

PROPOSED RULES

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

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

TITLE 4. AGRICULTURE

PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 51. ENTRY REQUIREMENTS

4 TAC §51.1, §51.4

The Texas Animal Health Commission (Commission) proposes amendments to Title 4, Texas Administrative Code, Chapter 51 titled "Entry Requirements." Specifically, the Commission proposes amendments to §51.1 regarding Definitions and §51.4 regarding Shows, Fairs, and Exhibitions.

BACKGROUND AND PURPOSE

A member of the public petitioned the Commission for a rule change to modify the requirements for Texas origin animals entering Texas exhibition events. The petitioner explained that the current regulations made it expensive for youth competitors to participate in small family-run or 4H/FFA volunteer shows because of the cost of obtaining a certificate of veterinary inspection (CVI) for each show when out-of-state animals are present.

The petitioner requested that the Commission consider removing the requirement that Texas origin animals obtain a CVI for each exhibition.

According to the petitioner, many exhibitors are unable to obtain CVIs for multiple shows due to the cost, only allowing wealthy exhibitors to attend multiple shows, causing a disadvantage to some youth exhibitors. Elimination of the requirement would help level the playing field for all youth competitors.

The petitioner also pointed out that the current rule requires show sponsors to bar out-of-state participants for Texas only shows if they want to eliminate the requirement for Texas participants to have CVIs, resulting in loss revenue from out-of-state participants. The petitioner noted that out-of-state participants provide additional income to local businesses, particularly restaurants, hotels, gas stations, and feed/tack supply stores.

Currently, Commission rules distinguish between interstate shows and intrastate shows and have different entry requirements for each. The Commission considers shows, fairs, and exhibitions to be interstate if they permit livestock and poultry from other states to enter for show or exhibition and be held or exhibited in common facilities with Texas origin livestock and poultry of the same species. For interstate shows all animals must meet the out-of-state entry requirements which includes obtaining a CVI. The Commission considers shows, fairs, or exhibitions to be intrastate if they only allow Texas animals to enter or if they require Texas livestock and poultry of the same species to be housed and exhibited separately from livestock

and poultry from out of state. For intrastate exhibitions, CVIs are not generally required.

Any time animals congregate from multiple premises there is an increased risk of disease transmission. The purpose of the entry requirements for shows, fairs, and exhibitions is to reduce the risk of disease transmission and ensure the Commission can perform a disease investigation if needed.

In reviewing the petition, staff at the Commission looked at the overall risk of disease transmission from Texas origin animals and at alternative ways a disease investigation could be conducted. Staff concluded that disease risk was not appreciably higher for interstate shows as long as out-of-state origin animals meet the Texas entry requirements. Staff also concluded that a disease investigation could be accomplished by obtaining information about participants from the show sponsor. Because sponsors typically gather information regarding the animals during the registration process, such as owner information, species, breed, sex, and age, it should not cause unreasonable burden on show sponsors. Commission staff found this recordkeeping would eliminate the need for CVIs for Texas origin animals.

After consideration of the petition, the Commission proposes amendments to the rules that will add a recordkeeping requirement for sponsors of shows, eliminate the distinction between interstate and intrastate shows, maintain entry requirements for out-of-state participants, and eliminate the need for Texas participants to meet the same standards of out-of-state participation. These proposed changes will reduce the barriers for entry to shows, fairs, and exhibitions for Texas participants. Entry requirements for out-of-state participants cannot be reduced further without conflicting with existing federal requirements.

SECTION-BY-SECTION DISCUSSION

Section 51.1 removes the definition of "interstate show" and adds a definition for "official identification."

Section 51.4 sets forth the requirements for entry requirements for shows, fairs, and exhibitions. The proposed amendments add a recordkeeping requirement for sponsors of shows, eliminate the distinction between interstate and intrastate shows, maintain entry requirements for out-of-state participants, and eliminate the need for Texas participants to meet the same standards of out-of-state participation.

FISCAL NOTE

Ms. Jeanine Coggeshall, General Counsel for the Commission, determined that for each year of the first five years that the rule is in effect there will be no additional estimated cost or estimated reductions in costs in enforcing or administering the proposed rules. Commission employees will administer and enforce these rules as part of their current job duties and resources and there is no foreseeable change in resources as a result of these pro-

posed rules. However, this proposed rule may decrease the fees collected on CVIs because the rule change will likely result in fewer issued CVIs.

Under the current rule, both Texas participants and out-of-state participants are required to obtain a CVI to enter shows, fairs, and events in which out-of-state animals are present. Under the proposed changes, Texas participants will no longer need to obtain a CVI to enter the event. The Commission assesses a \$7 fee per CVI. Approximately 18,600 CVIs for Texas origin animals traveling to Texas exhibitions are issued annually. It is anticipated that if the proposed rule changes, CVI for Texas origin animals traveling to Texas exhibitions would likely be reduced by 75%, leading to a reduction in fee revenue by approximately \$97,650 per year.

PUBLIC BENEFIT NOTE

Ms. Coggeshall determined that for each year of the first five years the rule is in effect, the anticipated public benefits are decreased costs to Texas residents entering livestock shows, fairs, and exhibitions, allowing more Texans to participate in events. These events bring value to local communities and provide an opportunity for Texas youth to learn about animal agriculture and showcase the animals they raise.

TAKINGS IMPACT ASSESSMENT

The Commission determined that the proposal does not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. Therefore, the proposed rules are compliant with the Private Real Property Preservation Act in Texas Government Code §2007.043 and do not constitute a taking.

LOCAL EMPLOYMENT IMPACT STATEMENT

The Commission determined that the proposed rules would not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission pursuant to Texas Government Code §2001.022.

REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

The Commission determined that this proposal is not a "major environmental rule" as defined by Government Code §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

GOVERNMENT GROWTH IMPACT STATEMENT

In compliance with the requirements of Texas Government Code §2001.0221, the Commission prepared the following Government Growth Impact Statement. The Commission determined for each year of the first five years the proposed rules would be in effect, the proposed rules:

- Will not create or eliminate a government program;
- Will not require the creation or elimination of employee positions;
- Will result in no assumed change in future legislative appropriations;

Will affect fees paid to the Commission;

Will create new regulation;

Will expand existing regulations;

Will not change the number of individuals subject to the rule; and

Will positively affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Ms. Coggeshall also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities pursuant to Texas Government Code, Chapter 2006. The rules do not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules.

COSTS TO REGULATED PERSONS

The proposed amendments to Chapter 51 do not impose additional costs on regulated persons and are designed to reduce the costs to regulated persons, specifically, eliminate the need for Texas residents participating in shows, fairs, and exhibitions to obtain a CVI for each event. The proposed rules do not otherwise impose a direct cost on a regulated person, state agency, a special district, or a local government within the state.

PUBLIC COMMENT

Written comments regarding the proposed amendments may be submitted to Amanda Bernhard, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0719 or by e-mail to comments@tahc.texas.gov. To be considered, comments must be received no later than thirty (30) days from the date of publication of this proposal in the *Texas Register*. When faxing or emailing comments, please indicate "Comments on Proposed Rule-Chapter 51, Entry Requirements" in the subject line.

STATUTORY AUTHORITY

The amendments are authorized by Texas Agriculture Code, Chapter 161.

Pursuant to §161.041, titled "Disease Control", the Commission shall protect all livestock, exotic livestock, domestic fowl, and exotic fowl from diseases the Commission determines require control or eradication. Pursuant to §161.041(b) the Commission may act to eradicate or control any disease or agent of transmission for any disease that affects livestock, exotic livestock, domestic fowl, or exotic fowl. The Commission may adopt any rules necessary to carry out the purposes of this subsection, including rules concerning testing, movement, inspection, and treatment.

Pursuant to §161.043, titled "Regulation of Exhibitions", the Commission may regulate the entry of livestock and may require certification of those animals as reasonably necessary to protect against communicable diseases.

Pursuant to §161.046, titled "Rules", the Commission may adopt rules as necessary for the administration and enforcement of this chapter.

Pursuant to §161.047, titled "Entry Power", a commissioner or veterinarian or inspector employed by the Commission may enter public or private property for the exercise of an authority or performance of a duty under Chapter 161.

Pursuant to §161.048, titled "Inspection of Shipment of Animals or Animal Product", the Commission may require testing, vacci-

nation, or another epidemiologically sound procedure before or after animals are moved. An agent of the Commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or non-communicable disease.

Pursuant to §161.054, titled "Regulation of Movement of Animals; Exception", the Commission may by rule regulate the movement of animals, and may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The Commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved.

Pursuant to §161.056(a), titled "Animal Identification Program", the Commission, to provide for disease control and enhance the ability to trace disease-infected animals or animals that have been exposed to disease, may develop and implement an animal identification program that is no more stringent than a federal animal disease traceability or other federal animal identification program. Section 161.056(d) authorizes the Commission to adopt rules to provide for an animal identification program more stringent than a federal program only for control of a specific animal disease or for animal emergency management.

Pursuant to §161.0601, titled "Certificates of Veterinary Inspection", the Commission by rule may provide for the issuance of certificates of veterinary inspection by a veterinarian to a person transporting livestock, exotic livestock, domestic fowl, or exotic fowl.

Pursuant to §161.081, titled "Importation of Animals", the Commission by rule may provide the method for inspecting and testing animals before and after entry into the state of Texas. The Commission may create rules for the issuance and form of health certificates and entry permits.

No other statutes, articles, or codes are affected by this proposal.

§51.1. Definitions.

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

(1) - (15) (No change.)

~~{(16) Interstate show--A show, fair, or exhibition that permits livestock and poultry from other states to enter for show or exhibition and be held in common facilities with Texas origin livestock and poultry of the same species.}~~

(16) ~~[(47)]~~ Livestock--Cattle, horses, mules, asses, sheep, goats, and hogs.

(17) Official Identification--The identification of livestock and fowl by means of an official identification device, official cartag, registration tattoo, or registration brand, or any other method approved by the Commission and/or Administrator of the United States Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS) that provides unique identification for each animal.

(18) - (23) (No change.)

§51.4. Shows, Fairs and Exhibitions.

(a) Sponsor Recordkeeping

(1) A sponsor must maintain the following records for each animal entered into a show, fair, or exhibition:

(A) owner's name and contact information, including address;

(B) county of origin;

(C) a description of the animal including sex, age, and breed, and, if applicable, official identification, validation information, tag numbers, tattoos, brands, and registration;

(D) information regarding the stall or pen that the animal was kept during the event, if applicable; and

(E) the buyer's name and contact information, including address, if the animal is sold at the show, fair, or exhibition.

(2) A sponsor must maintain records for one year after the date of the event.

(3) The sponsor must provide the records to Commission personnel upon request.

(b) Requirements for out-of-state origin animals.

(1) Cattle

(A) Certificate of Veterinary Inspection. All out-of-state origin cattle must have a valid Certificate of Veterinary Inspection (CVI).

(B) Official Identification. All out-of-state origin cattle of any age must be identified using official identification regardless of age or breed.

(C) Permit Requirements. Out-of-state origin cattle must meet the permit requirements contained in §51.8 of this title (relating to Cattle).

(D) Testing Requirements. Out-of-state origin cattle must meet the testing requirements contained in §51.8 of this title.

(E) Vaccination Requirements. Out-of-state origin cattle must meet the brucellosis vaccination requirements contained in §35.4 of this title (relating to Entry, Movement, and Change of Ownership).

(2) Equine

(A) Certificate of Veterinary Inspection. All out-of-state origin equine must have one of the following: a valid Certificate of Veterinary Inspection (CVI); a valid equine interstate passport; or a valid equine identification card.

(B) Testing Requirements.

(i) Equine Infectious Anemia (EIA). All out-of-state origin equine must have one of the following: proof of a negative result to an official Equine Infection Anemia (EIA) test within the previous 12 month if travelling on a Certificate of Veterinary Inspection (CVI); a valid equine interstate passport; or equine identification card.

(ii) Piroplasmiasis. Equine entering a racetrack facility must meet the Piroplasmiasis requirements for testing in §49.5 of this title (relating to Piroplasmiasis: Testing, Identification of Infected Equine).

(3) Exotic Livestock and Fowl

(A) Certificate of Veterinary Inspection. All out-of-state origin exotic livestock and fowl must have a valid Certificate of Veterinary Inspection (CVI).

(B) Official Identification. All out-of-state origin exotic Cervidae, Bovidae, Swine, and Ratites must be identified using official identification.

(C) Permit Requirements. Out-of-state origin exotic livestock and fowl must meet the permit requirements contained in §51.9 of this title (relating to Exotic Livestock and Fowl).

(D) Testing Requirements. Out-of-state origin exotic livestock and fowl must meet the testing requirements contained in §51.9 of this title.

(E) Sale of Exhibition Exotic Fowl. All out-of-state sellers of live exotic fowl who do not participate in a qualifying disease surveillance program recognized by the Commission must register under Chapter 54 of this title.

(4) Goats

(A) Certificate of Veterinary Inspection. All out-of-state origin goats must have a valid Certificate of Veterinary Inspection (CVI).

(B) Official Identification. Unless excepted, all out-of-state origin goats are required to be identified using official identification.

(C) Permit Requirements. Out-of-state origin goats must meet the permit requirements contained in §51.11 and §51.12 of this title (relating to Goats and relating to Sheep).

(D) Testing Requirements. Out-of-State origin goats must meet the testing requirements contained in §51.11 and §51.12 of this title.

(5) Poultry and Domestic Fowl

(A) Certificate of Veterinary Inspection. All out-of-state origin poultry and domestic fowl entering Texas to be exhibited must have a valid Certificate of Veterinary Inspection (CVI).

(B) Permit Requirements. All poultry and domestic fowl entering Texas to be exhibited must have an entry permit issued by the Commission.

(C) Testing Requirements. All out-of-state origin poultry must meet the testing requirements contained in §51.15 and §57.11 of this title (relating to Poultry and relating to General Requirements).

(D) Sale of Exhibition Poultry and Domestic Fowl. All out-of-state sellers of live poultry and domestic fowl who do not participate in a qualifying disease surveillance program recognized by the Commission must register under Chapter 54 of this title.

(6) Sheep

(A) Certificate of Veterinary Inspection. All out-of-state origin sheep must have a valid Certificate of Veterinary Inspection (CVI).

(B) Official Identification. All out-of-state origin sheep are required to be identified using official identification.

(C) Permit Requirements. Out-of-state origin sheep must meet the permit requirements contained in §51.12 of this title.

(D) Testing Requirements. Out-of-State origin sheep must meet the testing requirements contained in §51.12 of this title.

(7) Swine

(A) Certificate of Veterinary Inspection. All out-of-state origin swine must have a valid Certificate of Veterinary Inspection (CVI) that includes the certifications required by §51.14(a) of this title (relating to Swine).

(B) Official Identification. All out-of-state origin swine are required to be identified using official identification.

(C) Testing Requirements. All out-of-state origin swine must meet testing requirements contained in §51.14 of this title.

(D) Vaccination Requirements. All out-of-state origin breeding swine (sexually intact swine, 6 months of age or older) must have a Leptospirosis vaccination within 30 days prior to the event. The vaccine must contain the following strains: Canicola, Hardjo, Icterohaemorrhagiae, Grippotyphosa, and Pomona. Vaccination status should be recorded on the CVI.

(c) Requirements for Texas origin animals.

(1) Cattle

(A) Official Identification. All dairy breed cattle, including steers and spayed heifers, and all breeding bulls 12 months of age or older must be identified using official identification.

(B) Testing Requirements. Texas origin dairy cattle are not required to test for tuberculosis to participate in a show, fair or exhibition within this state.

(C) Sale of Exhibition Bulls. Any Texas origin bulls changing possession at the event must meet the Trichomoniasis testing requirements contained in §38.2 of this title (relating to General Requirements).

(2) Equine

(A) A Certificate of Veterinary Inspection is required for Texas origin entering a parimutuel racetrack.

(B) Testing Requirements.

(i) Equine Infectious Anemia (EIA). All equine must have one of the following: proof of a negative results to an official Equine Infection Anemia (EIA) test within the previous 12 months month if travelling on a Certificate of Veterinary Inspection (CVI); or a valid equine interstate passport; or or equine identification card.

(ii) Piroplasmosis. Equine entering a racetrack facility must meet the Piroplasmosis requirements for testing in §49.5 of this title.

(3) Exotic Livestock and Fowl

(A) Official Identification.

(i) Texas origin Chronic Wasting Disease (CWD) susceptible cervids must be identified using official identification.

(ii) Exhibition ratites offered for sale must be identified using official identification.

(B) Sale of Exhibition Exotic Fowl. All sellers of live exotic fowl who do not participate in a qualifying disease surveillance program recognized by the Commission must register under Chapter 54 of this title.

(4) Goats. Unless excepted under §60.2 of this title (relating to Animal Identification and Record Keeping), all Texas origin goats are required to be identified using official identification.

(5) Poultry and Domestic Fowl

(A) Testing Requirements.

(i) Pullorum-Typhoid (PT) Test. Poultry must originate from flocks or hatcheries free of pullorum disease and fowl typhoid or have a negative PT test within 30 days before exhibition.

(ii) Laryngotracheitis (LT) Test. Poultry must originate from areas where LT has not been active in the past 30 days, and

poultry must not have been vaccinated with the modified live chick-em-bryo origin LT vaccine or the modified live MG- attenuated vaccine.

(B) Sale of Exhibition Poultry and Domestic Fowl. All sellers of live poultry and domestic fowl who do not participate in a qualifying disease surveillance program recognized by the Commission must register under Chapter 54 of this title.

(6) Sheep

(A) Official Identification. Unless excepted under §60.2 of this title, all Texas origin sheep are required to be identified using official identification.

(B) Testing Requirements. Texas origin breeding rams may enter shows, fairs, and exhibitions without a test for *Brucella ovis*.

(7) Swine

(A) Official Identification. Texas origin breeding swine changing ownership must be identified using official identification.

(B) Testing Requirements. Prior to change of ownership, all swine must meet testing requirements contained in §55.1(b) of this title (relating to Testing Breeding Swine Prior to Sale or Change of Ownership). Texas origin swine entered in terminal shows are exempt from brucellosis and pseudorabies testing requirements.

[(a) Out-of-state or area origin.]

[(1) Animals entering for exhibition and sale shall be accompanied by a certificate of veterinary inspection and a permit for entry. Livestock entering only for exhibition purposes are required to be accompanied by a certificate of veterinary inspection.]

[(2) Poultry, meaning chickens or turkeys, entered in terminal public exhibition events shall be accompanied by a certificate of source which identifies the flock of origin. Poultry entering in a non-terminal public exhibition shall be accompanied by a certificate of veterinary inspection. The certificate of veterinary inspection shall state that poultry have been inspected and are free from evidence of infectious or contagious diseases; that the poultry have been vaccinated only with approved vaccines, as provided by §57.10(12) of this title, and poultry have not originated from an area that has had an active avian disease, as provided by §45.2 of this title, within thirty days of entry. Poultry entering the state for public exhibition, from other states, must have either a negative flock or individual bird test for Avian Influenza, within thirty days of entry, and the results of such test shall be recorded on or attached to the certificate of veterinary inspection. For poultry the certificate shall also state that they have passed a negative test for pullorum-typhoid within 30 days prior to shipment or that the birds originate from flocks which have met the pullorum-typhoid requirements of the Texas Pullorum-Typhoid Program and/or the National Poultry Improvement Plan.]

[(3) Cattle. Vaccination for brucellosis is not required for cattle from Class Free States. Texas origin dairy cattle are not required by §51.8(b)(3) of this title (relating to Cattle) to test for tuberculosis to participate in a show, fair or exhibition within this state.]

[(4) Equine may enter shows, fairs, exhibitions or assemblies without a certificate of veterinary inspection when accompanied by a valid equine interstate passport or equine identification card and a completed VS Form 10-11 showing negative results to an official EIA test within the previous six months. Horses entering a pari-mutuel track must have a negative EIA test within the past 12 months and a Certificate of Veterinary Inspection.]

[(b) In-state origin.]

[(1) Equine. Must have had a negative EIA test within the past 12 months if entering a show, fair, exhibition, or assembly. Horses entering a pari-mutuel track must have a negative EIA test within the past 12 months and a Certificate of Veterinary Inspection. Foals less than eight months of age, as evidenced by the lack of the eruption of the third pair of upper incisors, nursing a negative dam are exempt from testing.]

[(2) Breeding rams. May enter shows, fairs, and exhibitions without a test for *Brucella ovis* if they originate in Texas. (See: §51.12 of this title relating to Entry Requirements for Sheep).]

[(3) Other livestock shall meet the same requirements as for those entering from out-of-state, and be accompanied by a certificate of veterinary inspection when entering shows, fairs, and exhibitions that are determined to be interstate. Texas origin dairy cattle are not required by §51.8(b)(3) of this title to test for tuberculosis to participate in a show, fair or exhibition within this state. Poultry see subsection (a)(2) of this section.]

[(4) Exhibition swine originating in Texas. These swine entered in terminal shows are exempt from brucellosis, and pseudorabies testing requirements.]

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

Filed with the Office of the Secretary of State on March 3, 2025.

TRD-202500761

Jeanine Coggeshall

General Counsel

Texas Animal Health Commission

Earliest possible date of adoption: April 13, 2025

For further information, please call: (512) 839-0511



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS

The Texas Education Agency (TEA) proposes the repeal of §§61.1026, 61.1071, and 61.1073, concerning school district reporting requirements and counseling public school students. The proposed repeal would relocate the existing requirements to proposed new 19 TAC Chapter 78 with no changes to the content of the rules.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 61.1026 requires school districts and open-enrollment charter schools to report through the Texas Student Data System Public Education Information Management System (TSDS PEIMS) the number of full-time equivalent school counselors at each campus and the availability of expanded learning opportunities. The proposed repeal of §61.1026 would move the existing language to proposed new §78.1001 with no changes to the content of the rule.

Section 61.1071 requires school counselors to provide certain information about higher education to a student and a student's parent or guardian during the first year the student is enrolled in a high school or at the high school level in an open-enrollment charter school and again during the student's senior year. The proposed repeal of §61.1071 would move the existing language

to proposed new §78.2001 with no changes to the content of the rule.

Section 61.1073 implements the statutory requirement for school districts to annually assess compliance with the district policy requiring a school counselor to spend at least 80% of the school counselor's total work time on duties that are components of a counseling program. The proposed repeal of §61.1073 would move the existing language to proposed new §78.1003 with no changes to the content of the rule.

The relocations are necessary due to a comprehensive reorganization of 19 TAC Chapter 61.

FISCAL IMPACT: Monica Martinez, associate commissioner for standards and programs, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

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

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

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

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

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would repeal existing regulations to relocate the requirements.

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

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Martinez has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be to allow for TEA rules to be reorganized. There is no anticipated economic cost to persons who are required to comply with the proposal.

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

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

PUBLIC COMMENTS: The public comment period on the proposal begins March 14, 2025, and ends April 14, 2025. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on March 14, 2025. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/Proposed_Commissioner_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

CROSS REFERENCE TO STATUTE. The repeal implements Texas Education Code, §33.252 and §48.009.

SUBCHAPTER BB. COMMISSIONER'S RULES ON REPORTING REQUIREMENTS

19 TAC §61.1026

STATUTORY AUTHORITY. The repeal is proposed under Texas Education Code (TEC), §33.252, which outlines the types of expanded learning opportunities that may be provided by school districts and open-enrollment charter schools and the manner in which expanded learning opportunities may be offered; and TEC, §48.009, which requires the commissioner to by rule require each school district and open-enrollment charter school to report through PEIMS information regarding the availability of school counselors at each campus and the availability of expanded learning opportunities as described by TEC, §33.252.

§61.1026. Statutorily Required Reporting through the Public Education Information Management System.

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

Filed with the Office of the Secretary of State on March 3, 2025.

TRD-202500764

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



SUBCHAPTER GG. COMMISSIONER'S RULES CONCERNING COUNSELING PUBLIC SCHOOL STUDENTS

19 TAC §61.1071, §61.1073

STATUTORY AUTHORITY. The repeals are proposed under Texas Education Code (TEC), §33.007, which requires school counselors to provide information about postsecondary education to students and their parents or guardians; TEC, §33.005, which provides that a school counselor shall plan, implement, and evaluate a comprehensive school counseling program that meets the requirements of the section; TEC, §33.006(d), which requires, except as provided by subsection (e) of the section, school districts to adopt a policy that requires a school counselor to spend at least 80% of the school counselor's total work time on duties that are components of a counseling program developed under TEC, §33.005; TEC, §33.006(e), which requires school district boards of trustees that determine

that staffing needs require school counselors to spend less than 80% of their work time on duties that are components of counseling programs developed under TEC, §33.005, to change the policy adopted under subsection (d) of the section to reflect the reasons why counselors need to spend less than 80% of their work time on components of the counseling program, list those non-it hduities, and set the required percentage of work time to be spent on components of the counseling program; and TEC, §33.006(h), which requires each school district to annually assess the district's compliance with the policy adopted under TEC, §33.006(d), and, on request by the commissioner, provide a written copy of the assessment to Texas Education Agency on or before a date specified by the commissioner. This section requires the commissioner to adopt rules to implement these requirements.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code (TEC), §33.007, for §61.1071; and TEC, §33.005 and §33.006, for §61.1073.

§61.1071. Counseling Public School Students Regarding Higher Education.

§61.1073. Annual Assessment of School District Compliance.

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

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



CHAPTER 78. COUNSELING, ADVISING, AND STUDENT SUPPORT

The Texas Education Agency (TEA) proposes new §§78.1001, 78.1003, and 78.2001, concerning counseling services and student advising. The proposed new sections would relocate existing requirements from 19 TAC Chapter 61 with no changes to the content of the rules.

BACKGROUND INFORMATION AND JUSTIFICATION: Proposed new §78.1001 would move existing language from 19 TAC §61.1026, which requires school districts and open-enrollment charter schools to report through the Texas Student Data System Public Education Information Management System (TSDS PEIMS) the number of full-time equivalent school counselors at each campus and the availability of expanded learning opportunities. The relocation is necessary due to a comprehensive reorganization of 19 TAC Chapter 61. No changes from the existing rule are proposed.

Proposed new §78.1003 would move existing language from 19 TAC §61.1073, which implements the statutory requirement for school districts to annually assess compliance with the district policy requiring a school counselor to spend at least 80% of the school counselor's total work time on duties that are components of a counseling program. The relocation is necessary due to a comprehensive reorganization of 19 TAC Chapter 61. No changes from the existing rule are proposed.

Proposed new §78.2001 would move existing language from 19 TAC §61.1071, which requires school counselors to provide certain information about higher education to a student and a student's parent or guardian during the first year the student is enrolled in a high school or at the high school level in an open-enrollment charter school and again during the student's senior year. The relocation is necessary due to a comprehensive reorganization of 19 TAC Chapter 61. No changes from the existing rule are proposed.

FISCAL IMPACT: Monica Martinez, associate commissioner for standards and programs, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

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

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

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

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

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would create new regulations to relocate existing requirements.

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

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Martinez has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be to allow for TEA rules to be reorganized. There is no anticipated economic cost to persons who are required to comply with the proposal.

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

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

PUBLIC COMMENTS: The public comment period on the proposal begins March 14, 2025, and ends April 14, 2025. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received

by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on March 14, 2025. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/Proposed_Commissioner_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

SUBCHAPTER AA. COMMISSIONER'S RULES ON COUNSELING SERVICES

19 TAC §78.1001, §78.1003

STATUTORY AUTHORITY. The new sections are proposed under Texas Education Code (TEC), §33.252, which outlines the types of expanded learning opportunities that may be provided by school districts and open-enrollment charter schools and the manner in which expanded learning opportunities may be offered; TEC, §48.009, which requires the commissioner to by rule require each school district and open-enrollment charter school to report through PEIMS information regarding the availability of school counselors at each campus and the availability of expanded learning opportunities as described by TEC, §33.252; TEC, §33.005, which provides that a school counselor shall plan, implement, and evaluate a comprehensive school counseling program that meets the requirements of the section; TEC, §33.006(d), which requires, except as provided by subsection (e) of the section, school districts to adopt a policy that requires a school counselor to spend at least 80% of the school counselor's total work time on duties that are components of a counseling program developed under TEC, §33.005; TEC, §33.006(e), which requires school district boards of trustees that determine that staffing needs require school counselors to spend less than 80% of their work time on duties that are components of counseling programs developed under TEC, §33.005, to change the policy adopted under subsection (d) of the section to reflect the reasons why counselors need to spend less than 80% of their work time on components of the counseling program, list those non-component duties, and set the required percentage of work time to be spent on components of the counseling program; and TEC, §33.006(h), which requires each school district to annually assess the district's compliance with the policy adopted under TEC, §33.006(d), and, on request by the commissioner, provide a written copy of the assessment to Texas Education Agency on or before a date specified by the commissioner. This section requires the commissioner to adopt rules to implement these requirements.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code (TEC), §33.252 and §48.009, for §78.1001; and TEC, §33.005 and §33.006, for §78.1003.

§78.1001. Statutorily Required Reporting through the Public Education Information Management System.

(a) Each school district and open-enrollment charter school shall report through the Texas Student Data System Public Education Information Management System (TSDS PEIMS) the number of full-time equivalent school counselors, defined as 40 hours of counseling services a week, at each campus.

(b) Each school district and open-enrollment charter school shall report through TSDS PEIMS for each campus:

(1) the availability of expanded learning opportunities that are provided during:

(A) an extended school day program that students are required to attend as part of the regular program of the campus at which

students are enrolled to increase the academic achievement and development of participating students;

(B) an extended school year program that students are required to attend as part of the regular program of the campus at which students are enrolled to increase the academic achievement and development of participating students; or

(C) a supplemental voluntary structured learning program that:

(i) occurs outside of the regular school day, including before- and after-school programs and summer programs; and

(ii) is coordinated with and enhances the regular academic program of the campus to increase the academic achievement and development of the participating student; and

(2) the availability of expanded learning opportunities that are provided by offering:

(A) rigorous coursework that includes activities related to providing Texas Essential Knowledge and Skills (TEKS)-aligned credit-earning courses, including activities related to dual credit and credit recovery;

(B) mentoring that consists of scheduled interaction between a trained adult and an individual student in which the adult provides support and teaches life skills to help the student's personal and academic development;

(C) tutoring that consists of one-on-one or small group instruction, led by a certified teacher, that provides supplemental content instruction or homework help to support student mastery of academic material and that does not include academic skill-building activities;

(D) physical activity that consists of instructor-led activities designed to provide students with supplemental opportunities for individual or group exercise or related knowledge and skills that encourage regular physical activity;

(E) academic support that provides supplemental instruction related to student academic skill development, including compensatory education, test-taking skills, and related academic skill-building, and that does not include tutoring and homework help; or

(F) educational enrichment in one or more subjects, including fine arts, civic engagement, science, technology, engineering, and mathematics, that includes activities that engage students in actively exploring academic content introduced during the regular school day to increase the academic success of students and consists of activities that are intentionally designed to align with but not replicate the instruction.

§78.1003. Annual Assessment of School District Compliance.

(a) The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise.

(1) Comprehensive school counseling program--provision of a guidance curriculum, responsive services, individual planning, and system support as described in Texas Education Code (TEC), §33.005(b).

(2) Duties that are components of a counseling program--work activities related to the development, implementation, and evaluation of a comprehensive school counseling program as described in TEC, §33.005(b).

(3) School counselor--the position described by TEC, §21.003, and Chapter 239, Subchapter A, of this title (relating to School Counselor Certificate).

(4) School counselor's total work time--the amount of time, reported in hours, that a school counselor is contracted to work as a school counselor for a school district during a school year.

(b) School districts shall require each district school counselor to track and document, using a standardized tracking tool, as established by each district, the time spent on work duties performed by the school counselor throughout a school year. This tracking tool shall:

(1) include the following components:

(A) the total work time worked by the school counselor for the year;

(B) the total time spent on the following duties that are components of a counseling program developed under TEC, §33.005:

(i) provision of a guidance curriculum;

(ii) responsive services for students;

(iii) individual planning for students; and

(iv) system support; and

(C) the total time spent on duties that are not components of a counseling program developed under TEC, §33.005, including time spent in administering assessment instruments or providing other assistance in connection with assessment instruments (except time spent in interpreting data from assessment instruments); and

(2) be maintained by the district in a format that can be made available to Texas Education Agency (TEA) upon request.

(c) School districts shall annually assess the district's compliance with the policy adopted under TEC, §33.006(d). The assessment shall include:

(1) work time tracking documentation as described in subsection (b) of this section for each school counselor in the district;

(2) the number of school counselors whose work was in compliance with the district policy adopted under TEC, §33.006(d); and

(3) the number of school counselors in the district whose work was not in compliance with the district policy adopted under TEC, §33.006(d).

(d) The assessment described in subsection (c) of this section shall be maintained by the school district in a format that can be made available to TEA upon request.

(e) Not later than October 15 of each year, TEA will request the following information from a randomly selected sample of school districts, with district responses required to be submitted to TEA not later than November 15 of each year in the format requested by TEA:

(1) a copy of the district policy adopted under TEC, §33.006(d);

(2) a copy of the district annual assessment as required by subsection (c) of this section;

(3) the number of school counselors in the district from the previous school year;

(4) the number of school counselors in the district whose work is determined by the district to be out of compliance with the district policy adopted under TEC, §33.006(d); and

(5) any other findings, conclusions, or analysis included in the annual assessment required by subsection (c) of this section, including proposed strategies to address any lack of compliance with the district policy adopted under TEC, §33.006(d).

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

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Cristina De La Fuente-Valadez
Director, Rulemaking

Texas Education Agency

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



SUBCHAPTER BB. COMMISSIONER'S RULES ON STUDENT ADVISING

19 TAC §78.2001

STATUTORY AUTHORITY. The new section is proposed under Texas Education Code, §33.007, which requires school counselors to provide information about postsecondary education to students and their parents or guardians.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §33.007.

§78.2001. Counseling Public School Students Regarding Higher Education.

(a) In accordance with Texas Education Code (TEC), §33.007, a counselor shall provide certain information about higher education to a student and a student's parent or guardian during the first year the student is enrolled in a high school or at the high school level in an open-enrollment charter school and again during the student's senior year.

(b) The information that counselors provide in accordance with subsection (a) of this section must include information regarding all of the following:

(1) the importance of higher education, which:

(A) includes workforce education, liberal arts studies, science education, graduate education, and professional education to provide broad educational opportunities for all students;

(B) furthers students' intellectual and academic development; and

(C) offers students more career choices and a greater potential earning power;

(2) the advantages of completing the recommended high school curriculum or higher, including, at a minimum, curriculum programs which:

(A) provide students with opportunities to complete higher-level course work, particularly in mathematics, science, social studies, and languages other than English, thereby:

(i) increasing students' readiness for higher education and reducing the need for additional preparation for college-level work;

(ii) preparing students for additional advanced work and research in both career and educational settings;

(iii) allowing students, in certain instances, to receive college credit for their high school course work; and

(iv) enabling students to be eligible for certain financial aid programs for which they would otherwise be ineligible (e.g., the TEXAS grant program);

(B) enable students to receive an academic achievement record noting the completion of either the recommended program or higher; and

(C) provide students who elect to complete the distinguished achievement program with an opportunity to demonstrate student performance at the college or career level by demonstrating certain advanced measures of achievement;

(3) the advantages of taking courses leading to a high school diploma relative to the disadvantages of preparing for a high school equivalency examination, including:

(A) the progressive relationship between education and income; and

(B) the greater possibility for post-secondary opportunities (including higher education and military service) that are available to students with a high school diploma;

(4) financial aid eligibility, including:

(A) the types of available aid, not limited to need-based aid, and including grants, scholarships, loans, tuition and/or fee exemptions, and work-study;

(B) the types of organizations that offer financial aid, such as federal and state government, civic or church groups, foundations, nonprofit organizations, parents' employers, and institutions of higher education; and

(C) the importance of meeting financial aid deadlines;

(5) instruction on how to apply for financial aid, including guidance and assistance in:

(A) determining when is the most appropriate time to complete financial aid forms; and

(B) completing and submitting the Free Application for Federal Student Aid (FAFSA) or any new version of this form as adopted by the U.S. Department of Education;

(6) the Texas Higher Education Coordinating Board's Center for Financial Aid Information, including its toll-free telephone line, its Internet website address, and the various publications available to students and their parents;

(7) the Automatic Admissions policy, which provides certain students who graduate in the top 10% of their high school class with automatic admission into Texas public universities; and

(8) the general eligibility and academic performance requirements for the TEXAS grant program, which allows students meeting the academic standards set by their college or university to receive awards for up to 150 credit hours or for six years or until they receive their bachelor's degree, whichever occurs first. The specific eligibility and academic performance requirements, along with certain exemptions to these requirements, are specified in Chapter 22, Subchapter L, of this title (relating to Toward Excellence, Access and Success (TEXAS) Grant Program). The general requirements include:

(A) Texas residency;

(B) financial need;

(C) registration for the Selective Service or exemption from this requirement;

(D) completion of the recommended high school program or higher or, in the case of a public high school that did not offer all of the courses necessary to complete the recommended or higher curriculum, a certification from the district that certifies that the student completed all courses toward such a curriculum that the high school had to offer;

(E) enrollment of at least three-quarters time in an undergraduate degree or certificate program within 16 months of high school graduation, unless an allowable exemption is satisfied; and

(F) no conviction of a felony or crime involving a controlled substance, unless certain conditions are met.

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

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 250. ADMINISTRATION SUBCHAPTER B. RULEMAKING PROCEDURES

19 TAC §250.20

The State Board for Educator Certification (SBEC) proposes an amendment to 19 Texas Administrative Code (TAC) §250.20, concerning petition for adoption of rules or rule changes. The proposed amendment would update the SBEC's petition for adoption of rule change procedures to align with statute.

BACKGROUND INFORMATION AND JUSTIFICATION: Texas Government Code (TGC), §2001.021, requires that procedures to petition for the adoption of rule changes be adopted by rule. To comply with statute, the SBEC rules in 19 TAC Chapter 250, Subchapter B, establish procedures for SBEC petition for rulemaking in §250.20, Petition for Adoption of Rules or Rule Changes.

The proposed amendment to §250.20 would strike subsections (b)(1) and (2) and add new subsection (b) to align with statute and allow the SBEC to address petitions for rulemaking more effectively, by either denying or initiating rulemaking within the 60-day required window.

FISCAL IMPACT: Jessica McLoughlin, associate commissioner for educator preparation, certification, and enforcement, has determined that for the first five years enforcing or administering the rule does not have foreseeable implications relating to cost or revenues of the state or local governments. There are no additional costs to entities required to comply with the proposal.

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

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

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

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

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not expand, limit, or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Ms. McLoughlin has determined that for the first five years the proposal is in effect, the public benefit anticipated would be aligning with statute and reflecting current procedures. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no new data and reporting impact.

ENVIRONMENTAL IMPACT STATEMENT: The proposal does not require an environmental impact analysis because the proposal does not include major environmental rules under TGC, §2001.0225.

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

PUBLIC COMMENTS: The public comment period on the proposal begins March 15, 2025, and ends April 14, 2025. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/SBEC_Rules_\(TAC\)/Proposed_State_Board_for_Educator_Certification_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/SBEC_Rules_(TAC)/Proposed_State_Board_for_Educator_Certification_Rules/). Comments on the proposal may also be submitted by calling (512) 475-1497. The SBEC will also take registered oral and written comments on the proposal during the April 2025 meeting's public comment period in accordance with the SBEC board operating policies and procedures.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §21.035(b), which requires the Texas Education Agency (TEA) to provide the State Board for Educator's (SBEC's) administrative functions and services; TEC,

§21.041(a), which authorizes the SBEC to adopt rules as necessary to implement its procedures; and TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and Texas Government Code, §2001.021, which authorizes a state agency to prescribe by rule the form for a petition and the procedure for the submission, consideration, and disposition.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code (TEC), §21.035(b) and §21.041(a) and (b)(1), and Texas Government Code (TGC), §2001.021.

§250.20. *Petition for Adoption of Rules or Rule Changes.*

(a) Any interested person, as defined in Texas Government Code (TGC), §2001.021, may petition for the adoption, amendment, or repeal of a rule of the State Board for Educator Certification (SBEC) by filing a petition on the form provided in this subsection. The petition shall be signed and submitted to the designated Texas Education Agency (TEA) office. The TEA staff shall evaluate the merits of the petition to determine whether to recommend that rulemaking proceedings be initiated or that the petition be denied.

Figure: 19 TAC §250.20(a) (No change.)

(b) The SBEC shall respond to a written request for rulemaking from an interested person in accordance with TGC, §2001.021.

~~[(b) In accordance with TGC, §2001.021, the TEA staff must respond to the petitioner within 60 calendar days of receipt of the petition.]~~

~~[(1) Where possible, the recommendation concerning the petition shall be placed on the next SBEC agenda, and the SBEC shall act on the petition within 60 calendar days.]~~

~~[(2) Where the time required to review the petition or the scheduling of SBEC meetings will not permit the SBEC to act on the petition within the required 60 calendar days, the TEA staff shall respond to the petitioner within the required 60 calendar days, notifying the petitioner of the date of the SBEC meeting at which the recommendation will be presented to the SBEC for action.]~~

(c) The SBEC will review the petition and the recommendation and will either deny the petition, giving reasons for the denial, or direct the TEA staff to begin the rulemaking process. The TEA staff will notify the petitioner of the SBEC's action related to the petition.

(d) Without limitation to the reasons for denial in this subsection, the SBEC may deny a petition on the following grounds:

(1) the SBEC does not have jurisdiction or authority to propose or to adopt the petitioned rule;

(2) the petitioned rule conflicts with a statute, court decision, another rule proposed or adopted by the SBEC, or other law;

(3) the SBEC determines that a different proceeding, procedure, or act more appropriately addresses the subject matter of the petition than initiating a rulemaking proceeding;

(4) the petitioner files a petition:

(A) before the fourth anniversary of the SBEC's having previously considered and rejected a similar rule on the same subject matter; or

(B) to amend a rule proposed or adopted by the SBEC that has not yet become effective; or

(5) any other reason the SBEC determines is grounds for denial.

(e) If the SBEC initiates rulemaking procedures in response to a petition, the rule text which the SBEC proposes may differ from the rule text proposed by the petitioner.

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

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Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

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



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 12. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS

CHAPTER 374. DISCIPLINARY ACTIONS/DETRIMENTAL PRACTICE/COMPLAINT PROCESS/CODE OF ETHICS/LICENSURE OF PERSONS WITH CRIMINAL CONVICTIONS

40 TAC §374.1, §374.2

The Texas Board of Occupational Therapy Examiners proposes amendments to the Schedule of Sanctions figure in 40 Texas Administrative Code §374.1, Disciplinary Actions, and §374.2, Detrimental Practice.

The amendments to §374.2 will update the definition of "practiced occupational therapy in a manner detrimental to the public health and welfare" and clarify conduct that constitutes grounds to take disciplinary action against license holders.

Amendments to the Schedule of Sanctions in §374.1 will align the provisions therein with the proposed changes to §374.2; update the minimum, intermediate, and maximum discipline columns to reflect current trends in disciplinary action; and update administrative penalties for each day a violation continues or occurs. The amendments to the Schedule of Sanction also include the addition of a violation related to failure to inform the Board of information changes pursuant to §369.2, Changes of Name or Contact Information. The amendments also include general cleanups, including the removal of the current §374.2(12) and corresponding item in the Schedule of Sanctions, which concerned deceptive and fraudulent advertising, as a related item is already listed under Texas Occupations Code §454.301, Grounds for Denial of License or Discipline of License Holder; in tandem with the change, that related item from §454.301 has been added to the Schedule of Sanctions.

The amendments are proposed to ensure that the rules clearly identify the conduct that may be considered detrimental practice and the corresponding discipline. The changes will also facilitate the ability of individuals and the Board to identify violations and related discipline in order to ensure the health, safety, and welfare of the public.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENTS

Ralph A. Harper, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal impact to state or local governments as a result of enforcing or administering these amendments as proposed under Texas Government Code §2001.024(a)(4) because the amendments do not impose a cost on state or local governments.

LOCAL EMPLOYMENT IMPACT

Mr. Harper has determined that the proposed amendments would not impact a local economy. Therefore, a local employment impact statement is not required under Texas Government Code §2001.022 and §2001.024(a)(6).

PUBLIC BENEFIT AND COST NOTE

Mr. Harper has determined under Texas Government Code §2001.024(a)(5) that for each of the first five years the proposed amendments would be in effect, the public benefit will be the greater ability of the rules to address violations that may be considered detrimental practice in order to ensure the health, safety, and welfare of the public. There would not be an additional anticipated economic cost to persons required to comply with the proposed amendments because Texas Occupations Code Chapter 454, the Occupational Therapy Practice Act, already allows for the Board to impose an administrative penalty and proposed changes do not exceed that amount authorized by Texas Occupations Code §454.3521(b).

ECONOMIC IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

Mr. Harper has determined there would be no costs or adverse economic effects on small businesses, micro-businesses, or rural communities. Therefore, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002.

TAKINGS IMPACT ASSESSMENT

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

GOVERNMENT GROWTH IMPACT STATEMENT

Mr. Harper has determined under Texas Government Code §2001.0221 that during the first five years the rules would be in effect:

- (1) the rules will not create or eliminate a government program;
- (2) the rules will not require the creation of new employee positions or the elimination of existing employee positions;
- (3) the rules will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rules will not require an increase or decrease in fees paid to the agency;

(5) the rules will create new regulations and repeal existing regulations;

(6) the rules will expand certain existing regulations and limit certain existing regulations;

(7) the rules will not increase or decrease the number of individuals subject to the rules' applicability; and

(8) the rules will neither positively nor adversely affect this state's economy.

COSTS TO REGULATED PERSONS

These rules are not subject to Texas Government Code §2001.0045 because the rules are necessary to protect the health, safety, and welfare of the residents of this state and the Board is required to adopt a schedule of administrative penalties and other sanctions by rule pursuant to Texas Occupations Code §454.3025(a). The administrative penalties in the Schedule of Sanctions are necessary to deter the practice of occupational therapy in a manner detrimental to the public health and welfare.

ENVIRONMENTAL IMPACT STATEMENT

Mr. Harper has determined that the proposed amendments do not require an environmental impact analysis because the amendments are not major environmental rules under Texas Government Code §2001.0225.

PUBLIC COMMENT

Comments on the proposed amendments may be submitted in writing to Lea Weiss, Occupational Therapy Coordinator, Texas Board of Occupational Therapy Examiners, 1801 Congress Ave Ste 10.900, Austin, Texas 78701 or to lea@ptot.texas.gov within 30 days following the publication of this notice in the *Texas Register*. It is requested when sending a comment that individuals include the rule section to which the comment refers and that comments sent by email include "Public Comment" in the email's subject line.

STATUTORY AUTHORITY

The amendments are proposed under Texas Occupations Code §454.102, which authorizes the Board to adopt rules to carry out its duties under Chapter 454. The amendments are also proposed under §454.3025, which requires the Board by rule to adopt a schedule of administrative penalties and other sanctions that the Board may impose under this chapter, and under §454.3521, which authorizes the Board to impose an administrative penalty, not to exceed \$200 for each day a violation continues or occurs, under this chapter for a violation of this chapter or a rule or order adopted under this chapter. The amendments, lastly, are proposed under Texas Occupations Code §454.301, which includes that the Board may deny, suspend, or revoke a license or take other disciplinary action against a license holder if the applicant or license holder has practiced occupational therapy in a manner detrimental to the public health and welfare.

CROSS REFERENCE TO STATUTE

No other statutes, articles, or codes are affected by these amendments.

§374.1. *Disciplinary Actions.*

(a) The board, in accordance with the Administrative Procedure Act, may deny, revoke, suspend, or refuse to renew or issue a

license, or may reprimand or impose probationary conditions, if the licensee or applicant for licensure has been found in violation of the rules or the Act. The board will adhere to procedures for such action as stated in the Act, §§454.301, 454.302, 454.303, and 454.304.

(b) The board recognizes four levels of disciplinary action for its licensees.

(1) Level I: Order and/or Letter of Reprimand or Other Appropriate Disciplinary Action (including but not limited to community service hours).

(2) Level II: Probation--The licensee may continue to practice while on probation. The board orders the probationary status which may include but is not limited to restrictions on practice and continued monitoring by the board during the specified time period.

(3) Level III: Suspension--A specified period of time that the licensee may not practice as an occupational therapist or occupational therapy assistant. Upon the successful completion of the suspension period, the license will be reinstated upon the licensee successfully meeting all requirements.

(4) Level IV: Revocation--A determination that the licensee may not practice as an occupational therapist or occupational therapy assistant. Upon passage of 180 days, from the date the revocation order becomes final, the former licensee may petition the board for re-issuance of a license. The former licensee may be required to re-take the Examination.

(c) The board shall utilize the following schedule of sanctions in all disciplinary matters.

Figure: 40 TAC §374.1(c)

[Figure: 40 TAC §374.1(e)]

(d) The board shall consider the following factors in conjunction with the schedule of sanctions when determining the appropriate penalty/sanction in disciplinary matters:

(1) the seriousness of the violation, including:

(A) the nature, circumstances, extent, and gravity of the violation; and

(B) the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts to correct the violation;

(5) the economic harm to the public interest or public confidence caused by the violation;

(6) whether the violation was intentional; and

(7) any other matter that justice requires.

(e) Licensees who provide occupational therapy services are responsible for understanding and complying with Chapter 454 of the Occupations Code (the Occupational Therapy Practice Act), and the Texas Board of Occupational Therapy Examiners' rules.

(f) Final disciplinary actions taken by the board will be routinely published as to the names and offenses of the licensees.

(g) A licensee who is ordered by the board to perform certain act(s) will be monitored by the board to ensure that the required act(s) are completed per the order of the board.

(h) The board may expunge any record of disciplinary action taken against a license holder before September 1, 2019, for practicing

in a facility that failed to meet the registration requirements of §454.215 of the Act (relating to Occupational Therapy Facility Registration), as that section existed on January 1, 2019. The board may not expunge a record under this subsection after September 1, 2021.

(i) A licensee or applicant is required to report to the board a felony of which he/she is convicted within 60 days after the conviction occurs.

§374.2. *Detrimental Practice.*

§454.301(a)(6) of the [The] Act (relating to Grounds for Denial of License or Discipline of License Holder)[, §454.301(a)(6)] states, "practiced occupational therapy in a manner detrimental to the public health and welfare," which is defined, but not limited to, the following:

(1) failing to document occupational therapy services or inaccurately recording, falsifying, or altering client records;

[(1) impersonating another person holding an occupational therapy license or allowing another person to use his or her license;]

(2) making or filing a false or misleading report, or failing to file a report when it is required by law or third person or obstructing or attempting to obstruct another person from filing such a report;

[(2) using occupational therapy techniques or modalities for purposes not consistent with the development of occupational therapy as a profession, as a science, or as a means for promoting the public health and welfare;]

(3) failing to report or otherwise concealing any conduct by self or another licensee likely to be a violation of the Act or Rules;

[(3) failing to report or otherwise concealing information related to violations of the Act, or rules and regulations pursuant to the Act, which could therefore result in harm to the public health and welfare or damage the reputation of the profession;]

(4) drug diversion. In this paragraph, "drug diversion" refers to when a medication is diverted from the person to whom it was prescribed;

[(4) intentionally making or filing a false or misleading report, or failing to file a report when it is required by law or third person, or intentionally obstructing or attempting to obstruct another person from filing such a report;]

(5) not providing the supervision required by the Act and Rules for those individuals to whom occupational therapy services are delegated;

[(5) intentionally harassing, abusing, or intimidating a patient either physically or verbally;]

(6) practicing occupational therapy without receiving the supervision required by the Act and Rules;

[(6) intentionally or knowingly offering to pay or agreeing to accept any remuneration directly or indirectly, overtly or covertly, in cash or in kind, to or from any person, firm, association of persons, partnership, or corporation for receiving or soliciting patients or patronage, regardless of source of reimbursement, unless said business arrangement or payments practice is acceptable under the Texas Health and Safety Code, §§161.091 - 161.094, the Social Security Act, §1128B, 42 United States Code 1320a-7b, or the Social Security Act, §1877, 42 United States Code 1395nn or its regulations;]

(7) impersonating another person holding a license; aiding, abetting, authorizing, condoning, or allowing the practice of occupational therapy or the representation of oneself as an occupational therapy practitioner by a person without a license; or aiding, abetting, au-

thorizing, condoning, or allowing the use of a license by a person other than the holder of the license;

[(7) recommending or prescribing therapeutic devices or modalities sold by a third person for the purpose or with the result of receiving a fee or other consideration from the third person;]

(8) practicing occupational therapy or representing oneself in a manner not authorized by the license;

[(8) breaching the confidentiality of the patient/therapist relationship;]

(9) failing to cooperate with the agency by not responding to agency correspondence addressed to the individual's designated address(es) or by not furnishing papers or documents requested or not responding to subpoenas issued by the agency within 90 days;

[(9) failing to obtain informed consent prior to engaging in scientific research involving patients, or otherwise violating ethical principles of research as defined by the TBOTE Code of Ethics, §374.4 of this title (relating to Code of Ethics), or other occupational therapy standards;]

(10) failing to complete the requirements of an agreed order;

[(10) practicing occupational therapy after the expiration of a temporary, provisional, or regular license;]

(11) interfering with an investigation or disciplinary proceeding by willful misrepresentation of facts before the agency or Board or by the use of threats, intimidation, or harassment against any clients or witnesses with the potential of preventing them from providing evidence in a disciplinary proceeding or any other legal action;

[(11) violation of Chapter 373 of this title (relating to Supervision);]

(12) practicing occupational therapy without a valid license, including after the expiration, surrender, or revocation of the license, during the suspension of the license, or after the license is void;

[(12) advertising in a manner which is false, misleading, or deceptive;]

(13) failing to conform to the minimal standards of acceptable prevailing practice, including, but not limited to:

(A) using occupational therapy techniques or modalities for purposes not consistent with the development of occupational therapy as a profession or science or as a means of promoting the public health and welfare;

(B) delegating, performing, or attempting to perform techniques or procedures in which one is untrained by education or experience;

(C) delegating occupational therapy functions or responsibilities to an individual lacking the competency to perform such;

(D) harassing, abusing, or intimidating a client either physically or verbally;

(E) causing or enabling physical or emotional injury to or the impairment of the dignity or safety of the client; and

(F) violating the principles or related standards of conduct of §374.4 of this title (relating to Code of Ethics);

[(13) failing to give sufficient prior written notice of resignation of employment (or termination of contract) resulting in loss or

delay of patient treatment for those patients/clients under the licensee's care; or]

(14) engaging in sexual contact or an inappropriate relationship with a client, including, but not limited to:

(A) engaging in inappropriate behavior with or comments directed toward a client; and

(B) becoming financially or personally involved in an inappropriate manner with a client;

[(14) failing to maintain the confidentiality of all verbal, written, electronic, augmentative, and nonverbal communication, including compliance with HIPAA regulations.]

(15) intentionally or knowingly offering to pay or agreeing to accept any remuneration directly or indirectly, overtly or covertly, in cash or in kind, to or from any person, firm, association of persons, partnership, or corporation for receiving or soliciting clients or patronage, regardless of source of reimbursement, unless said business arrangement or payments practice is acceptable under 42 United States Code §1320a-7b(b) or its regulations;

(16) recommending therapeutic devices or modalities sold by a third person for the purpose or with the result of receiving a fee or other consideration from a third person;

(17) failing to maintain the confidentiality of all verbal, written, electronic, augmentative, and nonverbal communication, including compliance with Health Insurance Portability and Accountability Act (HIPAA) regulations; and

(18) failing to provide sufficient prior written notice of resignation of employment or termination of contract, or if self-employed, sufficient prior written notice to existing clients or any licensees under the individual's supervision, resulting in the loss or delay of occupational therapy services. In this paragraph, "sufficient" means at least 14 days; however, should an employment contract, or if self-employed, a comparable written agreement with clients, specify a different period of time, "sufficient" means the term dictated by such, up to and including 30 days.

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

Filed with the Office of the Secretary of State on February 28, 2025.

TRD-202500756

Ralph A. Harper

Executive Director

Texas Board of Occupational Therapy Examiners

Earliest possible date of adoption: April 13, 2025

For further information, please call: (512) 305-6900

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