than the broader terminology ("less than legal size") in the current rule.

The amendment to §58.353, concerning General Provisions, consists of several components. The amendment alters subsection (a) to allow a permittee to possess their permit either physically or electronically, which is intended to increase convenience for the regulated community.

The amendment to §58.353 also alters subsections (b) and (c) to more clearly delineate the differences between the two permits issued under the subchapter. The Cultivated Oyster Mariculture Permit is renamed the Cultivated Oyster Mariculture Grow-Out Permit, and the Cultivated Oyster Mariculture - Nursery Only Permit is renamed the Cultivated Oyster Mariculture Nursery-Hatchery Permit. The changes are intended to more clearly and explicitly delineate the activities authorized under a Nursery-Hatchery Permit. As many oyster hatcheries also function as nurseries, staff determined it would be more efficient to group nurseries and hatcheries under a single permit type. The alterations to the permit titles are made throughout the rules as adopted.

The amendment adds new subsection (e), which is current §58.360(1), concerning Prohibited Acts. Current §58.360 is repealed by this rulemaking and its contents have been relocated elsewhere in the rules as necessary. The modification is nonsubstantive.

The amendment alters current subsection (g) to include line-bred descendants of oysters originally from Texas waters as allowable broodstock. Current rules limit broodstock to oysters collected from Texas waters; however, this would allow the descendants of those oysters to be used, which would relieve a permittee from having to perform direct collection of broodstock from the wild each time broodstock is needed. The regulated community requested the change, as oyster hatcheries often retain offspring of broodstock to propagate additional broodstock in or-

der to reduce the impact of continuous collection on wild populations. The department has determined that so long as the offspring have Texas-origin genetics there is little danger to the native genetics of Texas oyster populations.

The amendment to paragraph (1) of current subsection (g) extends the time period during which the department may authorize the importation of oysters under certain conditions from other states for use in oyster mariculture operations. The deadline in the current rule was intended to allow permittees for a limited period of time to utilize genetically acceptable stock produced outside of Texas, after which the department expected all stock to be propagated in Texas facilities using Texas broodstock lineage. Most oysters in the wild are diploid (having two sets of chromosomes); however, triploid (having three sets of chromosomes) oysters are mostly sterile, which makes them desirable for mariculture because they grow significantly faster than diploids and maintain high meat quality year-round (since no energy goes into reproduction). Triploid oysters rarely occur in the wild but can be produced reliably in a hatchery by crossing a diploid female with a tetraploid (four sets of chromosomes) male. However, the development of a Texas lineage tetraploid line has not occurred as quickly as anticipated, which necessitates an extension of the timeline. The amendment also more explicitly delineates the acceptable types of genetic provenance allowed for triploid oysters that can be lawfully imported to Texas for use in oyster mariculture operations. The rule as adopted specifies that the diploid parent must be of Texas origin broodstock, which protects the genetic identities of Texas oysters.

The amendment also adds new subsection (i), which is relocated from current §58.360(2), reorganized and reworded for clarity. As noted previously in this preamble, §58.360 is repealed in this rulemaking. The provision as adopted clarifies that the offense of commingling wild-caught oysters with oysters possessed under the provisions of this subchapter includes possession of wild-caught oysters within COM Grow-Out sites, within COM Nursery-Hatchery sites (except for legally obtained broodstock), or on a vessel operating under a permit issued under the subchapter.

The amendment retitles current subsection (l) to reflect the fact that the rule language addresses the harvest of cultivated oysters in general and does not apply solely to size requirements. The amendment alters current paragraph (1) to reduce the minimum size requirements for legal harvest of cultivated oysters, from 2.5 inches to two inches. The current COM rules stipulate a minimum size limit of 2.5 inches, which was intended primarily to facilitate field identification by department personnel of cultivated oysters (as opposed to cargos of wild oysters). Since the current rules have been in effect, the department has determined that because cultivated oysters are readily distinguishable from wild oysters, the minimum size limit can be reduced, which not only allows cultivated oysters to be marketed sooner, but also introduces additional market opportunities for the regulated community by enabling the sale of smaller oysters that are popular in certain markets. The amendment additionally creates a five percent allowance for undersized oysters (oysters between 1.5 inches and two inches in length) to acknowledge the inherent difficulty, when sorting and harvesting large quantities of oysters, of ensuring that all of them meet the minimum size limit.

The amendment revises paragraphs (2) and (3) of current subsection (l) to separate and more clearly state provisions applicable to oysters coming from Nursery-Hatchery sites in or using waters from Unclassified and Prohibited areas from provisions applicable to oysters coming from sites in or using waters from

Restricted areas. The provisions give the size by which oysters in Nursery-Hatchery facilities located in or using certain waters (e.g., designated by DSHS as Unclassified, Prohibited, or Restricted) must be moved to waters designated by DSHS as Approved or Conditionally Approved, as well as the minimum length of time the oysters must remain in those waters before harvest. These standards are established by the NSSP. Further, the amendment to paragraph (2) also provides that oysters of over one inch in length in a Nursery-Hatchery facility located in or using waters from a Restricted area may be moved, but are subject to "relay regulation" requirements under the NSSP. The amendment adds new paragraph (4) to stipulate explicitly that oysters that are for certain reasons (e.g., tumbling and sorting) out of the water longer than the limits established by DSHS rule (Time-to-Temperature controls in the *Vibrio vulnificus* Management Plan for Oysters) must be re-submerged for at least 14 days prior to harvest, which is necessary to conform with NSSP standards intended to protect human health and safety. As noted earlier in this preamble, an exception for post-harvest processing has been added. Finally, new paragraph (5) clearly establishes that it is unlawful to harvest oysters unless both a valid Grow-Out permit and a valid Cultivated Oyster Mariculture Harvest Authorization are possessed, which is necessary to more explicitly align department rules with the NSSP.

The amendment to §58.353 also alters current subsection (n) to clearly establish that the department will review a permittee's request to add subpermittees to the permit, designate those persons approved for subpermittee status, and may refuse to authorize subpermittees determined to be unqualified for permit issuance. The provisions are necessary to ensure that persons authorized to conduct permitted activities in the absence or in lieu of the permittee are identified, qualified to do so, and not otherwise prohibited or ineligible from being a permittee.

The amendment to current subsection (p) provides for the transfer of permits. Under current rule, COM permits are not transferrable. At the request of the regulated community, the department considers that because the period of validity of a COM permit is ten years and COM activities are typically for-profit commercial ventures, there likely will be scenarios in which the nature of business transactions result in changes in ownership, which could result in disruptive or inconvenient situations resulting from the process of having to issue a new permit each time ownership changes. Therefore, the department is persuaded that a mechanism for transferring permits is reasonable and prudent. The amendment allows for the transfer of a permit upon completion of a transfer request and payment of a \$200 transfer fee.

The amendment also alters the provisions of current subsection (r) to allow required infrastructure gear tags to bear the phone number of the permittee in lieu of the permittee's address.

The amendment to current subsection (s) consists primarily of clarifying changes to nomenclature. The word "harvest" would replace current language referencing the removal of oysters from permitted facilities, clarify that harvest tagging requirements apply to oysters being delivered and/or sold for human consumption, and that all tagging requirements of the subchapter must be met before oysters leave the permitted area.

Finally, the amendment alters current subsection (v) to rename the Oyster Seed Transport Document as the Oyster Transport Authorization and allow for transport of oysters to a temporary location for purposes of tumbling and sorting. The authorization creates a mechanism to document permitted activities involving



the transport of oysters of various lengths outside of permitted sites, and to account for the possession of undersized oysters. The name change better identifies what the authorization is applicable to (i.e., not just oyster seed), and additional language clarifies the process by which authorizations are requested, reviewed, and issued. The rule as adopted requires this documentation to accompany all non-harvest tagged oysters, oyster seed or oyster larvae that are being transported outside of a permitted area. The amendment also creates a mechanism for oysters to be temporarily relocated outside of a permitted area for tumbling and sorting. A common oyster mariculture practice, the tumbling and sorting of oysters is a mechanical process that separates oysters according to size. Many permittees perform tumbling and sorting aboard boats on open water in permitted areas; however, wind and wave energy in Texas bay systems often make tumbling and sorting activities unsafe or unfeasible. The regulated community has requested the creation of some sort of mechanism that would allow the transport of oysters to a nearby location (such as a dock or onshore) to tumble and sort oysters. The department has determined that it is reasonable to allow permittees to transport mariculture oysters to shore on a temporary basis for tumbling and sorting, provided the oysters are then returned to the original permitted site prior to harvest and such oysters are not aboard any boat at the same time that oysters tagged for harvest are aboard.

The repeal of §58.354, concerning Oyster Seed Hatchery, is necessary because the provisions of the section are no longer needed in light of other aspects of this rulemaking.

The amendment to §58.355, concerning Permit Application, alters the subsection to provide for public notice of an application for a permit under the subchapter to be effected via the department's website. The current rule stipulates that the department will "publish notice" of permit applications and hold public meetings. Under current rule, the notices are required to be published in a newspaper. Because the Texas coast is lengthy and for the most part consists of small communities, newspaper publication is not as convenient as it once was and is not as efficient as electronic notification. The department believes it is more efficient to provide all notifications to the public via the department's website and to have the option of conducting the required public meetings virtually or in person. The department notes that it prepares and disseminates weekly press releases on a variety of department activities to hundreds of daily and weekly newspapers, who can then publish whatever is of interest to their readership. The department as well operates an email subscription service to notify interested persons and organizations of agency actions and notices.

The amendment to §58.356, concerning Renewal, alters the current provisions to clearly stipulate that the application fee specified in §53.13(d), concerning Fees, is also the renewal fee, since a submission of a renewal is simply another form of an application.

The repeal of §58.359, concerning Agency Decision to Refuse to Issue or Renew Permit; Review of Agency Decision, is necessary because all department regulations governing such processes were consolidated in 31 TAC Chapter 56 in compliance with the directives of the Texas Sunset Advisory Commission to establish a uniform process to govern department decisions to refuse issuance or renewal of non-recreational licenses and permits for which such processes are not prescribed by statute and prescribe a similar process regarding agency decisions to sus-

pend or revoke a license or permit affected by the new subchapter.

The department received six comments in favor of adoption of the rules as proposed.

The department received seven comments in favor of adoption of the rules except for specific issues:

Three commenters, including the Texas Aquaculture Association, requested a reduction in fees. The department disagrees with the comment and responds that while fees are referenced in the subchapter, actual fee values are stipulated in another chapter and are not germane to this rulemaking. No changes were made as a result of the comments.

Five commenters, including the Texas Aquaculture Association and the Texas Oyster Mariculture Association, requested that permittees be allowed to use triploid oysters that do not have a Texas origin diploid parent so that increased oyster seed supply would be available to permit holders. The department disagrees with the comments and responds that not all triploids produced by a diploid-tetraploid cross are sterile, therefore having a Texas origin diploid parent protects the genetic integrity of the oyster stocks in Texas waters. No changes were made as a result of the comments.

Three commenters requested the elimination of a harvest size limit. The department disagrees with the comments and responds that the rules as proposed reduce the size limit, opening up a wider range of market opportunities for permit holders. Size limits help reinforce the minimum time requirements of oyster seed growing in Approved or Conditionally Approved waters prior to harvest for consumption. No changes were made as a result of the comments.

The department received one comment opposing adoption of the rules as proposed. The Texas Press Association commented in opposition to the proposed changes to the public notice provisions that eliminated the requirement for newspaper publication of an application for a COM permit stating that removing the requirement would deprive the public of an effective way of being informed of pending governmental action. The department disagrees with the comment and responds that very few communities along the Texas Gulf Coast still have a daily or weekly newspaper and that advertising in the few daily or weekly newspapers that do exist is not the most effective method of reaching members of the public who live in remote locations. The department notes that internet access is now widespread, and the department prepares and disseminates weekly press releases on a variety of department activities to hundreds of daily and weekly newspapers, magazines, and other media, who can then publish whatever is deemed to be of interest to their readership. The department as well operates an email subscription service to notify interested persons and organizations of agency actions and notices.

### **31 TAC §§58.352, 58.353, 58.355, 58.356**

The amendments adopted are under the authority of Parks and Wildlife Code, §75.0103, which requires the commission to adopt rules to establish a program governing cultivated oyster mariculture, which may establish requirements for the taking, possession, transport, movement, and sale of cultivated oysters; the taking, possession, transport, and movement of broodstock oysters; fees and conditions for use of public resources, including broodstock oysters and public water, and any other matter necessary to implement and administer Parks

and Wildlife Code, Chapter 75; and Parks and Wildlife Code, §75.0101, which requires the commission to adopt rules to establish requirements for permit applications and application fees; criteria for the approval, transfer, revocation, and suspension of permits; and procedures for hearings related to a permit.

§58.353. *General Provisions.*

(a) No person may engage in cultivated oyster mariculture (COM) in this state unless they have on their person a valid permit issued by the department authorizing the activity. A valid permit may be possessed in physical or electronic format.

(b) A Cultivated Oyster Mariculture (COM) Grow-out Permit authorizes the permittee to purchase, receive, grow, and sell cultivated oysters.

(c) A Cultivated Oyster Mariculture (COM) Nursery-Hatchery Permit authorizes a permittee to:

- (1) hold oyster broodstock and germplasm;
- (2) spawn oyster broodstock;
- (3) purchase, receive, and grow oyster seed and larvae; and
- (4) sell oyster broodstock, germplasm, seed, and larvae;

but

(5) does not authorize the sale of oysters in any form for human consumption.

(d) No person may conduct an activity authorized by a permit issued under this subchapter at any location other than the location specified by the permit.

(e) It is unlawful for a permittee or subpermittee to possess an oyster dredge or oyster tongs within a permitted area or aboard a vessel transporting oysters under the provisions of this subchapter.

(f) The period of validity for a permit issued under this subchapter is 10 years, subject to the limitations of this subchapter.

(g) Unless otherwise specifically authorized in writing by the department, one year from the date of issuance of a COM Grow-Out Permit and by the anniversary of the date of issuance for each year thereafter, the permittee must provide evidence to the department's satisfaction that at least 100,000 oyster seed per acre of permitted area has been planted.

(h) Unless otherwise specifically authorized by the department in writing, cultivated oyster mariculture is restricted to seed and larvae from native Eastern oyster (*Crassostrea virginica*) broodstock collected or originating from Texas waters and propagated in a permitted Nursery-Hatchery located in Texas.

(1) The department may authorize a person permitted under this subchapter to, on or before December 31, 2033, import:

(A) tetraploid seed, larvae, and/or semen/eggs (germplasm) produced in department-approved out-of-state hatcheries located along the Gulf of Mexico for use in cultivated oyster mariculture in this state; and/or

(B) triploid seed, larvae, and/or semen/eggs (germplasm) from a tetraploid line of oysters originating from the Gulf of Mexico crossed with broodstock originating from Texas waters produced in department-approved out-of-state hatcheries located along the Gulf of Mexico for use in cultivated oyster mariculture in this state; and/or

(C) diploid seed, larvae, and/or semen/eggs (germplasm) produced from Texas broodstock at department-approved

out-of-state hatcheries located along the Gulf of Mexico for use in cultivated oyster mariculture in this state.

(2) A department authorization made under the provisions of this subsection must be in writing and provide for any permit conditions the department deems necessary.

(3) The department will not authorize the possession of any oyster, larvae, or oyster seed that the department has determined, in the context of the prospective activity, represents a threat to any native oyster population, including to genetic identity.

(i) It is unlawful to possess wild caught oysters:

- (1) within a COM Grow-Out permitted area;
- (2) within a COM Nursery-Hatchery permitted area unless:
  - (A) they are legally obtained;
  - (B) labeled as to their identity and use for broodstock;

and

(C) held separately from cultivated oysters; or

(3) on a vessel operating under a permit issued under this subchapter.

(j) The department may:

(1) inspect any permitted area, facility, infrastructure, container, vessel, or vehicle used to engage in cultivated oyster mariculture;

(2) sample any oyster in a permitted area, facility, container, vessel, or vehicle used to engage in cultivated oyster mariculture in order to determine genetic lineage; and

(3) specify any permit provisions deemed necessary.

(k) The holder of a COM Permit (Grow-out or Nursery-Hatchery) must notify the department within 24 hours of the:

(1) discovery of any disease condition within a permitted area; and

(2) discovery of any condition, manmade or natural, that creates a threat of the unintentional release of stock or larvae.

(3) The requirements of this subsection do not apply to the discovery of dermo (*Perkinsosis*, *Perkinsus marinus*).

(1) The department may take any action it considers appropriate, including ordering the removal of all stock and larvae from a permitted area or facility and the cessation of permitted activities, upon:

(1) a determination that a disease condition other than dermo (*Perkinsosis*, *Perkinsus marinus*) exists; or

(2) the suspension or revocation by a federal or state entity of a permit or authorization required under §58.355 of this title (relating to Permit Application).

(m) The department may order the suspension of any or all permitted activities, including the removal of all stock and larvae from a permitted area or facility, upon determining that a permittee is not compliant with any provision of this subchapter, which suspension shall remain in effect until the deficiency is remedied and the department authorizes resumption of permitted activities in writing.

(n) Harvest Requirements .

(1) No person may harvest for the purpose of delivery and/or sale for human consumption any oyster less than 2.0 inches in length (measured along the greatest length of the shell) from a COM Grow-Out permitted area; however, a cargo of oysters may contain

oysters between 1.5 inches and 2 inches (measured along the greatest length of the shell); provided such oysters constitute five percent or less of the cargo in question.

(2) Oysters produced under a Nursery-Hatchery permit in waters or using waters from an area classified as Prohibited or Unclassified must be transferred to a COM permitted Grow-Out location in waters classified as Approved or Conditionally Approved before they reach one inch in length (as measured along the greatest length of the shell) and held in that area for a minimum of 120 days before harvest.

(3) Oysters produced under a Nursery-Hatchery permit in waters or using waters from an area classified as Restricted must be transferred to a COM permitted Grow-Out location in waters classified as Approved or Conditionally Approved before they reach one inch in length (as measured along the greatest length of the shell) and held in that area for a minimum of 60 days before harvest. Oysters greater than one inch may be transferred from these facilities but are subject to relay regulation requirements under the NSSP.

(4) Oysters that are out of the water for a time period exceeding the parameters specified by the Time-to-Temperature controls established by DSHS in 25 TAC §241.68, relating to *Vibrio vulnificus* Management Plan for Oysters, must be re-submerged for a minimum of 14 days prior to harvest for market for raw consumption. Records regarding re-submergence must be maintained in accordance with permit provisions.

(5) It is unlawful for a permittee to harvest oysters under this subchapter unless they have a Grow-Out permit and a Cultivated Oyster Mariculture Harvest Authorization.

(o) Harvest of oysters under this subchapter is unlawful between sunset and sunrise.

(p) Except as may be specifically provided otherwise in this section, activities authorized by a permit issued under this subchapter shall be conducted only by the permittee or subpermittees named on the permit.

(1) A permittee may designate subpermittees to perform permitted activities in the absence of the permittee.

(A) The permittee shall submit a subpermittee request on a form provided by the department that is signed and dated by both the permittee and subpermittee.

(B) The department will review the request and issue a list of individuals authorized as subpermittees.

(C) The department may refuse to approve a subpermittee if that person would not be eligible to be a permittee under this subchapter.

(2) At all times that a subpermittee is conducting permitted activities, the subpermittee shall have on their person a valid permit and subpermittee list in physical or electronic format

(3) It is an offense for a permittee to allow any permitted activity to be performed by a person not listed with the department as a subpermittee as required under this subsection.

(4) A permittee and subpermittee are jointly liable for violations of this subchapter or the provisions of a permit issued under this subchapter.

(q) A permittee shall, prior to the placement of any infrastructure within a permitted area located in or on public water:

(1) mark the boundaries of the permitted area with buoys or other permanent markers and continuously maintain the markers until

the termination of the permit. All marker, buoys, or other permanent markers must:

(A) be at least six inches in diameter;

(B) extend at least three feet above the water at mean high tide;

(C) be of a shape and color that is visible for at least one half-mile under conditions that do not constitute restricted visibility; and

(D) be marked with the permit identifier assigned by the department to the permitted area, in characters at least two inches high, in a location where it will not be obscured by water or marine growth; and

(2) install safety lights and signals required by applicable federal regulations, including regulations of the United States Coast Guard (U.S.C.G.) and must be functional. A permittee shall repair or otherwise restore to functionality any light or signal within 24 hours of notification by the U.S.C.G or the department.

(r) Transfer of Permit. The department may approve the transfer of a permit.

(1) A transfer request must be submitted to the department for approval on a form provided by the department, accompanied by the application fee specified in §53.13 of this title (relating to Business License and Permits (Fishing)).

(2) The department may refuse to approve a transfer if that person would not be eligible to be a permittee under this subchapter.

(3) A transfer does not change the terms, conditions, or provisions of a permit.

(s) Permittees must remove, at the expense of the permittee, all containers, enclosures and associated infrastructure from public waters within 60 calendar days of permit expiration or revocation.

(t) A valid gear tag must be attached to each piece of component infrastructure (e.g., containers, cages, bags, sacks, totes, trays, nursery structures) within a permitted area. The gear tag must bear the name and either address or phone number of the permittee and the permit identifier of the permitted area. The information on a gear tag must be legible.

(u) It is unlawful for any person to harvest oysters from a COM Grow-Out area for purposes of delivery and/or sale for human consumption unless the oysters are in a container that has been tagged in accordance with the applicable provisions of the NSSP concerning shellstock identification, and this subchapter. Tagging must occur prior to leaving the permitted area.

(v) Except as provided by subsection (u) of this section for harvested oysters transported for delivery and/or sale for human consumption, it is unlawful for any person to possess oysters, oyster seed, or oyster larvae outside of a permitted area unless the person also possesses a department-issued Oyster Transport Authorization or the department has authorized in a permit provision the transport of oysters for tumbling and sorting:

(1) Oyster Transport Authorization

(A) An Oyster Transport Request must be submitted to the department prior to the transport date and:

(i) be on a form provided or approved by the department;

(ii) contain the name, address, and, if applicable, permit identifier from whom the oysters, oyster seed, or oyster larvae were obtained;

(iii) contain the name, address, and permit identifier to whom the oyster, oyster seed, or oyster larvae are to be delivered; and

(iv) precisely account for and describe all containers in possession.

(B) The department will review the request and, if approved, will issue an Oyster Transport Authorization specific to the oysters, oyster seed, or oyster larvae being transported.

(2) Permit Provision Authorization for Tumbling and Sorting outside of permitted area

(A) The department may authorize, within a permit's provisions, a permittee to transport oysters to a specified location outside of their permitted area for tumbling and sorting oysters.

(B) Oysters must be returned to the permitted area after tumbling and sorting before harvest.

(C) It is unlawful to transport oysters for tumbling and sorting while in possession of oysters tagged for harvest.

(w) A vessel used to engage in activities regulated under this subchapter shall prominently display an identification plate supplied by the department at all times the vessel is being used in such activities.

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 January 10, 2025.

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James Murphy  
General Counsel  
Texas Parks and Wildlife Department  
Effective date: January 30, 2025  
Proposal publication date: October 4, 2024  
For further information, please call: (512) 389-4775



### 31 TAC §§58.354, 58.359, 58.360

The repeals are adopted under the authority of Parks and Wildlife Code, §75.0103, which requires the commission to adopt rules to establish a program governing cultivated oyster mariculture, which may establish requirements for the taking, possession, transport, movement, and sale of cultivated oysters; the taking, possession, transport, and movement of broodstock oysters; fees and conditions for use of public resources, including broodstock oysters and public water, and any other matter necessary implement and administer Parks and Wildlife Code, Chapter 75; and Parks and Wildlife Code, §75.0101, which requires the commission to adopt rules to establish requirements for permit applications and application fees; criteria for the approval, transfer, revocation, and suspension of permits; and procedures for hearings related to a permit. The repeals affect Parks and Wildlife Code, Chapter 75.

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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James Murphy  
General Counsel  
Texas Parks and Wildlife Department  
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## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 16. COMPTROLLER GRANT PROGRAMS

##### SUBCHAPTER D. RURAL LAW ENFORCEMENT SALARY ASSISTANCE PROGRAM

###### 34 TAC §§16.300, 16.303 - 16.305

The Comptroller of Public Accounts adopts amendments to §16.300, concerning definitions, §16.303, concerning awards; grant agreement, §16.304, concerning authorized uses of grant funds; limitations, and §16.305, concerning reporting and compliance, without changes to the proposed text as published in the November 15, 2024, issue of the *Texas Register* (49 TexReg 9187). The rules will not be republished.

The amendments to §16.300 modify the current definition of "county jailer" to simplify the term to "jailer" and clarify a permanent or temporary county jailer license is acceptable, by deleting the definition of "county jailer" in paragraph (2) and adding the definition of "jailer" in new paragraph (9). The amendments add a definition for "investigator" in new paragraph (8). The amendments also add to the definition of "safety equipment" in paragraph (13) that software is not included in the term unless it is purchased in connection with the purchase of tangible safety equipment and is necessary for that safety equipment to be functional.

The amendments to §16.303 modify subsection (d) to further explain that a legal obligation to expend funds requires an effective, binding contract. The amendments add new subsection (f), which clarifies who must electronically sign a grant agreement. The amendments also add new subsection (g) clarifying a qualified county may receive grants for their sheriff's office, constable's office, and prosecutor's office, including a prosecutor's office receiving more than one grant.

The amendments to §16.304 amend subsection (a) to clarify the minimum annual salary requirement applies to vacant positions upon hiring as described in this subsection and update the citations and grammar. The amendments delete duplicate language in subsection (a)(1) relating to the definitions of "deputy sheriff" and "jailer." The amendments relocate the language previously in subsection (d) to subsection (i) and add new language to subsection (d) to clarify impermissible uses of grant funds. The amendments make non-substantive changes to subsection

(f). The amendments add new subsection (i), which describes the authorized uses of grant funds and limitations on uses of grant funds with new examples. The amendments add new subsection (j), which describes the authorized uses of grant funds and limitations specific to additional employees hired with grant funds, and includes examples. The amendments add new subsection (k) to clarify when vehicle leases are considered purchases under subsection (a)(2)(C).

The amendments to §16.305 amend subsection (c) to provide that the comptroller may require a grant recipient to cure, to the satisfaction of the comptroller, a failure to comply with the requirements of subsection (b). The amendments add new subsection (d) to clarify the person who must electronically provide information and sign and certify the compliance report.

The comptroller did not receive any comments regarding adoption of the amendments.

These amendments are adopted under Local Government Code, §§130.911, 130.912 and 130.913, which authorize the comptroller to adopt rules to efficiently and effectively administer a grant program to provide financial assistance to qualified

sheriff's offices, constable's offices, and prosecutor's offices in rural counties.

The amendments implement Local Government Code, §§130.911, 130.912 and 130.913.

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 January 10, 2025.

TRD-202500071

Victoria North

General Counsel for Fiscal and Agency Affairs

Comptroller of Public Accounts

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