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# TEXAS REGISTER

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# TEXAS REGISTER

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# THE GOVERNOR

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

## Appointments

### Appointments for May 2, 2024

Appointed to the Governor's Commission for Women for a term to expire December 31, 2025, Angelica A. "Angie" Rosales of El Paso, Texas (replacing Cynthia T. "Cindy" Conroy of El Paso, who resigned).

### Appointments for May 6, 2024

Designating Jerry L. Adelman of Palacios as president of the Lavaca-Navidad River Authority for a term to expire at the pleasure of the Governor.

Designating Kristin D. Tips of San Antonio as presiding officer of the Texas Funeral Service Commission for a term to expire at the pleasure of the Governor. Ms. Tips is replacing Larry M. Allen of Mesquite as presiding officer.

### Appointments for May 7, 2024

Appointed to the OneStar National Service Commission for a term to expire March 15, 2026, Karin L. Morris of Highland Village, Texas (replacing Corey D. Tabor of Manor, whose term expired.)

Greg Abbott, Governor

TRD-202402042



## Proclamation 41-4106

### TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, do hereby certify that the severe storms and flooding event that began on April 26, 2024, and continues, and that included heavy rainfall, flash flooding, river flooding, large hail, and hazardous wind gusts are causing widespread and severe property damage, injury, or loss of life in Baylor, Chambers, Dickens, Ellis, Freestone, Galveston, Grimes, Harris, Haskell, Hill, Hood, Hunt, Kaufman, Knox, Leon, Liberty, Limestone, Madison, McLennan, Montgomery, Navarro, Polk, San Jacinto, Somervell, Tarrant, Trinity, Tyler, Walker, and Wichita Counties;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby declare a state of disaster in the previously listed counties.

Pursuant to Section 418.017 of the Texas Government Code, I authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster.

Pursuant to Section 418.016 of the Texas Government Code, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder, or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to protect life or property threatened by this declared disaster, I hereby authorize the

suspension of such statutes and rules for the duration of this declared disaster.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 30th day of April, 2024.

Greg Abbott, Governor

TRD-202401997



## Proclamation 41-4107

### TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, issued a disaster proclamation on Tuesday, April 30, 2024, certifying the severe storms and flooding that began on April 26, 2024, and included heavy rainfall, flash flooding, river flooding, large hail, and hazardous wind gusts that caused widespread and severe property damage, injury, or loss of life in Baylor, Chambers, Dickens, Ellis, Freestone, Galveston, Grimes, Harris, Haskell, Hill, Hood, Hunt, Kaufman, Knox, Leon, Liberty, Limestone, Madison, McLennan, Montgomery, Navarro, Polk, San Jacinto, Somervell, Tarrant, Trinity, Tyler, Walker, and Wichita Counties;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby amend the aforementioned proclamation and declare a disaster in these additional counties: Anderson, Angelina, Austin, Bandera, Bastrop, Bell, Bexar, Blanco, Bosque, Brazos, Burleson, Burnet, Caldwell, Cherokee, Colorado, Comal, Coryell, DeWitt, Falls, Fayette, Gillespie, Gonzales, Gregg, Guadalupe, Hamilton, Hardin, Hays, Henderson, Houston, Jasper, Jefferson, Johnson, Karnes, Kendall, Kerr, Kimble, Lampasas, Lavaca, Lee, Llano, Mason, Medina, Milam, Nacogdoches, Newton, Orange, Panola, Robertson, Rusk, Sabine, San Augustine, Shelby, Smith, Travis, Van Zandt, Waller, Washington, Williamson, and Wilson counties.

Pursuant to Section 418.017 of the Texas Government Code, I authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster.

Pursuant to Section 418.016 of the Texas Government Code, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder, or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to protect life or property threatened by this declared disaster, I hereby authorize the suspension of such statutes and rules for the duration of this declared disaster.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 2nd day of May, 2024.

Greg Abbott, Governor

TRD-202401998



# THE ATTORNEY GENERAL

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

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

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

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## Opinions

### Opinion No. KP-0463

The Honorable Dee Hobbs  
Williamson County Attorney  
405 M.L.K. Street, #7  
Georgetown, Texas 78626

Re: Whether a member of the public may obtain copies of spoiled ballots on the 61st day following election day (RQ-0520-KP)

### S U M M A R Y

The Legislature has established procedures aimed at both preserving spoiled ballots and granting public access to them.

Section 66.058 of the Election Code requires spoiled ballots be preserved in ballot box no. 4 or by any other method chosen by the election records custodian during a 22-month preservation period. Section 1.012 establishes spoiled ballots as public information and requires the custodian to make the ballots available to the public. By expressly re-

quiring the custodian to provide public access to such records, the Legislature authorized entry into ballot box no. 4 for such purpose during the 22-month period. Thus, members of the public may obtain copies of spoiled ballots preserved in ballot box no. 4 during the 22-month preservation period.

Personally identifiable information contained in election records that could tie a voter's identity to their specific voting selections is confidential and excepted from public disclosure. Thus, any confidential information on a spoiled ballot must be redacted for purposes of disclosure in order to protect the constitutional right to a secret ballot.

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

TRD-202402032

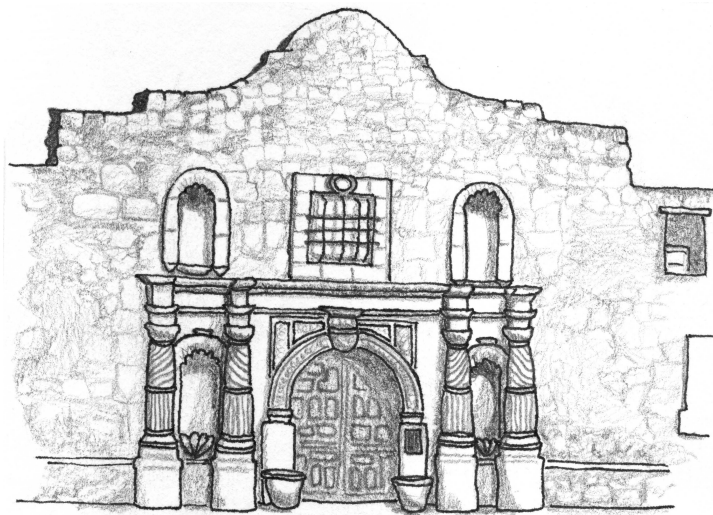
Justin Gordon

General Counsel

Office of the Attorney General

Filed: May 7, 2024





# PROPOSED RULES

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

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

## TITLE 4. AGRICULTURE

### PART 1. TEXAS DEPARTMENT OF AGRICULTURE

#### CHAPTER 14. ~~[PERISHABLE COMMODITIES]~~ HANDLING AND MARKETING OF PERISHABLE COMMODITIES ~~[PROGRAM]~~

The Texas Department of Agriculture (Department) proposes amendments to Texas Administrative Code, Title 4, Chapter 14 (Perishable Commodities Handling and Marketing Program), Subchapter A (General Provisions), §14.1 (Definitions), §14.3 (Fees), and §14.4 (Cancellation of License); Subchapter B (Produce Recovery Fund Claims), §14.10 (Claims Against the Fund), §14.11 (Determination on Claims by the Department), §14.12 (Filing of Notice of Protest; Appeal to the Board), §14.13 (Payment of Claims from the Fund), and §14.14 (Reimbursement to the Fund); and Subchapter C (Produce Recovery Fund Board), §14.20 (Purpose and Scope), §14.21 (Duties of the Board and the Department), §14.22 (Meetings), §14.23 (Conduct of Hearings of the Produce Recovery Fund Board), §14.24 (The Board's Final Determination), and §14.25 (Motion for Rehearing).

The Department identified the need for the proposed amendments during its rule review conducted pursuant to Texas Government Code, §2001.039, the adoption of which can be found in the Review of Agency Rules section of this issue.

In accordance with Texas Agriculture Code (Code), §103.004 and §103.012, the Produce Recovery Fund Board (Board) is required to advise the Department in its rulemaking capacity under Chapter 103 of the Texas Agriculture Code (Code). Chapter 103 governs the Board and payments from the Produce Recovery Fund pursuant to claims against license holders and persons requiring to be licensed as handlers of perishable commodities under Chapter 101 of the Code.

The Department presented the proposed amendments to the Board at its open meeting on November 15, 2023. The Board discussed and approved the proposed amendments by a unanimous vote.

The proposed amendments replace the current title of this chapter with "Handling and Marketing of Perishable Commodities" for consistency with the name of the Department's related program and the title of Chapter 101 of the Code.

The proposed amendments to §14.1 include a definition for the "Administrative Procedure Act" to account for its frequency in this chapter, remove a definition for "agent" due to its infrequency in this chapter, update a reference in the definition for the "Open

Meetings Act," add language to the definition for "claim" to specify against whom claims can be filed, and add a citation to the Code to the definition of "perishable commodity" to denote the statutory source of its definition.

The proposed amendments to §14.3 add language specifying those agents who require identification cards.

The proposed amendments to §14.4 specify a reference to the Department's general rules of procedure outlines in Chapter 1, Subchapter A of this title and change a reference to Chapter 2001 of the Texas Government Code to account for its proposed definition in §14.1.

The proposed amendments to §14.10 remove subsection (e) to become new subsection (d) §14.10 as its provisions fit more appropriately with those of §14.14, remove an outdated provision addressing claims prior to September 1, 2009, remove unnecessary language precluding the filing of out-of-state claims, and add a reference to §14.3 to specify claim-filing fees.

The proposed amendments to §14.11 change references to this chapter from "title" to "chapter," as the latter term is generally used throughout Title 4, update a reference to Chapter 1, Subchapter A of this title, change "recommendation" to "proposal for decision" as the former is used throughout this chapter and Chapter 1, Subchapter A of this title, make "Deputy Commissioner" lower-case as "Commissioner" is made lower-case throughout this chapter, and replace general references to "agency" with "department."

The proposed amendments to §14.12 change the term "person" to "party" as the former is used within the context of a hearing and in Chapter 103 of the Code, make "proposal for decision" lower-case to be the same as its occurrences in the Department's rules of procedure in Chapter 1, Subchapter A of this title and Chapter 2001 of the Texas Government Code (the Administrative Procedure Act), and replace general references to "agency" with "department."

The proposed amendments to §14.13 remove an outdated subsection outlining payments for claims prior to September 1, 2009; remove an obsolete subsection limiting total payments on claims against a single entity to \$85,000 as its statutory analogue, former Subsection 103.008(c) of the Code, was removed in 2009; and remove a reference to its restrictions on claim payments and replace it with the applicable statutory authority in Chapter 103 of the Code.

The proposed amendments to §14.14 add subsection (e) of §14.10 as new subsection (d) as its provisions fit more appropriately with those of §14.14 and replace the term "working days" with "business days" as the former is the more prevalent term.

The proposed amendments to §14.20 update a reference to Chapter 1, Subchapter A of this title.

The proposed amendments to §14.22 remove unnecessary language addressing requirements of the Open Meetings Act and remove an incorrect provision on notice of Board meetings being published in the *Texas Register*.

The proposed amendments to §14.23 update Department contact information for prehearing motions and exhibit requests, specify that requests to the Department for hearing-related information must be written, and replace the term "working days" with "business days" as the former is the more prevalent term.

The proposed amendments to §14.25 require motions for rehearing to be sent to opposing parties and Board rulings on these motions to be made in accordance with Section 2001.146 of the Texas Government Code and update Department contact information.

In addition, "Board," "Fund," and "Chairman" are made lowercase throughout these rules to align with their occurrences in Chapter 103 of the Code. Likewise, "licensee" and "complaining party" are changed to "license holder" and "aggrieved party" throughout these rules because the latter terms are used in Chapter 103.

Also, editorial changes are made throughout these rules to correct grammar, remove superfluous or outdated language, and improve the rules' readability.

**FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT:** Mr. Philip Wright, the Administrator for Regulatory Affairs, has determined that for each year of the first five years the proposed amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering them.

**PUBLIC BENEFITS AND PROBABLE ECONOMIC COSTS:** Mr. Wright has determined that for each year of the first five years the proposed amendments are in effect, the public benefit will be increased consumer protection due to updates to and improved readability of the chapter. Mr. Wright has also determined there are no anticipated economic costs to persons required to comply with the proposed amendments.

**LOCAL EMPLOYMENT IMPACT STATEMENT:** Mr. Wright has determined that the proposed amendments will not affect a local economy, so the Department is not required to prepare a local employment impact statement under Texas Government Code, §2001.022.

**FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES:** The Department has determined there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed amendments, therefore preparation of an economic impact statement and a regulatory flexibility analysis, as detailed under Texas Government Code, §2006.002 is not required.

**GOVERNMENT GROWTH IMPACT STATEMENT:** Pursuant to Texas Government Code, §2001.0221, the Department provides the following Government Growth Impact Statement for the proposed amendments. For each year of the first five years the proposed amendments will be in effect:

- (1) they will not create or eliminate a government program;
- (2) their implementation will not require the creation or elimination of existing employee positions;

(3) their implementation will not require an increase or decrease in future legislative appropriations to the Department;

(4) there will be no increase or decrease in fees paid to the Department;

(5) they will not create a new regulation;

(6) they will not expand, limit, or repeal an existing regulation;

(7) there will be no increase or decrease in the number of individuals subject to the rules; and

(8) there will be no positive or adverse effect on the state's economy.

Comments on this proposal may be submitted by mail to John "Chris" Gee, Lead Assistant General Counsel, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, or by email to [chris.gee@texasagriculture.gov](mailto:chris.gee@texasagriculture.gov). Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

## SUBCHAPTER A. GENERAL PROVISIONS

### 4 TAC §§14.1 - 14.4

The amendments are proposed under the Department's authority in Section 12.016 of the Texas Agriculture Code (Code), which authorizes the Department to adopt rule to administer its powers and duties under the Code; such powers and duties include Code, Section 101.006, the requirement that the Department to set fees for licensure to handle perishable commodities by rule; Code, Section 101.010, which requires the Department to set fees for identification cards for agents of license holders who either transport or buy perishable commodities; Code, Section 103.005, which also requires the Department to set fees for filing claims against the Produce Recovery Fund (Fund); Code, Section 103.009, which further requires the Department to issue orders canceling licenses and to deny issuing new licenses or renewing licenses for license holders or those required to be licensed to handle perishable commodities who, following payments from the Fund against them, neither pays nor agrees to pay either the Fund or the aggrieved party; Code, Section 103.011, which requires the Department to set an annual fee for those licensed under Code, Chapter 101; and Code, Section 103.012, which requires the Department, with the advice of the Board, to adopt rules related to payment of claims from the Fund.

The code affected by the proposed amendments is Texas Agriculture Code, Chapters 101 and 103.

#### §14.1. Definitions.

In addition to the definitions set out in Texas Agriculture Code (Code), Chapters 101[;] and 103, and Chapter 1, Subchapter A of this title (relating to [the] General Rules of Practice), the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Administrative Procedure Act--The Texas Government Code, Chapter 2001 [~~Agent--An employee authorized to act for and on behalf of a licensee as a buying agent and/or a transporting agent~~].

(2) (No change.)

(3) Citrus fruit [~~Fruit~~]~~--Any fruit belonging to the genus Citrus, Poncirus, Microcitrus, Eremocitrus, or Fortunella, including, grapefruit, oranges, lemons, limes, and tangerines.~~

(4) Claim--A sworn complaint accompanied by the prescribed fee alleging a loss or damages occurred as a result of a violation of the terms or conditions of a contract involving the sale of perishable



commodities grown in Texas by a license holder or person required to be licensed.

(5) License holder [Licensee]--A person who holds a license issued under the [Texas Agriculture] Code, Chapter 101.

(6) Open Meetings Act--The [Texas Open Meetings Act,] Texas Government Code, Chapter 551.

(7) Perishable commodity [Commodity]--As defined in the Code, §101.001, fresh [Fresh] produce grown in Texas and generally considered a perishable vegetable or fruit.

§14.2. *Citrus Proof of Ownership.*

A license holder [licensee] or a packer, processor, warehouseman or transporter may not receive or handle citrus fruit without requiring the person from whom the citrus fruit is purchased or received to furnish proof of ownership on a form approved by the department; except for citrus fruit being transported from the farm or grove to market or the place of first processing by the producer of the citrus fruit operating the producer's vehicle or by an employee of the producer operating a vehicle owned by the producer.

§14.3. *Fees.*

(a) License and ~~registration~~ identification card fees.

(1) (No change.)

(2) The fee for each identification card for transporting and buying agents is \$30.

(b) - (d) (No change.)

§14.4. *Cancellation of License.*

If an award and payment is made from the fund [Fund] and the license holder [licensee], or person required to be licensed, fails to reimburse and/or fails to agree in writing to reimburse the fund [Fund] and/or the aggrieved [complaining] party [to the ease in accordance with the provisions of this chapter, the department shall initiate proceedings, after 90 days, the department shall initiate proceedings [of failure to reimburse and/or failure to agree in writing to reimburse the Produce Recovery Fund,] to cancel the license holder's [licensee's] license in accordance with the Texas Agriculture Code (Code), §103.009. Such proceedings shall be conducted in accordance with the [Texas Agriculture] Code, §12.032, the Administrative Procedure Act, [Texas Government Code, Chapter 200], and the department's General Rules of Practice and Procedure found at Chapter 1, Subchapter A of this title [relating to General Practice and Procedure] [rules of procedure].

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

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Susan Maldonado

General Counsel

Texas Department of Agriculture

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For further information, please call: (512) 463-6591



## SUBCHAPTER B. PRODUCE RECOVERY FUND CLAIMS

### 4 TAC §§14.10 - 14.14

The amendments are proposed under the Department's authority in Code, Section 12.016, which authorizes the Department to adopt rule to administer its powers and duties under the Code. The amendments are proposed under Code, Section 103.009, which requires the Department to set schedules for reimbursements to the Fund and payments to aggrieved parties following Department payments from the Fund and Code, Section 103.012, which requires the Department, with the advice of the Board, to adopt rules related to payment of claims from the Fund.

The code affected by the proposed amendments is Texas Agriculture Code, Chapters 101 and 103.

§14.10. *Claims Against the Fund.*

(a) What claims can be filed. Only claims against a license holder [licensee] or a person required to be licensed for loss or damages due to a violation of the terms or conditions of a contract for the sale of perishable commodities grown in Texas may be filed. ~~[The following claims may not be accepted:]~~

~~[(1) Claims for perishable commodities grown out-of-state.]~~

~~(b) [(2)] Claims filed under the Perishable Agriculture Commodities Act [(PACA)] that are accepted as formal complaints and adjudicated by the United States Department of Agriculture, or claims for which an aggrieved party [a complainant] has filed suit in a court of competent jurisdiction shall not be accepted.~~

~~[(b) Who may file. A person who suffers a loss or damages due to the violation of the terms or conditions of a contract by a licensee or a person required to be licensed may file a claim against the Fund.]~~

~~(c) How to file. A claim shall be filed with the department on a prescribed complaint form and shall be accompanied by the [prescribed] fee required by §14.3 of this chapter (relating to Fees). The date of postmark, if mailed, or the date the complaint and fee are received by the department, if hand-delivered, shall be the date the claim is deemed filed.~~

~~(d) Statute of Limitations. A claim shall be barred if it is filed later than [one year from the date the violation of the terms or conditions of a contract occurred. This limitation applies to claims that are based on violations that occurred prior to September 1, 2009. Claims based on violations that occurred on or after September 1, 2009 shall be barred if it is filed later than] two years from the date the payment was due.~~

~~[(e) Respondent's Option to Pay. If a recommendation for payment from the Fund is made by a department hearing officer or a payment is awarded in a final department or Board determination, the respondent may pay the amount found to be due directly to complainant rather than have that payment made by the Fund. If direct payment is made, parties shall notify the department in writing.]~~

§14.11. *Determination on Claims by the Department.*

(a) Once a claim is filed in accordance with §14.10 of this chapter [title] (relating to Claims Against the Fund), the department shall investigate the claim and may conduct a hearing to determine the amount due the aggrieved party. All hearings shall be conducted by a department hearing officer in accordance with the provisions of the Administrative Procedure Act and [the department's General Rules of Practice and Procedure found at] Chapter 1, Subchapter A of this title (relating to General Rules of Practice [and Procedure]).

(b) (No change.)

(c) Parties may protest the proposal for decision [recommendation] made by the department hearing officer by filing

a Notice of Protest in accordance with §14.12 of this chapter [title] (relating to Filing of Notice of Protest; Appeal to the Board). If no protest is filed, the case will be forwarded to the deputy commissioner [Deputy Commissioner] for a final [agency] determination.

(d) Parties may also protest the department's [agency's] final determination by filing a Notice of Protest in accordance with §14.12 of this chapter [title (relating to Filing of Notice of Protest; Appeal to the Board)].

(e) (No change.)

#### §14.12. Filing of Notice of Protest; Appeal to the Board.

(a) A party [person] who disputes the recommendation of the department's hearing officer or the department's final determination on a claim shall file a Notice of Protest with the [department. The notice shall be sent to the attention of the] Hearings Clerk, General Counsel Division, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. A copy of the Notice of Protest shall be sent to the opposing party and/or a designated representative.

(b) A Notice of Protest shall be in writing, state the [reason or] reasons for the protest, and request a hearing before the board [Board].

(c) A Notice of Protest must be received by the department within 15 days from the date of the receipt of the hearing officer's proposal for decision [Proposal for Decision] on the claim, or if an appeal from the final department [agency] determination, within 20 days from the date the final department [agency] determination was mailed. A Notice of Protest [The department shall accept notices of protest] filed by fax shall be accepted if it [facsimile transmission; as long as the facsimile] is received no later than 5:00 [5] p.m. on the due date. [Oral notices of protest shall not be accepted.]

(d) If a Notice of Protest is received on a claim, the claim shall be referred to the board [Board] for hearing.

#### §14.13. Payment of Claims from the Fund.

[(a) The following payments of claims shall apply for a claim based on a violation occurring prior to September 1, 2009.]

[(1) Claims of \$2000 or less may be paid in full.]

[(2) Claims of more than \$2000 may be paid in the following manner:]

[(A) If the claim was filed on or after September 1, 1999, but prior to September 1, 2009, the first \$2000 plus no more than 70% of the amount in excess of \$2,000, may be paid.]

[(B) If the claim was filed prior to September 1, 1999, the first \$1,000 plus no more than 60% of the amount in excess of \$1000, may be paid.]

[(3) Claims arising from Same Contract. Total payment for claims arising from the same contract shall not exceed \$35,000.]

[(4) Claims Against a Single Licensee. Total payment for claims against a single licensee shall not exceed \$85,000 in any one calendar year. Claims shall be paid in the order that a final determination is made by the department or the Board. In cases when a claim cannot be paid in full due to the restrictions of this paragraph, the claimant shall be given the option of accepting immediate payment of a lesser amount or accepting full payment from the Fund during the next calendar year.]

[(b) Payment [The following payments] of claims from the fund shall be subject to the following: [apply for a claim based on a violation occurring on or after September 1, 2009.]

(1) (No change.)

(2) [Claims Arising from Same Contract.] Total payment for claims arising from the same contract shall not exceed \$50,000.

[(3) Claims Against a Single Licensee or a person required to be licensed. Total payment for claims against a single licensee or a person required to be licensed shall not exceed \$85,000 in any one calendar year.]

(3) [(4)] Claims against a person who is not licensed. Payment for claims against a person who is not licensed at the time the claim was filed shall not exceed 80% of the total recovery [claim].

(4) [(5)] Claims shall be paid in accordance with the order that a final determination is made by the department or the board [Board]. In cases when a claim cannot be paid in full due to the restrictions of the Texas Agriculture Code, §103.008(c) [this subsection], the aggrieved party [claimant] shall be given the option of accepting immediate payment of a lesser amount or accepting full payment from the fund [Fund] during the next calendar year.

#### §14.14. Reimbursement to the Fund.

(a) If the department pays a claim [against a licensee, or a person required to be licensed,] from the fund [Fund]:

(1) Upon issuance of a final determination from the department or the board [Board], the license holder [licensee] shall reimburse the total amount paid by the fund [Fund] or agree in writing to reimburse the fund [Fund] the total amount paid by the fund [Fund]. If a person is not licensed on the date the transaction forming the basis of the claim occurred but is required to be licensed, the person shall pay the fund one and one-half times the amount of the claim paid by the fund [Fund], upon issuance of a final determination from the department or the board [Board]. Payment to the fund [Fund] is due in full within 30 days of the date of the final [agency] determination. If the license holder [licensee], or a person required to be licensed, cannot pay the full amount owed to the fund [Fund] at that time, the department may allow the license holder [licensee], or a person required to be licensed, to pay the fund pursuant to [amount owed to the Fund on an amortization schedule set out in] paragraph (3) of this subsection plus an annual interest rate of 8.0%.

(2) After fully reimbursing the fund [Fund] for payments made to the aggrieved party [claimant], the license holder [licensee], or a person required to be licensed, shall immediately pay or agree to pay the claimant any remaining amount due that party (balance not received from the fund [Fund]). If the license holder [licensee], or a person required to be licensed, cannot pay the full amount to the aggrieved party [claimant] at that time, the department may allow the license holder [licensee], or a person required to be licensed, to pay the amount owed to the aggrieved party pursuant to [claimant on an amortization schedule as set out in] paragraph (3) of this subsection plus an annual interest rate of 8.0%, after the fund [Fund] is fully reimbursed.

(3) Payment [Amortization] Schedule [for Reimbursement to the Produce Recovery Fund and Claimant]. Claims of:

(A) - (D) (No change.)

(b) Monthly installments to the fund [Fund] are due on the last business [working] day of the month and payable to TDA, P.O. Box 12847, Austin, Texas 78711. The department may make exceptions on payment schedules for good cause shown.

(c) If a license holder [licensee], or a person required to be licensed, owes money to the fund [Fund] at the time the license holder [licensee], or a person required to be licensed, makes a claim against the fund [Fund], the department shall offset the amount owed to the fund [Fund] from the amount determined to be payable from the fund [Fund].

(d) Respondent's Option to Pay. The respondent may pay the amount found to be directly to the aggrieved party rather than have the payment made by the fund. If direct payment is made, the parties shall notify the department in writing.

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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Susan Maldonado

General Counsel

Texas Department of Agriculture

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For further information, please call: (512) 463-6591



## SUBCHAPTER C. PRODUCE RECOVERY FUND BOARD

### 4 TAC §§14.20 - 14.26

The amendments are proposed under the Department's authority in Code, Section 12.016, which authorizes the Department to adopt rule to administer its powers and duties under the Code. The amendments are proposed under Section 103.012 of the Texas Agriculture Code, which requires the Department, with the advice of the Board, to adopt rules related to payment of claims from the Fund.

The code affected by the proposed amendments is Texas Agriculture Code, Chapters 101 and 103.

#### §14.20. Purpose and Scope.

The purpose of this subchapter [these sections] is to provide [operating] procedures for the board [Produce Recovery Fund Board (the Board)], and to provide procedures for the conduct and determination of Board decisions], so that hearings and other proceedings before the Board may be conducted in a uniform and efficient manner. Unless otherwise provided, these rules are designed to supplement procedures established in Chapter 1, Subchapter A of this title (relating to General Rules of Practice [and Procedure]), and the Administrative Procedure Act and should be read together with those procedures.

#### §14.21. Duties of the Board and the Department.

(a) The board [Board] shall:

(1) advise the department on all matters relating to the fund [Fund], including the fund's [Fund's] budget and revenues necessary to accomplish the purposes of the fund [Fund];

(2) advise the department on the adoption of rules relating to the payment of claims from the fund [Fund] and to the administration of the fund [Fund]; and

(3) conduct hearings on claims on which a Notice of Protest has been filed with the department.

(b) The department shall:

(1) administer the fund [Fund], including the collection of fees from license holders [licensees], or persons [a person] required to be licensed, which are to be deposited into the fund [Fund] in accordance with the Texas Agriculture Code (Code), Chapter 103;

(2) receive and process claims;

(3) conduct hearings on claims, when [where] appropriate, and issue determinations [an agency determination] on claims;

(4) refer claims to the board when a Notice of Protest is filed [Board, where appropriate];

(5) [where an award from the Fund is made,] process payment of claims in accordance with the Code, Chapter 103, when an award from the fund is made;

(6) [where appropriate,] seek reimbursement of payments made from the fund when appropriate [Fund]; and

(7) provide administrative support to the board [Board], including posting notices of board [Board] meetings, making arrangements for board [Board] meetings, and preparing and mailing [ef] notices of hearing and other correspondence to parties on cases heard by the board [Board].

#### §14.22. Meetings.

(a) Location, conduct and time of meetings. The board [Board] shall meet in Austin, or other places designated by the board [Board], on dates to be determined by the department with the advice of the board [Board], for the purpose of conducting hearings on matters appealed to the board [Board] and/or for the purpose of conducting business authorized by the Texas Agriculture Code, Chapter 103. Meetings will be conducted in accordance with the Open Meetings Act.

(b) Notice of meetings. Notice [A written notice] of the agenda, date, time and place of each [business] meeting [of the Board] and/or hearing of [conducted by] the board [Board,] shall be provided [published in the Texas Register] in accordance with the Open Meetings Act. [In cases of emergency or urgent public necessity, notice shall be given as authorized by the Open Meetings Act.]

(c) Chairman to preside. The chairman of the board [Board] shall preside over all meetings of the board [Board] and shall perform all duties delegated to the chairman [him or her] under this subchapter [these rules]. In the chairman's absence, the vice-chairman shall preside over all meetings of the board [Board], and shall perform all duties of the chairman under this subchapter [these rules]. The vice-chairman shall be selected by a majority of board [Board] members present at the time of selection.

(d) Public comment period. As part of its [business] meetings, the board [Board] shall [include a public comment period to] allow members of the public to [appear and provide] comment on matters within the jurisdiction of the board [Board]. This item will be included in the agenda of [published in the Texas Register for] the [business] meeting.

#### §14.23. Conduct of Hearings of the Produce Recovery Fund Board.

(a) Representation. Parties to proceedings before the board [Board] shall have a right to appear and may be represented by counsel, or any other designated person, and shall have a right to have witnesses appear to testify on their behalf.

(b) Review of Department Record and Presentation By Parties.

(1) The board [In hearing cases in which a Notice of Protest has been filed, the Board] shall conduct hearings to review cases for which a Notice of Protest has been filed and base its determination on the record of the hearing held before the department and any subsequent matters filed by parties to the case which are admitted into the record by the board [Board], including any exhibits accepted into the record at the hearing before the board [Board].

(2) The board [Board] may take additional testimony [of parties or other witnesses] and admit into the record any documentary

evidence that it deems necessary to clarify the record of the hearing before the department and/or aid the board [Board] in making its determination on the case.

(3) At the board's [Board's] discretion, any party may present oral testimony or argument [~~to the Board~~] by filing a written request with the board [Board ~~a written request to do so~~] at least five business [working] days prior to the hearing [~~day on which the Board is to consider the case~~]. The board [Board] may waive the five-day [~~five working day~~] requirement for good cause shown.

(c) Ruling on Objections, Motions; Filing of Motions.

(1) The board [Board] shall have the authority to rule on motions, on the admissibility of evidence, on objections, and on amendments to pleadings.

(2) A pre-hearing [Any] motion [~~relating to a pending proceeding~~] shall [~~unless made during a hearing,~~] be written, set forth under oath the relief or order sought and the specific reasons and grounds therefor, and be directed to the board [Board]. Any motion [~~including a motion for continuance~~] shall be filed with the Hearings Clerk, General Counsel Division, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, and distributed to all interested parties, under a certificate of service, not less than seven business [working] days prior to the hearing [designated] date [~~that the matter is set to be heard by the Board~~]. The board [Board] may waive the seven-day [seven day] requirement for good cause shown. A reply to such motion may be filed by any other party to the proceeding. A pre-hearing motion [Pre-hearing motions] shall be ruled on by the chairman [Chairman] at the earliest time practicable, and a final determination [determinations] on any such motion [motions] shall be signed by the chairman [Chairman] on behalf of the board [Board].

(3) When necessary, in the judgment of the chairman [Chairman] and/or the board [Board], or upon request of a party, a hearing may be set to consider any motion. A request for hearing on a motion, or a request for hearing on a final determination issued in response to a motion shall be filed with the board [Board] no later than three business [working] days after receipt of the final determination by the requesting party.

(d) Exhibits.

(1) All exhibits admitted into the record of the hearing before the department and the [tape] recording of the hearing shall be tendered for admission into the record of the hearing before the board [Board]. All such exhibits shall be available to the [~~for inspection by~~] parties prior to the beginning of the hearing, and [~~are available prior to the hearing date~~] to any interested person or party prior to the hearing date upon filing of a written request to the Hearings Clerk [~~Deputy General Counsel, General Counsel Division, Texas Department of Agriculture~~].

(2) A [Each] party shall deliver to the other party any additional documents intended to be offered at the hearing at least three business [working] days prior to the hearing date [~~any documents in addition to those included in the record of the hearing before the department which the party intends to offer at the hearing before the Board~~].

(e) Recording the Hearing and Preparation of Transcript.

(1) All hearings before the board [Board] shall be [tape] recorded and [~~All tape recordings of hearings before the Board shall be~~] maintained by the General Counsel Division, Texas Department of Agriculture.

(2) Upon written request [~~and~~] and payment of any associated [~~the appropriate~~] cost [~~by any party~~], the department shall prepare a

copy of the [tape] recording of a hearing for any party [~~conducted by the Board~~].

(3) Upon written request and payment of any associated cost [~~of any party~~], the department shall prepare, or order the preparation of, a transcript of a hearing for any party [~~conducted by the Board~~]. The Board may assess the cost of the transcript to one or more parties].

(4) In the event a final decision of the board [Board] is appealed to the district court, the board [Board] may require the appealing party to pay all or part of the cost of preparation of the original or a certified copy of the record of the [Board] proceeding that is required to be transmitted to the reviewing court, as is specified by the board [Board].

§14.24. *The Board's Final Determination.*

(a) All final determinations of the board [Board] shall be in writing and shall set forth findings of fact and conclusions of law as required by the Administrative Procedure Act.

(b) Unless otherwise prohibited by statute or by this chapter, all final board [Board] determinations may be signed by the chairman [Chairman], on behalf of the board [Board]. In the event that the final decision of the board [Board] is not unanimous, the final determination may indicate that the vote was not unanimous, and may indicate those members dissenting.

(c) Except for good cause, the [The] Board's final determination shall be issued within 60 days of the closing of the record of the case [~~unless for good cause, the Board members hearing the case are not able to reconvene to deliberate on a case within the 60 day period after the closing of the record~~].

§14.25. *Motion for Rehearing.*

A motion for rehearing shall be governed by the Administrative Procedure Act, §§2001.145-2001.146. Communications regarding any such motion shall be directed to the board [Board], and filed with the Hearings Clerk, General Counsel Division, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. A copy of the motion for rehearing shall [~~should also~~] be sent to the opposing party and/or designated representative. Board rulings on motions for rehearing shall [~~may~~] be made [~~by telephone, mail, or other suitable means of communication~~] in accordance with the Administrative Procedure Act, §2001.146. A final determination granting or denying a motion for rehearing may be signed by the chairman [Chairman] on behalf of the board [Board].

§14.26. *Appeals.*

All appeals from final board [Board] determinations shall be governed by the Administrative Procedure Act, Subchapter G [~~or other pertinent statute~~].

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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Susan Maldonado

General Counsel

Texas Department of Agriculture

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For further information, please call: (512) 463-6591



## TITLE 16. ECONOMIC REGULATION

# PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

## CHAPTER 65. BOILERS

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 65, Subchapter A, §65.2; Subchapter C, §§65.12 - 65.15; Subchapter D, §65.25 and §65.26; Subchapter F, §65.40 and §65.41; Subchapter H, §65.50; Subchapter I, §§65.60 - 65.63; Subchapter J, §65.70 and §65.71; Subchapter K, §65.83 and §65.86; Subchapter M, §65.101; Subchapter N, §§65.200, 65.206, and 65.217; Subchapter O, §65.300; Subchapter P, §65.401; new Subchapter S, Technical Requirements, amendments to §§65.607 - 65.609, 65.611, 65.612, and 65.614; new rules at Subchapter K, §65.87; and Subchapter R, §§65.550 - 65.552, 65.555, 65.556, 65.559, and 65.560; and the repeal of existing rules at Subchapter B, §65.8; Subchapter L, §65.90 and §65.91; Subchapter M, §65.104; and existing Subchapter R, §§65.600 - 65.604, regarding the Boiler program. These proposed changes are referred to as "proposed rules."

### EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 65, implement Texas Health and Safety Code, Chapter 755, Boilers.

The proposed rules make twelve discrete changes to improve standards for and regulation of boilers and those who install, operate, maintain, and inspect them. The amendments originate with staff and the Board of Boiler Rules members and are authorized by the boiler enabling act.

The new and amended rules promote equipment safety and compliance. They include more detailed requirements for installing boilers and reporting their installation; installing blow-down equipment where needed and required; replacing and plugging boiler tubes; provide an option for remote monitoring of carbon monoxide levels in boiler rooms; and add a requirement for a visual display to carbon monoxide detectors if absent.

Other new and amended rules to enhance safety address National Fire Protection Association compliance; safety of the physical conditions of the premises for inspectors; and detailed requirements for preservation of the scene of boiler accidents to aid investigation and determine causes of malfunction.

To provide for more efficient and effective regulation, new rule requirements include clarifying the responsibilities of Authorized Inspection Agencies (AIA) to timely conduct required inspections and imposing the new late inspection fee on them as appropriate; prohibiting inspectors from installing boilers to prevent conflicts of interest; and removing minor or infrequently assessed fees. These amendments replace the late renewal fee with a fairer late inspection fee and a presumption of operation after expiration of the certificate of operation. The fee change for late inspections accompanies the removal of the referral fee for a department inspection when the owner fails to obtain an inspection. The late inspection fee is expected to increase compliance with the required frequency of boiler inspections, resulting in improved safety and more proportionate consequences for non-compliance.

Finally, the department has made edits throughout the rules to correct and update citations, cross-references, grammar, capitalization, and usage to improve accuracy, readability, and con-

sistency in the rule text. These are hence referred to collectively as "nonsubstantive edits" for brevity.

### *Advisory Board Recommendations*

The proposed rules were presented to and discussed by the Board of Boiler Rules at its meeting on April 10, 2024. The Board made changes to the proposed rules in §65.555 to clarify the technical requirements for blowdown and added a requirement that blowdown separators or tanks be registered with the National Board of Boiler and Pressure Vessel Inspectors. The Advisory Board voted and recommended that the proposed rules with these changes be published in the *Texas Register* for public comment.

### SECTION-BY-SECTION SUMMARY

The proposed rules amend §65.2, Definitions, to add definitions for blowdown separators, blowdown tanks, and blowdown water; clarify the definition of "install;" make numerous nonsubstantive edits; and renumber the section.

The proposed rules repeal §65.8, Registration--Authorized Inspection Agency Without NB-360 Accreditation, because the National Board has retired this accreditation.

The proposed rules amend §65.12, Boiler Registration and Certificate of Operation Required, to add that the issuance of a certificate of operation triggers the obligation to remain in compliance, to timely conduct the required inspections, and that continued operation is presumed during the term of the certificate. The section is edited for clarity.

The proposed rules amend §65.13, Boiler Installation, to require submission of the installation report upon completion of installation instead of within 30 days after installation, and to prohibit operation or test-firing before the first inspection unless the installation was conducted in compliance with the rules, the installation report has been submitted, and a temporary operating permit has been approved.

The proposed rules amend §65.14, Inspector Commissions, to make a nonsubstantive edit.

The proposed rules amend §65.15, Boiler Certificate of Operation, to add the condition that unpaid invoices associated with a boiler must be paid before the boiler is eligible for a certificate of operation. The section is renumbered, and the section heading is updated.

The proposed rules amend §65.25, Authorized Inspector--Eligibility Requirements and §65.26, Commission-Renewal and Reinstatement, to make non-substantive edits.

The proposed rules amend §65.40, Authorized Inspector--Commission Card, to simplify and clarify the requirements for obtaining and using commission cards.

The proposed rules amend §65.41, Reissuance after Reemployment, to simplify and clarify the requirements for reissuance of a commission card when changing employers. The section heading is amended.

The proposed rules amend §65.50, Inspectors--Prohibited Conflicts of Interest, to prohibit inspectors and inspection agencies from installing boilers or inspecting boilers installed by other inspectors or inspection agencies due to the inherent conflict of interest.

The proposed rules amend §65.60, External Inspection, to make a non-substantive edit.

The proposed rules amend §65.61, Inspection of All Boilers Required, to subject owners, operators, and Authorized Inspection Agencies that are responsible for a boiler to the late inspection fee for failure to conduct the certificate inspection before the certificate of operation expires. Operation beyond expiration of the certificate is presumed. AIAs are required to timely conduct inspections for boilers for which they are responsible. AIAs that are not responsible for a boiler at the time the certificate expires, and those agencies denied access to inspect, are not made responsible for the late inspection fee for failure to conduct the inspection timely. The late inspection fee is made applicable to boilers for which the certificate of operation expires one year or more after the adoption of these rule amendments.

The proposed rules amend §65.62, Notice of Inspection to Owners or Operators of Boilers, to clarify that owners or operators must make boilers available for inspection when notified by the inspector.

The proposed rules amend §65.63, Inspection of Portable Boilers, to make nonsubstantive edits.

The proposed rules amend §65.70, Texas Boiler Numbers--Required, to clarify requirements related to the identification number tag attached to each boiler during its first inspection.

The proposed rules amend §65.71, Texas Boiler Number--Placement on Boiler, to make nonsubstantive edits.

The proposed rules amend §65.83, Boiler Accidents, to clarify and add details about the actions to take and the items to preserve and protect from disturbance following a serious accident until an inspection and investigation are conducted.

The proposed rules amend §65.86, Authorized Inspection Agencies Reporting Requirements, to remove mention of the obsolete NB-360 authorization.

The proposed rules add new §65.87, Boiler Installation Reporting Requirements, to add the updated requirement for the owner, operator, or installer to submit the boiler installation report upon completion of the installation of a boiler.

The proposed rules repeal §65.90, Commissions--Authorized Inspector, because the requirements in this section are obsolete or appear in §§65.14, 65.26, 65.40, and 65.41.

The proposed rules repeal §65.91, Overdue Boiler Inspection--Authorized Inspection Agency Referral, because the Department will no longer refer boilers for which the inspection is past due to another AIA but will instead impose the late inspection fee.

The proposed rules amend §65.101, Board of Boiler Rules--Membership; Presiding Officer, to update the requirements for presiding officer participation consistent with the Act, and to amend the section heading.

The proposed rules repeal §65.104 because the Boiler Board rules in §65.101 are being amended to include the relevant requirement.

The proposed rules amend §65.200, New Boiler Installations, to clarify and update requirements consistent with other updates in the chapter regarding installation, inspection, and operation, and to add the presumption of continued operation past expiration of the certificate of operation unless the owner, operator, or AIA demonstrates otherwise.

The proposed rules amend §65.206, Boiler Room, to add the requirement to install a display on any carbon monoxide detector

that is not so equipped. The amended rule also provides for the choice to use a remote monitoring system provided certain alarm and interlock conditions are met. The section is renumbered.

The proposed rules amend §65.217, Variance, to make nonsubstantive edits.

The proposed rules amend §65.300, Fees, to clarify that the owner or operator is responsible for the fee to file boiler installation reports. Additional amendments remove the late renewal fee, the fee for reissuance of a commission card, the fee for overdue boiler inspections, and make nonsubstantive edits. The rule specifies that any due or past due amounts must be paid with the fee for a certificate of operation. The late inspection fee is imposed and is limited to \$25 per day for the first 30 days following expiration of the certificate of operation. The daily fee increases at the 31st day and the 61st day after expiration of the certificate of operation until the inspection is conducted.

The proposed rules amend §65.401, Sanctions, to impose the late inspection fee for boilers not inspected before the expiration of the certificate of operation, and to make nonsubstantive edits.

The proposed rules amend the heading of Subchapter R, Technical Requirements, to Subchapter R, Basic Technical Requirements, which now encompasses all sections from new §65.550 and ending with new §65.560. Sections 65.550, 65.551, 65.552, 65.556, and 65.559 were formerly §§65.600, 65.601, 65.602, 65.603, and 65.604, respectively, which are proposed for repeal and inclusion with these new section numbers as described in the following. New sections with all new requirements are §65.555 and §65.560.

The proposed rules add new §65.550, Conditions Not Covered by Rules, which is the repealed former §65.600, Conditions Not Covered by Rules, with no substantive changes made.

The proposed rules add new §65.551, General Safety, which is the repealed former §65.601, General Safety, but with new additional requirements for the owner or operator to maintain a safe work environment for access and inspection of a boiler, and which clarifies and updates the procedures for an inspector and the department to follow if the conditions or the boiler itself are unsafe.

The proposed rules add new §65.552, Chimneys and Vents, which is the repealed former §65.602, Chimneys and Vents, with no substantive changes made.

The proposed rules create new §65.555, Boiler Blowdown, which adds requirements to install blowdown separators or blowdown tanks to ensure that the temperature and pressure of the water does not exceed safe levels when discharged from a power boiler into a sanitary sewer. Requirements for design, standards, construction, and registration with the National Board of Boiler and Pressure Vessel Inspectors are included, as is a requirement for compliance with the new requirements no later than six months after the adoption of the rule.

The proposed rules add new §65.556, Boiler Room Ventilation, which is the repealed former §65.603, Boiler Room Ventilation, with no substantive changes made.

The proposed rules add new §65.559, Location of Discharge Outlets, which is the repealed §65.604, Location of Discharge outlets, with no substantive changes made.

The proposed rules create new §65.560, Boiler and Combustion Systems Hazards Code, to add requirements for compliance with National Fire Protection Association Code Book 85 for

certain specified types of boilers, pulverized fuel systems, and steam generators.

The proposed rules would repeal existing §§65.600, 65.601, 65.602, 65.603, and 65.604 and repropose them with additional requirements and nonsubstantive edits as described above, in existing Subchapter R, as new §§65.550, 65.551, 65.552, 65.556, and 65.559.

The proposed rules add the new Subchapter S., Technical Requirements, which encompasses all existing sections from §65.605 to §65.615, the end of the boiler rules. These sections were formerly in Subchapter R. They are not renumbered and proposed changes to some sections are described in the following.

The proposed rules amend §65.607, Power Boilers, Excluding Unfired Steam Boilers and Process Steam Generators; §65.608, Unfired Steam Boilers; §65.609, Process Steam Generators; and §65.611, Heating Boilers, to correct cross-references and to make nonsubstantive edits.

The proposed rules amend §65.612, Repair and Alterations, to add requirements for replacing and plugging boiler tubes on certain boilers and to add qualifications for persons performing the activities, to ensure safety. Renumbering and nonsubstantive edits are also made in the section.

The proposed rules amend §65.614, Authority to Set and Seal Safety Appliances, to make nonsubstantive edits.

#### FISCAL IMPACT ON STATE GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, there will be no reduction in costs to the state government to administer and enforce the rules. However, increases in costs and revenue are expected, as is a loss of revenue to the state.

The proposed change to assessing late inspection fees would entail a one-time programming cost for the boiler tracking and billing system used by TDLR to automatically assess the fee. The estimated hourly cost for programming is approximately \$190.00 and the system provider estimates 90 hours of work to complete that programming, so the cost would be \$17,100.

A loss of revenue is expected primarily from the removal of the previous method of assessing late fees. Currently, boiler owners and operators who do not have the boiler inspected before the expiration date of the current certificate of operation are assessed late fees as provided under 16 Texas Administrative Code §60.83, in which the late fee is one and one-half times the regular fee if the certificate is expired 90 days or less, and two times the regular fee if the certificate is expired more than 90 days. Boiler owners and operators have paid an average of approximately \$188,000 in late fees each year of the past five years. The current method of charging late fees is repealed by the proposed rules, so there will be an approximate loss of \$188,000 in revenue each year for the next five years. The proposed rules also remove TDLR's practice of referring any uninspected boiler that is more than 90 days past the certificate expiration date to an Authorized Inspection Agency for completion of the past due inspection. The referral fee of \$260 therefore is also removed. Boiler owners and operators have paid an average total of approximately \$3,800 in referral fees each year of the past five years.

The proposed rules repeal the fee for the reissuance of an inspector commission when an inspector changes employers. The fee for the reissuance of the commission is \$50, and TDLR has averaged three requests per year for the past five years. Total revenue lost would be \$150 per year.

A person without a National Board 360 certification is no longer required to first obtain a letter of recognition and pay a \$100 fee each year to be registered with the Department as an Authorized Inspection Agency. No agencies without this certification have applied for a registration in the past five years and it is not anticipated that one will apply in the next five years, so there is no loss of revenue from the elimination of this fee.

The total revenue loss will be approximately \$191,950 each year for the next five years.

The new method for assessing late inspection fees is also expected to create an increase in revenue to the state. The proposed rules establish a modest late inspection fee that is charged each day after the certificate has expired. The amount of the daily fee assessed increases at 31 days and then again at 61 days after the certificate's expiration date if the boiler remains uninspected. Additionally, the proposed rules make an Authorized Inspection Agency that issues an insurance policy for a boiler responsible for the timely inspection of that boiler, and subject the AIA to the same late inspection fees as a boiler owner or operator who does not timely get the required inspection. AIAs have not previously had to pay late inspection fees.

Because the new way of assessing fees will have the potential to be more costly to boiler owners and operators who fail to get their boilers inspected before the expiration of the current certificate, it is believed that owners and operators will be more likely to get the required inspections before the certificate of operation expires and will be less likely to delay inspection indefinitely after expiration. However, it is unknown how many boilers that might have gone uninspected in the past will receive untimely inspections under the new method of assessing fees. It is expected that owners, operators, and AIAs will try to avoid subjecting themselves to late inspection fees, but those who incur the fee could accrue larger late fees in shorter amounts of time. There is no data on which to base an estimate and therefore the amount of any increase in revenue caused by the proposed method of assessing late inspection fees cannot be estimated at this time.

Because the current method of charging late fees results in many delayed inspections, owners and operators have benefitted from having gaps in time between the expiration of the certificate of operation and the issuance of the new certificate of operation. A new certificate is issued only upon the completion of the required inspection regardless of when the prior certificate expired. The revised method of assessing late inspection fees is predicted to result in timely issuance of more certificates of operation due to the lost incentive for owners and operators to delay inspections past the certificate expiration date. The lost benefits of delay for owners and operators will accrue to the Department in timely fee payment and to the public in increased safety, but again, are not subject to specific quantification or prediction.

#### FISCAL IMPACT ON LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue or increase in costs, and thus, no foreseeable implications relating to costs or revenues of local governments as a result

of enforcing or administering the proposed rules. Local governments are not responsible for administering the state regulation of boilers. However, the requirement for owners and operators to install blowdown equipment where none currently exists or is not functioning will allow local governments to avoid potential damage to drainage and sewer systems. The associated costs of repair or replacement due to control of the temperature and pressure of boiler fluids entering those systems are expected to be reduced or avoided by the use of blowdown equipment but are not subject to estimation.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

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

#### PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be primarily safety-related. The proposed rules reemphasize that boiler owners, operators, and Authorized Inspection Agencies, which issue insurance policies for boilers, are responsible for ensuring that a boiler is inspected before the expiration of the current certificate of operation - the primary way to ensure that boilers are in compliance and will keep operating safely, to the benefit of the public.

The proposed rules amend requirements for boiler blowdown equipment and procedures, which will ensure that boilers are operating efficiently by reducing buildup of sediment, saving owners and operators additional maintenance costs and making boilers safer. The requirement will also ensure that all boilers comply with the requirement of the Uniform Plumbing Code, and thereby the Plumbing License Law, that prohibits water having excessive temperature or pressure from being discharged directly into a drainage system, which is detrimental to the system. The avoided cost of repair to public drainage systems is a benefit to the local public.

The proposed rules amend requirements for carbon monoxide detectors, authorizing owners or operators of boilers to choose to remotely monitor them for the presence of carbon monoxide above 50 ppm in the boiler room. When remotely monitored, the detector must be set to alert personnel if the 50 ppm threshold is reached but will not force an automatic shutdown until and unless the carbon monoxide concentration reaches 200 ppm. This option provides owners and operators time to correct problems and avoid the sometimes enormous costs involved when a boiler is taken out of operation, by allowing the cause of the rise in carbon monoxide emissions to be addressed before the boiler is automatically shut down.

The proposed rules add other amendments to ensure the safe operation of boilers, including the requirement for certain boilers to follow the National Fire Protection Association Code book 85; procedures for the replacement and plugging of boiler tubes in certain fire tube boilers; requirements for boiler installation procedures and the prohibition on boiler installation by inspectors to avoid conflict of interest; necessary improvements in physical facilities that pose a risk to inspectors; a new requirement for the carbon monoxide detector in a boiler room to have a visual display indicating the current level of carbon monoxide present in the room; and the addition of new requirements for certain notifications to TDLR and for recordkeeping.

The proposed rules change the method by which late fees are assessed for boilers that are not inspected when the current certificate of operation has expired. The late fees associated with the lack of inspection could and probably would be substantially higher when a boiler is allowed to remain uninspected. This increase in fees should induce owners and operators to have their boilers inspected timely to avoid these discretionary fees, thereby helping to ensure the continuing safe operation of boilers.

The proposed rules add requirements for the boiler and its related equipment to be in a safe condition for access and inspection. This will keep inspectors and maintenance personnel safe in the performance of their duties. A person without a National Board 360 certification is no longer required to first obtain a letter of recognition and pay a fee each year to be registered with the Department as an Authorized Inspection Agency. The proposed rules make several other additions and amendments, all of which are intended to ensure the continued safe operation of boilers in Texas, a benefit to the public. Some changes allow for cost savings and increase flexibility for boiler owners and operators, inspectors, and Authorized Inspection Agencies, but none of these changes compromise safety.

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there will be a reduction in costs (savings) to persons who are required to comply with the proposed rules. Savings are expected primarily from the removal of the previous method of assessing late fees. Boiler owners and operators who do not have the boiler inspected before the expiration date of the current certificate of operation are assessed late fees as provided under 16 Texas Administrative Code §60.83, in which the late fee is one and one-half times the regular fee if the certificate is expired 90 days or less, and two times the regular fee if the certificate is expired more than 90 days. Boiler owners and operators have paid an average of approximately \$188,000 in late fees each year of the past five years. The current method of charging late fees is repealed by the proposed rules, so owners and operators will avoid paying approximately \$188,000 in late fees each year for the next five years. The proposed rules also remove TDLR's practice of referring any uninspected boiler that is more than 90 days past the certificate expiration date to an Authorized Inspection Agency for completion of the past due inspection. The referral fee of \$260 therefore is also removed. Boiler owners and operators have paid an average total of approximately \$3,800 in referral fees each year of the past five years and will save approximately this amount.

The proposed rules repeal the fee for the reissuance of an inspector commission when an inspector changes employers. The fee for the reissuance of the commission is \$50, and TDLR has averaged three requests per year for the past five years, so savings will be approximately \$150 per year.

The total savings to the regulated community will be approximately \$191,950 each year for the next five years.

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

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there will be additional costs to persons who are required to comply with the proposed rules. However, the amount of additional costs are not predictable because they depend on individual compliance



choices and equipment needs, and the deterrence effect of the new late inspection fee.

Almost all, if not all, carbon monoxide detectors have the ability to remotely alert personnel that the level of carbon monoxide present in a boiler room has exceeded 50 ppm. The detector needs to be connected to wi-fi and the alert system needs to be monitored by personnel ready to react to an alert. The cost to obtain a detector that has the ability to remotely alert personnel is comparable to one that does not, and the cost to connect the detector to wi-fi is minimal, if any. There could be a larger cost to have personnel watchful for alerts at all hours, but the cost for this would vary by boiler owner and how the owner weighs the cost of earlier, automatic shutdown at 50 ppm as opposed to remote monitoring and additional time to act to avoid automatic shutdown at 200 ppm. The choice to use remote monitoring of a boiler is not a requirement for any owner.

Almost all, if not all, carbon monoxide detectors have a display that indicates the current level of carbon monoxide present in the boiler room. The cost to obtain a detector that has a display is comparable to one that does not, and the cost to replace a detector without a display is minimal.

The proposed rules require a power boiler to pass blowdown water through an approved blowdown separator or blowdown tank to cool the blowdown water to less than 140° Fahrenheit so that it may be legally discharged into a drainage system. Any power boiler that does not currently have a blowdown separator or blowdown tank but discharges into a sanitary sewer will need to have the required equipment installed. The cost for this could be from \$1,000 to \$5,000 per boiler for equipment and installation, depending on the type of equipment purchased and the size and type of the power boiler.

The proposed rules add the requirement for certain boilers to follow the National Fire Protection Association Code book 85. These types of boilers already comply with the codebook, so there is no cost to these boiler owners.

The proposed rules add requirements for the replacement of boiler tubes in certain fire tube boilers, designating the material the replacement tubes must be made of, and allowing only qualified and authorized persons to replace the tubes. The cost of complying with these new requirements cannot be determined due to the variety and differing costs of replacement tubes, and the variety and differing costs of persons authorized to perform replacements. The increase in boiler safety and the reduced possibility of damage or failure of boilers is not subject to specific determination.

Corrosion-resistant tags or decals required by the proposed rules are already issued by TDLR at no cost for boilers that need them.

The proposed rules change the method by which late fees are assessed for boilers that are not inspected when the current certificate of operation has expired. The late fees associated with the lack of inspection could and probably would be substantially higher when a boiler is allowed to remain uninspected. The proposed rules also specify that an Authorized Inspection Agency is subject to the same late fees if it fails to inspect a boiler it is required to inspect. It is unknown how many owners, operators, or agencies will be liable for the new late fees, given that the fees would accrue more quickly and in greater amounts than under the current late fee structure, or how much cost there would be for those liable. However, no person or entity is subject to paying this fee if the boiler is inspected timely. Persons and entities

who comply with inspection requirements will have no additional costs.

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

There will be an adverse economic effect on small businesses or micro-businesses as a result of the proposed rules. Because the agency has determined that the proposed rule will have an adverse economic effect on small businesses or micro-businesses, the agency has prepared an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed and required under Texas Government Code §2006.002.

Approximately 864 locations in Texas have power boilers and might be considered a small or micro-business. TDLR does not collect information from license applicants or license holders about numbers of employees or gross receipts and is therefore unable to determine a reliable number of those businesses. Many of those boilers probably do not have blowdown separators or tanks and would need to install the equipment. A cost of \$1,000 to \$5,000 could possibly have an adverse economic effect on some small or micro-businesses that have a small profit margin or are having financial difficulties keeping the business operating. The Department is proposing to delay the effective date of this requirement for six months past the adoption date of the rule to provide time to prepare and budget for the cost.

No other costs associated with the proposed rules will have an adverse economic effect on any small or micro-business. The proposed rules have no anticipated adverse economic effect on rural communities because the rules will not decrease the number of boilers or businesses that use boilers in rural communities, nor will the rules increase the cost of the services from businesses that operate boilers in rural communities.

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

The proposed rules have a fiscal note that imposes a cost on regulated persons; however, the proposed rules fall under the exception for rules that are necessary to implement legislation and for consistency with it, namely, the Uniform Plumbing Code and the Plumbing License Law. The rules are also necessary to protect the health, safety, and welfare of the residents of Texas by imposing necessary safety standards and procedures. (Government Code §2001.0045(c)(6), (9).) Therefore, the agency is not required to take any further action under Government Code §2001.0045.

#### GOVERNMENT GROWTH IMPACT STATEMENT

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

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

5. The proposed rules create a new regulation.
6. The proposed rules expand, limit, and repeal portions of the existing regulation.
7. The proposed rules do not increase or decrease the number of individuals subject to the rules' applicability.
8. The proposed rules do not positively or adversely affect this state's economy.

The proposed rules implement a change in the method by which late fees are assessed and paid, but it is unknown whether the overall effect will be an increase or decrease in the amount of fees collected by the agency. The proposed rules repeal the fee associated with the referral of a boiler for which the inspection is 90 days past due to an Authorized Inspection Agency to conduct an inspection.

The proposed rules expand an existing regulation by adding prohibitions on who can install boilers; making Authorized Inspection Agencies subject to late inspection fees; adding requirements for remote carbon monoxide level detection when the owner or operator chooses to use remote monitoring; adding general requirements for placing a boiler and related equipment in a safe condition for access and inspection; requiring that neither a boiler nor equipment are disturbed after a serious accident and requiring records for that boiler and its operation to be preserved; denoting that a boiler is presumed to be in continued operation unless it is established otherwise; adding the requirement for certain boilers to follow the National Fire Protection Association Code book 85; establishing a new method of assessing late inspection fees for a boiler that has not been inspected when the current certificate of operation has expired; adding requirements for the replacement and plugging of boiler tubes in certain fire tube boilers; and adding requirements for boiler blowdown process and equipment.

The proposed rules repeal an existing regulation by no longer requiring an Authorized Inspection Agency with NB 360 accreditation to obtain a registration from TDLR; repealing the procedure to refer a boiler for which the inspection is 90 days or more past due to an AIA to conduct an inspection; repealing the previous method of assessing late fees established under §60.83; and repealing the requirement for a fee to be paid for the reissuance of a commission when an inspector changes employers.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENTS

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

### SUBCHAPTER A. GENERAL PROVISIONS

#### 16 TAC §65.2

#### STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed rules are also proposed under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the proposed rules.

#### §65.2. Definitions.

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

(1) Alteration--A change in the item described on the original Manufacturer's Data Report which affects the pressure containing capability of the pressure retaining item. Nonphysical changes such as an increase in the maximum allowable working pressure (internal or external [Internal or External]), increase in design temperature, or a reduction in minimum temperature of a pressure-retaining item is [shall be] considered an alteration.

(2) - (4) (No change.)

(5) Authorized Inspection Agency (AIA) (In-service)--An entity accredited by the National Board meeting NB-369, "Qualifications and Duties for Authorized Inspection Agencies Performing In-service Activities and Qualifications for Inspectors of Boilers and Pressure Vessels."[-]

(6) Authorized Inspection Agency (AIA) (New Construction--ASME Activities)--An entity accredited by the National Board meeting the qualification and duties of NB-360, "Criteria for Acceptance of Authorized Inspection Agencies for New Construction."[-]

(7) Authorized Inspector (AI)--An inspector qualified to be employed by an Authorized Inspection Agency (AIA) who holds a commission issued by the executive director.

(8) (No change.)

(9) Blowdown separator--a pressure vessel used to capture boiler blowdown water for the purpose of reducing the boiler blowdown water temperature and pressure. The cooling of the blowdown water occurs by mixing cooling water with the blowdown water.

(10) Blowdown tank--A pressure vessel used to capture boiler blowdown water for the purpose of reducing the boiler blowdown water temperature and pressure. The cooling of the blowdown water occurs over time.

(11) Blowdown water--Boiler water that contains dissolved solids and sludge.

(12) [(9)] Board--The Board of Boiler Rules.

(13) [(10)] "Boiler" means:

- (A) a heating boiler;
- (B) a nuclear boiler;
- (C) a power boiler;

(D) an unfired steam boiler; or

(E) a process steam generator.

(14) [(11)] Boiler external piping [External Piping]--The piping which begins where the ASME Code Section I or Section VIII, Division 1, 2, or 3 boiler proper or separately fired superheater terminates at:

(A) the first circumferential joint for welding end connections; or

(B) the face of the first flange in bolted flange connections; or

(C) the first threaded joint in that type of connection; and which extends up to and including the valve or valves required by ASME.

(15) [(12)] Certificate inspection [Inspection]--The required internal or external boiler inspection, the report of which is used by the chief inspector to decide whether to issue a certificate of operation.

(16) [(13)] Certificate of operation [Operation]--A certificate issued by the executive director to allow the operation of a boiler.

(17) [(14)] Changeover valve [Valve]--A valve that, which allows two redundant pressure relief valves to be installed for the purpose of changing from one pressure relief valve to the other while the boiler is operating and designed such that there is no intermediate position where both pressure relief valves are isolated from the boiler.

(18) [(15)] Chief inspector [Inspector]--The inspector appointed in accordance with Texas Health and Safety Code, §755.023.

(19) [(16)] Code--ASME Code.

(20) [(17)] Commission--The Texas Commission of Licensing and Regulation.

(21) [(18)] Competent attendant [Attendant]--An individual who has been trained to properly operate, start up, shut down, respond to emergencies and maintain control of the boiler in safe operating condition.

(22) [(19)] Condemned boiler [Boiler]--A boiler inspected and declared unfit for further service by the chief inspector, the deputy inspector, or the executive director.

(23) [(20)] Continuous water treatment [Water Treatment]--A verifiable program that controls and limits corrosion and deposits in a boiler.

(24) [(21)] Department--Texas Department of Licensing and Regulation.

(25) [(22)] Deputy inspector [Inspector]--An inspector appointed by the executive director.

(26) [(23)] Disconnected boiler [Boiler]--A boiler in which all fuel, water, steam and electricity are removed from any connection on the boiler. These connections must [shall] provide an isolated gap and the source must [shall] be safely isolated to prevent potential leaks or electrical hazards.

(27) [(24)] Electric boiler [Boiler]--A boiler in which the source of heat is electricity, such as an electrode type boiler and an immersion resistance element type boiler.

(28) [(25)] Electrode type boiler [Type Boiler]--An electric boiler in which heat is generated by the passage of electric current using water as the conductor.

(29) [(26)] Executive director [Director]--The executive director of the department.

(30) [(27)] External inspection [Inspection]--An inspection of the exterior of a boiler and its appurtenances that is made, if possible, while the boiler is in operation.

(31) [(28)] Heat Recovery Steam Generator (HRSG)--A boiler which produces steam where its principle source of thermal energy is a hot gas stream having high ramp rates, such as the exhaust of a gas turbine.

(32) [(29)] Heating boiler [Boiler]--A steam heating boiler, hot water heating boiler, hot water supply boiler, or potable water heater that is directly fired with oil, gas, solar energy, electricity, coal, or other solid or liquid fuel.

(33) [(30)] High-temperature water boiler [Temperature Water Boiler]--A water boiler designed for operation at pressures exceeding 160 pounds per square inch gage (1100 kilopascals) or temperatures exceeding 250 degrees Fahrenheit (121 degrees Celsius).

(34) [(31)] Hot water heating boiler [Water Heating Boiler]--A boiler designed for operation at a pressure not exceeding 160 pounds per square inch gage (1100 kilopascals) or temperatures not exceeding 250 degrees Fahrenheit (121 degrees Celsius) at or near the boiler outlet.

(35) [(32)] Hot water supply boiler [Water Supply Boiler]--A boiler designed for operation at pressures not exceeding 160 pounds per square inch gage (1100 kilopascals) or temperatures not exceeding 250 degrees Fahrenheit (121 degrees Celsius) at or near the boiler outlet if the boiler's heat input exceeds 200,000 British thermal units per hour (58.6 kilowatts); water temperature exceeds 210 degrees Fahrenheit (99 degrees Celsius); or nominal water-containing capacity exceeds 120 gallons (454 Liters).

(36) [(33)] Immersion resistance element type boiler [Resistance Element Type Boiler]--An electric boiler in which heat is generated by the passage of an electric current through a resistance heating element immersed in water.

(37) [(34)] Inspection agency [Agency]--An Authorized Inspection Agency (AIA) [authorized inspection agency] providing inspection services.

(38) [(35)] Inspector--The chief inspector, a deputy inspector, or an Authorized Inspector (AI) [authorized inspector].

(39) [(36)] Install--To place, position or fit a boiler into position and then to connect, change or modify the boiler [in such a manner as] to enable [bring] the boiler to be brought into service.

(40) [(37)] Installation--The act of installing a boiler or associated equipment.

(41) [(38)] Internal inspection--A complete and thorough inspection of the interior waterside and fireside areas of a boiler as construction allows.

(42) [(39)] Maximum Allowable Working Pressure (MAWP)--The greatest pressure at which a boiler is designed to operate.

(43) [(40)] Metric (SI)--An international system of measurement.

(44) [(41)] Metrication--The process of converting between US customary units and metric (SI) units.

(45) [(42)] Modular boiler [Boiler]--A steam or hot water heating assembly consisting of a group of individual boilers called

modules, intended to be installed as a unit, with a single inlet and single outlet. Modules may be under one jacket or may be individually jacketed.

(46) [(43)] Multiple pressure steam generator [Pressure Steam Generator]-A boiler consisting of several sections of heat exchange surface designed for different pressure levels.

(47) [(44)] National Board--The National Board of Boiler and Pressure Vessel Inspectors.

(48) [(45)] National Board Inspection Code (NBIC)--The manual for boiler and pressure vessel inspectors published by the National Board of Boiler and Pressure Vessel Inspectors.

(49) [(46)] Nominal--The accepted ASME standard used to designate a size or capacity of an item.

(50) [(47)] Non-code boiler [Code Boiler]-A complete boiler not constructed to the appropriate ASME Code.

(51) [(48)] Nonstandard boiler [Boiler]-A boiler that does not qualify as a standard boiler.

(52) [(49)] Nuclear boiler [Boiler]-A nuclear power plant system, including its pressure vessels, piping systems, pumps, valves, and storage tanks that produces and controls an output of thermal energy from nuclear fuel and the associated systems essential to the function of the power system.

(53) [(50)] Operation--The condition of a boiler in which the energy source is being applied to the boiler.

(54) [(51)] Out of service [Service]-The condition of a boiler in which it is neither in operation nor in standby.

(55) [(52)] Owner or operator [Operator]-Any person, firm, or corporation owning or operating boilers within the State of Texas.

(56) [(53)] Person--An individual, corporation, partnership, association or other legal entity.

(57) [(54)] Pool heater [Heater]-A hot water supply boiler or a potable water heater designed to provide hot water to a pool.

(58) [(55)] Portable boiler [Boiler]-A boiler primarily intended for use at a temporary location.

(59) [(56)] Potable water heater [Water Heater]-A boiler designed for operation at pressures not exceeding 160 pounds per square inch gage (1100 kilopascals) and water temperatures not exceeding 210 degrees Fahrenheit (99 degrees Celsius) if the boiler's heat input exceeds 200,000 British thermal units per hour (58.6 kilowatts) or nominal water-containing capacity exceeds 120 gallons (454 liters).

(60) [(57)] Power boiler [Boiler]-A high-temperature water boiler or a boiler in which steam is generated at a pressure exceeding 15 pounds per square inch gage (103 kilopascals) for a purpose external to the boiler.

(61) [(58)] Preliminary order--A written order issued by the chief inspector or any commissioned boiler inspector to require repairs or alterations to render a boiler safe for use or to require that operation of the boiler be discontinued. The boiler inspection [Boiler Inspection] report which requires repairs to be made or the boiler operation to be ceased which is signed by the chief inspector or a commissioned boiler inspector is a Preliminary Order.

(62) [(59)] Process steam generator [Steam Generator]-An evaporator, heat exchanger, or vessel in which steam is generated by the use of heat resulting from the operation of a process-

ing system that contains a number of pressure vessels, such as used in the manufacture of chemical and petroleum products.

(63) [(60)] Reinstalled boiler [Boiler]-A boiler removed from its original setting and reinstalled at the same location or at a new location [without change of ownership].

(64) [(61)] Repair--The work necessary to restore pressure-retaining items to a safe and satisfactory operating condition.

(65) [(62)] Rules--The rules promulgated and enforced by the commission in accordance with Texas Health and Safety Code, §755.032 and Texas Occupations Code, Chapter 51.

(66) [(63)] Safety appliance [Appliance]-A safety device such as a safety valve or a pressure relief valve for a boiler provided to diminish the danger of accidents.

(67) [(64)] Secondhand boiler [Boiler]-A boiler for in which the location and ownership have changed.

(68) [(65)] Serious accident [Accident]-An explosion resulting in any degree of distortion to the wall of the boiler or related equipment or damage to the building where the boiler is located. Or, emergency medical services are dispatched to the location of a boiler accident in which one or more persons require on-site medical services, transport to a medical facility or the accident results in a fatality.

(69) [(66)] Special inspection [Inspection]-An inspection by the chief inspector or deputy inspector other than those in Texas Health and Safety Code, §§755.025 - 755.027.

(70) [(67)] Stacked boiler [Boiler]-A design in which one boiler is placed onto a rack above another boiler, as designed by the boiler manufacturer with a rack nameplate, and as approved by the department.

(71) [(68)] Standard boiler [Boiler]-A boiler that bears the stamp of a nationally recognized engineering professional society, or the stamp of any jurisdiction that has adopted a standard of construction equivalent to the standard required by the executive director.

(72) [(69)] Standby--The condition of a boiler in which the owner or operator has (1) placed the boiler into operation at low fire or (2) can place the boiler into operation within 48 hours' notice.

(73) [(70)] Steam heating boiler [Heating Boiler]-A boiler designed for operation at pressures not exceeding 15 pounds per square inch gage (103 kilopascals).

(74) [(71)] System pressure [Pressure]-The pressure of the boiler system, which is governed by the highest safety valve or pressure relief valve set pressure as allowed by ASME Code and this chapter.

(75) [(72)] Texas Commission--Authorization to inspect boilers and enforce Texas Health and Safety Code, Chapter 755, and 16 Texas Administrative Code, Chapter 65, on behalf of the department.

(A) ASME Only commission [Commission]-Authorizes [Only authorizes] an inspector to conduct only ASME new construction activities.

(B) In-service only commission [In-Service Only Commission]-Authorizes [Only authorizes] an inspector to conduct only boiler in-service activities.

(C) ASME and in-service commission [In-Service Commission]-Authorizes [Only authorizes] an inspector to conduct both activities in subparagraphs (A) and (B).

(76) [(73)] Unfired steam boiler [Steam Boiler]-An unfired pressure vessel in which steam is generated. The term does not include: vessels known as evaporators or heat exchangers; or vessels in

which steam is generated by using the heat that results from the operation of a processing system that contains a number of pressure vessels, as used in the manufacture of chemical and petroleum products.

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## SUBCHAPTER B. REGISTRATION-- AUTHORIZED INSPECTION AGENCY

### 16 TAC §65.8

#### STATUTORY AUTHORITY

The proposed repeal is repealed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed repeal is also repealed under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed repeal are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the proposed repeal.

*§65.8. Registration--Authorized Inspection Agency Without NB 360 Accreditation.*

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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## SUBCHAPTER C. BOILER REGISTRATION AND CERTIFICATE OF OPERATION[-- REQUIREMENTS]

### 16 TAC §§65.12 - 65.15

#### STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed rules are also proposed under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the proposed rules.

*§65.12. Boiler Registration and Certificate of Operation Required.*

(a) Except as provided by this chapter, the owner or operator of each boiler operated in this state must:

(1) register the boiler [be registered] with the department; [and]

(2) have qualified each boiler for a current certificate of operation; and [with]

(3) post the current certificate of operation [posted] in a conspicuous place on or near the boiler for which it is issued.

(b) Upon issuance of a certificate of operation for a boiler:

(1) the obligation to comply with the Act and this chapter, including the requirement for periodic inspections, is required to continue operation; and

(2) the continued operation of the boiler is presumed unless the person establishes to the satisfaction of the department, based on the person's records or other evidence reasonably acceptable to the department, that the boiler was not in operation after the expiration of a certificate of operation for that boiler.

*§65.13. Boiler Installation.*

(a) The owner or operator of a boiler in this state must submit a boiler installation report to the department, in the manner prescribed by the department, not later than the time of completion of: [within thirty (30) days after completion of a boiler installation.]

(1) a boiler installation; or

(2) a boiler re-installation following relocation, disconnection and reconnection, or disassembly and reassembly.

(b) A boiler may not be test-fired or operated before the required first inspection unless the boiler installation:

(1) is conducted in accordance with the applicable requirements of this chapter, including but not limited to this section and §§65.50, 65.87, 65.200, 65.201, 65.204, and 65.209;

(2) the owner, operator, or boiler installer has submitted a boiler installation report to the department in the manner prescribed by the department; and

(3) a Temporary Boiler Operating Permit has been approved in accordance with subsection (c).

[(b) The boiler shall not be test-fired or operated prior to the required first inspection except as allowed under subsection (e).]

(c) Temporary Boiler Operating Permit.

(1) The owner or operator may request a Temporary Boiler Operating Permit in the manner prescribed by the department [on a department-approved form].

(2) The owner or operator must pay the applicable fee provided under §65.300.

(3) The department will not approve a Temporary Boiler Operating Permit if a boiler installation report for the boiler has not been submitted to the department in the manner prescribed by the department.

(4) [(3)] Upon approval of the Temporary Boiler Operating Permit from the department, the boiler may be operated before [prior to] the required initial inspection for up to thirty (30) days.

§65.14. *Inspector Commissions.*

(a) In-service [In-Servic] Commission. To be eligible for in-service commission, an applicant must:

(1) - (4) (No change.)

(b) (No change.)

§65.15. *Boiler Certificate of Operation [Certification Requirements].*

(a) To be eligible for a certificate of operation, the following requirements must be met:

(1) - (2) (No change.)

(3) required repairs completed; ~~and~~

(4) payment of fees under §65.300; ~~and~~[-]

(5) payment of due or past-due invoices associated with the boiler.

(b) - (c) (No change.)

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## SUBCHAPTER D. AUTHORIZED INSPECTOR

### 16 TAC §65.25, §65.26

#### STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed rules are also proposed under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the proposed rules.

§65.25. *Authorized Inspector--Eligibility Requirements.*

To perform work as [be] an Authorized Inspector [authorized inspector], an applicant must be an inspector in the employment of a department-registered Authorized Inspection Agency [have at least five years' experience in the constructions, installation, inspection, operation, maintenance, or repair of boilers].

§65.26. *Commission--Renewal and Reinstatement.*

(a) To renew or reinstate an Authorized Inspector [authorized inspector] commission, an applicant must:

(1) - (4) (No change.)

(b) Non-receipt of a license or registration renewal notice from the department does not exempt a person[<sub>3</sub>] or entity[<sub>3</sub>] from any requirements of this chapter.

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## SUBCHAPTER F. COMMISSION CARDS

### 16 TAC §65.40, §65.41

#### STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed rules are also proposed under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the proposed rules.

§65.40. *Authorized Inspector--Commission Card.*

(a) The executive director may issue a commission and an identifying commission card to an Authorized Inspector provided the inspector has successfully passed the examination as set forth in §65.14.

(b) A commission card or a digital or paper photograph or copy of the commission card issued by the department must be in the inspector's possession and readily available while conducting inspection activities within the state of Texas.

{(a) A commission as an authorized inspector and an identifying commission card may be issued by the department to a person who has met the requirements of §65.14(a) and (b).}

{(b) A commission card issued by the department shall only be used while conducting inspection activities within the State of Texas and shall be in the inspector's possession during these activities.}

(c) Written requests for renewals, and applications for new and reinstated commissions must [reinstatements shall] specify if the scope of work to be performed will be ASME Code only, in-service [~~in-service~~] only, or both.

(d) When a request is for new issuance or reinstatement as described in §65.14 and §65.26, the inspector must [shall] attend a mandatory commission approved training program before [~~prior to~~] issuance of the commission.

(e) (No change.)

(f) Within two (2) business days after an inspector's employment terminates, the Authorized Inspection Agency must notify the department in writing that the inspector no longer works for the agency.[:]

{(1) the inspection agency shall notify the department in writing that the inspector no longer works for the agency; and}

{(2) on the final day of employment with the inspection agency, the commission card issued to the inspector is void and shall not be used as authorization to perform or otherwise conduct a boiler inspection under this chapter.}

{(g) The identifying commission card shall be returned to the department by the authorized inspection agency within thirty (30) days after the inspector to whom the commission was issued is no longer employed by the department or the authorized inspection agency.}

§65.41. *Reissuance of Commission Card after Reemployment.*

An inspector, commissioned as provided in this subchapter, is [shall be] entitled to another commission without examination upon leaving an employer and commencing [the] employment with another employer if the inspector: [of the department and entering the employment of an inspection agency without examination; if the following requirements are met.]

(1) [The inspector] is employed by the new employer [inspection agency] within 12 months [twelve (12) months] after leaving the former employer [department];

(2) submits an application for a commission as required in this subchapter; and

{(2) A Commission application and fee required under §65.300 are submitted to the department; and}

(3) meets all [All] other requirements [have been met] for obtaining a commission.

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## SUBCHAPTER H. INSPECTOR STANDARDS OF CONDUCT

### 16 TAC §65.50

#### STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed rules are also proposed under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the proposed rules.

#### §65.50. *Inspectors--Prohibited Conflicts of Interest.*

(a) Inspectors may [shall] not engage in the sale of any article or device relating to boilers, pressure vessels, or [other] appurtenances.

(b) Authorized Inspection Agencies, Authorized Inspectors, and inspectors employed by the department may not install boilers.

(c) An Authorized Inspection Agency, an Authorized Inspector, or an employee of the department may not inspect a boiler installed by an Authorized Inspection Agency, by any Authorized Inspector, by a current or former Authorized Inspection Agency employer, or by the same employee of the department.

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## SUBCHAPTER I. INSPECTION OF BOILERS

### 16 TAC §§65.60 - 65.63

#### STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed rules are also proposed under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the proposed rules.

*§65.60. External Inspection.*

External inspections must ~~shall~~ be performed as part of the application for an extension to the inspection interval of Health and Safety Code, §755.026. Otherwise, an external inspection must ~~it shall~~ be conducted in conjunction with the annual internal inspection required in Health and Safety Code, §755.025.

*§65.61. Inspection of All Boilers Required.*

(a) (No change.)

(b) All boilers must receive a certificate inspection before the expiration date of the current certificate of operation.

(c) ~~[(b)]~~ Boilers ~~must~~ ~~shall~~ be inspected by the ~~Authorized Inspection Agency~~ ~~[inspection agency]~~ that issued an insurance policy to cover a boiler located in this state, or by an authorized representative. All other boilers ~~must~~ ~~shall~~ be inspected by the department.

(1) The Authorized Inspection Agency must conduct a certificate inspection for each boiler for which it is responsible before the expiration of the boiler's current certificate of operation.

(2) The continued operation of the boiler beyond the expiration of the certificate of operation is presumed in accordance with §65.200.

(3) The Authorized Inspection Agency listed in the department's reporting system that fails to timely inspect a boiler for which it is responsible is subject to the late inspection fee in §65.300 if the current certificate of operation expires while the Authorized Inspection Agency has inspection responsibility.

(4) The owner or operator of a boiler that does not receive a certificate inspection before the expiration of the current certificate of operation is subject to the late inspection fee in §65.300.

(5) An Authorized Inspection Agency that is denied access to a boiler for inspection purposes is not responsible for a late inspection fee under paragraph (3). A denied-access violation of §65.62(a) must be documented on the inspection report.

(d) Upon request, an Authorized Inspection Agency must provide the department documentation of the effective dates of its inspection responsibility for a boiler.

(e) Subsections (c)(3) and (c)(4) apply to boilers for which the certificate of operation expires one year or more after the adoption of the amendments to this section.

(f) ~~[(e)]~~ Except in the case of an accident or other emergency, no inspection will ~~shall~~ be made by the chief inspector or any deputy inspector on a Saturday, Sunday, or legal holiday, unless otherwise directed by the department.

~~[(d) Boilers shall be inspected prior to the expiration date of the current certificate of operation.]~~

~~[(e) Boilers not inspected prior to the expiration date of the current certificate of operation will be assessed a late fee in accordance with §65.300 and subject to penalties and sanctions as provided under this chapter.]~~

*§65.62. Notice of Inspection to Owners or Operators of Boilers.*

(a) All boilers, unless otherwise exempted, ~~must~~ ~~shall~~ be made available for inspection and prepared for initial inspection, regular inspections, or liquid pressure tests, whenever necessary, by the owner or operator when notified by the inspector.

(b) (No change.)

*§65.63. Inspection of Portable Boilers.*

The internal and external inspection of portable boilers must ~~[Portable Boilers shall]~~ occur as follows:

(1) - (3) (No change.)

(4) Boilers designated as a nonstandard boiler ~~[Nonstandard Boiler]~~ in accordance with §65.45, ~~must~~ ~~shall~~ be inspected annually.

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## SUBCHAPTER J. TEXAS BOILER NUMBERS

### 16 TAC §65.70, §65.71

#### STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed rules are also proposed under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the proposed rules.

*§65.70. Texas Boiler Numbers--Required.*

(a) Each boiler must be identified with a single unique department-issued identification number displayed on a corrosion-resistant tag or decal and located on the boiler next to the ASME name plate. The decal or tag must be attached to the boiler during the first inspection and ~~shall~~ remain on the boiler for the life of the equipment.

(b) After the initial issuance of an identification number [a tag number], that [tag] number may not be reassigned or reused.

(c) - (d) (No change.)

*§65.71. Texas Boiler Number--Placement on Boiler.*

(a) During the first inspection of all boilers, the inspector ~~must~~ ~~shall~~ stamp the Texas boiler number, except as provided for in subsections (c) and (d), as near to the original ASME Code [eode] name plate and required information as practicable.

(b) - (d) (No change.)

(e) The following types of boilers are exempt from the stamping requirements of subsection (c), ASME Code: boilers bearing [eode]



name plates stamped with the HLW designator, cast iron sectional boilers, cast aluminum sectional boilers, water tube boilers with cast headers, and other types of boilers that will be damaged by direct impression stamping.

(1) - (2) (No change.)

(f) (No change.)

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## SUBCHAPTER K. REPORTING REQUIREMENTS

### 16 TAC §§65.83, 65.86, 65.87

#### STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed rules are also proposed under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the proposed rules.

#### §65.83. Boiler Accidents.

(a) In case of a serious accident, the owner, operator, or Authorized Inspector must [owner/operator shall] immediately notify the chief inspector and Authorized Inspector, as applicable. [authorized inspector.]

(b) The owner or operator must ensure that neither the boiler nor any of the following is removed or disturbed, whether or not it is or was installed, in use, impacted, damaged, or functioning, except for the purpose of saving human life or preventing death or serious harm to an individual or preventing serious damage, before an inspection and investigation has been made by a department inspector:

- (1) parts of the boiler;
- (2) fuel supply equipment;
- (3) gauges, valves, meters, regulators, or cocks;
- (4) wiring, relays, switches, electrical panels, or motherboards;
- (5) ventilation equipment, structures, or fans;

(6) any other equipment serving the operation of the boiler;

(7) any matter, material, substance, equipment, part, or item related or unrelated to the operation of the boiler; or

(8) building structures, building materials, building contents, adjacent or surrounding structures or components thereof, soils, or vegetation.

[(b) Neither the boiler nor any of the parts thereof, shall be removed or disturbed, except for the purpose of saving human life or preventing further damage, before an inspection and investigation has been made by an inspector.]

[(e) The authorized inspector shall immediately notify the chief inspector of each boiler accident.]

(c) [(d)] The chief inspector must [shall] investigate, or cause to be investigated, each boiler accident to the extent necessary to reasonably determine the cause of the boiler accident.

(d) [(e)] To the extent necessary to conduct an inspection and subsequent investigation of a boiler accident, the owner or operator must [owner/operator shall] provide an inspector free access to the boiler and accident area.

(e) All records related to the boiler and the operation of the boiler must be preserved and may not be modified or destroyed.

(1) If records related to the operation or maintenance of the boiler are created or updated through electronic or automated processes, the records may not be accessed to modify, delete, or otherwise change the automated system or the records created or produced by that system.

(2) All records must be made available to the inspector or the department upon request in a readily understandable format that can be read and interpreted without the use of proprietary software, interpretation services, or other specialized processes.

(f) The owner or operator must timely [owner/operator shall] provide the chief inspector, deputy inspector and Authorized Inspector [authorized inspector,] with fragments, parts, appurtenances, documents, any items listed in subsection (b), and records necessary to conduct an investigation of the accident.

(g) The Authorized Inspector must [authorized inspector shall] submit a report of the boiler accident to the chief inspector[: The report shall be submitted] in a manner prescribed by the department.

(h) The chief inspector must [shall] file a final report to the executive director.

#### §65.86. Authorized Inspection Agencies Reporting Requirements.

Authorized Inspection Agencies must notify the department within ten [(10)] calendar days after the loss of ASME Certificate of Authorization [: NB-360 Certificate of Authorization] or NB-369 Certificate of Authorization.

#### §65.87. Boiler Installation Reporting Requirements.

The owner or operator of a boiler or any person who installs or reinstalls a boiler in this state must file an installation report with the department by the completion of installation in accordance with §65.13.

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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## SUBCHAPTER L. RESPONSIBILITIES OF THE DEPARTMENT

### 16 TAC §65.90, §65.91

#### STATUTORY AUTHORITY

The proposed repeals are repealed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed repeals are also repealed under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed repeals are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the proposed repeals.

§65.90. *Commissions--Authorized Inspector.*

§65.91. *Overdue Boiler Inspection--Authorized Inspection Agency Referral.*

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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## SUBCHAPTER M. BOARD OF BOILER RULES

### 16 TAC §65.101

#### STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed rules are also proposed under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the proposed rules.

§65.101. *Board of Boiler Rules--Membership; Presiding Officer.*

(a) - (d) (No change.)

(e) The chief inspector of the department serves as presiding officer of the board.

(f) A quorum of the advisory board is necessary to conduct official business.

(g) A board decision is not effective unless supported by the vote of a majority of the members present and voting.

(h) The presiding officer may not vote on board actions and may not be counted in determining whether a quorum is present.

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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### 16 TAC §65.104

#### STATUTORY AUTHORITY

The proposed repeal is repealed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed repeal is also repealed under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed repeal are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the proposed repeal.

§65.104. *Board of Boiler Rules--Board Meetings.*

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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SUBCHAPTER N. RESPONSIBILITIES OF THE OWNER AND OPERATOR

16 TAC §§65.200, 65.206, 65.217

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed rules are also proposed under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the proposed rules.

§65.200. New Boiler Installations.

(a) No boiler, except reinstalled boilers and those exempted by Texas Health and Safety Code, §755.022, may [shall] be operated [installed] in this state unless:

(1) it has been constructed, installed, inspected, and stamped in conformity with the applicable section of the ASME Code [code];

(2) it is registered with the National Board of Boiler and Pressure Vessel Inspectors except cast iron or cast-aluminum sectional boilers; and

(3) it is installed, approved, registered, and inspected in accordance with the requirements of this chapter.

(b) A boiler having the standard stamping of another state that has adopted a standard of construction equivalent to the standard of the State of Texas, or a special-designed boiler, may be approved [accepted] by the department. Any person desiring to install such a boiler must [shall] file a written request for approval to install and for a special inspection [complete application for the installation of the boiler in compliance with §65.13].

(c) New boilers and, including reinstalled boilers must, shall be installed in accordance with the requirements of the latest revision of the applicable section of the manufacturer's recommendations, the ASME Code, the Act, [ASME code] and this chapter. These boilers must [shall] be inspected before [prior to operation] test-firing or operation in accordance with §65.13 and all applicable rules.

(d) Upon issuance of a certificate of operation for a boiler:

(1) the obligation to comply with the Act and this chapter, including the requirement for periodic inspections, is required to continue operation; and

(2) the continued operation of the boiler is presumed unless the person establishes to the satisfaction of the department, based on the person's records or other evidence reasonably acceptable to the department, that the boiler was not in operation after the expiration of the certificate of operation for that boiler.

§65.206. Boiler Room.

(a) Each boiler room containing one or more boilers from which carbon monoxide can be produced must [shall] be equipped with a carbon monoxide detector with a manual reset.

(1) The carbon monoxide detector must have a display that indicates the current level of carbon monoxide in parts per million (ppm) present in the boiler room.

(2) [(4)] The carbon monoxide detector and boiler(s) must [shall] be interlocked to disable the burners when the measured level of CO rises above 50 ppm.

(3) The owner or operator may choose to use a remote monitoring system. When the CO detector is remotely monitored:

(A) it must be set to alarm personnel at the boiler location and at the remote location at a measured level of 50 ppm of CO;

(B) the alarm at the boiler location must not be capable of being disabled until the measured level of CO falls below 50 ppm; and

(C) the detector must be interlocked to disable the burners when the CO level in the boiler room reaches a measured level of 200 ppm.

(4) [(2)] The carbon monoxide detector must [shall] disable the burners upon loss of power to the detector.

(5) [(3)] The carbon monoxide detector must [shall] be calibrated in accordance with the manufacturer's recommendations or every eighteen months after installation of the detector, whichever is less. A record of calibration must [shall] be posted at or near the boiler, or be readily accessible to an inspector.

(6) [(4)] The requirements in this subsection apply to boiler rooms in which new installations or reinstallations of one or more boilers are completed on or after September 1, 2020.

(b) - (h) (No change.)

§65.217. Variance.

(a) (No change.)

(b) In evaluating a request for variance, the department must [shall] consider whether the variance would be in the public interest, and may consider factors such as the effect of the proposed variance on the public, the burden that compliance imposes on the owner or operator [Owner or Operator], and whether the owner or operator [Owner or Operator] has in place a maintenance plan that promotes boiler safety.

(c) - (h) (No change.)

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SUBCHAPTER O. FEES

16 TAC §65.300

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to

adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed rules are also proposed under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the proposed rules.

*§65.300. Fees.*

(a) Certificate of operation. The owner or operator must ~~[shall]~~ make payment for the following fees:

(1) Initial certificate of operation--\$70.

(2) Subsequent certificate of operation--\$70. Any amounts due or past due for any invoices associated with the boiler must also be paid.

~~[(1) On or before expiration date--\$70; in addition to all outstanding invoices, including any past due invoices associated with the boiler.]~~

~~[(2) After expiration date--Late fees for certificates are provided for under §60.83 of this title (relating to Late Renewal Fees).]~~

(3) Duplicate certificate of operation--\$25

(b) - (c) (No change.)

(d) Commission Fees. The Authorized Inspector seeking or holding the commission must ~~[Commission shall]~~ make payment for the following fees:

(1) - (3) (No change.)

(4) Duplicate commission card--\$25

~~[(5) Reissuance of card after re-employment--\$50]~~

(5) ~~[(6)]~~ Late renewal fees for commissions issued under this chapter are provided under §60.83 [of this title (relating to Late Renewal Fees)].

(e) Authorized Inspection Agency Letter of Recognition. The Authorized Inspection Agency must pay ~~[shall make payment for]~~ the following fees:

(1) Initial application [Application]--\$100

(2) Renewal application [Application]--\$100

(f) - (h) (No change.)

(i) Boiler Installation Report Filing [Reports]. The owner or operator must [shall] make a \$25 fee payment. The boiler installer, if a different person than the owner or operator, is not responsible for the boiler installation report filing fee unless otherwise agreed.

~~[(j) Overdue Boiler Inspection Fee. The owner or operator shall make a \$260 fee payment to the agency assigned by the department in accordance with §65.91.]~~

(j) ~~[(k)]~~ Temporary Boiler Operating Permit Fee. The owner or operator must [shall] make a \$50 fee payment.

(k) Late Inspection Fee--A late inspection fee will be assessed as follows to the owner or operator and the Authorized Inspection Agency, as applicable, for inspections conducted after the expiration of the current certificate of operation.

(1) \$25 per day for each day after the expiration date of the certificate of operation until the 30th day after expiration of the certificate of operation;

(2) \$50 per day for days 31 to 60 after expiration of the certificate of operation; and

(3) \$100 per day for day 61 after expiration of the certificate of operation and for each day of noncompliance thereafter.

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## SUBCHAPTER P. ADMINISTRATIVE PENALTIES AND SANCTIONS

### 16 TAC §65.401

#### STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed rules are also proposed under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the proposed rules.

*§65.401. Sanctions.*

(a) If a boiler has not been properly prepared for an internal inspection or a liquid pressure test as required by the Act and this chapter [boiler law and rules], the inspector may decline to make the inspection or witness the test~~;~~ and the certificate of operation shall be withheld until the owner or operator complies with all requirements. Late certificate of operation fees shall apply if the boiler is not inspected prior to the expiration date of the certificate of operation].

(1) The certificate of operation will be withheld until the owner or operator complies with all requirements.

(2) A late inspection fee in accordance with §65.300 must be paid if the boiler is not inspected before the expiration date of the certificate of operation.

(b) (No change.)

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## SUBCHAPTER R. BASIC TECHNICAL REQUIREMENTS

**16 TAC §§65.550 - 65.552, 65.555, 65.556, 65.559, 65.560**

### STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed rules are also proposed under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the proposed rules.

#### §65.550. Conditions Not Covered by Rules.

(a) Any owner or operator of boilers or any deputy inspector, Authorized Inspector, or interested party, may submit in writing an inquiry to the department for an opinion or clarification.

(b) All conditions not specifically covered by these requirements must be treated as new installations or be referred to the chief inspector for instruction.

#### §65.551. General Safety.

(a) The owner or operator must place a boiler and its related equipment in a safe condition for access and inspection. A boiler inspector is not required to perform an inspection if:

(1) A boiler, its related equipment, or the facility is not in compliance with applicable minimum federal, state, or local safety standards; or

(2) Unsafe conditions, including obstructed entry or exit, unsafe flooring or walking surfaces, inadequate space for conducting the inspection, inadequate lighting, or other unsafe conditions, hazards, or safety risks are present.

(b) A determination by an inspector that an inspection cannot be conducted safely is final.

(c) A boiler that is deemed unsafe for operation by the inspector will be removed from service or placed in a safe condition in the following manner:

(1) The inspector must notify the owner or operator about:

(A) the prohibition against operating an unsafe boiler;

(B) insurance policy provisions, if any, that may exclude insurance coverage for operating an unsafe boiler;

(C) possible administrative penalties for operating an unsafe boiler; and

(D) the department's authority to follow a request for the immediate but voluntary shut-down of the boiler with formal action to prohibit continued operation of the boiler.

(2) If the owner or operator refuses to immediately shut the boiler down upon the request of the inspector, before leaving the premise on which the unsafe boiler is located the inspector must notify the chief inspector about the condition of the unsafe boiler.

(d) Upon receipt of the notice required by paragraph (c)(2), the chief inspector must assign a deputy inspector to confirm that an unsafe condition exists and, if confirmed, to declare the boiler unsafe for operation by placing a red tag on the boiler prohibiting continued operation of the boiler.

(e) The continued operation of an unsafe boiler subjects the owner or operator to administrative penalties as provided for in this chapter.

#### §65.552. Chimneys and Vents.

All chimneys and vents must be installed in accordance with boiler manufacturer recommendations and chimney/vent manufacturer recommendations.

#### §65.555. Boiler Blowdown.

(a) Blowdown water from power boilers must pass through an approved blowdown separator or blowdown tank when entering a sanitary sewer.

(b) The temperature of the blowdown water leaving the blowdown separator or blowdown tank must not exceed 140 degrees Fahrenheit.

(c) The pressure of the blowdown water leaving a blowdown separator or blowdown tank must not exceed 5 PSIG.

(d) All blowdown piping and fittings must meet requirements set forth in ASME Piping Code B31.1, Power Piping.

(e) A blowdown separator must be fitted with threaded or flanged openings to facilitate inspection. A blowdown tank must be fitted with a manway for cleaning and inspection.

(f) The vent and drain of the blowdown separator or blowdown tank must be piped to a safe point of discharge.

(g) A blowdown separator or blowdown tank, when required by this chapter, must:

(1) be constructed in accordance with ASME Boiler and Pressure Vessel Code, Section VIII Division 1;

(2) have a minimum design pressure equal to the recommended pressure of the boiler manufacturer for the boiler to which the tank or separator is connected; and

(3) be registered with the National Board of Boiler and Pressure Vessel Inspectors.

(h) Installation or modification of equipment to achieve compliance with this section is required to be completed no later than six months after the adoption of the requirements of this section.

#### §65.556. Boiler Room Ventilation.

(a) Each boiler room containing one or more boilers from which carbon monoxide can be produced must have an adequate and uninterrupted air supply to assure proper combustion and ventilation.

(b) The combustion and ventilation air may be supplied by either an unobstructed opening or by power ventilators or fans as provided below.

(1) For a single unobstructed opening, the opening must be sized on the basis of one square inch (645 square millimeters) of free area for each 2,000 Btu/hour (.586 kilowatts) input of the combined burners located in the boiler room.

(2) For two unobstructed openings, one commencing not more than 12 inches (304.8 millimeters) from the ceiling of the room and one commencing not more than 12 inches (304.8 millimeters) from the floor of the room, the opening must be sized on the basis of one square inch (645 square millimeters) of free area for each 3,000 Btu/hour (.879 kilowatts) input per opening of the combined burners located in the boiler room.

(3) The power ventilator or fans must be sized on the basis of 0.2 cfm. (5.6 liters per minute) for each 1,000 Btu/hour (.29 kilowatts) fuel input for the combined burners located in the boiler room. The boiler and the fans must be interlocked to disable the burners unless a supply of combustion, ventilation, and dilution air in accordance with the boiler manufacturer's recommendations is maintained.

(4) Power ventilators or fans designed to maintain pressure in the boiler room must be sized on the basis of 0.2 cfm. (5.6 liters per minute) for each 1,000 Btu/hour (.29 kilowatts) fuel input for the combined burners located in the boiler room. The boiler and the fan control must be interlocked to disable the burners unless a supply of combustion, ventilation and dilution air in accordance with the boiler manufacturer's recommendations is maintained.

(c) Boilers of a sealed combustion design by the manufacturer.

(1) When a boiler(s) in the boiler room is of a sealed combustion design by the manufacturer of the boiler and pulls air for combustion from outside of the building, ventilation of the boiler room is not required.

(2) When the boiler room is configured to include both designs, i.e. a boiler(s) of a sealed combustion design by the manufacturer of the boiler that pulls air for combustion from outside of the building and a boiler(s) that is not of a sealed combustion design by the manufacturer of the boiler, the boiler room must meet the ventilation requirements in subsection (b) only for the boiler(s) that are not of the sealed combustion design that pull air from outside of the building.

§65.559. Location of Discharge Outlets.

Pressure relief valve, blowdown pipes, and other outlets must be discharged to a safe point.

§65.560. Boiler and Combustion Systems Hazards Code.

National Fire Protection Association (NFPA) Code Book 85 must be followed for the following types of boilers.

(1) Single burner boilers, multiple burner boilers, stokers and atmospheric fluidized bed boilers with a fuel input of 3.7 MW (12.5 million Btu/hr) or greater.

(2) Pulverized fuel systems at any heat input rate.

(3) Fired or unfired steam generators used to recover heat from combustion turbines and other combustion turbine exhaust systems at any heat input.

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SUBCHAPTER R. TECHNICAL REQUIREMENTS

**16 TAC §§65.600 - 65.604**

STATUTORY AUTHORITY

The proposed repeals are repealed under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The proposed repeals are also repealed under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed repeals are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the proposed repeals.

*§65.600. Conditions Not Covered by Rules.*

*§65.601. General Safety.*

*§65.602. Chimneys and Vents.*

*§65.603. Boiler Room Ventilation.*

*§65.604. Location of Discharge Outlets.*

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SUBCHAPTER S. TECHNICAL REQUIREMENTS

**16 TAC §§65.607 - 65.609, 65.611, 65.612, 65.614**

STATUTORY AUTHORITY

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

The proposed rules are also proposed under Texas Health and Safety Code, Chapter 755, Boilers, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 755. No other statutes, articles, or codes are affected by the proposed rules.

*§65.607. Power Boilers, Excluding Unfired Steam Boilers and Process Steam Generators.*

(a) Safety valves and pressure relief valves.

(1) - (4) (No change.)

(5) Except for changeover valves as defined in §65.2(17)(14), other valve(s) must [shall] not be placed:

(A) - (B) (No change.)

(6) - (9) (No change.)

(10) If a muffler is used on a pressure relief valve, it must [shall] have sufficient area to prevent back pressure from interfering with the proper operation and discharge capacity of the valve. Mufflers must [shall] not be used on high-temperature water boilers [High-Temperature Water Boilers].

(11) - (14) (No change.)

(b) - (c) (No change.)

(d) Low-water fuel cutoff and water feeding devices.

(1) All automatically fired steam boilers, except boilers having a constant attendant, who has no other duties while the boiler is in operation, must [shall] be equipped with approved low-water fuel cutoffs.

(A) - (C) (No change.)

(D) For high-temperature water boilers [High-Temperature Water Boilers] requiring forced flow circulation, an approved flow sensing device must [shall] be installed on the outlet, as close to the boiler as possible.

(2) - (4) (No change.)

(e) - (h) (No change.)

(i) Provisions for thermal expansion for high-temperature water boilers. [High-Temperature Water Boilers.]

(1) - (3) (No change.)

*§65.608. Unfired Steam Boilers.*

(a) - (b) (No change.)

(c) Safety valves and pressure relief valves.

(1) - (2) (No change.)

(3) Each ASME Code, Section I, unfired steam boiler must [shall] have one safety valve and if it has more than 500 square feet (47 square meters) of bare tube water heating surface, it must [shall] have two or more safety valves.

(A) (No change.)

(B) Valves, except a changeover valve as defined in §65.2(17)(14), must [shall] not be placed between the required safety valve or pressure relief valve or valves and the boiler nor on the

discharge pipe between the safety valve or pressure relief valve and the atmosphere.

(C) (No change.)

(4) - (6) (No change.)

(d) - (e) (No change.)

(f) Low-water cutoffs, alarms and feed regulating devices.

(1) The owner or operator [owner/operator] is responsible for the design and installation of any low water protection devices as required to prevent damage to the unfired steam boiler. All installed low water cutoffs, alarms and feeding devices must [shall] be designed for pressure and temperature equal to or greater than the MAWP of the unfired steam boiler.

(2) - (3) (No change.)

(g) - (h) (No change.)

*§65.609. Process Steam Generators.*

(a) Some process steam generators referred to in §65.2[5] are shown in §65.615, Exhibits 4 and 5.

(b) (No change.)

(c) When the owner or operator [owner/operator] elects to construct a process steam generator to ASME Code, Section I, the limits as shown in §65.615, Exhibits 4 and 5, are as defined in the rules of ASME Code, Section I.

(d) Safety valves and pressure relief valves.

(1) (No change.)

(2) Each ASME Code, Section VIII, Division 1 or Division 2, steam collection or liberation drum of a process steam generator, must [shall] have at least one safety valve designed for steam service in accordance with applicable ASME Code of Construction. The valve body drain must [shall] be open and piped to a safe point of discharge.

(A) The installation of full-area stop valves between the steam collection or liberation drum of a process steam generator and the safety valve is permitted as depicted in §65.615, Exhibits 4 and 5. A full-area stop valve may be installed on the discharge of the safety valve when connected to a common header. Stop valves must [shall] be car sealed or locked in the open position.

(B) One or more safety valves on every steam collection or liberation drum of a process steam generator must [shall] be set at or below the MAWP. The remaining valves, if any, must [shall] be set within the range specified and have the capacity required by the applicable ASME Code [eode].

(3) Each ASME Code, Section I, process steam generator, must [shall] have one safety valve and if it has more than 500 square feet (47 square meters) of bare tube water heating surface, it must [shall] have two or more safety valves. ASME Code, Section I, safety valves must [shall] be applicably stamped.

(A) (No change.)

(B) No valves, except as defined in §65.2(17)(14), of any description may [shall] be placed between the required safety valve or pressure relief valve or valves and the steam collection or liberation drum, nor on the discharge pipe between the safety valve or pressure relief valve and the atmosphere.

(C) (No change.)

(4) - (6) (No change.)

(e) - (f) (No change.)

(g) Low-water cutoffs, alarms and feed regulating devices.

(1) The owner or operator [~~owner/operator~~] is responsible for the design and installation of any low water protection devices as required, to prevent damage to the process steam generator. All installed low water cutoffs, alarms and feeding devices, must [shall] be designed for a pressure and temperature equal to or greater than the MAWP and temperature of the process steam generator steam collection or liberation drum.

(2) - (3) (No change.)

(h) Pressure gages.

(1) (No change.)

(2) Each steam collection or liberation drum of a process steam generator must [shall] have a valved connection at least 1/4 inch nominal pipe size (8 mm)[~~5~~] connected to the steam space for the purpose of attaching a test gage when the process steam generator is in service, to test the accuracy of the pressure-indicating device.

(i) (No change.)

§65.611. *Heating boilers.*

(a) Steam Heating Boilers.

(1) Safety valves.

(A) Each steam boiler must [shall] have one or more safety valves, that are identified with applicable designator with the ASME certification mark [~~Certification Mark~~] of the spring pop type, adjusted and sealed to discharge at a pressure not to exceed 15 psig (103 kilopascals). Seals must [shall] be attached in a manner to prevent the valve from being taken apart without breaking the seal. The safety valves must [shall] be arranged so that they cannot be reset to relieve at a higher pressure than the MAWP of the boiler. A body drain connection below seat level must [shall] be provided. For valves exceeding 2 1/2 inch nominal pipe size (65 mm), the drain hole or holes must [shall] be tapped not less than 3/8 inch nominal pipe size (10 mm). For valves 2 1/2 inch nominal pipe size (65 mm) or less, the drain hole must [shall] not be less than 1/4 inch (6 mm) in diameter.

(B) - (G) (No change.)

(2) - (8) (No change.)

(b) Hot Water Heating Boilers.

(1) Pressure relief valves.

(A) Each hot water heating boiler must [shall] have at least one pressure relief valve, of the automatic reseating type, identified with the ASME certification [~~Certification~~] mark with the "V" or "HV" designator ASME Code Symbol, and set to relieve at or below the MAWP of the boiler.

(B) - (J) (No change.)

(2) - (3) (No change.)

(4) Pressure and temperature [Temperature] gages.

(A) - (D) (No change.)

(5) - (7) (No change.)

(8) Piping, fittings, and valves [Fittings and Valves].

(A) - (B) (No change.)

(c) Hot Water Supply Boilers.

(1) - (3) (No change.)

(4) Pressure and temperature [Temperature] gages.

(A) - (D) (No change.)

(5) - (7) (No change.)

(8) Piping, fittings, and valves [Fittings and Valves].

(A) - (B) (No change.)

(d) Potable Water Heaters (ASME Code HLW).

(1) Pressure relief valves.

(A) Potable water heaters (tank type) must [shall] have at least one officially rated temperature and pressure relief valve, or one officially rated pressure relief valve, set to relieve at or below the maximum allowable pressure of the heater. No pressure relief valve may [shall] be smaller than 3/4 inch nominal pipe size (20 mm). The valve(s) must [shall] be marked with the Code Symbol "V" or "HV."~~[ ]~~ At no time may [shall] the temperature probe of the temperature and pressure relief valve be removed or modified.

(B) - (G) (No change.)

(2) - (7) (No change.)

(8) Piping, fittings, and valves. [Fittings and Valves.]

(A) - (B) (No change.)

§65.612 *Repairs [Repair] and Alterations.*

(a) Repairs and alterations must [shall] conform to the current edition of the National Board Inspection Code (NBIC) and must [shall] be acceptable to the inspector, except that repairs and alterations may be performed by the following, provided the intended work is within the scope of the issued certificate of authorization:

(1) (No change.)

(2) owners or operators [owners/operators] of boilers who have been issued a certificate of authorization by the department.

(A) Issuance of the certificate of authorization will be made upon submission of an application in the manner prescribed [; on forms provided] by the department.

(B) (No change.)

(b) Derating a boiler's MAWP and/or allowable temperature (in accordance with the NBIC), must [shall] be approved by the department before [prior to] commencement of the alteration. If the derating is approved, the MAWP and/or allowable temperature may [shall] not be increased without prior approval from the department.

(c) Non-welded repairs.

(1) (No change.)

(2) Replacement parts fabricated by welding must [shall] be certified, stamped with the appropriate ASME Code symbol and inspected by an Authorized Inspector [authorized inspector] as required by the ASME Code.

(3) - (6) (No change.)

(d) (No change.)

(e) Replacement of boiler tubes in a fire tube boiler fabricated in accordance with ASME Code Section I or IV.

(1) The following are alterations:

(A) Replacing a mechanically expanded boiler tube with a welded boiler tube.

(B) Replacing a welded boiler tube with a mechanically expanded boiler tube.



(2) Only a person qualified and authorized under subsections (a)(1) or (a)(2) may replace welded or mechanically expanded boiler tubes.

(3) Replacement tubes must be made of a material that is the same as or is compatible with the material of the boiler tube being replaced and must be welded or mechanically expanded into the tube sheet or drum.

(f) ~~[(e)]~~ Plugging of boiler tubes (excluding tubes in headers of economizers, evaporators, superheaters, or reheaters).

(1) Tube plugs must [shall] be made of a material which is compatible with the material of the boiler tube being plugged and must [shall] be welded into place~~;~~ or manufactured to be mechanically expanded into the tube sheet or drum.

(2) Plugging boiler tubes on fire tube boilers [Fire Tube Boilers] fabricated in accordance with ASME Code Section I or IV. Best practice is not to plug a boiler tube in a fire tube boiler [Fire Tube Boiler]. If a fire tube boiler [Fire Tube Boiler] tube is plugged, the following conditions [criteria shall] apply.

(A) Only a person qualified and authorized under subsections (a)(1) or (a)(2) may plug boiler tubes.

(B) ~~[(A)]~~ Plugging boiler tubes that are adjacent to another plugged boiler tube is prohibited.

(C) ~~[(B)]~~ No more than 10% of the total number of boiler tubes may [shall] be plugged.

(D) ~~[(C)]~~ All non-expanded boiler tube plugs must [shall] be welded into place.

(E) ~~[(D)]~~ All plugged boiler tubes must [shall] be replaced before [prior to] the next required certificate inspection [Certificate Inspection].

(3) Plugging boiler tubes on water tube boilers, unfired boilers, or process steam generators [Water Tube Boilers, Unfired Boilers, or Process Steam Generators].

(A) No more than 10% of the boiler generating tubes may be plugged. Additional tubes may be plugged after approval is obtained from the Original Equipment Manufacturer or an engineer [Engineer] experienced in boiler design. The scope of the approval is limited to the plugging of the tubes and must [shall] consider the operational effect on the water side pressure boundary or membrane and the effect on the combustion process throughout the boiler.

(B) No water wall [Water Wall] tubes may be plugged, where the tube forms a separation wall between products of combustion and the outside atmosphere or a separation of the gas passes in a multiple (gas) pass boiler.

#### *§65.614. Authority to Set and Seal Safety Appliances.*

(a) All safety and pressure relief valves for ASME Code Sections I, IV, and VIII Division 1 boilers must be repaired, tested, set, and sealed by one of the organizations listed in this section, provided the scope of the issued certificate of authorization covers the work to be performed.

(b) The following organizations are authorized to set and seal safety appliances:

(1) - (2) (No change.)

(3) an organization holding a valid owner or operator [owner/operator] certificate of authorization issued by the department to repair, test, set and seal safety appliances for boilers meeting the requirements of this chapter only at the approved owner or operator

[owner/operators] facilities. Such authorization may be granted or withheld by the department.

(A) If authorization is granted and proper administrative fees as provided for in §65.300~~;~~ are paid, a certificate of authorization will be issued, expiring on the triennial anniversary date. The certificate will [shall] indicate authorization to repair ASME Code Sections I, IV, or VIII valves, as verified by testing and as covered by the repair organization's quality control manual.

(B) The applicant should apply to the department for renewal of authorization and reissuance of the certificate six ~~[(6)]~~ months before [prior to] the date of expiration.

(C) The owner or operator [owner/operator] certificate of authorization is renewable every three ~~[(3)]~~ years. Before issuance or renewal of the certificate of authorization, the repair organization and its facilities are subject to a review and demonstration of its quality control system by an inspector. Original code books and the National Board's Pressure Relief Device Certifications (NB-18), as required to set and seal safety appliances, must [shall] be available during the review of the quality control system.

(D) Before the owner or operator [owner/operator] certificate of authorization may be issued or renewed, two valves that [which] have been repaired by the applicant must successfully complete operational verification tests as follows:

(i) - (iv) (No change.)

(E) (No change.)

(F) Field repairs are defined as any repair conducted outside a fixed repair shop location. Field repairs may be conducted with the aid of mobile facilities with repair capabilities with or without testing capabilities. Field repairs may be conducted in owner or operator [owner/operator] facilities without the use of mobile facilities. Organizations that obtain the owner or operator [owner/operator] certificate of authorization for in-shop/plant repairs may also perform field repairs to safety and pressure relief valves provided that:

(i) - (iii) (No change.)

(G) - (I) (No change.)

(J) In general, the quality control system must [shall] describe and explain what documents and procedures the owner or operator [owner/operator] will use to validate a valve repair. Before issuance or renewal of the owner or operator [owner/operator] certificate of authorization, the applicant must meet all requirements, including an acceptable written quality control system. The basic elements of a written quality control system are [shall be] those described in §65.615, Exhibit 9.

(i) - (iii) (No change.)

(K) It is essential that owner or operator [owner/operator] valve repair organizations ensure that personnel making repairs to safety and pressure relief valves are knowledgeable and qualified. The owner or operator must [owner/operator shall] provide documented training with minimum qualification requirements for the valve repair position. Specific requirements to be included in an individual's training are as follows:

(i) - (iii) (No change.)

(L) - (M) (No change.)

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

Filed with the Office of the Secretary of State on May 2, 2024.

TRD-202401964

Doug Jennings

General Counsel

Texas Department of Licensing and Regulation

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



## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 61. SCHOOL DISTRICTS

##### SUBCHAPTER A. BOARD OF TRUSTEES RELATIONSHIP

###### 19 TAC §61.2

The State Board of Education (SBOE) proposes an amendment to §61.2, concerning nominations of trustees for military reservation school districts and Boys Ranch Independent School District. The proposed amendment would reflect changes made by House Bill (HB) 4210, 88th Texas Legislature, Regular Session, 2023, to the SBOE's process for appointing trustees for military reservation districts and add a definition for the term "commanding officer."

**BACKGROUND INFORMATION AND JUSTIFICATION:** Texas Education Code (TEC), §11.352, requires the SBOE to appoint a board of three or five trustees for each military reservation district established under TEC, §11.351. Enlisted personnel and officers may be appointed to the school board, but a majority of the trustees must be civilians. To be eligible to serve, one must either live or be employed on the military reservation. The trustees are selected from a list of people provided by the commanding officer of the military reservation.

HB 4210, 88th Texas Legislature, Regular Session, 2023, amended TEC, §11.352(b) and (c), to establish that a person who retires from active duty or civilian service while serving as a member of the board of trustees of a military reservation district may continue to serve for the remainder of his or her term. The bill also changed the SBOE's responsibility to adopt rules for the governance of special-purpose districts from permissive to required.

To implement HB 4210, the proposed amendment would add new §61.2(e) to specify that a trustee of a military reservation school district who retires from active duty or civilian service while serving as a member of the board of trustees may continue to serve for the remainder of his or her term.

In addition, the proposal would define "commanding officer" for the purposes of this section.

The SBOE approved the proposed amendment for first reading and filing authorization at its April 12, 2024, meeting.

**FISCAL IMPACT:** Steve Lecholop, deputy commissioner for governance, has determined that for the first five years the proposal is in effect, there are no additional costs to state or local government 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:** Texas Education Agency (TEA) staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand an existing regulation by defining "commanding officer" for the purpose of the rule and adding a provision to allow a trustee to continue serving his or her term upon retirement from active duty or civilian service.

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

**PUBLIC BENEFIT AND COST TO PERSONS:** Mr. Lecholop has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be to update the eligibility of people to serve on military reservation schools districts to conform to HB 4210, provide clarity to the public on who is eligible to serve on a board of trustees of a military reservation school district, and establish a definition for "commanding officer" for the purpose of the rule. 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 or 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 May 17, 2024, and ends at 5:00 p.m. on June 17, 2024. The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in June 2024 in accordance with the SBOE board operating policies and procedures. 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 May 17, 2024.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code, §11.352, as amended by House Bill 4210, 88th Texas Legislature, Regular Session, 2023, which requires the State Board of Education to appoint a board of three or five trustees for each military reservation district.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §11.352, as amended by House Bill 4210, 88th Texas Legislature, Regular Session, 2023.

§61.2. *Nomination of Trustees for Military Reservation School Districts and Boys Ranch Independent School District.*

(a) For purposes of this section, "commanding officer" is defined as the officer who is assigned to serve physically on the installation or military reservation on which the military reservation school district is located and who provides leadership for the functional support of and contingency or emergency coordination for the military reservation school district. (Perez-Diaz/Pickren) Adopted.

(b) [(a)] In nominating trustee candidates for military reservation school districts, the commanding officer of the military reservation shall do the following:

(1) submit a list to the commissioner of education with at least one nominee for each vacancy. A majority of the trustees appointed to the school board must be civilian, and all may be civilian. When two or more vacancies occur simultaneously, a list of at least one nominee for each vacancy shall be submitted. In cases when the commanding officer wishes to reappoint existing board members, a list of at least one nominee for each vacancy must still be submitted. Nominees not selected for existing vacancies may be resubmitted as candidates for subsequent vacancies. The commanding officer may rank in the order of preference the nominees submitted for each vacancy;

(2) submit a statement that verifies that each of the nominees is qualified under the general school laws of Texas and lives or is employed on the military reservation;

(3) submit a copy of a current biographical vita (resume) for each nominee, with a signature by the nominee attesting truth to the contents of the biographical vita;

(4) submit a statement from each nominee that expresses the nominee's willingness to accept appointment and to serve in such a capacity with full adherence to the state-established standards on the duties and responsibilities of school board members;

(5) submit a signed statement that expresses recognition of the powers of the board of trustees to govern and manage the operations of the military reservation school districts;

(6) submit a signed statement regarding the governance and management operations of the district that expresses recognition that the role of the commanding officer of the military reservation is limited only to the duty defined by statute in the process for appointing members of the board of trustees; and

(7) submit a statement that the membership composition of the entire board of trustees is in full compliance with the provisions of the Texas Education Code (TEC), §11.352.

(c) [(b)] In nominating trustee candidates for the Boys Ranch Independent School District (ISD), the president and chief executive officer of the Cal Farley's Boys Ranch shall do the following:

(1) submit a name to the commissioner for each vacancy. When two or more vacancies occur simultaneously, a name for each vacancy shall be submitted. In cases when the president and chief executive officer wishes to reappoint existing board members, the name of the existing board member for each vacancy must still be submitted;

(2) submit a statement that verifies that each of the nominees is qualified under the general school laws of Texas;

(3) submit a copy of a current biographical vita (resume) for each of the nominees, with a signature by the nominee attesting truth to the contents of the biographical vita;

(4) submit a statement from each of the nominees that expresses the nominee's willingness to accept appointment and to serve in such a capacity with full adherence to the state-established standards on the duties and responsibilities of school board members;

(5) submit a signed statement that expresses recognition of the powers of the board of trustees to govern and manage the operations of the Boys Ranch ISD;

(6) submit a signed statement regarding the governance and management operations of the district that expresses recognition that the role of the superintendent is in full compliance with the provisions of the TEC, §11.201; and

(7) submit a statement that the membership composition of the entire board of trustees is in full compliance with the provisions of the TEC, §11.352.

(d) [(e)] A member of a board of trustees appointed under the TEC, §11.352, and this section will serve a term of two years. A member of the board of trustees, who during the period of the term of office resigns from office or experiences a change of status that disqualifies such member for appointment under the provisions of the TEC, shall become ineligible to serve at the time of the change of status. A board vacancy resulting from such resignation or disqualification shall be filled in accordance with the procedures established under the TEC, §11.352, and this section.

(e) Notwithstanding subsection (d) of this section, a trustee of a military reservation school district appointed under this section who retires from active duty or civilian service while serving as a member of the board of trustees may continue to serve for the remainder of his or her term.

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 May 6, 2024.

TRD-202401999

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 REPORTING REQUIREMENTS

### 19 TAC §61.1028

The Texas Education Agency (TEA) proposes an amendment to §61.1028, concerning bus accident reporting. The proposed amendment would more closely align existing definitions with statute and, in accordance with House Bill (HB) 2190, 88th Texas Legislature, Regular Session, 2023, would change the word "accident" to "collision" throughout the rule.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 61.1028, requires that school districts and open-enrollment

charter schools report accidents in which the district's or charter school's buses are involved, in accordance with Texas Education Code (TEC), §34.015.

HB 2190, 88th Texas Legislature, Regular Session, 2023, modified TEC, §34.015, by updating the term "accident" to "collision." The proposed amendment to §61.1028 would implement HB 2190 by using the term "collision" throughout the rule.

In addition, the proposed amendment to §61.1028(a) would redefine the term "motor bus" in alignment with definitions in both TEC, §34.003, and Texas Transportation Code, §502.001.

**FISCAL IMPACT:** John Scott, chief of school safety and security, 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 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:** Mr. Scott 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 align definitions and terminology in the rule with statute. 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. The rule will continue to have an annual reporting requirement for school districts.

**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 May 17, 2024, and ends June 17, 2024.

A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on June 10, 2024. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About\\_TEA/Laws\\_and\\_Rules/Commissioner\\_Rules\\_\(TAC\)/Proposed\\_Commissioner\\_of\\_Education\\_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

**STATUTORY AUTHORITY.** The amendment is proposed under Texas Education Code, §34.015, as amended by House Bill 2190, 88th Texas Legislature, Regular Session, 2023, which requires school districts to annually report to the Texas Education Agency the number of collisions in which the district's buses are involved. The agency is required to adopt rules determining the information to be reported.

**CROSS REFERENCE TO STATUTE.** Texas Education Code, §34.015, as amended by House Bill 2190, 88th Texas Legislature, Regular Session, 2023.

*§61.1028. Reporting of Bus Collisions [Accidents].*

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

(1) **Collision [Accident]**--Any collision [accident] as described by [the] Texas Transportation Code, Chapter 550, Subchapter B.

(2) **Motor bus**--In accordance with Texas Education Code, §34.003, and Texas Transportation Code, §502.001, a motor bus is a vehicle designed to transport more than 15 passengers, including the driver, and includes vehicles used to transport persons on the public highways for compensation, other than a vehicle operated by muscular power or a municipal bus.

~~(2) School bus--In accordance with the Texas Transportation Code, §541.201, a school bus is a motor vehicle that was manufactured in compliance with the Federal Motor Vehicle Safety Standards (FMVSS) for school buses in effect on the date of manufacture and that is used to transport preprimary, primary, or secondary students on a route to or from school or on a school-related activity trip other than on routes to and from school. A school bus is a bus owned, leased, contracted to, or operated by a school or school district that is regularly used to transport students to and from school or school-related activities; meets all applicable FMVSS; and is readily identified by alternately flashing lights, national school bus yellow paint, and the legend "School Bus." The term does not include a multifunction school activity bus; a school activity bus; or a motor bus.~~

(3) **Multifunction school activity bus**--In accordance with [the] Texas Transportation Code, §541.201, a multifunction school activity bus is a subcategory of school bus. It must meet all FMVSS for a school bus except having traffic control devices, including flashing lights and stop arm, and it may not be painted in national school bus yellow. The multifunction school activity bus cannot be used to transport students from home to school or school to home or for any purpose other than school activities.

(4) **School activity bus**--In accordance with [the] Texas Transportation Code, §541.201, a school activity bus is a bus designed to accommodate more than 15 passengers, including the operator, that is owned, operated, rented, or leased by a school district, county school, open-enrollment charter school, regional education service center, or shared services arrangement and that is used to transport public school students on a school-related activity trip, other than

on routes to and from school. The term does not include a chartered bus, a bus operated by a mass transit authority, a school bus, or a multifunction school activity bus.

(5) School bus--In accordance with Texas Transportation Code, §541.201, a school bus is a motor vehicle that was manufactured in compliance with the Federal Motor Vehicle Safety Standards (FMVSS) for school buses in effect on the date of manufacture and that is used to transport preprimary, primary, or secondary students on a route to or from school or on a school-related activity trip other than on routes to and from school. A school bus is a bus owned, leased, contracted to, or operated by a school or school district that is regularly used to transport students to and from school or school-related activities; meets all applicable FMVSS; and is readily identified by alternately flashing lights, national school bus yellow paint, and the legend "School Bus." The term does not include a multifunction school activity bus, a school activity bus, or a motor bus.

~~{(5) Motor bus--The term "motor bus" does not include a vehicle that meets the definition of a school bus, a multifunction school activity bus, or a school activity bus. A motor bus is:}~~

~~{(A) a commercial, motor transit-type vehicle owned or leased by the school district or the school district's commercial contractor that is designed to transport 16 or more passengers including the driver on school activity trips; or}~~

~~{(B) a transit-type bus operated by a mass/metropolitan transit authority when the school district contracts with the authority in accordance with Texas Education Code, §34.008, to transport students to and from school.}~~

(b) Reporting.

(1) School districts and open-enrollment charter schools shall report annually to the Texas Education Agency (TEA) the number of collisions [~~accidents~~] in which their buses were involved in the past year. School districts and open-enrollment charter schools shall report the collisions [~~accidents~~] in a manner prescribed by the commissioner of education. School districts and open-enrollment charter schools shall file annual collision [~~accident~~] reports to [~~the~~] TEA only in the period beginning July 1 and ending July 31 and shall include the following information in the report:

(A) the total number of bus collisions [~~accidents~~];

(B) the date each collision [~~accident~~] occurred;

(C) the type of bus, as specified in subsection (a) of this section, involved in each collision [~~accident~~];

(D) whether the bus involved in each collision [~~accident~~] was equipped with seat belts and, if so, the type of seat belts;

(E) the number of students and adults involved in each collision [~~accident~~];

(F) the number and types of injuries that were sustained by the bus passengers in each collision [~~accident~~]; and

(G) whether the injured passengers in each collision [~~accident~~] were wearing seat belts at the time of the collision [~~accident~~] and, if so, the type of seat belts.

(2) A school district or open-enrollment charter school shall report a bus collision [~~accident~~] involving a school bus, a multifunction school activity bus, a school activity bus, or a motor bus if:

(A) the bus is owned, leased, contracted, or chartered by a school district or charter school and was transporting school district

or charter school personnel, students, or a combination of personnel and students; or

(B) the bus was driven by a school district or charter school employee or by an employee of the school district's or charter school's bus contractor with no passengers on board and the collision [~~accident~~] involved a [~~collision with a~~] pedestrian.

(3) A school district or open-enrollment charter school shall not report a bus collision [~~accident~~] involving a school bus, a multifunction school activity bus, a school activity bus, or a motor bus if:

(A) the bus was driven by a school district or charter school employee or by an employee of the school district's or charter school's bus contractor, the collision [~~accident~~] occurred when no passenger other than the school district's or charter school's driver or bus contractor's driver was on board the bus, and the collision [~~accident~~] did not involve a [~~collision with a~~] pedestrian; or

(B) the collision [~~accident~~] involved a bus chartered by a school district or charter school for a school activity trip and no school district or charter school personnel or students were on board the bus at the time of the collision [~~accident~~].

(4) A school district or open-enrollment charter school shall not report a collision [~~an accident~~] that occurred in a vehicle that is owned, contracted, or chartered by a school district or charter school and is not a school bus, a multifunction school activity bus, a school activity bus, or a motor bus.

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 74. CURRICULUM REQUIREMENTS

### SUBCHAPTER B. GRADUATION REQUIREMENTS

#### 19 TAC §74.12, §74.13

The State Board of Education (SBOE) proposes amendments to §74.12 and §74.13, concerning graduation requirements. The proposed amendments would update titles of courses and career and technical education (CTE) career clusters, align all CTE programs of study with endorsements, and make technical edits.

**BACKGROUND INFORMATION AND JUSTIFICATION:** In November 2020, the SBOE adopted revisions to the Texas Essential Knowledge and Skills (TEKS) for physical education (PE) with an effective date of August 1, 2022. The revisions to the TEKS for the high school PE courses revised the amount of credit available to one credit for each course. The proposed amendment to §74.12 would make a technical edit to update the amount of credit associated with these courses to one credit. Additionally, the proposed amendment would revise the

language for PE substitutions to align with the reduction in the number of high school PE courses.

At the November 2021 SBOE meeting, the board approved for second reading and final adoption revised CTE TEKS, which have historically been codified in 19 TAC Chapter 130. To accommodate the addition of these new courses and future courses, the SBOE took action to begin moving the CTE TEKS in Chapter 130 to existing 19 TAC Chapter 127, Texas Essential Knowledge and Skills for Career Development, and to rename the chapter "Texas Essential Knowledge and Skills for Career Development and Career and Technical Education." CTE sub-chapters are being moved from Chapter 130 to Chapter 127 as the TEKS are revised by the SBOE. In November 2021, the board gave final approval to new 19 TAC Chapter 127, Sub-chapters G, I, J, M, and O. At the January 2022 SBOE meeting, the board took action to repeal the associated subchapters from Chapter 130 and move the sections to Chapter 127. In April 2022, the graduation requirements in 19 TAC §74.13 were updated to reflect the move of CTE TEKS from Chapter 130 to Chapter 127 and the new title for Chapter 127.

In November 2023, the board took action to approve revisions to the CTE TEKS for career preparation and entrepreneurship courses. The proposed amendment to §74.13 would update titles of CTE courses and career clusters to align with these revisions.

Texas recently refreshed state-level programs of study to ensure coherent and rigorous content with challenging academic standards and relevant career and technical content. Programs of study are aligned with state and regional labor market information, including high-wage, high-skill, and in-demand occupations. When the rule for endorsements was first adopted, programs of study were determined locally rather than at the state level. The proposed amendment to §74.13 would ensure all programs of study are specifically aligned to an endorsement and would eliminate language related to coherent sequences of CTE courses that is outdated.

In November 2023, the SBOE approved changes to its rules on innovative courses to remove the commissioner of education's authority to approve certain innovative courses. The proposed amendment to §74.13 would remove references to innovative courses approved by the commissioner.

The SBOE approved the proposed amendment for first reading and filing authorization at its April 12, 2024 meeting.

**FISCAL IMPACT:** Monica Martinez, associate commissioner for standards and programs, has determined that for the first five years the proposal is in effect, there are no additional costs to state or local government 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:** Texas Education Agency (TEA) staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand an existing regulation by adding language regarding endorsements to reflect the updated programs of study that went into effect in the 2023-2024 school year.

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

**PUBLIC BENEFIT AND COST TO PERSONS:** 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 clarify the rules by updating out-of-date language. 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 or 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 May 17, 2024, and ends at 5:00 p.m. on June 17, 2024. The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in June 2024 in accordance with the SBOE board operating policies and procedures. 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 May 17, 2024.

**STATUTORY AUTHORITY.** The amendments are proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.025(a), which requires the SBOE to determine by rule the curriculum requirements for the foundation high school program that are consistent with the required curriculum and requires the SBOE to designate specific courses that are required for the foundation high school program; TEC, §28.025(b-17), which requires the SBOE to adopt rules that ensure a student who successfully completes an advanced career and technical education course, including a course that may lead to an industry-recognized credential or certificate or an associate degree, may comply with elective requirements for graduation; and TEC, §28.025(c-1), which requires the SBOE to adopt rules regarding earning an endorsement.

**CROSS REFERENCE TO STATUTE.** The amendments implement Texas Education Code, §7.102(c)(4) and §28.025(a), (b-17), and (c-1).

§74.12. *Foundation High School Program.*

(a) (No change.)

(b) Core courses. A student must demonstrate proficiency in the following.

(1) - (5) (No change.)

(6) Physical education--one credit.

(A) The required credit may be selected from one full credit or a combination of two half credits from two different courses from [any combination of] the following [one-half to one credit] courses:

- (i) Lifetime Fitness and Wellness Pursuits;
- (ii) Lifetime Recreation and Outdoor Pursuits; and
- (iii) Skill-Based Lifetime Activities.

(B) In accordance with local district policy, the required credit may be earned through completion of any Texas essential knowledge and skills-based course that meets the requirement in subparagraph (E) of this paragraph for 100 minutes of moderate to vigorous physical activity per five-day school week and that is not being used to satisfy another specific graduation requirement.

(C) In accordance with local district policy, credit for any of the courses listed in subparagraph (A) of this paragraph may be earned through participation in the following activities:

- (i) Athletics;
- (ii) Junior Reserve Officer Training Corps (JROTC); and
- (iii) appropriate private or commercially sponsored physical activity programs conducted on or off campus. The district must apply to the commissioner of education for approval of such programs, which may be substituted for state graduation credit in physical education. Such approval may be granted under the following conditions.

(I) Olympic-level participation and/or competition includes a minimum of 15 hours per week of highly intensive, professional, supervised training. The training facility, instructors, and the activities involved in the program must be certified by the superintendent to be of exceptional quality. Students qualifying and participating at this level may be dismissed from school one hour per day. Students dismissed may not miss any class other than physical education.

(II) Private or commercially sponsored physical activities include those certified by the superintendent to be of high quality and well supervised by appropriately trained instructors. Student participation of at least five hours per week must be required. Students certified to participate at this level may not be dismissed from any part of the regular school day.

(D) In accordance with local district policy, up to one credit for any one of the courses listed in subparagraph (A) of this paragraph may be earned through participation in any of the following activities:

- (i) Drill Team;
- (ii) Marching Band; and
- (iii) Cheerleading.

(E) All substitution activities allowed in subparagraphs (B)-(D) of this paragraph must include at least 100 minutes per five-day school week of moderate to vigorous physical activity.

(F) Credit may not be earned more than once for the courses [any course] identified in subparagraph (A)(i) and (iii) [(A)] of this paragraph. Credit may not be earned more than twice for the course identified in subparagraph (A)(ii) of this paragraph. No more than four substitution credits may be earned through any combination of substitutions allowed in subparagraphs (B)-(D) of this paragraph.

(G) A student who is unable to participate in physical activity due to disability or illness may substitute an academic elective credit (English language arts, mathematics, science, or social studies) or a course that is offered for credit as provided by the TEC, §28.002(g-1), for the physical education credit requirement. The determination regarding a student's ability to participate in physical activity will be made by:

(i) the student's ARD committee if the student receives special education services under the TEC, Chapter 29, Subchapter A;

(ii) the committee established for the student under Section 504, Rehabilitation Act of 1973 (29 United States Code, Section 794) if the student does not receive special education services under the TEC, Chapter 29, Subchapter A, but is covered by the Rehabilitation Act of 1973; or

(iii) a committee established by the school district of persons with appropriate knowledge regarding the student if each of the committees described by clauses (i) and (ii) of this subparagraph is inapplicable. This committee shall follow the same procedures required of an ARD or a Section 504 committee.

(7) (No change.)

(c) - (d) (No change.)

§74.13. *Endorsements.*

(a) - (e) (No change.)

(f) A student may earn any of the following endorsements.

(1) Science, technology, engineering, and mathematics (STEM). Students who entered high school prior to the 2022-2023 school year [A student] may earn a STEM endorsement by completing the requirements specified in subsection (e) of this section, including Algebra II, chemistry, and physics or Principles of Technology and:

(A) a coherent sequence of courses for four or more credits in career and technical education (CTE) that consists of at least two courses in the same career cluster and at least one advanced CTE course. The courses may be selected from Chapter 130 of this title (relating to Texas Essential Knowledge and Skills for Career and Technical Education), Chapter 127 of this title (relating to Texas Essential Knowledge and Skills for Career Development and Career and Technical Education), or CTE innovative courses [approved by the commissioner of education]. The final course in the sequence must be selected from Chapter 127, Subchapter O, of this title (relating to Science, Technology, Engineering, and Mathematics) or Career Preparation I or II (Career Preparation General or Career Preparation for Programs of Study) and Project-Based Research (Career and Technical Education Project-Based Capstone) in Chapter 127, Subchapter B, of this title (relating to High School), if the course addresses a STEM-related field; [or]

(B) courses required to complete a TEA-designated program of study related to STEM; [or]

(C) three credits in mathematics by successfully completing Algebra II and two additional mathematics courses for which Algebra II is a prerequisite by selecting courses from subsection (e)(2) of this section; [or]

(D) four credits in science by successfully completing chemistry, physics, and two additional science courses by selecting courses from subsection (e)(6) of this section; or

(E) in addition to Algebra II, chemistry, and physics, a coherent sequence of three additional credits from no more than two of the categories or disciplines represented by subparagraphs (A), (B), (C), and (D) of this paragraph.

(2) Business and industry. Students who entered high school prior to the 2022-2023 school year [A student] may earn a business and industry endorsement by completing the requirements specified in subsection (e) of this section and:

(A) a coherent sequence of courses for four or more credits in CTE that consists of at least two courses in the same career cluster and at least one advanced CTE course. The courses may be selected from Chapter 130 of this title, Chapter 127 of this title, or CTE innovative courses [~~approved by the commissioner~~]. The final course in the sequence must be selected from one of the following:

(i) Chapter 127, Subchapter C, of this title (related to Agriculture, Food, and Natural Resources);

(ii) [(†)] Chapter 130, Subchapter A, of this title (relating to Agriculture, Food, and Natural Resources); [ø]

(iii) [(‡)] Chapter 130, Subchapter B, of this title (relating to Architecture and Construction); [ø]

(iv) [(§)] Chapter 130, Subchapter C, of this title (relating to Arts, Audio/Video Technology, and Communications); [ø]

(v) Chapter 127, Subchapter F, of this title (relating to Business, Marketing, and Finance);

(vi) [(¶)] Chapter 130, Subchapter D, of this title (relating to Business Management and Administration); [ø]

(vii) [(⋄)] Chapter 130, Subchapter F, of this title (relating to Finance); [ø]

(viii) [(⋅)] Chapter 127, Subchapter J, of this title (relating to Hospitality and Tourism); [ø]

(ix) [(⋆)] Chapter 130, Subchapter K, of this title (relating to Information Technology); [ø]

(x) [(⋇)] Chapter 130, Subchapter M, of this title (relating to Manufacturing); [ø]

(xi) [(⋈)] Chapter 130, Subchapter N, of this title (relating to Marketing); [ø]

(xii) Chapter 127, Subchapter P, of this title (relating to Transportation, Distribution, and Logistics);

(xiii) [(⋉)] Chapter 130, Subchapter P, of this title (relating to Transportation, Distribution, and Logistics); [ø]

(xiv) [(⋊)] Chapter 130, Subchapter Q, of this title (relating to Energy); or

(xv) [(⋋)] Career Preparation I or II (Career Preparation General or Career Preparation for Programs of Study) and Project-Based Research (Career and Technical Education Project-Based Capstone) in Chapter 127, Subchapter B, of this title if the course addresses a career from a field listed in clauses (i)-(xiv) [(†)-(⋋)] of this subparagraph; [ø]

(B) courses required to complete a TEA-designated program of study related to business and industry; [ø]

(C) four English credits by selecting courses from Chapter 110 of this title to include three levels in one of the following areas:

(i) public speaking; [ø]

(ii) debate; [ø]

(iii) advanced broadcast journalism; [ø]

(iv) advanced journalism: newspaper; [ø]

(v) advanced journalism: yearbook; or

(vi) advanced journalism: literary magazine; or

(D) a coherent sequence of four credits from subparagraph (A), (B), or (C) of this paragraph.

(3) Public services. Students who entered high school prior to the 2022-2023 school year [A student] may earn a public services endorsement by completing the requirements specified in subsection (e) of this section and:

(A) a coherent sequence of courses for four or more credits in CTE that consists of at least two courses in the same career cluster and at least one advanced CTE course. The courses may be selected from Chapter 130 of this title, Chapter 127 of this title, or CTE innovative courses [~~approved by the commissioner~~]. The final course in the sequence must be selected from one of the following:

(i) Chapter 127, Subchapter G, of this title (relating to Education and Training); [ø]

(ii) Chapter 127, Subchapter I, of this title (relating to Health Science); [ø]

(iii) Chapter 130, Subchapter J, of this title (relating to Human Services); [ø]

(iv) Chapter 127, Subchapter M, of this title (relating to Law and Public Service); or

(v) Career Preparation I or II (Career Preparation General or Career Preparation for Programs of Study) and Project-Based Research (Career and Technical Education Project-Based Capstone) in Chapter 127, Subchapter B, of this title if the course addresses a field from a cluster listed in clauses (i)-(v) of this subparagraph; [ø]

(B) courses required to complete a TEA-designated program of study related to public services; or

(C) four courses in Junior Reserve Officer Training Corps (JROTC).

(4) - (5) (No change.)

(6) STEM. Students who entered high school in the 2022-2023 school year or later may earn a STEM endorsement by completing the requirements specified in subsection (e) of this section, including Algebra II, chemistry, and physics or Principles of Technology and:

(A) courses required to be designated a CTE completer in one of the following TEA-approved programs of study related to STEM:

(i) biomedical sciences;

(ii) civil engineering;

(iii) cybersecurity;

(iv) electrical engineering;

(v) engineering foundations;



- (vi) geospatial engineering and land surveying;
- (vii) mechanical and aerospace engineering;
- (viii) networking systems;
- (ix) nursing science;
- (x) programming and software development;
- (xi) renewable energy;
- (xii) robotics and automation technology; or
- (xiii) web development;

(B) three credits in mathematics by successfully completing Algebra II and two additional mathematics courses for which Algebra II is a prerequisite by selecting courses from subsection (e)(2) of this section;

(C) four credits in science by successfully completing chemistry, physics, and two additional science courses by selecting courses from subsection (e)(6) of this section; or

(D) in addition to Algebra II, chemistry, and physics, a coherent sequence of three additional credits from no more than two of the categories or disciplines represented by subparagraphs (A), (B), and (C) of this paragraph.

(7) Business and industry. Students who entered high school in the 2022-2023 school year or later may earn a business and industry endorsement by completing the requirements specified in subsection (e) of this section and:

(A) courses required to be designated a CTE completer in one of the following TEA-approved programs of study related to business and industry:

- (i) accounting and financial services;
- (ii) agriculture business, leadership, and communications;
- (iii) agricultural technology and mechanical systems;
- (iv) animal science;
- (v) architectural drafting and design;
- (vi) automotive and collision repair;
- (vii) aviation maintenance;
- (viii) aviation pilots;
- (ix) business management;
- (x) carpentry;
- (xi) construction management and inspection;
- (xii) cosmetology;
- (xiii) culinary arts;
- (xiv) diesel and heavy equipment maintenance and commercial drivers;
- (xv) digital communications;
- (xvi) distribution, logistics, and warehousing;
- (xvii) drone (unmanned vehicle);
- (xviii) electrical;
- (xix) entrepreneurship;

- (xx) environmental and natural resources;
- (xxi) food science and technology;
- (xxii) graphic design and interactive media;
- (xxiii) HVAC and sheet metal;
- (xxiv) industrial maintenance;
- (xxv) information technology support and services;
- (xxvi) lodging and resort management;
- (xxvii) manufacturing technology;
- (xxviii) maritime;
- (xxix) marketing and sales;
- (xxx) masonry;
- (xxxi) oil and gas exploration and production;
- (xxxii) plant science;
- (xxxiii) plumbing and pipefitting;
- (xxxiv) printing and imaging;
- (xxxv) real estate;
- (xxxvi) refining and chemical processes;
- (xxxvii) retail management;
- (xxxviii) travel, tourism, and attractions; or
- (xxxix) welding;

(B) courses required to be designated a CTE completer in one of the following TEA-approved programs of study related to business and industry, if the mathematics and science requirements for the STEM endorsement are not met:

- (i) civil engineering;
- (ii) cybersecurity;
- (iii) electrical engineering;
- (iv) engineering foundations;
- (v) geospatial engineering and land surveying;
- (vi) mechanical and aerospace engineering;
- (vii) networking systems;
- (viii) programming and software development;
- (ix) renewable energy;
- (x) robotics and automation technology; or
- (xi) web development;

(C) four English credits by selecting courses from Chapter 110 of this title to include three levels in one of the following areas:

- (i) public speaking;
- (ii) debate;
- (iii) advanced broadcast journalism;
- (iv) advanced journalism: newspaper;
- (v) advanced journalism: yearbook; or
- (vi) advanced journalism: literary magazine; or

(D) a coherent sequence of four credits from subparagraph (A), (B), or (C) of this paragraph.

(8) Public services. Students who entered high school in the 2022-2023 school year or later may earn a public services endorsement by completing the requirements specified in subsection (e) of this section and:

(A) courses required to be designated a CTE completer in one of the following TEA-approved programs of study related to public services:

(i) biomedical science, if the mathematics and science requirements for the STEM are not met;

(ii) diagnostic and therapeutic services;

(iii) early learning;

(iv) exercise science, wellness, and restoration;

(v) family and community services;

(vi) fire science;

(vii) government and public administration;

(viii) health and wellness;

(ix) health informatics;

(x) law enforcement;

(xi) legal studies;

(xii) nursing science, if the mathematics and science requirements for the STEM are not met; or

(xiii) teaching and training; or

(B) four courses in Junior Reserve Officer Training Corps (JROTC).

(g) (No change.)

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

Filed with the Office of the Secretary of State on May 6, 2024.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: June 16, 2024

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



## CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS

### SUBCHAPTER A. GIFTED/TALENTED EDUCATION

#### 19 TAC §§89.1, 89.2, 89.4, 89.5

The State Board of Education (SBOE) proposes amendments to §§89.1, 89.2, and 89.5 and new §89.4 concerning gifted/talented education. The proposed revisions would update rules to align with the requirements of House Bill (HB) 1525, 87th Texas Legislature, Regular Session, 2021, and codify current program practices.

**BACKGROUND INFORMATION AND JUSTIFICATION:** Chapter 89, Subchapter A, provides rules for gifted and talented education. HB 1525, 87th Texas Legislature, Regular Session, 2021, provided for a gifted and talented student allotment and established criteria for using the funds. The proposed revisions to Chapter 89, Subchapter A, would implement HB 1525 and codify current program practices. Specifically, the following changes would be made.

Section 89.1 would be amended to add new paragraph (6) to establish that school district policies related to gifted and talented education may not limit the number of students who may be identified as gifted and talented. In addition, the section title would be modified to clarify that the section addresses the identification of gifted and talented students.

Section 89.2 would be amended to clarify terms regarding professional learning for staff and establish criteria for completion. The section title would also be updated to reflect the contents of the rule.

New §89.4 would align with HB 1525, 87th Texas Legislature, Regular Session, 2021, by establishing fiscal responsibilities for school districts regarding the use of gifted and talented services for identified students.

Section 89.5 would be amended to establish additional criteria for program accountability in new paragraphs (2) and (3). New paragraph (2) would require school districts to annually certify to the commissioner that the district's services for gifted and talented students have been established in accordance with the Texas State Plan for the Education of the Gifted/Talented (State Plan) and that the use of funds complies with new §89.4. New paragraph (3) would include the addition of a performance measure by the board of trustees in alignment with the State Plan.

The SBOE approved the proposed revisions for first reading and filing authorization at its April 12, 2024 meeting.

**FISCAL IMPACT:** Justin Porter, associate commissioner and chief program officer for special populations programs, reporting, and student support, has determined that for the first five years the proposal is in effect, there are no additional costs to state or local government 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:** Texas Education Agency (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 add a new regulation and expand existing regulations to align with

the requirements of HB 1525, 87th Texas Legislature, 2021, and clarify current expectations, practices, and 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 limit or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

**PUBLIC BENEFIT AND COST TO PERSONS:** Mr. Porter has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be to clarify requirements related to gifted and talented identification, professional learning, fiscal responsibility, and program accountability. 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 or 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 May 17, 2024, and ends at 5:00 p.m. on June 17, 2024. The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in June 2024 in accordance with the SBOE board operating policies and procedures. 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 May 17, 2024.

**STATUTORY AUTHORITY.** The amendments and new section are proposed under Texas Education Code (TEC), §29.121, which establishes the definition of a gifted and talented student; TEC, §29.122, which establishes that each school district shall adopt a process for identifying and serving gifted and talented students; TEC, §29.123, which establishes that the State Board of Education shall develop and update a state plan for the education of gifted and talented students to guide school districts; §39.236, which establishes criteria for the commissioner to adopt standards to evaluate school district programs for gifted and talented students; and TEC, §48.109, as added by House Bill 1525, 87th Texas Legislature, Regular Session, 2021, which establishes criteria for utilizing the gifted and talented student allotment funds.

**CROSS REFERENCE TO STATUTE.** The amendments and new section implement Texas Education Code, §§29.121; 29.122; 29.123; 39.236; and 48.109, as added by House Bill 1525, 87th Texas Legislature, Regular Session, 2021.

*§89.1. Student Identification [Assessment].*

School districts shall develop written policies on student identification that are approved by the local board of trustees and disseminated to parents. The policies must:

(1) include provisions for ongoing screening and selection of students who perform or show potential for performing at remarkably high levels of accomplishment in the areas defined in the Texas Education Code, §29.121;

(2) include assessment measures collected from multiple sources according to each area defined in the Texas State Plan for the Education of Gifted/Talented Students;

(3) include data and procedures designed to ensure that students from all populations in the district have access to assessment and, if identified, services for the gifted/talented program;

(4) provide for final selection of students to be made by a committee of at least three local district educators who have received training in the nature and needs of gifted students; ~~and~~

(5) include provisions regarding furloughs, reassessment, exiting of students from program services, transfer students, and appeals of district decisions regarding program placement; ~~and~~ [-]

(6) ~~not limit the number of students the district may identify as gifted/talented or served under the district's program for gifted/talented students.~~

*§89.2. Professional Learning [Development].*

School districts shall ensure that:

(1) ~~prior to assignment in the program or within one semester of assignment,~~ teachers who provide instruction and services that are a part of the program for gifted/talented [~~gifted~~] students have a minimum of 30 hours of professional learning [~~staff development~~] that includes nature and needs of gifted/talented students, assessing student needs, and curriculum and instruction for gifted/talented [~~gifted~~] students;

~~[(2) teachers without training required in paragraph (1) of this section who provide instruction and services that are part of the gifted/talented program must complete the 30-hour training requirement within one semester;]~~

(2) ~~[(3)]~~ teachers who provide instruction and services that are a part of the program for gifted/talented [~~gifted~~] students receive a minimum of six hours annually of professional learning [~~development~~] in gifted/talented [~~gifted~~] education; and

(3) ~~[(4)]~~ administrators and counselors who have authority for program decisions have a minimum of six hours of professional learning [~~development~~] that includes nature and needs of gifted/talented students and program options with an update after legislative sessions.

*§89.4. Fiscal Responsibility.*

School districts shall adopt a policy regarding the use of funds to support the district's program for gifted and talented students, as required by Texas Education Code, §29.022(b). The policy must:

(1) ensure that 100% of state funds allocated for gifted/talented education are spent on providing gifted/talented services or enhancing the district's gifted and talented program; and

(2) establish a method to account for the expenditure of the gifted and talented allotment in alignment with the Texas Education Agency's financial compliance guidance.

*§89.5. Program Accountability.*

A school district [~~School districts~~] shall ensure that :

(1) student assessment and services for gifted/talented students comply with accountability standards defined in the Texas State Plan for the Education of the Gifted/Talented (State Plan); [-]

(2) it annually certifies to the commissioner of education that the district's program for gifted/talented students is consistent with the State Plan and that the district's use of funds comply with §89.4 of this title (relating to Fiscal Responsibility); and

(3) the board of trustees annually measures the performance of the district in providing gifted/talented services in alignment with the State Plan.

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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TRD-202402003

Cristina de La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



## CHAPTER 112. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR SCIENCE

The State Board of Education (SBOE) proposes the repeal of §§112.10-112.16, 112.17-112.20, and 112.31-112.39, concerning Texas Essential Knowledge and Skills (TEKS) for science. The proposed repeals would remove the TEKS for Kindergarten-Grade 12 science and related implementation language that will be superseded by 19 TAC §§112.1-112.7, 112.25-112.28, and 112.41-112.51 beginning with the 2024-2025 school year.

**BACKGROUND INFORMATION AND JUSTIFICATION:** In accordance with statutory requirements that the SBOE identify by rule the essential knowledge and skills of each subject in the required curriculum, the SBOE follows a board-approved cycle to review and revise the essential knowledge and skills for each subject. In late 2019, the SBOE began the process to review and revise the TEKS for Kindergarten-Grade 12 science. At the recommendation of Work Group A, the SBOE directed the work groups to follow a backward-by-design approach to the revisions to the Kindergarten-Grade 12 science TEKS. Consequently, work groups started first with recommendations for revisions to the high school science TEKS. In November 2020, the SBOE approved for second reading and final adoption revised TEKS for four high school science courses: Biology, Chemistry, Physics, and Integrated Physics and Chemistry. At the June 2021 SBOE meeting, the board approved for second reading and final adoption new TEKS for Specialized Topics in Science and revised standards for Aquatic Science, Astronomy, Earth Science Systems (formerly titled Earth and Space Science), and Environmental Systems. At the November 2021 SBOE meeting, the board approved for second reading and final adoption new science TEKS for Kindergarten-Grade 8 with an implementation date of the 2024-2025 school year. At the November 2022 SBOE meeting, the board approved for second reading and final adoption the proposed amendment to §112.41 to ensure implementation language for all science courses was consistent.

The proposed repeals would remove the TEKS for Kindergarten-Grade 12 science and related implementation language that will be superseded by 19 TAC §§112.1-112.7, 112.25-112.28, and 112.41-112.51 beginning with the 2024-2025 school year.

The SBOE approved the proposed repeals for first reading and filing authorization at its April 12, 2024 meeting.

**FISCAL IMPACT:** Monica Martinez, associate commissioner for standards and programs, has determined that for the first five

years the proposal is in effect, there are no additional costs to state or local government 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:** Texas Education Agency (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 by removing outdated science TEKS that will be superseded by a newly adopted set of TEKS.

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 repeal the TEKS for Kindergarten-Grade 12 science and related implementation language that will be superseded by 19 TAC §§112.1-112.7, 112.25-112.28, and 112.41-112.51 beginning with the 2024-2025 school year to avoid confusion. 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 or 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 May 17, 2024, and ends at 5:00 p.m. on June 17, 2024. The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in June 2024 in accordance with the SBOE board operating policies and procedures. 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 May 17, 2024.

## SUBCHAPTER A. ELEMENTARY

**19 TAC §§112.10 - 112.16**

STATUTORY AUTHORITY. The repeals are proposed 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 repeals implement Texas Education Code, §7.102(c)(4) and §28.002(a) and (c).

- §112.10. *Implementation of Texas Essential Knowledge and Skills for Science, Elementary, Adopted 2017.*
- §112.11. *Science, Kindergarten, Adopted 2017.*
- §112.12. *Science, Grade 1, Adopted 2017.*
- §112.13. *Science, Grade 2, Adopted 2017.*
- §112.14. *Science, Grade 3, Adopted 2017.*
- §112.15. *Science, Grade 4, Adopted 2017.*
- §112.16. *Science, Grade 5, Adopted 2017.*

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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**SUBCHAPTER B. MIDDLE SCHOOL**

**19 TAC §§112.17 - 112.20**

STATUTORY AUTHORITY. The repeals are proposed 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 repeals implement Texas Education Code, §7.102(c)(4) and §28.002(a) and (c).

- §112.17. *Implementation of Texas Essential Knowledge and Skills for Science, Middle School, Adopted 2017.*
- §112.18. *Science, Grade 6, Adopted 2017.*
- §112.19. *Science, Grade 7, Adopted 2017.*
- §112.20. *Science, Grade 8, Adopted 2017.*

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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**SUBCHAPTER C. HIGH SCHOOL**

**19 TAC §§112.31 - 112.39**

STATUTORY AUTHORITY. The repeals are proposed 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 repeals implement Texas Education Code, §7.102(c)(4) and §28.002(a) and (c).

- §112.31. *Implementation of Texas Essential Knowledge and Skills for Science, High School.*
- §112.32. *Aquatic Science, Beginning with School Year 2010-2011 (One Credit).*
- §112.33. *Astronomy, Beginning with School Year 2010-2011 (One Credit).*
- §112.34. *Biology (One Credit), Adopted 2017.*
- §112.35. *Chemistry (One Credit), Adopted 2017.*
- §112.36. *Earth and Space Science, Beginning with School Year 2010-2011 (One Credit).*
- §112.37. *Environmental Systems, Beginning with School Year 2010-2011 (One Credit).*
- §112.38. *Integrated Physics and Chemistry (One Credit), Adopted 2017.*
- §112.39. *Physics (One Credit), Adopted 2017.*

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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**CHAPTER 126. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR TECHNOLOGY APPLICATIONS**

The State Board of Education (SBOE) proposes the repeal of §§126.5 - 126.7 and 126.13 - 126.16, concerning Texas Essential Knowledge and Skills (TEKS) for technology applications. The proposed repeals would remove the TEKS for Kindergarten-

Grade 8 technology applications and related implementation language that will be superseded by 19 TAC §§126.1 - 126.3, 126.8 - 126.10, and 126.17 - 126.19 beginning with the 2024-2025 school year.

**BACKGROUND INFORMATION AND JUSTIFICATION:** In accordance with statutory requirements that the SBOE identify by rule the essential knowledge and skills of each subject in the required curriculum, the SBOE follows a board-approved cycle to review and revise the essential knowledge and skills for each subject. Technology applications is part of the required curriculum for Kindergarten-Grade 8 only. In 2020, the SBOE approved the consolidation of the high school technology applications courses into the Career and Technical Education TEKS. New elementary and middle school TEKS for technology applications were approved for second reading and final adoption at the June 2022 SBOE meeting and became effective August 7, 2022.

The proposed repeal would remove the TEKS for Kindergarten-Grade 8 technology applications and related implementation language that will be superseded by 19 TAC §§126.1 - 126.3, 126.8 - 126.10, and 126.17 - 126.19 beginning with the 2024-2025 school year.

The SBOE approved the proposed repeals for first reading and filing authorization at its April 12, 2024 meeting.

**FISCAL IMPACT:** Monica Martinez, associate commissioner for standards and programs, has determined that for the first five years the proposal is in effect, there are no additional costs to state or local government 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:** Texas Education Agency (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 by removing the TEKS for Kindergarten-Grade 8 technology applications and related implementation language that will be superseded by 19 TAC §§126.1 - 126.3, 126.8 - 126.10, and 126.17 - 126.19 beginning with the 2024-2025 school year.

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 remove the TEKS for elementary and middle school technology applications that would be superseded by 19 TAC §§126.1 - 126.3, 126.8 - 126.10, and 126.17 - 126.19 beginning with the 2024-2025 school year. 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 or 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 May 17, 2024, and ends at 5:00 p.m. on June 17, 2024. The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in June 2024 in accordance with the SBOE board operating policies and procedures. 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 May 17, 2024.

## SUBCHAPTER A. ELEMENTARY

### 19 TAC §§126.5 - 126.7

**STATUTORY AUTHORITY.** The repeals are proposed 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 repeals implement Texas Education Code, §7.102(c)(4) and §28.002(a) and (c).

*§126.5. Implementation of Texas Essential Knowledge and Skills for Technology Applications, Elementary, Beginning with School Year 2012-2013.*

*§126.6. Technology Applications, Kindergarten-Grade 2, Beginning with School Year 2012-2013.*

*§126.7. Technology Applications, Grades 3-5, Beginning with School Year 2012-2013.*

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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## SUBCHAPTER B. MIDDLE SCHOOL

### 19 TAC §§126.13 - 126.16

STATUTORY AUTHORITY. The repeals are proposed 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 repeals implement Texas Education Code, §7.102(c)(4) and §28.002(a) and (c).

*§126.13. Implementation of Texas Essential Knowledge and Skills for Technology Applications, Middle School, Beginning with School Year 2012-2013.*

*§126.14. Technology Applications, Grade 6, Beginning with School Year 2012-2013.*

*§126.15. Technology Applications, Grade 7, Beginning with School Year 2012-2013.*

*§126.16. Technology Applications, Grade 8, Beginning with School Year 2012-2013.*

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

The State Board of Education (SBOE) proposes the repeal of §§127.11, 127.12, 127.14 - 127.16, 127.309, 127.311, 127.402, 127.404 - 127.408, 127.412, 127.468, 127.473, 127.742, 127.743, 127.751, 127.752, 127.762, and 127.763, concerning Texas Essential Knowledge and Skills (TEKS) for career development and career and technical education (CTE). The proposed repeals would remove the TEKS and related implementation language that will be superseded by 19 TAC §§127.19 - 127.22, 127.323, 127.417, 127.420, 127.422 - 127.424, 127.433, 127.482, 127.781, 127.783, 127.784, 127.789, and 127.790 beginning with the 2024-2025 school year.

BACKGROUND INFORMATION AND JUSTIFICATION: In accordance with statutory requirements that the SBOE identify by

rule the essential knowledge and skills of each subject in the required curriculum, the SBOE follows a board-approved cycle to review and revise the essential knowledge and skills for each subject.

The TEKS for courses associated with 14 CTE career clusters are codified by subchapter in 19 TAC Chapters 127 and 130. In December 2020, the SBOE began initial steps to prepare for the review and revision of CTE courses in programs of study for the education and training; health science; and science, technology, engineering, and mathematics career clusters. Two additional courses eligible to satisfy a graduation requirement in science were also part of the review. The board approved for second reading and final adoption new TEKS for these courses in November 2021 and January, April, and June 2022.

At the November 2023 SBOE meeting, the board approved new CTE TEKS in 19 TAC Chapter 127 for courses in career preparation and entrepreneurship, which became effective February 13, 2024, and will be implemented beginning in the 2024-2025 school year.

The proposed repeals would remove the TEKS and related implementation language that will be superseded by 19 TAC §§127.19 - 127.22, 127.323, 127.417, 127.420, 127.422 - 127.424, 127.433, 127.482, 127.781, 127.783, 127.784, 127.789, and 127.790 beginning with the 2024-2025 school year.

FISCAL IMPACT: Monica Martinez, associate commissioner for standards and programs, has determined that for the first five years the proposal is in effect, there are no additional costs to state or local government 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 by removing sections to avoid confusion with the new TEKS that are being implemented at the beginning of the 2024-2025 school year.

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 remove the TEKS and related implementation language that will be superseded by 19 TAC §§127.19 - 127.22, 127.323, 127.417, 127.420, 127.422 - 127.424, 127.433, 127.482, 127.781, 127.783, 127.784, 127.789, and 127.790 beginning with the 2024-2025 school year to avoid confusion with the new TEKS that are being implemented. 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 or 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 May 17, 2024, and ends at 5:00 p.m. on June 17, 2024. The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in June 2024 in accordance with the SBOE board operating policies and procedures. 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 May 17, 2024.

## SUBCHAPTER B. HIGH SCHOOL

### 19 TAC §§127.11, 127.12, 127.14 - 127.16

**STATUTORY AUTHORITY.** The repeals are proposed 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 repeals implement Texas Education Code, §7.102(c)(4) and §28.002(a) and (c).

§127.11. *Implementation of Texas Essential Knowledge and Skills for Career Development, High School, Adopted 2015.*

§127.12. *Project-Based Research (One Credit), Adopted 2015.*

§127.14. *Career Preparation I (Two Credits), Adopted 2015.*

§127.15. *Career Preparation II (Two Credits), Adopted 2015.*

§127.16. *Extended Career Preparation (One Credit), Adopted 2016.*

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

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Cristina De La Fuente-Valadez

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## SUBCHAPTER G. EDUCATION AND TRAINING

### 19 TAC §127.309, §127.311

**STATUTORY AUTHORITY.** The repeals are proposed 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 repeals implement Texas Education Code, §7.102(c)(4) and §28.002(a) and (c).

§127.309. *Implementation of Texas Essential Knowledge and Skills for Education and Training, Adopted 2015.*

§127.311. *Human Growth and Development (One Credit), Adopted 2015.*

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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## SUBCHAPTER I. HEALTH SCIENCE

### 19 TAC §§127.402, 127.404 - 127.408, 127.412

§127.402. *Implementation of Texas Essential Knowledge and Skills for Health Science, Adopted 2015.*

§127.404. *Medical Terminology (One Credit), Adopted 2015.*

§127.405. *Anatomy and Physiology (One Credit), Adopted 2015.*

§127.406. *Medical Microbiology (One Credit), Adopted 2015.*

§127.407. *World Health Research (One Credit), Adopted 2015.*

§127.408. *Pathophysiology (One Credit), Adopted 2015.*

§127.412. *Health Science Theory (One Credit), Adopted 2015.*

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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## SUBCHAPTER J. HOSPITALITY AND TOURISM

### 19 TAC §127.468, §127.473

STATUTORY AUTHORITY. The repeals are proposed 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 repeals implement Texas Education Code, §7.102(c)(4) and §28.002(a) and (c).

§127.468. *Implementation of Texas Essential Knowledge and Skills for Hospitality and Tourism, Adopted 2015.*

§127.473. *Food Science (One Credit), Adopted 2015.*

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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## SUBCHAPTER O. SCIENCE, TECHNOLOGY, ENGINEERING, AND MATHEMATICS

### 19 TAC §§127.742, 127.743, 127.751, 127.752, 127.762, 127.763

STATUTORY AUTHORITY. The repeals are proposed 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 repeals implement Texas Education Code, §7.102(c)(4) and §28.002(a) and (c).

§127.742. *Implementation of Texas Essential Knowledge and Skills for Science, Technology, Engineering, and Mathematics, Adopted 2015.*

§127.743. *Principles of Applied Engineering (One Credit), Adopted 2015.*

§127.751. *Engineering Design and Presentation I (One Credit), Adopted 2015.*

§127.752. *Engineering Design and Presentation II (Two Credits), Adopted 2015.*

§127.762. *Computer Science I (One Credit).*

§127.763. *Computer Science II (One Credit).*

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 May 6, 2024.

TRD-202402013

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: June 16, 2024

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



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

The State Board of Education (SBOE) proposes the repeal of §130.278 and §130.384, concerning Texas Essential Knowledge and Skills (TEKS) for career and technical education (CTE). The proposed repeals would remove the Texas Essential Knowledge and Skills (TEKS) and related implementation language that will be superseded by 19 TAC §127.275 and §127.318 beginning with the 2024-2025 school year.

BACKGROUND INFORMATION AND JUSTIFICATION: In accordance with statutory requirements that the SBOE identify by rule the essential knowledge and skills of each subject in the required curriculum, the SBOE follows a board-approved cycle to review and revise the essential knowledge and skills for each subject.

The TEKS for courses associated with 14 CTE career clusters are codified by subchapter in 19 TAC Chapters 127 and 130. In December 2020, the SBOE began initial steps to prepare for the review and revision of CTE courses in programs of study for the education and training; health science; and science, technology, engineering, and mathematics career clusters. Two additional courses eligible to satisfy a graduation requirement in science were also part of the review. The board approved for second reading and final adoption new TEKS for these courses in November 2021 and January, April, and June 2022.

At the November 2023 SBOE meeting, the board approved new CTE TEKS in 19 TAC Chapter 127 for courses in career preparation and entrepreneurship, which became effective February 13, 2024, and will be implemented beginning in the 2024-2025 school year.

The proposed repeals would remove the TEKS and related implementation language that will be superseded by 19 TAC

§127.275 and §127.318 beginning with the 2024-2025 school year.

**FISCAL IMPACT:** Monica Martinez, associate commissioner for standards and programs, has determined that for the first five years the proposal is in effect, there are no additional costs to state or local government 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 by removing sections to avoid confusion with the new TEKS that are being implemented at the beginning of the 2024-2025 school year.

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 remove the TEKS and related implementation language that will be superseded by 19 TAC §127.275 and §127.318 beginning with the 2024-2025 school year to avoid confusion with the new TEKS that are being implemented. 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 or 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 May 17, 2024, and ends at 5:00 p.m. on June 17, 2024. The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in June 2024 in accordance with the SBOE board operating policies and procedures. 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 May 17, 2024.

## SUBCHAPTER J. HUMAN SERVICES

### 19 TAC §130.278

**STATUTORY AUTHORITY.** The repeal is proposed 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 repeal implements Texas Education Code, §7.102(c)(4) and §28.002(a) and (c).

§130.278. *Child Guidance (Two Credits), Adopted 2015.*

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 May 6, 2024.

TRD-202402014

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: June 16, 2024

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



## SUBCHAPTER N. MARKETING

### 19 TAC §130.384

**STATUTORY AUTHORITY.** The repeal is proposed 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 repeal implements Texas Education Code, §7.102(c)(4) and §28.002(a) and (c).

§130.384. *Entrepreneurship (One Credit), Adopted 2015.*

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 May 6, 2024.

TRD-202402015

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: June 16, 2024

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

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**TITLE 22. EXAMINING BOARDS**

**PART 35. TEXAS STATE BOARD OF  
EXAMINERS OF MARRIAGE AND  
FAMILY THERAPISTS**

**CHAPTER 801. LICENSURE AND  
REGULATION OF MARRIAGE AND  
FAMILY THERAPISTS**

**SUBCHAPTER C. APPLICATIONS AND  
LICENSING**

**22 TAC §801.143**

The Texas Behavioral Health Executive Council proposes amendments to §801.143, relating to Supervisor Requirements.

**Overview and Explanation of the Proposed Rule.** The proposed amendments are intended to set equitable requirements for achieving supervisor status; to standardize provisions concerning automatic revocation of supervisor status after a disciplinary order imposes a probated suspension, suspension, or revocation of a license; and makes typographical updates.

**Fiscal Note.** Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

**Public Benefit.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

**Probable Economic Costs.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

**Small Business, Micro-Business, and Rural Community Impact Statement.** Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

**Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities.** Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

**Local Employment Impact Statement.** Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

**Requirement for Rules Increasing Costs to Regulated Persons.** The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

**Government Growth Impact Statement.** For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

**Takings Impact Assessment.** Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

**Request for Public Comments.** Comments on the proposed rule may be submitted by mail to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701 or via <https://www.bhec.texas.gov/proposed-rule-changes-and-the-rulemaking-process/index.html>. The deadline for receipt of comments is 5:00 p.m., Central Time, on June 16, 2024, which is at least 30 days from the date of publication of this proposal in the *Texas Register*.

**Applicable Legislation.** This rule is proposed pursuant to the specific legal authority granted to the Executive Council by H.B. 1501, 86th Leg., R.S. (2019).

**Statutory Authority.** The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§801.143. *Supervisor Requirements.*

(a) To apply for supervisor status, an LMFT must be in good standing and submit:

(1) an application and applicable fee;

(2) documentation of the completion of at least 3,000 hours of LMFT practice over a minimum of 3 years; and

(3) documentation of one of following:

(A) successful completion of a 3-semester-hour, graduate course in marriage and family therapy supervision from an accredited institution;

(B) a 40-hour continuing education course in clinical supervision; or

(C) successful completion of an American Association for Marriage and Family Therapy (AAMFT) approved Fundamentals of Supervision course.

~~[(a) To apply for supervisor status, an LMFT in good standing must submit an application and applicable fee as well as documentation of the of following:]~~

~~[(1) completion of at least 3,000 hours of LMFT practice over a minimum of 3 years; and]~~

~~[(A) successful completion of a 3-semester-hour, graduate course in marriage and family therapy supervision from an accredited institution; or]~~

~~[(B) a 40-hour continuing education course in clinical supervision; or]~~

~~[(2) designation as an approved supervisor or supervisor candidate by the American Association for Marriage and Family Therapy (AAMFT).]~~

(b) A supervisor may not be employed by the person he or she is supervising.

(c) A supervisor may not be related within the second degree by affinity (marriage) or within the third degree by consanguinity (blood or adoption) to the person whom he or she is supervising.

(d) Within 60 days of the initiation of supervision, a supervisor must process and maintain a complete supervision file on the LMFT Associate. The supervision file must include:

(1) a photocopy of the submitted Supervisory Agreement Form;

(2) proof of council approval of the Supervisory Agreement Form;

(3) a record of all locations at which the LMFT Associate will practice;

(4) a dated and signed record of each supervision conference with the LMFT Associate's total number of hours of supervised experience, direct client contact hours, and direct client contact hours with couples or families accumulated up to the date of the conference;

(5) an established plan for the custody and control of the records of supervision for each LMFT Associate in the event of the supervisor's death or incapacity, or the termination of the supervisor's practice; and

(6) a copy of any written plan for remediation of the LMFT Associate.

(e) Within 30 days of the termination of supervision, a supervisor must submit written notification to the council.

(f) Both the LMFT Associate and the council-approved supervisor are fully responsible for the marriage and family therapy activities of the LMFT Associate.

(1) The supervisor must ensure the LMFT Associate knows and adheres to all statutes and rules that govern the practice of marriage and family therapy.

(2) A supervisor must maintain objective, professional judgment; a dual relationship between the supervisor and the LMFT Associate is prohibited.

(3) A supervisor may only supervise the number of individuals for which the supervisor can provide adequate supervision.

(4) If a supervisor determines the LMFT Associate may not have the therapeutic skills or competence to practice marriage and family therapy under an LMFT license, the supervisor must develop and implement a written plan for remediation of the LMFT Associate.

(5) A supervisor must timely submit accurate documentation of supervised experience.

(g) Supervisor status expires with the LMFT license.

(h) A supervisor who fails to meet all requirements for licensure renewal may not advertise or represent himself or herself as a supervisor in any manner.

(i) A supervisor whose license status is other than "current, active" is no longer an approved supervisor. Supervised clinical experience hours accumulated under that person's supervision after the date his or her license status changed from "current, active" or after removal of the supervisor designation will not count as acceptable hours unless approved by the council.

(j) Upon execution of a Council order for probated suspension, suspension, or revocation of the LMFT license with supervisor status, the supervisor status is revoked. A licensee whose supervisor status is revoked must: [A supervisor who becomes subject to a council disciplinary order is no longer an approved supervisor. The person must:]

(1) inform each LMFT Associate of the council disciplinary order;

(2) refund all supervisory fees received after date the council disciplinary order was ratified to the LMFT Associate who paid the fees; and

(3) assist each LMFT Associate in finding alternate supervision.

(k) Supervision of an LMFT Associate without being currently approved as a supervisor is grounds for disciplinary action.

(l) The LMFT Associate may compensate the supervisor for time spent in supervision if the supervision is not part of the supervisor's responsibilities as a paid employee of an agency, institution, clinic, or other business entity.

(m) At a minimum, the 40-hour continuing education course in clinical supervision, referenced in subsection (a)(3)(B) of this rule, must meet each of the following requirements: [The 40-hour supervision training must comply with §801.261 of this title (relating to Requirements for Continuing Education) and:]

(1) the course must be taught by a graduate-level licensee holding supervisor [licensed marriage and family therapist holding supervisor] status issued by the Council:

(2) all related coursework and assignments must be completed over a time period not to exceed 90 days; and

(3) the 40-hour supervision training must include at least:

(A) three (3) hours for defining and conceptualizing supervision and models of supervision;

(B) three (3) hours for supervisory relationship and marriage and family therapist development;

(C) twelve (12) hours for supervision methods and techniques, covering roles, focus (process, conceptualization, and personalization), group supervision, multi-cultural supervision (race, ethnic, and gender issues), and evaluation methods;

(D) twelve (12) hours for supervision and standards of practice, codes of ethics, and legal and professional issues; and

(E) three (3) hours for executive and administrative tasks, covering supervision plan, supervision contract, time for supervision, record keeping, and reporting.

(n) Subsection (m) of this rule is effective May 1, 2023

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 May 1, 2024.

TRD-202401943

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Marriage and Family Therapists

Earliest possible date of adoption: June 16, 2024

For further information, please call: (512) 305-7706



## 22 TAC §801.261

The Texas Behavioral Health Executive Council proposes amendments to §801.261, relating to Requirements for Continuing Education.

Overview and Explanation of the Proposed Rule. The proposed amendments will require licensees to complete one hour of continuing education in crisis management in order to renew their license. This one hour requirement is proposed to be included in the currently required 30 hours of continuing education needed for the renewal of a license. Crisis management can include, but is not limited to, suicidal ideation, homicidal ideation, abuse or

neglect, domestic violence, crisis prevention, and crisis or disaster response.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule may be submitted by mail to Brenda Skiff, Executive Assistant, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701 or via <https://www.bhec.texas.gov/proposed-rule-changes-and-the-rulemaking-process/index.html>. The deadline for receipt of comments is 5:00 p.m., Central Time, on June 16, 2024, which is at least 30 days from the date of publication of this proposal in the *Texas Register*.

Applicable Legislation. This rule is proposed pursuant to the specific legal authority granted to the Executive Council by H.B. 1501, 86th Leg., R.S. (2019).

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§801.261. *Requirements for Continuing Education.*

(a) Minimum Continuing Education Hours Required.

(1) An LMFT must complete 30 hours of continuing education during each renewal period that they hold a license. The 30 hours of continuing education must include 6 hours in ethics and 3 hours in

cultural diversity or competency. Additionally, effective September 1, 2024, the 30 hours of continuing education must also include 1 hour of continuing education in crisis management.

(2) A licensee may carry forward to the next renewal period, a maximum of 10 hours accrued during the current renewal period if those hours are not needed for renewal.

(b) Special Continuing Education Requirements. The special continuing education requirements set out in this subsection may be counted toward the minimum continuing education hours required under subsection (a) of this section.

(1) A licensee with supervisory status must complete 6 hours of continuing education in supervision.

(2) A licensee with supervisory status must take and pass the jurisprudence examination. One hour of continuing education in ethics may be claimed for passing the jurisprudence examination.

(3) A licensee who provides telehealth services must complete 2 hours of continuing education in technology-assisted services.

(c) Acceptable ethics hours include, but are not limited to continuing education on:

(1) state or federal laws, including agency rules, relevant to the practice of marriage and family therapy;

(2) practice guidelines established by local, regional, state, national, or international professional organizations;

(3) training or education designed to demonstrate or affirm the ideals and responsibilities of the profession; and

(4) training or education intended to assist licensees in determining appropriate decision-making and behavior, improve consistency in or enhance the professional delivery of services, and provide a minimum acceptable level of practice.

(d) Acceptable cultural diversity or competency and crisis management activities. [Hours include, but are not limited to continuing education regarding age, disability, ethnicity, gender, gender identity, language, national origin, race, religion, culture, sexual orientation, and socio-economic status.]

(1) Cultural diversity or competency hours include, but are not limited to continuing education regarding age, disability, ethnicity, gender, gender identity, language, national origin, race, religion, culture, sexual orientation, and socio-economic status.

(2) Crisis management hours include, but are not limited to continuing education regarding suicidal ideation, homicidal ideation, abuse or neglect, domestic violence, crisis prevention, and crisis or disaster response.

(e) Acceptable Continuing Education Activities.

(1) All continuing education hours must have been received during the renewal period unless allowed under subsection (a)(3) of this section, and be directly related to the practice of marriage and family therapy;

(2) The Council shall make the determination as to whether the activity claimed by the licensee is directly related to the practice of marriage and family therapy;

(3) Except for hours claimed under subsection (h) of this section, all continuing education hours obtained must be designated by the provider in a letter, email, certificate, or transcript that displays the licensee's name, topic covered, date(s) of training, and hours of credit earned.

(4) Multiple instances or occurrences of a continuing education activity may not be claimed for the same renewal period.

(f) Licensees must obtain at least fifty percent of their continuing education hours from one or more of the following providers:

(1) an international, national, regional, state, or local association of medical, mental, or behavioral health professionals;

(2) public school districts, charter schools, or education service centers;

(3) city, county, state, or federal governmental entities;

(4) an institution of higher education accredited by a regional accrediting organization recognized by the Council for Higher Education Accreditation, the Texas Higher Education Coordinating Board, or the United States Department of Education;

(5) religious or charitable organizations devoted to improving the mental or behavioral health of individuals;

(6) a graduate-level licensee with supervisor status;

(7) a hospital or hospital system, including any clinic, division, or department within a hospital or hospital system; or

(8) any provider approved or endorsed by a provider listed herein.

(g) Licensees shall receive credit for continuing education activities according to the number of hours designated by the provider, or if no such designation, on a one-for-one basis with one credit hour for each hour spent in the continuing education activity.

(h) Notwithstanding subsection (f) above, licensees may claim continuing education credit for each of the following activities:

(1) Passage of the jurisprudence examination. Licensees who pass the jurisprudence examination may claim 1 hour of continuing education in ethics.

(2) Preparing and giving a presentation at a continuing education activity. The maximum number of hours that may be claimed for this activity is 5 hours.

(3) Authoring a book or peer reviewed article. The maximum number of hours that may be claimed for this activity is 5 hours.

(4) Teaching or attending a graduate level course. The maximum number of hours that may be claimed for this activity is 5 hours.

(5) Self-study. The maximum number of hours that may be claimed for this activity is 1 hour. Self-study is credit that is obtained from any type of activity that is performed by an individual licensee acting alone. Such activities include, but are not limited to, reading materials directly related to the practice of marriage and family therapy. Time spent individually viewing or listening to audio, video, digital, or print media as part of an organized continuing education activity, program, or offering from a third-party is not subject to this self-study limitation and may count as acceptable education under other parts of this rule.

(6) Successful completion of a training course on human trafficking prevention described by §116.002 of the Occupations Code. Licensees who complete this training may claim 1 hour of continuing education credit.

(i) The Council does not pre-evaluate or pre-approve continuing education providers or hours.

(j) Licensees shall maintain proof of continuing education compliance for a minimum of 3 years after the applicable renewal period.

(k) Subsection (f) of this rule is effective January 1, 2024.

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

Filed with the Office of the Secretary of State on May 1, 2024.

TRD-202401944

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Marriage and Family Therapists

Earliest possible date of adoption: June 16, 2024

For further information, please call: (512) 305-7706



## TITLE 28. INSURANCE

### PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

#### CHAPTER 102. PRACTICES AND PROCEDURES--GENERAL PROVISIONS

##### 28 TAC §102.2

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) proposes to amend 28 TAC §102.2, concerning gifts, grants, and donations. Section 102.2 implements Texas Labor Code §402.062.

EXPLANATION. The proposed amendments update the language in §102.2 and remove obsolete provisions. Amending §102.2 is necessary to reflect the current agency structure to ensure that the rule is clear and accurate. Labor Code §402.062 permits DWC to accept gifts, grants, or donations as provided by DWC rules. The proposed amendments also explain DWC's process for providing notice of gifts, grants, and donations, and include nonsubstantive editorial and formatting changes that make updates for plain language and agency style to improve the rule's clarity.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Deputy Commissioner for Health and Safety Mary Landrum has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the sections, other than that imposed by the statute. This determination was made because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Deputy Commissioner Landrum does not anticipate a measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Deputy Commissioner Landrum expects that enforcing and administering the proposed amendments will have the public benefits of streamlin-

ing the Texas Administrative Code by removing or updating obsolete provisions, as well as ensuring that DWC's rules conform to Labor Code §402.062 and are current and accurate, which promotes transparent and efficient regulation.

Deputy Commissioner Landrum expects that the proposed amendments will not increase the cost to comply with Labor Code §402.062 because they do not impose requirements beyond those in the statute. Labor Code §402.062 permits DWC to accept gifts, grants, or donations as provided by DWC rules. The proposed amendments do not impose additional requirements on regulated persons. As a result, any associated cost does not result from the enforcement or administration of the proposed amendments.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** DWC has determined that the proposed amendments will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities because the proposed amendments update the language, remove obsolete provisions, and make editorial changes and updates for plain language and agency style only. The proposed amendments do not change the people the rule affects or impose additional costs. As a result, and in accordance with Government Code §2006.002(c), DWC is not required to prepare a regulatory flexibility analysis.

**EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045.** DWC has determined that this proposal does not impose a possible cost on regulated persons. As a result, no additional rule amendments are required under Government Code §2001.0045.

**GOVERNMENT GROWTH IMPACT STATEMENT.** DWC has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:

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

DWC made these determinations because the proposed amendments update the language, remove obsolete provisions, and make editorial changes and updates for plain language and agency style only. They do not affect additional people or impose additional costs.

**TAKINGS IMPACT ASSESSMENT.** DWC has determined that no private real property interests are affected by this proposal, and this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

**REQUEST FOR PUBLIC COMMENT.** DWC will consider any written comments on the proposal that DWC receives no later than 5:00 p.m., Central time, on June 17, 2024. Send your comments to [RuleComments@tdi.texas.gov](mailto:RuleComments@tdi.texas.gov); or to Texas Department of Insurance, Division of Workers' Compensation, Legal Services, MC-LS, P.O. Box 12050, Austin, Texas 78711-2050.

To request a public hearing on the proposal, submit a request before the end of the comment period to [RuleComments@tdi.texas.gov](mailto:RuleComments@tdi.texas.gov); or to Texas Department of Insurance, Division of Workers' Compensation, Legal Services, MC-LS, P.O. Box 12050, Austin, Texas 78711-2050. The request for public hearing must be separate from any comments. If DWC holds a public hearing, it will consider written and oral comments presented at the hearing.

**STATUTORY AUTHORITY.** DWC proposes amendments to §102.2 under Labor Code §§402.062, 402.00111, 402.00116, and 402.061.

Labor Code §402.062 permits DWC to accept gifts, grants, or donations as provided by DWC rules.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

**CROSS-REFERENCE TO STATUTE.** Section 102.2 implements Labor Code §402.062, recodified by House Bill (HB) 752, 73rd Legislature, Regular Session (1993), and last amended by HB 7, 79th Legislature, Regular Session (2005).

*§102.2. Gifts, Grants, and Donations.*

(a) The division may accept and use gifts, grants, and donations in accordance with applicable law, including the Labor Code and the Government Code. [The commission may accept gifts, grants, and donations made to the Texas Workers' Compensation Commission as follows:]

[(1) If the value of a gift or donation is \$500 or more, the commissioners must, by a majority vote at a public meeting, acknowledge the gift or donation, no later than the 90th day after the date it is accepted.]

[(2) The Executive Director may accept a gift or donation on behalf of the commission. The Executive Director shall report all accepted gifts and donations to the commissioners.]

[(3) The Commission may accept a grant from the Texas Workers' Compensation Insurance Fund for the purpose of implementing steps to control and lower medical costs in the workers' compensation system and to ensure the delivery of quality medical care. The commission must additionally:]

[(A) publish the name of the grantor and the purpose and conditions of the grant in the *Texas Register*;

[(B) provide a 20-day public comment period prior to acceptance of the grant; and]

[(C) acknowledge acceptance at a public meeting.]



~~[(4) The Executive Director may accept all other grants on behalf of the Commission and shall report all accepted grants to the Commissioners.]~~

~~[(b) The acceptance or acknowledgment of a gift, grant, or donation made in accordance with subsection (a)(1) or (a)(3) of this section must be reflected in the minutes of the public meeting at which the gift, grant, or donation was accepted or acknowledged. The minutes must include the name of the donor/grantor; a description of the gift, grant, or donation; and a general statement of the purpose for which the gift, grant, or donation will be used.]~~

~~[(e) The Executive Director shall forward all money or financial instruments received as a gift, grant, or donation to the Comptroller of Public Accounts, for deposit in the appropriate commission fund.]~~

~~[(d) The Executive Director shall, where appropriate, convert non-monetary gifts, grants, and donations to cash.]~~

(b) On receiving a gift, grant, or donation of \$500 or more, the division will post on the public website for at least five years from the date it was received:

(1) The date the division received the gift, grant, or donation.

(2) The identity of the donor.

(3) The amount of the gift, grant, or donation.

(4) If applicable, the stated purpose of the gift, grant, or donation.

(c) [(e)] A donor may direct the use of the gift, grant, or donation in writing. The division will follow this [This] direction [will be followed by the commission,] as nearly as practicable, and in accordance with state and federal law.

(d) [(f)] The division [Commission] may not accept a gift or donation of \$500 or more from a person who is a party to a contested case before the agency until the 30th day after the decision in the case becomes final under §2001.144 of the Texas Government Code. For purposes of this rule, "contested case" has the meaning assigned by §2001.003 of the Texas Government Code.

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

Filed with the Office of the Secretary of State on April 29, 2024.

TRD-202401886

Kara Mace

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Earliest possible date of adoption: June 16, 2024

For further information, please call: (512) 804-4703



## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 20. STATEWIDE PROCUREMENT AND SUPPORT SERVICES

## SUBCHAPTER B. PUBLIC PROCUREMENT AUTHORITY AND ORGANIZATION

### DIVISION 3. CONTRACT MANAGEMENT GUIDE AND TRAINING

#### 34 TAC §20.133

The Comptroller of Public Accounts proposes to amend §20.133, concerning training and certification program.

The comptroller amends this section to assist state agencies so that they may fulfill their purchasing functions and contract development obligations. The comptroller is responding to the workforce shortage in this career field. Many state agencies rely on contractors and temporary workers to perform purchasing functions. However, without the means to obtain the proper credentials, these contractors and temporary workers are limited in their ability to perform their assigned duties. The proposed amendment is designed to close this gap. Thus, the amendment should increase the number of workers with these vital credentials; create opportunities for these workers to obtain full-time state employment in this career field; and increase the likelihood of retention of these valuable talents and skills for the State of Texas.

This amendment adds a definition of contractor in subsection (b). The amendment of subsection (c)(1) requires contractors retained by a state agency to perform purchasing functions to complete the Statewide Procurement Division's (SPD's) Texas Purchasing Course. In addition, the amendment of subsection (c)(2)(A) requires contractors retained by a state agency to perform contract development functions to become certified as Certified Texas Contract Developers. The amendment of subsection (c)(2)(A) will also correct a minor grammatical error. Finally, the amendment of subsection (d) provides direction to the SPD Director to decide when contractors may obtain such training and certification.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed amended rule is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will increase the number of individuals subject to the rule's applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposed amended rule would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed amended rule would benefit the public by creating opportunities for contract work or to obtain full-time state employment in this career field and increase retention of these talents and skills. There would be no significant anticipated economic cost to the public. The proposed rule amendment would not have an adverse economic effect on small businesses or rural communities. The certification training for which a fee would be charged is currently unavailable to anyone other than a state employee. A decision by anyone other than a state employee to seek certification and contract work for which certification is required, as would newly be permitted under the proposed rule amendment, would be voluntary. A contractor, as defined under the proposed amended rule, or another person or entity on the contractor's behalf, and not the hiring state agency, would be responsible for paying the cost of the required applicable credentialing. The current cost of the SPD's Basic Texas Purchaser Course is \$100.

The current cost of the Texas Certified Contract Developer and Texas Certified Contract Manager courses are both \$435. There is also a certification renewal fee of \$50 and requirement for continuing education hours, and a fee for the CTCD certification exam of \$120, if paying with a Money Order, Check or Credit Card and \$130, if paying with a Purchase Order. It is anticipated that there would be at least one but not more than 1000 contractors seeking such credentialing.

You may submit comments on the proposal to Ms. Tosca M. McCormick, Comptroller of Public Accounts, P.O. Box 13528 Austin, Texas 78711 or to the email address: [Tosca.McCormick@cpa.texas.gov](mailto:Tosca.McCormick@cpa.texas.gov). The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register*.

This amendment is proposed under Government Code, §656.051(a), which grants to the comptroller the authority to establish and offer appropriate training to vendors on a cost recovery basis, as well as the authority to adopt rules to administer Section 656.051. The rule amendment is also proposed under Government Code, §656.054(a), which requires the comptroller to develop training programs under the State Employees Training Act that meet the needs of state agencies.

The amendment implements Government Code, §656.051 and §656.054.

§20.133. *Training and Certification Program.*

(a) Purpose. The purpose of these rules is to provide a uniform procedure through which the division will train and certify individuals who conduct government procurement functions.

(b) Definitions. The following words and terms when used in this section shall have the following meanings.

(1) Purchasing--The receipt and processing of requisitions, development of specifications, development of scope of work, the issuance of purchase orders against existing cooperative or agency contracts, and the verification of the inspection of merchandise or receipt of services by the agency. The term does not include the development of solicitations and contract awards that must be posted to the Electronic State Business Daily or in the *Texas Register*.

(2) Contract development--The term applies to actions taken prior to contract execution, including the receipt and processing of requisitions, assessment of need, development and review of specifications, development and review of scopes of work, identification and selection of procurement methods, identification and preparation of evaluation criteria, preparation of and advertising solicitation documents, tabulation of respondent bids, evaluation of respondent proposals, negotiation of proposals, and the preparation and completion of contract award documents. The term does not include invoice or audit functions.

(3) Contract management--The term applies to actions taken following contract execution, including the assessment of risk, verification of contractor performance, monitoring compliance with deliverable and reporting requirements, enforcement of contract terms, monitoring and reporting of vendor performance, and ensuring that contract performance and practices are consistent with applicable rules, laws and the State of Texas Procurement Manual and Contract Management Guide.

(4) Procurement--The performance of any purchasing, contract development, or contract management functions.

(5) Contractor--For purposes of this section, a person other than a state agency employee retained by a state agency to perform purchasing or contract development functions.

(c) Training required.

(1) Purchasing requirements. A state agency employee or contractor must complete the division's Texas Purchasing Course to engage in purchasing functions on behalf of a state agency if the employee or contractor:

(A) has the job title of "purchaser";

(B) performs purchasing functions as 15% or more of their job functions; or

(C) makes a purchase in excess of \$10,000.

(2) Certified Texas Contract Developer requirements.

(A) A state agency employee or contractor must be certified as a Certified Texas Contract Developer to engage in contract development functions on behalf of a state agency and to issue ~~issues~~ a solicitation or contract award required to be posted to the Electronic State Business Daily or in the *Texas Register*.

(B) A Certified Texas Contract Developer may conduct purchasing functions.

(3) Certified Texas Contract Manager requirements. A state agency employee must be certified as a Certified Texas Contract Manager to engage in contract management functions on behalf of a state agency if the employee:

(A) has the job title of "contract manager" or "contract administration manager" or "contract technician";

(B) performs contract management functions as 50% or more of their job functions; or

(C) manages any contract in excess of \$5,000,000.

(4) Certified Texas Contract Manager exemption. In accordance with Government Code, §656.052(h)(2), a contract manager whose contract management duties primarily relate to contracts described by Government Code, §2262.002(b) is exempt from the contract management certification requirements of this section.

(5) Licensed attorneys exemption. A licensed attorney employed by a state agency performing procurement or contract management functions described by this section is exempt from the certification requirements of this section.

(d) Eligible applicants. To be eligible to apply for and receive a certification, an applicant must be:

(1) a current Texas state or local government employee; ~~or~~

(2) at the sole discretion of the director, a contractor as defined in subsection (b)(5) of this section; or

(3) ~~[(2)]~~ at the sole discretion of the director, a student:

(A) currently enrolled in an accredited Texas university or community college; or

(B) who has graduated within the last three years from an accredited Texas university or community college.

(e) Requirements to receive certification.

(1) To be a Certified Texas Contract Developer, an eligible applicant must:

(A) complete the Texas Contract Developer Certification training course provided by the division;

(B) complete the division approved Texas Contract Developer Certification examination with a score of 80% or higher;

(C) have completed payment for the course and the examination; and

(D) be issued a Texas Contract Developer Certification.

(2) To be a Certified Texas Contract Manager, an eligible applicant must:

(A) complete the Texas Contract Manager Certification training course provided by the division;

(B) complete the division approved Texas Contract Manager Certification examination with a score of 80% or higher;

(C) have completed payment for the course and the examination; and

(D) be issued a Texas Contract Manager Certification.

(f) Training completion. To complete any training required in this section, an eligible applicant must:

(1) register for the applicable training using the electronic registration provided by the division on the official comptroller website;

(2) provide documentation of eligibility acceptable to the director;

(3) attend the applicable training course; and

(4) receive confirmation of course completion from the director.

(g) Certification examinations.

(1) To take any certification examination required in this section, an eligible applicant must register to take the examination using the electronic registration provided by the division on the official comptroller website within:

(A) three months of confirmation of completion of the applicable course by the director; or

(B) the time period determined at the sole discretion of the director with documented extenuating circumstances not to exceed twelve months from confirmation of completion of the applicable course.

(2) If an applicant receives a score of less than 80% following completion of the course, the applicant shall have two additional attempts to obtain a score of 80% or higher during a time period not to exceed six months following completion of the course.

(3) If the applicant does not obtain a score of 80% or higher after three attempts, the applicant must retake the applicable training course prior to retaking the examination.

(h) Certification issuance.

(1) To be issued any certification in this section, eligible applicants must within three months of the issuance of examination completion with a score of 80% or higher, submit:

(A) an application provided by the division on the official comptroller website; and

(B) any other documents required by the director.

(2) If the director determines that all applicable requirements have been satisfied, a certification will be issued to the applicant.

(i) Continuing education.

(1) A procurement professional certified in this section must complete twenty-four hours of in-person or online continuing education every three years, one hour of which must be ethics, to maintain certification. Twenty-three hours of the required hours must be division-sponsored training and one hour may be an elective selected by the professional, subject to division approval. The ethics requirement must be satisfied by division-sponsored training.

(2) A procurement professional dual certified in this section must complete thirty-six hours of in-person or online continuing education every three years, one hour of which must be ethics, to maintain dual certification. Thirty-four hours of the required hours must be division-sponsored training and two hours may be elective courses selected by the professional, subject to division approval. The ethics requirement must be satisfied by division-sponsored training.

(3) A procurement professional certified in this section is required to take the Renewal Refresher course offered by division once every three years in order to maintain certification. The Renewal Refresher course does not count towards continuing education hours.

(4) The Renewal Refresher course must be completed no earlier than two years following the date of initial certification or last renewal. Renewal Refresher courses completed prior to two years following the date of initial certification or last renewal will not be considered applicable to the Renewal Refresher requirement.

(5) Division-sponsored or elective course continuing education will be counted as credit with the completion of the course and approval of the continuing education course credit application. The division will email a certificate of completion to the certified procurement professional upon approval of the continuing education course credit application. The same course may not be taken more than once per renewal period for credit.

(j) Certification renewal.

(1) Certifications issued in this section expire three years following the date of issuance.

(2) Procurement professionals certified in this section must submit an application for certification renewal at least thirty calendar days prior to the expiration date of their certification.

(3) The application must include a certificate of completion of the applicable Renewal Refresher course, and certificates of completion of the division sponsored continuing education required under this rule.

(4) If a certified procurement professional allows the certification to expire, an extension may be requested within thirty calendar days from the date of expiration. If the division approves the extension, the certified procurement professional has sixty calendar days from the date of extension approval to complete the requirements for renewal. If the certified procurement professional does not complete the requirements during the extension period, the initial certification requirements must be completed to receive a new certification.

(5) Certifications awarded or renewed under previous requirements are valid until the date of first renewal.

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 May 6, 2024.

TRD-202402019  
Don Neal  
General Counsel, Operations and Support Legal Services  
Comptroller of Public Accounts  
Earliest possible date of adoption: June 16, 2024  
For further information, please call: (512) 475-2220



## DIVISION 4. IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

### 34 TAC §20.157

The Comptroller of Public Accounts proposes to amend §20.157, concerning adherence to ethical standards.

This amendment will require that contractors retained by a state agency to perform purchasing functions or to perform contract development functions must adhere to the same ethical standards required of comptroller employees, and must also avoid all conflicts of interest in their purchasing activities.

Many state agencies rely on contractors and temporary workers to perform purchasing functions. The comptroller proposes this amendment because it is in the public's interest that contractors working in the state public procurement arena in Texas be held to the same ethical standards as comptroller employees.

Contemporaneous with this proposal, the comptroller is proposing an amendment of §20.133, concerning training and certification program. Under that proposal, contractors retained by a state agency to perform purchasing functions must complete the Statewide Procurement Division's (SPD's) Basic Texas Purchaser Course and contractors retained by a state agency to perform contract development functions must become certified as Certified Texas Contract Developers.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed amended rule is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will increase the number of individuals subject to the rule's applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposed amended rule would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed amended rule would benefit the public by updating the rule to reflect current practices. There would be no significant anticipated economic cost to the public. The proposed amended rule would have no significant fiscal impact on small businesses or rural communities.

You may submit comments on the proposal to Ms. Tosca M. McCormick, Comptroller of Public Accounts, P.O. Box 13528 Austin, Texas 78711 or to the email address: [Tosca.McCormick@cpa.texas.gov](mailto:Tosca.McCormick@cpa.texas.gov). The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register*.

This rule is proposed under Government Code, §656.051(a), which grants the comptroller the authority to establish and offer appropriate training to vendors, including ethics training, on

a cost recovery basis, as well as the authority to adopt rules to administer Government Code, §656.051. The rule is also proposed under Government Code, §656.054(a), which requires the comptroller to develop training programs under the State Employees Training Act that meet the needs of state agencies.

The amendment implements Government Code, §656.051 and §656.054.

§20.157. *Adherence to Ethical Standards.*

Employees of agencies, and contractors as defined in §20.133 of this title, who perform purchasing functions under delegated authority shall adhere to the same ethical standards required of comptroller employees, and shall avoid all conflicts of interest in their purchasing activities.

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 May 6, 2024.

TRD-202402020  
Don Neal  
General Counsel, Operations and Support Legal Services  
Comptroller of Public Accounts  
Earliest possible date of adoption: June 16, 2024  
For further information, please call: (512) 475-2220



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT

#### CHAPTER 211. ADMINISTRATION

##### 37 TAC §211.24

The Texas Commission on Law Enforcement (Commission) proposes new 37 Texas Administrative Code §211.24, Licensee Service Report Database. This proposed new rule conforms with the addition of Texas Occupations Code §1701.205 made by Senate Bill 1445 (88R). The proposed new rule outlines the process for an officer or law enforcement agency to request that the service report for certain officers be excluded from the public database and states how long certain user activity will be maintained by the Commission.

Mr. John P. Beauchamp, General Counsel, has determined that for each year of the first five years this proposed new rule will be in effect, there will be no foreseeable fiscal implications to state or local governments as a result of enforcing or administering the proposed amendment.

Mr. Beauchamp has determined that for each year of the first five years this proposed new rule will be in effect, there will be a positive benefit to the public by conforming with Texas Occupations Code §1701.205 to establish a process to exclude service reports for certain officers from the public database. There will be no anticipated economic costs to persons required to comply with the proposed amendment.

Mr. Beauchamp has determined that for each year of the first five years this proposed new rule will be in effect, there will be no adverse economic effects to small businesses, microbusinesses,

or rural communities as a result of implementing the proposed amendment.

Mr. Beauchamp has determined that for each year of the first five years this proposed new rule will be in effect, there will be no effects to a local economy as a result of implementing the proposed amendment.

Mr. Beauchamp has determined the following:

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

The Commission will accept comments regarding the proposed new rule. The comment period will last 30 days following the publication of this proposal in the *Texas Register*. Comments may be submitted electronically to [public.comment@tcole.texas.gov](mailto:public.comment@tcole.texas.gov) or in writing to Mr. John P. Beauchamp, General Counsel, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The new rule is proposed pursuant to Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, and §1701.205, Officer Personal Service Reports. Texas Occupations Code §1701.151 authorizes the Commission to adopt rules for the administration of Occupations Code Chapter 1701. Texas Occupations Code §1701.205 requires the Commission to adopt rules to exclude from the public database service reports for certain officers.

The new rule as proposed affects or implements Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, and §1701.205, Officer Personal Service Reports. No other code, article, or statute is affected by this proposal.

§211.24. Licensee Service Report Database.

(a) The commission will exclude from the public database established under Texas Occupations Code §1701.205 the licensee service report (LSR) of certain officers if including the LSR in the public database would create a safety risk for an undercover officer or an officer involved in an active sensitive operation.

(b) An appointed officer or a law enforcement agency employing the officer may request, on a form prescribed by the commission, the LSR of the officer to be excluded from the public database.

(c) The commission, at the discretion of the executive director, may exclude the LSR of any licensee for good cause shown.

(d) The user activity required to be tracked on the public database will be maintained by the commission for a minimum of three years from creation.

(e) The effective date of this section is September 1, 2024.

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

Filed with the Office of the Secretary of State on May 1, 2024.

TRD-202401947

Gregory Stevens

Executive Director

Texas Commission on Law Enforcement

Earliest possible date of adoption: June 16, 2024

For further information, please call: (512) 936-7700



## CHAPTER 218. CONTINUING EDUCATION

### 37 TAC §218.3

The Texas Commission on Law Enforcement (Commission) proposes amended 37 Texas Administrative Code §218.3, Legislatively Required Continuing Education for Licensees. This proposed amended rule conforms with the amendments made to Texas Occupations Code §§1701.253(q) and 1701.3525 made by Senate Bill 1852 (88R). The proposed amended rule clarifies the continuing education requirements regarding Advanced Law Enforcement Rapid Response Training.

Mr. John P. Beauchamp, General Counsel, has determined that for each year of the first five years this proposed amended rule will be in effect, there will be no foreseeable fiscal implications to state or local governments as a result of enforcing or administering the proposed amendment.

Mr. Beauchamp has determined that for each year of the first five years this proposed amended rule will be in effect, there will be a positive benefit to the public by conforming with Texas Occupations Code §§1701.253 and 1701.3525 to require active shooter response training for law enforcement personnel. There will be no anticipated economic costs to persons required to comply with the proposed amendment.

Mr. Beauchamp has determined that for each year of the first five years this proposed amended rule will be in effect, there will be no adverse economic effects to small businesses, microbusinesses, or rural communities as a result of implementing the proposed amendment.

Mr. Beauchamp has determined that for each year of the first five years this proposed amended rule will be in effect, there will be no effects to a local economy as a result of implementing the proposed amendment.

Mr. Beauchamp has determined the following:

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

- (4) the proposed rule does not require an increase or decrease in fees paid to the agency;
- (5) the proposed rule does not create a new regulation;
- (6) the proposed rule does not expand, limit, or repeal an existing regulation;
- (7) the proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and
- (8) the proposed rule does not positively or adversely affect this state's economy.

The Commission will accept comments regarding the proposed amended rule. The comment period will last 30 days following the publication of this proposal in the *Texas Register*. Comments may be submitted electronically to [publiccomment@tcole.texas.gov](mailto:publiccomment@tcole.texas.gov) or in writing to Mr. John P. Beauchamp, General Counsel, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amended rule is proposed pursuant to Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, and Texas Occupations Code §1701.253, School Curriculum. Texas Occupations Code §1701.151 authorizes the Commission to adopt rules for the administration of Occupations Code Chapter 1701 and to establish minimum standards relating to education and training for the licensing of officers. Texas Occupations Code §1701.253 requires the Commission to establish minimum curriculum requirements.

The amended rule as proposed affects or implements Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, §1701.253, School Curriculum, §1701.351, Continuing Education Required for Peace Officers, and §1701.3525, Active Shooter Response Training Required for Officers. No other code, article, or statute is affected by this proposal.

*§218.3. Legislatively Required Continuing Education for Licensees.*

(a) Each licensee shall complete the legislatively mandated continuing education in this chapter. Each appointing agency shall allow the licensee the opportunity to complete the legislatively mandated continuing education in this chapter. This section does not limit the number or hours of continuing education an agency may provide.

(b) Each training unit (2 years)

(1) Peace officers shall complete at least 40 hours of continuing education, to include the corresponding legislative update for that unit. Peace officers shall complete not less than 16 hours of training on responding to an active shooter as developed by the Advanced Law Enforcement Rapid Response Training Center at Texas State University-San Marcos. All peace officers shall complete ALERRT Level 1 training not later than August 31, 2027. Training for all chief administrators and their designated senior level peace officers shall include ALERRT command and leadership training each training unit.

(2) Telecommunicators shall complete at least 20 hours of continuing education to include cardiopulmonary resuscitation training.

(c) Each training cycle (4 years)

(1) Peace officers who have not yet reached intermediate proficiency certification shall complete: Cultural Diversity (3939), Special Investigative Topics (3232), Crisis Intervention (3843) and De-escalation (1849).

(2) Individuals licensed as reserve law enforcement officers, jailers, or public security officers shall complete Cultural Diversity (3939), unless the person has completed or is otherwise exempted from legislatively required training under another commission license or certificate.

(d) Assignment specific training

(1) Police chiefs: individuals appointed as "chief" or "police chief" of a police department shall complete:

(A) For an individual appointed to that individual's first position as chief, the initial training program for new chiefs provided by the Bill Blackwood Law Enforcement Management Institute, not later than the second anniversary of that individual's appointment or election as chief; and

(B) At least 40 hours of continuing education for chiefs each 24-month unit, as provided by the Bill Blackwood Law Enforcement Management Institute.

(2) Constables: elected or appointed constables shall complete:

(A) For an individual appointed or elected to that individual's first position as constable, the initial training program for new constables provided by the Bill Blackwood Law Enforcement Management Institute, not later than the second anniversary of that individual's appointment or election as constable; and

(B) Each 48 month cycle, at least 40 hours of continuing education for constables, as provided by the Bill Blackwood Law Enforcement Management Institute and a 20 hour course of training in civil process to be provided by a public institution of higher education selected by the Commission.

(3) Deputy constables: each deputy constable shall complete a 20 hour course of training in civil process each training cycle. The commission may waive the requirement for this training if the constable, in the format required by TCOLE, requests exemption due to the deputy constable not engaging in civil process as part of their assigned duties.

(4) New supervisors: each peace officer assigned to their first position as a supervisor must complete new supervisor training within one year prior to or one year after appointment as a supervisor.

(5) School-based Law Enforcement Officers: School district peace officers and school resource officers providing law enforcement services at a school district must obtain a school-based law enforcement proficiency certificate within 180 days of the officer's commission or placement in the district or campus of the district.

(6) Eyewitness Identification Officers: peace officers performing the function of eyewitness identification must first complete the Eyewitness Identification training (3286).

(7) Courtroom Security Officers/Persons: any person appointed to perform courtroom security functions at any level shall complete the Courtroom Security course (10999) within 1 year of appointment.

(8) Body-Worn Cameras: peace officers and other persons meeting the requirements of Occupations Code 1701.656 must first complete Body-Worn Camera training (8158).

(9) Officers Carrying Epinephrine Auto-injectors: peace officers meeting the requirements of Occupations Code 1701.702 must first complete epinephrine auto-injector training.

(10) Jailer Firearm Certification: jailers carrying a firearm as part of their assigned duties must first obtain the Jailer Firearms certificate before carrying a firearm.

(11) University Peace Officers, Trauma-Informed Investigation Training: each university or college peace officer shall complete an approved course on trauma-informed investigation into allegations of sexual harassment, sexual assault, dating violence, and stalking.

(e) Miscellaneous training

(1) Human Trafficking: every peace officer first licensed on or after January 1, 2011, must complete Human Trafficking (3270) within 2 years of being licensed.

(2) Canine Encounters: every peace officer first licensed on or after January 1, 2016, must take Canine Encounters (4065) within 2 years of being licensed.

(3) Deaf and Hard of Hearing Drivers: every peace officer licensed on or after March 1, 2016, must complete Deaf and Hard of Hearing Drivers (7887) within 2 years of being licensed.

(4) Civilian Interaction Training: every peace officer licensed before January 1, 2018, must complete Civilian Interaction Training Program (CITP) within 2 years. All other peace officers must complete the course within 2 years of being licensed.

(5) Crisis Intervention Training: every peace officer licensed on or after April 1, 2018, must complete the 40 hour Crisis Intervention Training within 2 years of being licensed.

(6) Mental Health for Jailers: all county jailers must complete Mental Health for Jailers not later than August 31, 2021.

(f) The Commission may choose to accept an equivalent course for any of the courses listed in this chapter, provided the equivalent course is evaluated by commission staff and found to meet or exceed the minimum curriculum requirements of the legislatively mandated course.

(g) The commission shall provide adequate notice to agencies and licensees of impending non-compliance with the legislatively required continuing education.

(h) The chief administrator of an agency that has licensees who are in non-compliance shall, within 30 days of receipt of notice of non-compliance, submit a report to the commission explaining the reasons for such non-compliance.

(i) Licensees shall complete the legislatively mandated continuing education in the first complete training unit, as required, or first complete training cycle, as required, after being licensed.

(j) All peace officers must meet all continuing education requirements except where exempt by law.

(k) The effective date of this section is TBD [April 1, 2024].

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

Filed with the Office of the Secretary of State on May 1, 2024.

TRD-202401948

Gregory Stevens

Executive Director

Texas Commission on Law Enforcement

Earliest possible date of adoption: June 16, 2024

For further information, please call: (512) 936-7700

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**PART 15. TEXAS FORENSIC SCIENCE COMMISSION**

**CHAPTER 651. DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES**  
**SUBCHAPTER C. FORENSIC ANALYST LICENSING PROGRAM**

**37 TAC §651.202, §651.222**

The Texas Forensic Science Commission (Commission) proposes amendments to 37 Texas Administrative Code §651.202, Definitions, and §651.222, Voluntary Forensic Analyst Licensing Requirements Including Eligibility, License Term, Fee, and Procedure for Denial of Initial Application or Renewal Application and Reconsideration. The amendments add new definitions and create new voluntary license categories for latent print processing technicians, crime scene processing technicians, crime scene investigation analysts, and crime scene reconstruction analysts and elevate the minimum education requirement for document examiners from a high school diploma to a baccalaureate based on input received from the document examiner community.

**Background and Justification.** Under the amended rules, crime scene processing technicians, crime scene investigation analysts, and crime scene reconstruction analysts may apply for a voluntary license by the Commission. The Commission also defines certain crime scene processing and reconstruction and document examination terms for clarity. The amendments are necessary to reflect adoptions made by the Commission at its April 26, 2024 quarterly meeting at which the Commission voted to incorporate the changes to its administrative rules expanding its voluntary licensing program to include these new licenses and updates to the document examiner voluntary license.

**Fiscal Impact on State and Local Government.** Leigh M. Tomlin, Associate General Counsel of the Commission, has determined that for each year of the first five years the new rule is in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. There is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the proposed rule amendments.

**Local Employment Impact Statement.** The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code §2001.022.

**Probable Economic Costs to Persons Required to Comply with Proposal.** 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.

**Public Benefit.** Ms. Tomlin has also determined that for each year of the first five years the new rule is in effect, the anticipated public benefit is an option for crime scene practitioners not eligible for mandatory licensure in the State to achieve a voluntary license by the Commission and for better assurance of the quality and educational background of voluntarily licensed forensic document examiners in the State. Voluntary license requirements encourage forensic practitioner participation in continuing

education requirements, compliance with the Texas Forensic Analyst and Crime Laboratory Manager's Code of Professional Responsibility, and a general forensic analyst licensing exam that includes a required understanding of forensic analyst disclosure obligations designed to improve the integrity and reliability of forensic science in Texas courtrooms for practitioners who opt into the voluntary license.

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

Takings Impact Assessment. Ms. Tomlin has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Texas Government Code §2007.043.

Government Growth Impact Statement. Ms. Tomlin has determined that for the first five-year period, implementation of the proposed amendments will have no government growth impact. Pursuant to the analysis required by Government Code 2001.0221(b), 1) the proposed rule does not create or eliminate a government program; 2) implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions; 3) implementation of the proposed rule does not increase or decrease future legislative appropriations to the agency; 4) the proposed rule does require a fee, but the fee associated with the new license categories is voluntary for those wishing to achieve licensure in one of the three new categories of voluntary licensure; 5) the proposed rule does not create a new regulation; 6) the proposed rule does not expand, limit, or repeal an existing regulation; 7) the proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and 8) the proposed rule has no effect on the state's economy.

Environmental Rule Analysis. The Commission has determined that the proposed rules are not brought with specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Commission asserts that the proposed rules are not a "major environmental rule," as defined in Texas Government Code §2001.0225. As a result, the Commission asserts the preparation of an environmental impact analysis, as provided by §2001.0225, is not required.

Request for Public Comment. The Commission invites comments on the proposal from any member of the public. Please submit comments to Leigh M. Tomlin, 1700 North Congress Avenue, Suite 445, Austin, Texas 78701 or leigh@fsc.texas.gov. Comments must be received by June 1, 2024, to be considered by the Commission.

Statutory Authority. The rules are proposed under the Commission's general rulemaking authority provided in Code of Criminal Procedure, Article 38.01 § 3-a, its authority to regulate forensic analysts under Article 38.01 § 4-a, and its authority to establish voluntary licensing programs for forensic examinations or tests not subject to accreditation requirements under Article 38.01 § 4-a(c).

Cross reference to statute. The proposal affects Tex. Code Crim. Proc. art. 38.01 §§ 4-a and 4-a(c).

#### §651.202. *Definitions.*

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

(1) ~~[(4)]~~ Accredited laboratory - Includes a public or private laboratory or other entity that conducts forensic analysis as defined in Article 38.35, Code of Criminal Procedure and is accredited by a national accrediting body recognized by the Commission and listed in §651.4 of this title (relating to List of Recognized Accrediting Bodies).

(2) ~~[(6)]~~ Accredited university - A college or university accredited by a national accrediting body recognized by the United States Department of Education, or a foreign university with a degree program(s) recognized as equivalent by the Commission.

(3) Crime scene investigation - Includes locating, documenting, and preserving evidence at a crime scene as well as analysis of selected evidence for purposes of assessing suitability for additional forensic testing. It does not include the application of the scientific method to evaluate information regarding a scene, which would be considered crime scene reconstruction.

(4) Crime scene processing - Includes locating, documenting, and preserving evidence at a crime scene, but does not include any analytical activities with respect to the evidence.

(5) ~~[(10)]~~ Crime scene reconstruction -The application of the scientific method to evaluate information regarding a crime scene from all reasonably available sources such as scene documentation, investigative reports, physical evidence, laboratory reports, autopsy documentation, photographs, video, and witness statements. Crime scene reconstruction--as distinguished from crime scene processing or crime scene investigation--includes the application of analytical methods beyond general observations or opinions about the scene to identify and test hypotheses.

(6) Document examination - Includes the scientific examinations, analyses, and comparisons of documents in order to determine the origin, authenticity, and authorship.

(7) ~~[(2)]~~ Forensic analysis - Has the meaning assigned by Article 38.35, Code of Criminal Procedure.

(8) ~~[(1)]~~ Forensic analyst - A person who on behalf of a crime laboratory accredited under Article 38.01 §4-d, Code of Criminal Procedure, technically reviews or performs a forensic analysis or draws conclusions from or interprets a forensic analysis for a court or crime laboratory. The term does not include a medical examiner or other forensic pathologist who is a licensed physician.

(9) ~~[(12)]~~ Forensic anthropology - Includes the application of anthropological methods and theory, particularly those relating to the recovery and analysis of human remains.

(10) ~~[(3)]~~ Forensic pathology - Includes that portion of an autopsy conducted by a medical examiner or other forensic pathologist who is a licensed physician.

(11) ~~[(9)]~~ Interpretation for toxicology - Interpretation is the consideration of dose-response relationships between drugs, alcohol, or other compounds of interest and the resulting behavioral or physical changes to human performance, including the evaluation of pharmacokinetic and pharmacodynamics parameters. Examples include but are not limited to: calculation of dose or other pharmacokinetic calculations; determination of drug/drug interactions; determination (or reporting) of therapeutic, toxic, or lethal drug ranges; evaluation of drug absorption, distribution, metabolism, or excretion; and determination of the effects (mental or physical).



(12) [(14)] Latent print examination - Includes the forensic examination of friction ridge detail from the hands and feet.

(13) Latent print processing -Includes identifying and preserving latent prints from items obtained at a crime scene utilizing appropriate visual, physical, and/or chemical techniques with sequential processing to develop latent, patent, and/or plastic prints from a substrate.

(14) [(5)] Physical evidence - Has the meaning assigned by Article 38.35, Code of Criminal Procedure.

(15) [(7)] Professional misconduct - The forensic analyst or crime laboratory, through a material act or omission, deliberately failed to follow the standard of practice that an ordinary forensic analyst or crime laboratory would have followed, and the deliberate act or omission would substantially affect the integrity of the results of a forensic analysis. An act or omission was deliberate if the forensic analyst or crime laboratory was aware of and consciously disregarded an accepted standard of practice required for a forensic analysis.

(16) [(8)] Technician - An individual who performs basic analytical functions under the supervision of a qualified analyst, but does not evaluate data, reach conclusions, or sign any report for court or investigative purposes, shall be considered a technician under the disciplines set forth in this section, with the exception of a Firearms/Toolmarks Technician who may issue a report provided it is limited to a representation that a firearm was test-fired and/or cartridge cases were entered into the National Integrated Ballistics Information Network.

§651.222. *Voluntary Forensic Analyst and Technician Licensing Requirements [Including Eligibility, License Term, Fee and Procedure for Denial of Initial Application or Renewal Application and Reconsideration].*

(a) Issuance. The Commission may issue an individual's forensic analyst or technician license for forensic examinations or tests not subject to accreditation under this section.

(b) Voluntary. Licensure under this section is voluntary and is not a prerequisite for practice in any of the forensic disciplines listed in this section.

(c) The following forensic disciplines are eligible for a forensic analyst or forensic technician license under this section:

(1) forensic anthropology;

(2) document examination, including document authentication, physical comparison, qualitative determination, and recovery [product determination];

(3) latent print examination, including the forensic examination of friction ridge detail from the hands and feet; [and]

(4) latent print processing, including identifying and preserving latent prints from items obtained at a crime scene utilizing appropriate visual, physical, and/or chemical techniques with sequential processing to develop latent, patent, and/or plastic prints from a substrate;

(5) [(4)] digital/multimedia evidence (limited to computer, mobile, vehicle, call detail records (*i.e.*, phone carrier record comparisons to mobile device), and location detail records); and [-]

(6) crime scene, with the following sub-disciplines:

(A) crime scene processing technician, including crime scene documentation (scene notes, photography, sketching, laser scanning), and evidence identification, collection, preservation, and submission;

(B) crime scene investigation analyst, including crime scene processing activities as well as the application of analytical techniques used for evidence triage such as chemical and presumptive testing. It may also include the issuance of a report on crime scene documentation and/or crime scene processing;

(C) crime scene reconstruction analyst, including crime scene processing activities, crime scene investigation activities, and any forensic activities requiring the application of the scientific method to evaluate information regarding a crime scene from all reasonably available sources such as scene documentation, investigative reports, physical evidence, laboratory reports, autopsy documentation, photographs, video, and witness statements;

(D) crime scene reconstruction analyst, with specific recognition in bloodstain pattern analysis, including all crime scene reconstruction activities described in subparagraph (C) of this paragraph; and

(E) crime scene reconstruction analyst, with specific recognition in shooting incident reconstruction, including crime scene reconstruction activities described in subparagraph (C) of this paragraph.

(d) Application. Before being issued a forensic analyst license, an applicant shall complete and submit to the Commission a current forensic analyst license application and provide documentation that he or she has satisfied all applicable requirements set forth under this section.

(e) Minimum Education Requirements.

(1) Document Examination Analyst. An applicant for a forensic analyst license in document examination must have a baccalaureate or advanced degree from an accredited university [high school diploma or equivalent degree or higher (*i.e.*, baccalaureate or advanced degree)].

(2) Forensic Anthropologist. An applicant for a forensic analyst license in forensic anthropology must be certified by the American Board of Forensic Anthropology (ABFA), including fulfillment of any minimum education requirements required to comply with and maintain ABFA certification at the time of the candidate's application for a license.

(3) Latent Print Analyst. An applicant for a forensic analyst license in latent print examination must have:

(A) A baccalaureate or advanced degree from an accredited university;

(B) 3 years of experience in latent print examination with an Associates of Arts or Associates of Science; or

(C) 4 years of experience in latent print examination and 176 hours of training that includes 16 hours of testimonial training (with only a maximum of 80 conference hours accepted as training hours).

(4) Latent Print Processing Technician. An applicant for a forensic technician license in latent print processing must have a minimum of a high school diploma or equivalent degree.

(5) [(4)] Digital/Multimedia Evidence Analyst. An applicant for a forensic analyst license in digital/multimedia evidence must have:

(A) a baccalaureate or advanced degree from an accredited university;

(B) a non-law enforcement or non-military background without a baccalaureate degree, demonstrating equivalent digital skill

set through Certified Forensic Computer Examiner (CFCE), Global Information Assurance Certification Certified Forensic Examination (GCFE), or Global Information Assurance Certification Certified Forensic Analyst (GCFA) or equivalent non-vendor certification examination(s) with competency test(s); or

(C) law enforcement or military experience equivalent demonstrated through forensic training through one of the following organizations: SysAdmin, Audit, Network, and Security (SANS), International Association for Computer Investigative Specialists (IACIS), National White Collar Crime Center (NW3C), Law Enforcement & Emergency Services Video Association International, Inc. (LEVA), U.S. Military, Computer Analysis Response Team (CART) (FBI Training), Seized Computer Evidence Recovery Specialist (SCERS), or U.S. Secret Service.

(6) Crime Scene Reconstruction Analyst. An applicant for a forensic analyst license in crime scene reconstruction, crime scene reconstruction with specific recognition in bloodstain pattern analysis, or crime scene reconstruction with specific recognition in shooting incident reconstruction must have a minimum of an associate's degree or equivalent degree.

(7) Crime Scene Investigation Analyst. An applicant for a forensic analyst license limited to the crime scene investigation category of licensure must have a minimum of a high school diploma or equivalent degree.

(8) Crime Scene Processing Technician. An applicant for a forensic technician license limited to the crime scene processing technician category of licensure must have a minimum of a high school diploma or equivalent degree.

(9) [(5)] Foreign/Non-U.S. degrees. The Commission shall recognize equivalent foreign, non-U.S. baccalaureate or advanced degrees. The Commission reserves the right to charge licensees a reasonable fee for credential evaluation services to assess how a particular foreign degree compares to a similar degree in the United States. The Commission may accept a previously obtained credential evaluation report from an applicant or licensee in fulfillment of the degree comparison assessment.

(f) Specific Coursework Requirements and Certification Requirements.

(1) General Requirement for Statistics. With the exception of the categories of licensure specifically exempt in this subsection, an [An] applicant for any forensic analyst license under this section must have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission.

(2) Forensic Discipline-Specific Coursework Requirements.

(A) Document Examination Analyst. An applicant for a forensic analyst license in document examination must have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission. No other specific college-level coursework is required.

(B) Forensic Anthropologist. An applicant for a forensic analyst license in forensic anthropology must be certified by the American Board of Forensic Anthropology (ABFA), including fulfillment of any specific coursework requirements necessary [required] to comply with and maintain ABFA certification at the time of the candidate's application for a license.

(C) Latent Print Analyst.

(i) An applicant for a forensic analyst license in latent print examination who qualifies for a latent print analyst license based on the minimum education requirements set forth in subsection (d)(3)(A) or (B) of this section must have a minimum of 24 semester-credit hours or equivalent in science, technology, engineering, or mathematics (STEM) related coursework.

(ii) All applicants for a forensic analyst license in latent print examination must have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission.

(iii) IAI Certification Requirement for Unaccredited Laboratory. All licensed latent print examination analysts and applicants who are not employed by a laboratory accredited by the Commission are required to be certified by the International Association for Identification (IAI) under the IAI's Latent Print Certification program and are required to provide proof of certification upon request. Licensees are required to notify the Commission of any change in the status of their IAI certification within ten (10) business days of any changes.

(D) Digital/Multimedia Evidence Analyst. An applicant for a forensic analyst license in digital/multimedia evidence must have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission. No other specific college-level coursework is required.

(E) Crime Scene Processing Technician. An applicant for a forensic technician license in crime scene processing must successfully complete the Texas Commission on Law Enforcement Course Number 2106 Intermediate Crime Scene Search (Revised 2019 or later).

(F) Crime Scene Investigation Analyst. An applicant for a forensic analyst license in crime scene investigation must successfully complete the Texas Commission on Law Enforcement Course Number 2106 Intermediate Crime Scene Search (Revised 2019 or later) and must complete a minimum of 240 hours of forensic-related training courses which may include in-house mentorship training.

(G) Crime Scene Reconstruction Analyst. An applicant for a forensic analyst license in crime scene reconstruction must have twelve-semester credit hours of college-level courses or equivalent coursework approved by the Commission that includes fluid dynamics, math, and physics; a forty-hour crime scene reconstruction course approved by the Commission; 440 additional hours of forensic-related courses approved by the Commission which may include documented in-house mentorship programs; and have successfully completed the Texas Commission on Law Enforcement Course Number 2106 Intermediate Crime Scene Search (Revised 2019 or later).

(H) Crime Scene Reconstruction Analyst, with specific recognition in bloodstain pattern analysis. An applicant for a forensic analyst license in crime scene reconstruction, with specific recognition in bloodstain pattern analysis, must have a forty-hour crime scene reconstruction course approved by the commission, two forty-hour advanced courses taught by two different instructors in blood pattern analysis with syllabi accepted by the International Association of Bloodstain Pattern Analysts (IABPA) or the International Association for Identification (IAI) for certification, a forty-hour fluid dynamics course approved by the Commission, a forty-hour math and physics course approved by the Commission, twenty-four hours of instruction involving presentation and preparation of demonstrative evidence such as 3D modeling, courtroom demonstratives, and 440 additional hours of forensic-related courses approved by the Commission which may include documented in-house mentorship programs, and have successfully completed the Texas Commission on Law Enforcement

Course Number 2106 Intermediate Crime Scene Search (Revised 2019 or later).

(I) Crime Scene Reconstruction Analyst, with specific recognition in shooting incident reconstruction and crime scene reconstruction. An application for a forensic analyst license in crime scene reconstruction, with specific recognition in shooting incident reconstruction must have a forty-hour crime scene reconstruction course approved by the commission, two forty-hour shooting incident reconstruction courses taught by two different instructors in shooting incident reconstruction with syllabi accepted by the International Association for Identification (IAI), the Association of Firearm and Toolmark Examiners (AFTE), or the Association for Crime Scene Reconstruction (ACSR) for certification and approved by the Commission, twenty-four hours of instruction involving presentation and preparation of demonstrative evidence such as 3D modeling and courtroom demonstrations, 440 additional hours of forensic-related courses approved by the Commission which may include documented in-house mentorship programs, and have successfully completed the Texas Commission on Law Enforcement Course Number 2106 Intermediate Crime Scene Search (Revised 2019 or later).

(3) Exemptions from Specific Coursework Requirements.

(A) Previously Licensed Document Examination Analyst Exemption. An applicant for a voluntary forensic analyst license previously licensed by the Commission when licensure was mandatory for the discipline is exempt from any specific coursework requirements in this subsection.

(B) An applicant for the technician license category of any forensic discipline set forth in this subchapter is not required to fulfill any specific college-level coursework requirements, including the three-semester credit hour (or equivalent) college-level statistics course component for licensure.

(C) An applicant for a forensic analyst license limited to the crime scene investigation analyst category of licensure is not required to fulfill the three-semester credit hour (or equivalent) college-level statistics course component for licensure.

(g) Work Experience.

(1) Crime Scene Reconstruction Analyst. An applicant for any forensic analyst license in crime scene reconstruction must have a minimum of five years' experience working in crime scene settings.

(2) Crime Scene Investigation Analyst. An applicant for a forensic analyst license in crime scene investigation must have a minimum of one year of experience working in crime scene settings.

(h) [(g)] General Forensic Analyst Licensing Exam Requirement.

(1) Exam Requirement. An applicant for a forensic analyst license under this section must pass the General Forensic Analyst Licensing Exam administered by the Commission.

(A) An applicant is required to take and pass the General Forensic Analyst Licensing Exam one time.

(B) An applicant may take the General Forensic Analyst Licensing Exam no more than three times. If an applicant fails the General Forensic Analyst Licensing Exam three times, the applicant has thirty (30) days from the date the applicant receives notice of the failure to request special dispensation from the Commission as described in subparagraph (C) of this paragraph. Where special dispensation is granted, the applicant has 90 days from the date he or she receives notice the request for exam is granted to successfully complete

the exam requirement. However, for good cause shown, the Commission or its Designee at its discretion may waive this limitation.

(C) Requests for Exam. If an applicant fails the General Forensic Analyst Licensing Exam three times, the applicant must request in writing special dispensation from the Commission to take the exam more than three times. Applicants may submit a letter of support from their employing agency's director or licensing representative and any other supporting documentation supplemental to the written request.

(D) If an applicant sits for the General Forensic Analyst Licensing Exam more than three times, the applicant must pay a \$50 exam fee each additional time the applicant sits for the exam beyond the three initial attempts.

(E) Modified General Forensic Analyst Licensing Exam. Forensic Technicians in any disciplines set forth in this subchapter, including latent print processing technicians, crime scene processing technicians and crime scene investigation analysts, may fulfill the General Forensic Analyst Licensing Exam requirement by taking a modified exam administered by the Commission.

(2) Credit for Pilot Exam. If an individual passes a Pilot General Forensic Analyst Licensing Exam, regardless of his or her eligibility status for a voluntary or mandatory Forensic Analyst License at the time the exam is taken, the candidate has fulfilled the General Forensic Analyst Licensing Exam Requirement of this subsection.

(i) Continuing Education Requirements. All continuing education requirements outlined in §651.208(g) - (i) of this subchapter (relating to Forensic Analyst and Forensic Technician License Renewal) apply to this section.

(j) [(h)] Proficiency Monitoring Requirement.

(1) Requirement for Applicants Employed by an Accredited Laboratory. An applicant who is employed by an accredited laboratory must demonstrate the applicant participates in the laboratory's process for intraagency [intra-laboratory] comparison, interagency [inter-laboratory] comparison, proficiency testing, or observation-based performance monitoring requirements in compliance with and on the timeline set forth by the laboratory's accrediting body's proficiency monitoring requirements as applicable to the Forensic Analyst's or Forensic Technician's specific forensic discipline and job duties.

(2) Requirement for Applicants Not Employed at an Accredited Laboratory or at an Accredited Laboratory in an Unaccredited Forensic Discipline. An applicant who is employed by an entity other than an accredited laboratory or performs a forensic examination or test at an accredited laboratory in a forensic discipline not covered by the scope of the laboratory's accreditation must demonstrate the applicant participates in the laboratory or employing entity's process for intraagency [intra-laboratory] comparison, interagency [inter-laboratory] comparison, proficiency testing, or observation-based performance monitoring requirements in compliance with and on the timeline set forth by the laboratory or employing entity's Commission-approved process for proficiency monitoring as applicable to the Forensic Analyst's or Forensic Technician's specific forensic discipline and job duties.

(3) A signed certification by the laboratory or entity's authorized representative that the applicant has satisfied the applicable proficiency monitoring requirements, including any intraagency [intra-laboratory] comparison, inter-laboratory comparisons, proficiency testing, or observation-based performance monitoring requirements in paragraph (1) or (2) of this subsection as of the date of the analyst's application must be provided on the Proficiency Moni-

toring Certification form provided by the Commission. The licensee's authorized representative must designate the specific forensic discipline in which the Forensic Analyst or Forensic Technician actively performs forensic casework or is currently authorized to perform supervised or independent casework.

(4) Applicants employed by an entity other than an accredited laboratory or performing forensic examinations or tests at an accredited laboratory in a discipline not covered by the scope of the laboratory or employing entity's accreditation must include written proof of the Forensic Science Commission's approval described in (5) of this subsection with the Proficiency Monitoring Certification form required in (3) of this subsection. The applicant must include written documentation of performance in conformance with expected consensus results for the laboratory or employing entity's Commission-approved activities or exercise(s) as applicable to the applicant's specific forensic discipline and job duties in compliance with and on the timeline set forth by the laboratory or employing entity's Commission-approved process for proficiency monitoring.

(5) Applicants employed by an entity other than an accredited laboratory or performing forensic examinations or tests at an accredited laboratory in a discipline not covered by the scope of the laboratory or employing entity's accreditation seeking approval of proficiency monitoring activities or exercise(s) must seek prior approval of the activities or exercise(s) from the Commission.

(6) Special Proficiency Testing Requirements for Latent Print Analysts and Latent Print Processing Technicians.

(A) Where available and appropriate for the job function(s) being tested, proficiency tests shall be obtained from an external source through participation in a proficiency testing program offered by a provider accredited to the ISO/IEC 17043 international standard.

(B) Where not available or not appropriate for the job function(s) being tested, proficiency tests may be obtained from an external source through participation in an interagency [~~interlaboratory~~] comparison or developed internally by the employing laboratory or entity through participation in an interagency [~~interlaboratory~~] comparison or intraagency [~~intra~~laboratory] comparison.

(C) All latent print examiner and latent print processing technician proficiency tests selected shall be developed and validated in accordance with the requirements set forth in Sections 4.2 and 4.3 of the Organization of Scientific Area Committees for Forensic Science (OSAC) 2022-S-0012 Friction Ridge Subcommittee's Standard for Proficiency Testing in Friction Ridge Examination.

(7) Special Proficiency Testing Requirements for Crime Scene Processing Technicians, Crime Scene Investigation Analysts, and Crime Scene Reconstruction Analysts.

(A) Where available and appropriate for the job function(s) being tested, proficiency tests shall be obtained from an external source through participation in a proficiency testing program offered by a provider accredited to the ISO/IEC 17043 international standard.

(B) Where not available or not appropriate for the job function(s) being tested, proficiency tests may be obtained from an external source through participation in an interagency comparison or developed internally by the employing laboratory or entity through participation in an interagency comparison or intraagency comparison.

(k) [(j)] Employing Laboratory or Agency Quality Requirement for Forensic Analysts. Applicants for a forensic analyst license under this section must be employed by a laboratory or agency that can demonstrate, regardless of Commission accreditation status, compliance with specific standards as applicable to the applicant's forensic

discipline as published on the Commission's website and updated January 15 of each calendar year.

(l) [(j)] License Term and Fee.

(1) A Forensic Analyst license issued under this section shall expire two years from the date the applicant is granted a license.

(2) Application Fee. A Forensic Analyst or Forensic Technician license applicant or current licensee under this section shall pay the following fee(s) as applicable:

(A) Initial Application fee of \$220 for Analysts and \$150 for Technicians

(B) Biennial renewal fee of \$200 for Analysts and \$130 for Technicians

(C) License Reinstatement fee of \$220; or

(D) Special Exam Fee of \$50 for General Forensic Analyst Licensing Exam, required only if testing beyond the three initial attempts.

(m) [(k)] Forensic Analyst License Renewal. [~~Renewal of a Forensic Analyst License.~~] Applicants for renewal of a Forensic Analyst License must comply with §651.208 of this subchapter (relating to Forensic Analyst and Forensic Technician License Renewal) [~~of this subchapter~~].

(n) [(l)] Forensic Analyst License Expiration and Reinstatement. [~~Expiration and Reinstatement of a Forensic Analyst License.~~] A Forensic Analyst must comply with §651.209 of this subchapter (Forensic Analyst and Forensic Technician License Expiration and Reinstatement).

(o) [(m)] Procedure for Denial of Initial Application or Renewal Application and Reconsideration.

(1) Application Review. The Commission Director or Designee must review each initial application or renewal application and determine whether the applicant meets the qualifications and requirements set forth in this subchapter. If a person who has applied for a forensic analyst license under this section does not meet the qualifications or requirements set forth in this subchapter and has submitted a complete application, the Director or Designee must consult with members of the Licensing Advisory Committee before denying the application.

(2) Denial of Application. The Commission, through its Director or Designee, may deny an initial or renewal application if the applicant fails to meet any of the qualifications or requirements set forth in this subchapter.

(3) Notice of Denial. The Commission, through its Director or Designee, shall provide the applicant a written statement of the reason(s) for denial of the initial or renewal application.

(4) Request for Reconsideration. Within twenty (20) days of the date of the notice that the Commission has denied the application, the applicant may request that the Commission reconsider the denial. The request must be in writing, identify each point or matter about which reconsideration is requested, and set forth the grounds for the request for reconsideration.

(5) Reconsideration Procedure. The Commission must consider a request for reconsideration at its next meeting where the applicant may appear and present testimony.

(6) Commission Action on Request. After reconsidering its decision, the Commission may either affirm or reverse its original decision.

(7) Final Decision. The Commission, through its Director or Designee, must notify the applicant in writing of its decision on reconsideration within fifteen (15) business days of the date of its meeting where the final decision was rendered.

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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TRD-202401937

Leigh Tomlin

Associate General Counsel

Texas Forensic Science Commission

Earliest possible date of adoption: June 16, 2024

For further information, please call: (512) 936-0661



### 37 TAC §651.207, §651.208

The Texas Forensic Science Commission (Commission) proposes amendments to 37 Texas Administrative Code Chapter §651.207, Forensic Analyst Licensing Requirements, Including License Term, Fee, and Procedure for Denial of Application and Reconsideration, and §651.208, Forensic Analyst and Technician License Renewal. The amendments change the Commission's current policy for forensic analyst and forensic technician licenses to expire on the last day of the licensee's birth month to apply only to current licensees who were initially licensed before January 1, 2024, and are renewing on or before December 31, 2026. Under the proposed rule changes, new license applicants will expire two years from the date of initial licensure. The proposed rule changes also expressly expand the eligibility requirements for the Commission's General Forensic Analyst Licensing Exam to include eligible voluntary license applicants employed at a laboratory or agency. Under the current rules, the eligibility is implied (but not expressly stated) since voluntary licensees are required to take the exam.

**Background and Justification.** Under the current license expiration rules, forensic analyst and forensic technician licenses expire on the last day of the licensee's birth month after each two-year license cycle, rather than every two years from their initial application. At the inception of the Commission's forensic analyst licensing program on January 1, 2019, a majority of the Commission's licenses expired at the same time in the even-numbered years during the Fall months, placing a heavy administrative burden both on Commission staff and licensees waiting on their licenses to be renewed at the same time. The Commission recently transitioned to last-day-of-birth-month expiration dates, which included a pro-ration of initial licensure and renewal fees and applicable continuing forensic education hours. The transition has eased the burden on staff and licensees processing license renewals for current licensees at the same time each year. However, the same dilemma does not apply for new applicants for licensure as they apply and are granted an initial license at different times throughout the year. Therefore, the rule changes adjust the last-day-of-birth-month expiration policy to apply only to current licensees who were initially licensed before January 1, 2024 and are renewing on or before December 31, 2026 and propose that new license applicants expire two years from the date of initial licensure. These amendments are necessary to reflect adoptions made by the Commission at its April 26, 2024 quarterly meeting at which the Commission voted to change its

current license expiration policy for new applicants to expire two years from the date of initial licensure.

**Fiscal Impact on State and Local Government.** Leigh M. Tomlin, Associate General Counsel of the Commission, has determined that for each year of the first five years the new rule is in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. There is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the proposed rule amendments.

**Local Employment Impact Statement.** The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code §2001.022.

**Probable Economic Costs to Persons Required to Comply with Proposal.** 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.

**Public Benefit.** Ms. Tomlin has also determined that for each year of the first five years the new rule is in effect, the anticipated public benefit is a more efficient license term process, not requiring any proration of fees or continuing forensic education hours, for forensic analysts and forensic technicians applying for a license for the first time in the State of Texas.

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

**Takings Impact Assessment.** Ms. Tomlin has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

**Government Growth Impact Statement.** Ms. Tomlin has determined that for the first five-year period, implementation of the proposed amendments will have no government growth impact. Pursuant to the analysis required by Government Code 2001.221(b): 1) the proposed rule does not create or eliminate a government program; 2) implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions; 3) implementation of the proposed rule does not increase or decrease future legislative appropriations to the agency; 4) the proposed rule requires payment of regular licensing fees by new applicants rather than a prorated fee under the former birth month expiration policy; 5) the proposed rule does not create a new regulation; 6) the proposed rule does not expand, limit, or repeal an existing regulation; 7) the proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and 8) the proposed rule has no effect on the state's economy.

**Environmental Rule Analysis.** The Commission has determined that the proposed rules are not brought with specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Commission asserts that the proposed rules are not a "major environmental rule," as defined

in Government Code §2001.0225. As a result, the Commission asserts the preparation of an environmental impact analysis, as provided by §2001.0225, is not required.

**Request for Public Comment.** The Commission invites comments on the proposal from any member of the public. Please submit comments to Leigh M. Tomlin 1700 North Congress Avenue, Suite 445, Austin, Texas 78701 or [leigh@fsc.texas.gov](mailto:leigh@fsc.texas.gov). Comments must be received by June 1, 2024 to be considered by the Commission.

**Statutory Authority.** The amendments are proposed under the general rulemaking authority provided in Code of Criminal Procedure, Article 38.01 §§3-a and its authority to license forensic analysts under §4-a(b).

**Cross reference to statute.** The proposal affects Tex. Code Crim. Proc. art. 38.01.

*§651.207. Forensic Analyst and Forensic Technician Licensing Requirements, Including Initial License Term and Fee, Minimum Education and Coursework, General Forensic Examination, Proficiency Monitoring and Mandatory Legal and Professional Responsibility Training.*

(a) **Issuance.** The Commission may issue an individual's Forensic Analyst or Forensic Technician License under this section.

(b) **License Term.** A Forensic Analyst or Forensic Technician license holder must renew the license holder's license every two years on the day before the issuance of the initial license with the exception of §651.208(b) of this subchapter (relating to Renewal Term).

(c) **Application.** Before being issued a Forensic Analyst or Forensic Technician License, an applicant must:

(1) demonstrate that he or she meets the definition of Forensic Analyst or Forensic Technician set forth in this subchapter;

(2) complete and submit to the Commission a current Forensic Analyst or Forensic Technician License Application form;

(3) pay the required fee(s) as applicable:

(A) Initial Application fee of \$220 for Analysts and \$150 for Technicians/Screeners;

(B) Biennial renewal fee of \$200 for Analyst and \$130 for Technicians/Screeners;

(C) [(A)] Pro-rated Fees for Certain License {Licenses} Renewals. This subsection applies to licensees initially licensed before January 1, 2024 who are renewing on or before December 31, 2026. Initial Application fee of \$220 for Analysts and \$150 for Technicians for the twenty-four months of the Initial License Term. If the Analyst or Technician's renewed license term [Initial License Term] under §651.208(b) [subsection (b)] of this subchapter [section] exceeds twenty-four months, the Analyst or Technician shall pay an additional prorated amount of \$8.33 per month (for Analysts) and \$5.42 per month (for Technicians) for each month exceeding two years. If the Analyst or Technician's Initial License Term under §651.208(b) [subsection (b)] of this subchapter [section] is less than twenty-four months, the Analyst or Technician shall pay a prorated amount of \$8.33 per month (for Analysts) and \$5.42 per month (for Technicians) for each month in the Initial License Term;

(D) [(B)] Temporary License fee of \$100;

(E) [(C)] Provisional License fee of \$110 for Analysts and \$75 for Technicians; An applicant who is granted a provisional license and has paid the required fee will not be required to pay an

additional initial application fee if the provisional status is removed within one year of the date the provisional license is granted;

(F) [(D)] License Reinstatement fee of \$220;

(G) [(E)] *De Minimis* License fee of \$200 per ten (10) licenses;

(H) [(F)] Uncommon Forensic Analysis License fee of \$200 per ten (10) licenses; and/or

(I) [(G)] Special Exam Fee of \$50 for General Forensic Analyst Licensing Exam, required only if testing beyond the three initial attempts or voluntarily taking the exam under the Unaccredited Forensic Discipline Exception described in subsection (g)(5)(C) of this section;

(4) provide accurate and current address and employment information to the Commission and update the Commission within five (5) business days of any change in address or change of employment. Licensees are required to provide a home address, email address, and employer name and address on an application for a license; and

(5) provide documentation that he or she has satisfied all applicable requirements set forth under this section.

(d) [(e)] Minimum Education Requirements.

(1) **Seized Drugs Analyst.** An applicant for a Forensic Analyst License in seized drugs must have a baccalaureate or advanced degree in chemical, physical, biological science, chemical engineering or forensic science from an accredited university.

(2) **Seized Drugs Technician.** An applicant for a Forensic Analyst License limited to the seized drug technician category must have a minimum of an associate's degree or equivalent.

(3) **Toxicology (Toxicology Analyst (Alcohol Only, Non-interpretive), Toxicology Analyst (General, Non-interpretive), Toxicologist (Interpretive)).** An applicant for a Forensic Analyst License in toxicology must have a baccalaureate or advanced degree in a chemical, physical, biological science, chemical engineering or forensic science from an accredited university.

(4) **Toxicology Technician.** An applicant for a Forensic Analyst License limited to the toxicology technician category must have a minimum of an associate's degree or equivalent.

(5) **Forensic Biology (DNA Analyst, Forensic Biology Screener, Nucleic Acids other than Human DNA Analyst, Forensic Biology Technician).** An applicant for any category of forensic biology license must have a baccalaureate or advanced degree in a chemical, physical, biological science or forensic science from an accredited university.

(6) **Firearm/Toolmark Analyst.** An applicant for a Forensic Analyst License in firearm/toolmark analysis must have a baccalaureate or advanced degree in a chemical, physical, biological science, engineering or forensic science from an accredited university.

(7) **Firearm/Toolmark Technician.** An applicant for a Forensic Analyst License limited to firearm/toolmark technician must have a minimum of a high school diploma or equivalent degree.

(8) **Materials (Trace) Analyst.** An applicant for a Forensic Analyst License in materials (trace) must have a baccalaureate or advanced degree in a chemical, physical, biological science, chemical engineering or forensic science from an accredited university. A Materials (Trace) Analyst performing only impression evidence analyses must have a minimum of a high school diploma or equivalent degree.

(9) Materials (Trace) Technician. An applicant for a Forensic Analyst License limited to materials (trace) technician must have a minimum of a high school diploma or equivalent degree.

(10) Foreign/Non-U.S. degrees. The Commission shall recognize equivalent foreign, non-U.S. baccalaureate or advanced degrees. The Commission reserves the right to charge licensees a reasonable fee for credential evaluation services to assess how a particular foreign degree compares to a similar degree in the United States. The Commission may accept a previously obtained credential evaluation report from an applicant or licensee in fulfillment of the degree comparison assessment.

(11) If an applicant does not meet the minimum education qualifications outlined in this section, the procedure in subsection (f) or (j) of this section applies.

(c) ~~(d)~~ Specific Coursework Requirements.

(1) Seized Drugs Analyst. An applicant for a Forensic Analyst License in seized drugs must have a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework from an accredited university. In addition to the chemistry coursework, an applicant must also have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission.

(2) Toxicology. An applicant for a Forensic Analyst License in toxicology must fulfill required courses as appropriate to the analyst's role and training program as described in the categories below:

(A) Toxicology Analyst (Alcohol Only, Non-interpretive). A toxicology analyst who conducts, directs or reviews the alcohol analysis of forensic toxicology samples, evaluates data, reaches conclusions and may sign a report for court or investigative purposes, but does not provide interpretive opinions regarding human performance must complete a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework from an accredited university.

(B) Toxicology Analyst (General, Non-interpretive). A toxicology analyst who conducts, directs or reviews the analysis of forensic toxicology samples, evaluates data, reaches conclusions and may sign a report for court or investigative purposes, but does not provide interpretive opinions regarding human performance must complete a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework that includes organic chemistry and two three-semester credit hour (or equivalent) college-level courses in analytical chemistry and/or interpretive science courses that may include Analytical Chemistry, Chemical Informatics, Instrumental Analysis, Mass Spectrometry, Quantitative Analysis, Separation Science, Spectroscopic Analysis, Biochemistry, Drug Metabolism, Forensic Toxicology, Medicinal Chemistry, Pharmacology, Physiology, or Toxicology.

(C) Toxicologist (Interpretive). A toxicologist who provides interpretive opinions regarding human performance related to the results of toxicological tests (alcohol and general) for court or investigative purposes must complete a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework that includes organic chemistry, one three-semester credit hour (or equivalent) course in college-level analytical chemistry (Analytical Chemistry, Chemical Informatics, Instrumental Analysis, Mass Spectrometry, Quantitative Analysis, Separation Science or Spectroscopic Analysis) and one three-semester credit hour (or equivalent) college-level courses in interpretive science

(Biochemistry, Drug Metabolism, Forensic Toxicology, Medicinal Chemistry, Pharmacology, Physiology, or Toxicology).

(D) An applicant for a toxicology license for any of the categories outlined in subparagraphs (A) - (C) of this paragraph must have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission.

(3) DNA Analyst. An applicant for a Forensic Analyst License in DNA analysis must demonstrate he/she has fulfilled the specific requirements of the Federal Bureau of Investigation's Quality Assurance Standards for Forensic DNA Testing effective September 1, 2011. An applicant must also have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission.

(4) Firearm/Toolmark Analyst. An applicant must have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission. No other specific college-level coursework is required.

(5) Materials (Trace) Analyst. An applicant for a Forensic Analyst License in materials (trace) for one or more of the chemical analysis categories of analysis (chemical determination, physical/chemical comparison, gunshot residue analysis, and fire debris and explosives analysis) must have a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework from an accredited university. In addition to chemistry coursework for the chemical analysis categories, all materials (trace) license applicants must also have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission. An applicant for a Forensic Analyst License in materials (trace) limited to impression evidence is not required to fulfill any specific college-level coursework requirements other than the statistics requirement.

(6) Exemptions from specific coursework requirements. The following categories of licenses are exempted from coursework requirements:

(A) An applicant for the technician license category of any forensic discipline set forth in this subchapter is not required to fulfill any specific college-level coursework requirements.

(B) An applicant for a Forensic Analyst License limited to forensic biology screening, nucleic acids other than human DNA and/or Forensic Biology Technician is not required to fulfill the Federal Bureau of Investigation's Quality Assurance Standards for Forensic DNA Testing or any other specific college-level coursework requirements.

(f) ~~(e)~~ Requirements Specific to Forensic Science Degree Programs. For a forensic science degree to meet the Minimum Education Requirements set forth in this section, the forensic science degree program must be either accredited by the Forensic Science Education Programs Accreditation Commission (FEPAC) or if not accredited by FEPAC, it must meet the minimum curriculum requirements pertaining to natural science core courses and specialized science courses set forth in the FEPAC Accreditation Standards.

(g) ~~(f)~~ Waiver of Specific Coursework Requirements and/or Minimum Education Requirements for Lateral Hires, Promoting Analysts and Current Employees. Specific coursework requirements and minimum education requirements are considered an integral part of the licensing process; all applicants are expected to meet the requirements of the forensic discipline(s) for which they are applying or to offer sufficient evidence of their qualifications as described below in the absence of specific coursework requirements or minimum education re-

quirements. The Commission Director or Designee may waive one or more of the specific coursework requirements or minimum education requirements outlined in this section for an applicant who:

(1) has five or more years of credible experience in an accredited laboratory in the forensic discipline for which he or she seeks licensure; or

(2) is certified by one or more of the following nationally recognized certification bodies in the forensic discipline for which he or she seeks licensure;

- (A) The American Board of Forensic Toxicology;
- (B) The American Board of Clinical Chemistry;
- (C) The American Board of Criminalistics;
- (D) The International Association for Identification; or
- (E) The Association of Firearm and Toolmark Examiners; and

(3) provides written documentation of laboratory-sponsored training in the subject matter areas addressed by the specific coursework requirements.

(4) An applicant must request a waiver of specific coursework requirements and/or minimum education requirements at the time the application is filed.

(5) An applicant requesting a waiver from specific coursework requirements and/or minimum education requirements shall file any additional information needed to substantiate the eligibility for the waiver with the application. The Commission Director or Designee shall review all elements of the application to evaluate waiver request(s) and shall grant a waiver(s) to qualified applicants.

(h) [(g)] General Forensic Analyst Licensing Exam Requirement.

(1) Exam Requirement. An applicant for a Forensic Analyst License must pass the General Forensic Analyst Licensing Exam administered by the Commission.

(A) An applicant is required to take and pass the General Forensic Analyst Licensing Exam one time.

(B) An applicant may take the General Forensic Analyst Licensing Exam no more than three times. If an applicant fails the General Forensic Analyst Licensing Exam or the Modified General Forensic Analyst Licensing Exam three times, the applicant has thirty (30) days from the date the applicant receives notice of the failure to request special dispensation from the Commission as described in subparagraph (C) of this paragraph. Where special dispensation is granted, the applicant has 90 days from the date he or she receives notice the request for exam is granted to successfully complete the exam requirement. However, for good cause shown, the Commission or its Designee at its discretion may waive this limitation.

(C) Requests for Exam. If an applicant fails the General Forensic Analyst Licensing Exam or Modified General Forensic Analyst Licensing Exam three times, the applicant must request in writing special dispensation from the Commission to take the exam more than three times. Applicants may submit a letter of support from their laboratory director or licensing representative and any other supporting documentation supplemental to the written request.

(D) If an applicant sits for the General Forensic Analyst Licensing Exam or the Modified General Forensic Analyst Licensing Exam more than three times, the applicant must pay a \$50 exam fee

each additional time the applicant sits for the exam beyond the three initial attempts.

(E) Expiration of Provisional License if Special Dispensation Exam Unsuccessful. If the 90-day period during which special dispensation is granted expires before the applicant successfully completes the exam requirement, the applicant's provisional license expires.

(2) Modified General Forensic Analyst Licensing Exam. Technicians in any discipline set forth in this subchapter may fulfill the General Forensic Analyst Licensing Exam requirement by taking a modified exam administered by the Commission.

(3) Examination Requirements for Promoting Technicians. If a technician passes the modified General Forensic Analyst Licensing Exam and later seeks a full Forensic Analyst License, the applicant must complete the portions of the General Forensic Analyst Exam that were not tested on the modified exam.

(4) Credit for Pilot Exam. If an individual passes the Pilot General Forensic Analyst Licensing Exam, regardless of his or her eligibility status for a Forensic Analyst License at the time the exam is taken, the candidate has fulfilled the General Forensic Analyst Licensing Exam Requirement of this section should he or she later become subject to the licensing requirements and eligible for a Forensic Analyst License.

(5) Eligibility for General Forensic Analyst Licensing Exam and Modified General Forensic Analyst Licensing Exam.

(A) Candidates for the General Forensic Analyst Licensing Exam and Modified General Forensic Analyst Licensing Exam must be employees of a crime laboratory accredited under Texas law or employed by an agency rendering them eligible for a voluntary license under §651.222 (*Voluntary Forensic Analyst Licensing Requirements Including Eligibility, License Term, Fee and Procedure for Denial of Initial Application or Renewal Application and Reconsideration*) of this subchapter to be eligible to take the exam.

(B) Student Examinee Exception. A student is eligible for the General Forensic Analyst Licensing Exam one time if the student:

(i) is currently enrolled in an accredited university as defined in §651.202 of this subchapter (relating to Definitions);

(ii) has completed sufficient coursework to be within 24 semester hours of completing the requirements for graduation at the accredited university at which the student is enrolled; and

(iii) designates an official university representative who will proctor and administer the exam at the university for the student.

(C) Crime Laboratory Management and Unaccredited Forensic Discipline Exception. An Employee of a crime laboratory accredited under Texas law who is either part of the crime laboratory's administration or management team or authorized for independent case-work in a forensic discipline listed below is eligible for the General Forensic Analyst Licensing Exam and Modified General Forensic Analyst Licensing Exam:

(i) forensic anthropology;

(ii) the location, identification, collection or preservation of physical evidence at a crime scene;

(iii) crime scene reconstruction;

(iv) latent print processing or examination;



(v) digital evidence (including computer forensics, audio, or imaging);

(vi) breath specimen testing under Transportation Code, Chapter 724, limited to analysts who perform breath alcohol calibrations; and

(vii) document examination, including document authentication, physical comparison, and product determination.

(i) [(H)] Proficiency Monitoring Requirement.

(1) An applicant must demonstrate participation in the employing laboratory's process for intra-laboratory comparison, inter-laboratory comparison, proficiency testing, or observation-based performance monitoring requirements in compliance with and on the timeline set forth by the laboratory's accrediting body's proficiency monitoring requirements as applicable to the Forensic Analyst or Forensic Technician's specific forensic discipline and job duties.

(2) A signed certification by the laboratory's authorized representative that the applicant has satisfied the applicable proficiency monitoring requirements, including any intra-laboratory comparison, inter-laboratory comparison, proficiency testing, or observation-based performance monitoring requirements of the laboratory's accrediting body as of the date of the analyst's application, must be provided on the Proficiency Monitoring Certification form provided by the Commission. The licensee's authorized representative must designate the specific forensic discipline in which the Forensic Analyst or Forensic Technician actively performs forensic casework or is currently authorized to perform supervised or independent casework by the laboratory or employing entity.

(j) [(I)] Mandatory Legal and Professional Responsibility Course:

(1) All Forensic Analyst and Forensic Technician License applicants must complete the current Commission-sponsored mandatory legal and professional responsibility update at the time of their application or demonstrate that they have taken the training within the 12-month period preceding the date of their application.

(2) Mandatory legal and professional responsibility training topics may include training on current and past criminal forensic legal issues, professional responsibility and human factors, courtroom testimony, disclosure and discovery requirements under state and federal law, and other relevant topics as designated by the Commission.

§651.208. *Forensic Analyst and Forensic Technician License Renewal.*

(a) Timing of Application for Renewal. The Commission may renew an individual's Forensic Analyst or Forensic Technician License up to 60 days before the expiration of the individual's license term.

(b) Renewal Term. The renewal date of a Forensic Analyst or Forensic Technician License is [will be] every two years from the date the initial application was granted unless the applicant is a licensee who was initially licensed before January 1, 2024, and is renewing their license on or before December 31, 2026. Licensees renewing between January 1, 2024 and December 31, 2026 expire on the last day of the license holder's birth month.

(c) Renewal Fees. The biennial renewal fee is \$200 for Forensic Analysts and \$130 for Forensic Technicians/Screeners. Renewal fees [Fees] for Forensic Analysts and Forensic Technicians initially licensed before [seeking to renew their licenses between] January 1, 2024 and renewing on or before December 31, 2026 [2025], will be pro-rated on a monthly basis depending upon the birth month of the renewing license holder and the number of months in the renewal term as described [describe] in subsection (b) of this section. The pro-rated fee

will be assessed at \$8.33 per month (for Forensic Analysts) and \$5.42 per month (for Forensic Technicians).

(d) Application. An applicant for a Forensic Analyst or Forensic Technician License renewal shall complete and submit to the Commission a current Forensic Analyst or Forensic Technician License Renewal Application provided by the Commission, pay the required fee, attach documentation of fulfillment of Continuing Forensic Education and other requirements set forth in this section.

(e) Proficiency Monitoring Certification Form for Renewal Applicants Employed by an Accredited Laboratory. An applicant for a Forensic Analyst or Forensic Technician License renewal must provide an updated copy of the Commission's Proficiency Monitoring Certification form demonstrating the applicant participates in the laboratory's process for intra-laboratory comparison, inter-laboratory comparison, proficiency testing, or observation-based performance monitoring requirements in compliance with and on the timeline set forth by the laboratory's accrediting body's requirements as applicable to the Forensic Analyst or Forensic Technician's specific forensic discipline and job duties. The form must be:

(1) signed by the licensee's authorized laboratory representative; and

(2) designate the specific forensic discipline in which the Forensic Analyst or Forensic Technician actively performs forensic casework or is currently authorized or currently participating in a training program to become authorized to perform supervised or independent forensic casework.

(f) Proficiency Monitoring Certification Form for Renewal Applicants Not Employed at an Accredited Laboratory or at an Accredited Laboratory in a Forensic Discipline Not Covered by the Scope of the Laboratory's Accreditation.

[(H)] An applicant for a Forensic Analyst or Forensic Technician license renewal who is employed by an entity other than an accredited laboratory or performs a forensic examination or test at an accredited laboratory in a forensic discipline not covered by the scope of the laboratory's accreditation must provide the following items.[:]

(1) [(A)] an updated copy of the Commission's Proficiency Monitoring Certification form demonstrating the applicant participates in the laboratory or employing entity's process for intra-laboratory comparison, inter-laboratory comparison, proficiency testing, or observation-based performance monitoring requirements in compliance with and on the timeline set forth by the laboratory or employing entity's Commission-approved process for proficiency monitoring as applicable to the Forensic Analyst or Forensic Technician's specific forensic discipline and job duties:

(A) [(I)] signed by the licensee's authorized laboratory representative; and

(B) [(II)] designating the specific forensic discipline in which the Forensic Analyst or Forensic Technician actively performs forensic casework or is currently authorized to perform supervised or independent forensic casework;

(2) [(B)] written proof of the Forensic Science Commission's approval of the laboratory or employing entity's proficiency monitoring activities or exercise(s) as applicable to the applicant's specific forensic discipline and job duties; and

(3) [(C)] written documentation of performance in conformance with expected consensus results in compliance with and on the timeline set forth by the laboratory or employing entity's Commission-approved proficiency monitoring activities or exercise(s) as applicable to the applicant's specific forensic discipline and job duties.

(g) Continuing Forensic Education Including Mandatory Legal and Professional Responsibility:

(1) Forensic Analyst and Forensic Technician Licensees must complete a Commission-sponsored mandatory legal and professional responsibility update by the expiration of each two-year license cycle as provided by the Commission. Forensic Technicians are not required to complete any other continuing forensic education requirements listed in this section.

(2) Mandatory legal and professional responsibility training topics may include training on current and past criminal forensic legal issues, professional responsibility and human factors, courtroom testimony, disclosure and discovery requirements under state and federal law, and other relevant topics as designated by the Commission.

(3) All forensic analysts shall be required to satisfy the following Continuing Forensic Education Requirements by the expiration of each two-year license cycle:

(A) Completion of thirty-two (32) continuing forensic education hours per 2-year license cycle.

(B) Sixteen (16) hours of the thirty-two (32) must be discipline-specific training, peer-reviewed journal articles, and/or conference education hours. If a licensee is licensed in multiple forensic disciplines, at least eight (8) hours of discipline-specific training in each forensic discipline are required, subject to the provisions set forth in subsection (f) of this section.

(C) The remaining sixteen (16) hours may be general forensic training, peer-reviewed journal articles, and/or conference education hours that include hours credited for the mandatory legal and professional responsibility training.

(4) Continuing forensic education programs will be offered and/or designated by the Commission and will consist of independent, online trainings, readings, and participation in recognized state, regional, and national forensic conferences and workshops.

(5) Approved continuing forensic education hours are applied for credit on the date the program and/or training is delivered.

(h) Timeline for Exemption from Supplemental Continuing Forensic Education Requirements. Where a current licensee adds a forensic discipline to the scope of his or her license, the following continuing forensic education requirements apply for the supplemental forensic discipline:

(1) If the supplemental forensic discipline is added less than six (6) months prior to the expiration of the analyst's current license, no additional discipline-specific training is required for the supplemental forensic discipline.

(2) If the supplemental forensic discipline is added six (6) months or more but less than eighteen (18) months prior to the expiration of the analyst's current license, four (4) additional discipline-specific training hours are required for the supplemental forensic discipline.

(3) If the supplemental forensic discipline is added eighteen (18) months or more prior to the expiration of the analyst's current license, eight (8) additional discipline-specific training hours are required for the supplemental forensic discipline.

(i) If an applicant fails to fulfill any or all of the requirements pertaining to license renewal, continuing forensic education and the mandatory legal and professional responsibility update, the applicant may apply to the Commission for special dispensation on a form to be provided on the Commission's website. Upon approval by the Com-

mission, the applicant may be allowed an extension of time to fulfill remaining continuing forensic education requirements.

(j) Temporary Exception to Continuing Forensic Education Requirements During January 2024 to December 2026 Transition from Application to Birthdate-Based Renewal Terms. For any licensee who has less than two years to complete the continuing forensic education requirements in subsection (g) of this section as a result of the transition from application-based renewal to birthdate-based renewal, the number of required continuing education hours in subsection (g)(3)(A) and (B) of this section for license renewal shall be pro-rated based on the number of months in the renewal term.

(k) Subsections (j) and (k) of this section expire on December 31, 2026.

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 May 1, 2024.

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Leigh Tomlin

Associate General Counsel

Texas Forensic Science Commission

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For further information, please call: (512) 936-0661



## SUBCHAPTER E. NOTICE TO AND APPEALS BY LICENSE HOLDERS AND CRIME LABORATORIES

### 37 TAC §651.401

The Texas Forensic Science Commission (Commission) proposes new rule 37 Texas Administrative Code §651.401, Notice and Hearing, to reestablish the Commission's notice and hearing process previously repealed due to a non-substantive numbering error.

**Background and Justification.** The Commission recently repealed its notice and hearing process under 37 Texas Administrative Code §651.402 to correct a numbering error. This proposal establishes a policy for the Commission to notify license holders and crime laboratories that are the subject of any disciplinary action, finding of professional negligence or professional misconduct, violation of the Code of Professional Responsibility, or violation of another rule or order of the Commission. The rulemaking further establishes the Commission's hearing process and the process for appeals by license holders and crime laboratories before the Judicial Branch Certification Commission. The rulemaking also provides the option for disposition by agreement between the Commission and subject parties.

**Fiscal Impact on State and Local Government.** Leigh M. Tomlin, Associate General Counsel of the Texas Forensic Science Commission, has determined that for each year of the first five years the proposed new rule will be in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the new rule.

**Local Employment Impact Statement.** The proposal has no effect on local economy; therefore, no local employment im-

pact statement is required under Texas Government Code §2001.022.

Probable Economic Costs to Persons Required to Comply with Proposal. 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.

Public Benefit. Ms. Tomlin has also determined that for each year of the first five years the proposed new rule is in effect, the anticipated public benefit includes the correct numbering of the sections of the rules and an established policy for notice, hearing, and appeal for respondents.

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

Takings Impact Assessment. Ms. Tomlin has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

Environmental Rule Analysis. Ms. Tomlin has determined that the proposed new rule is not brought with the specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Commission asserts that this proposed rule is not a "major environmental rule," and defined by Government Code § 2001.0225. As a result, the Commission asserts that the preparation of an environmental impact analysis, as provided by Government Code §2001.0225, is not required.

Government Growth Impact Statement. Ms. Tomlin has determined that for the first five-year period, implementation of the proposed new rule will have no government growth impact as described in Title 34, Part 1, Texas Administrative Code §11.1. Pursuant to the analysis required by Government Code 2001.221(b): 1) the proposed new rule does not create or eliminate a government program; 2) implementation of the proposed new rule does not require the creation of new employee positions or the elimination of existing employee positions; 3) implementation of the proposed new rule does not increase or decrease future legislative appropriations to the agency; 4) the proposed new rule does not require a fee; 5) the proposed new rule does not create a new regulation; 6) the proposed new rule does not increase the number of individual's subject to regulation; and 7) the proposed new rule has a neutral effect on the state's economy.

Request for Public Comment. The Commission invites comments on the proposal from any member of the public. Please submit comments to Leigh M. Tomlin, 1700 North Congress Avenue, Suite 445, Austin, Texas 78701 or leigh@fsc.texas.gov. Comments must be received by June 1, 2024 to be considered by the Commission.

Statutory Authority. The new rule is made in accordance with the Commission's rulemaking authority under Art. 38.01 § 3-a, which directs the Commission to adopt rules necessary to implement Code of Criminal Procedure, Art. 38.01. It is also promulgated

under Code of Criminal Procedure, Art. 38.01, § 4-c, which establishes the disciplinary action process.

Cross reference to statute. The proposal implements Code of Criminal Procedure, Art. 38.01, § 4-c.

§651.401. Notice and Hearing Request.

(a) The Commission must give written notice by certified mail to a license holder or crime laboratory that is the subject of any disciplinary action, finding of professional negligence or professional misconduct, violation of the code of professional responsibility, or violation of another rule or order of the Commission. The notice must:

(1) include a brief summary of the professional negligence, professional misconduct, violation of the code of professional responsibility, or other rule or statutory violation;

(2) state the disciplinary action proposed by the Commission; and

(3) inform the license holder or crime laboratory of the right to a hearing before the Judicial Branch Certification Commission on the occurrence of the professional negligence or misconduct or rule violation, the imposition of a disciplinary action, or both.

(b) for purposes of this subchapter, "disciplinary action" against a license holder or crime laboratory includes any of the following actions: revocation or suspension of an individual's license or a crime laboratory's accreditation; refusal to renew an individual's license or a crime laboratory's accreditation; reprimand of a license holder or crime laboratory, or probated suspension.

(c) Hearing Request. Not later than the 20th day after the date the license holder or crime laboratory receives the notice under subsection (a) of this section, the license holder or crime laboratory may accept the Commission determination or disciplinary action or request a hearing by submitting a written request to the Judicial Branch Certification Commission to contest the findings of fact or conclusions of law, the occurrence of the negligence, misconduct, or violation, or the imposition of a disciplinary action, as applicable. If the license holder or crime laboratory fails to timely submit a request, the Commission's disciplinary action becomes final and is not subject to review by the Judicial Branch Certification Commission. Hearing requests may be submitted via email to info@fsc.texas.gov.

(d) Judicial Branch Certification Commission Hearing. If the license holder or crime laboratory requests a hearing, the Judicial Branch Certification Commission must conduct a hearing to determine whether there is substantial evidence to support the determination under subsection (a) of this section that the negligence, misconduct, or violation occurred. If the Judicial Branch Certification Commission upholds the determination, the Judicial Branch Certification Commission shall determine the type of disciplinary action to be taken. The Judicial Branch Certification Commission must conduct the hearing and any appeal of that Commission's decision, in accordance with the procedures provided by Subchapter B, Chapter 153, Government Code, as applicable, and the rules of the Judicial Branch Certification Commission.

(e) Disposition by Agreement. Any disciplinary matter may be disposed of by agreement, unless precluded by law. The agreement must be in writing and may be in the form of a stipulation, a settlement agreement, or a consent order. The Commission may approve or reject the agreement. If the Commission rejects the agreement, the respondent has a right to a hearing on the disciplinary matter before the Judicial Branch Certification Commission per subsection (d) of this section.

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 May 1, 2024.

TRD-202401940

Leigh Tomlin

Associate General Counsel

Texas Forensic Science Commission

Earliest possible date of adoption: June 16, 2024

For further information, please call: (512) 936-0661



### 37 TAC §651.402

The Texas Forensic Science Commission (Commission) proposes the repeal of 37 Texas Administrative Code §651.402.

**Background and Justification.** This repeal makes a non-substantive edit to change the section's number to §651.401. The current numbering of the subchapter begins with §651.402 and should begin with §651.401. The Commission will repropose the rule with the correct number—§651.401 in a separate rulemaking.

**Fiscal Impact on State and Local Government.** Leigh M. Tomlin, Associate General Counsel of the Texas Forensic Science Commission, has determined that for each year of the first five years the repeal will be in effect, there will be no fiscal impact to state or local governments as a result of the repeal.

**Local Employment Impact Statement.** The repeal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code §2001.022.

**Probable Economic Costs to Persons Required to Comply with Proposal.** The repeal 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.

**Public Benefit.** Ms. Tomlin has also determined that for each year of the first five years the repeal is in effect, the anticipated public benefit includes the correct numbering of the sections of the rules.

**Fiscal Impact on Small and Micro-businesses and Rural Communities.** There is no adverse economic effect anticipated for small businesses, micro-businesses, or rural communities as a result of the repeal. Accordingly, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002(c).

**Takings Impact Assessment.** Ms. Tomlin has determined that no private real property interests are affected by this repeal and that this repeal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

**Environmental Rule Analysis.** Ms. Tomlin has determined that the proposed repeal is not brought with the specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Commission asserts that this proposed rule is not a "major environmental rule," and defined by Government Code § 2001.0225. As a result, the Commission asserts that the preparation of an environmental impact analysis, as provided by Government Code §2001.0225, is not required.

Government Growth Impact Statement. Ms. Tomlin has determined that for the first five-year period, implementation of the repeal will have no government growth impact as described in Title 34, Part 1, Texas Administrative Code §11.1. Pursuant to the analysis required by Government Code 2001.221(b): 1) the repeal does not create or eliminate a government program; 2) implementation of the repeal does not require the creation of new employee positions or the elimination of existing employee positions; 3) implementation of the repeal does not increase or decrease future legislative appropriations to the agency; 4) the repeal does not require a fee; 5) the repeal does not create a new regulation; 6) the repeal does not increase the number of individual's subject to regulation; and 7) the repeal has a neutral effect on the state's economy.

**Request for Public Comment.** The Commission invites comments on the repeal from any member of the public. Please submit comments to Leigh M. Tomlin, 1700 North Congress Avenue, Suite 445, Austin, Texas 78701 or [leigh@fsc.texas.gov](mailto:leigh@fsc.texas.gov). Comments must be received by June 1, 2024 to be considered by the Commission.

**Statutory Authority.** The repeal is made in accordance with the Commission's rulemaking authority under Art. 38.01 § 3-a, which directs the Commission to adopt rules necessary to implement Code of Criminal Procedure, Art. 38.01.

This rulemaking is also proposed under Texas Government Code Section 2001.003(6)(B), which defines "rule" to include repeals.

*§651.402. Notice and Hearing Request.*

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 May 1, 2024.

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Leigh Tomlin

Associate General Counsel

Texas Forensic Science Commission

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For further information, please call: (512) 936-0661



## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### PART 20. TEXAS WORKFORCE COMMISSION

#### CHAPTER 809. CHILD CARE SERVICES

The Texas Workforce Commission (TWC) proposes amendments to the following sections of Chapter 809, relating to Child Care Services:

Subchapter A. General Provisions, §809.2

Subchapter B. General Management, §§809.18 - 809.21

Subchapter C. Eligibility for Child Care Services, §§809.42, 809.51, and 809.56

Subchapter D. Parent Rights and Responsibilities, §809.73

Subchapter E. Requirements to Provide Child Care, §§809.92 - 809.94, and 809.96

Subchapter G. Texas Rising Star Program, §§809.130 - 809.134, and 809.136

## PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The proposed amendments to Chapter 809:

--include changes to the Texas Rising Star program based on the program's four-year review as required by Texas Government Code §2308.3155(b);

--clarify that the eligibility period for child care during job search is for 12 months, with a three-month job search period;

--include the requirement that the Parent Share of Cost (PSoC) cannot exceed 7 percent of the family income, regardless of the number of children receiving child care services;

--add children with disabilities as a priority population for child care using contracted slots;

--remove rule provisions that expired on December 1, 2023, and remove specific dates for provisions that became effective on December 1, 2023; and

--change "provider reimbursement" to "provider payment" throughout the rules to align with §809.93, which requires that regulated child care providers (which exclude relatives) be paid prospectively rather than through reimbursement.

### Texas Rising Star Four-Year Review

Texas Government Code §2308.3155(b) requires a regular review of the Texas Rising Star program with stakeholder input, and §809.130(e) of this chapter requires the review to take place every four years.

Beginning in July 2023, TWC's Child Care and Early Learning (CC&EL) Division convened a workgroup to review the guidelines. The workgroup included child care program directors from around the state; early childhood advocacy organization representatives; professional development providers; Local Workforce Development Board (Board) staff; and representatives from TWC, the Texas Health and Human Services Commission's (HHSC's) Child Care Regulation (CCR) division, the State Center for Early Childhood, and the Children's Learning Institute (CLI). The workgroup presented several recommendations for modifications to the Texas Rising Star guidelines.

The workgroup also recommended rule changes under Subchapter G, Texas Rising Star Program. TWC considered and incorporated the following workgroup recommendations into the proposed rule amendments:

--Include reference to the points thresholds for high and medium-high CCR deficiencies established in the Texas Rising Star guidelines to the requirements for initial Texas Rising Star certification and to the standards for probationary status.

--Allow Texas Rising Star certified providers to retain certification for up to six months if the program undergoes a facility change and is issued an initial permit from CCR.

Additionally, as part of the Texas Rising Star Program review, CC&EL staff identified the following rule provisions for amendments:

--Modify the CCR licensing review period from 12 months to 6 months.

--Clarify that an Entry Level designated provider may receive new referrals if it is determined that the provider's licensing history will meet certification criteria by the end of the 24-month Entry Level period.

--Make a technical correction to clarify that TWC staff, rather than the three-member Commission, reviews and approves Texas Rising Star mentor education waivers.

--Clarify Texas Rising Star staff background checks as they relate to CCR background check requirements.

--Remove PSoC reductions for selecting a Texas Rising Star provider.

### 12-Month Eligibility Period for Child Care during Job Search

The rule amendments clarify that the eligibility period for child care during job search is for 12 months, with a three-month job search period, as allowed under 45 Code of Federal Regulations (CFR) §98.21(a)(2)(iii). TWC notes that this is not a change in policy. Current rule language in §809.56 of this chapter states that eligibility for child care during job search is limited to three months unless the parent becomes employed and meets the work requirements before the end of the job search period. If the parent meets work requirements, child care would continue for 12 months, inclusive of the three-month job search period.

The amended rules retain these time frames, but the rule language is amended to clarify that the child care eligibility period is for 12 months provided that the parent meets work requirements within the first three months of child care.

### Capping the PSoC at 7 Percent of Family Income

The amended rules include the requirement that the PSoC cannot exceed 7 percent of the family income, regardless of the number of children receiving child care services. The amended language complies with the recently amended Child Care Development Fund (CCDF) regulations in CFR 45 §98.45(l), as published in the Federal Register (89 FR 15366 - 15417) on March 1, 2024, with an effective date of April 30, 2024.

### Remove Expired Provisions

On September 13, 2022, TWC amended Chapter 809 with certain provisions set to be effective prior to December 1, 2023, and subsequently replaced by provisions set to be effective on December 1, 2023. The provisions effective prior to December 1, 2023, and those set to be effective on December 1, 2023, were adopted and published in the *Texas Register* (47 TexReg 6437). The affected sections are:

--§809.18. Maintenance of a Waiting List

--§809.19. Assessing the Parent Share of Cost

--§809.20. Maximum Provider Payment Rates

--§809.93. Provider Payment

## PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

### SUBCHAPTER A. GENERAL PROVISIONS

TWC proposes the following amendments to Subchapter A:

§809.2. Definitions

Section 809.2 is amended to change "provider reimbursement" to "provider payment" in the definitions of "child care contractor" and "child care subsidies" to align with §809.93, which requires that child care providers be paid prospectively rather than as a reimbursement.

## SUBCHAPTER B. GENERAL MANAGEMENT

TWC proposes the following amendments to Subchapter B:

### §809.18. Maintenance of a Waiting List

Section 809.18 is amended to remove the provisions that are no longer effective as of December 1, 2023, and leaves the sections that were previously adopted by the Commission with an effective date of December 1, 2023.

Specifically, the rules that became effective December 1, 2023, removed the Board-determined process for determining the child is potentially eligible for services and the frequency in which parent information is updated and maintained. The rules also created a statewide policy to require that Boards contact the parent every three months and remove the child from the waiting list if the parent indicates that child care services are no longer required or does not respond to the Board regarding the continued need for child care services.

### §809.19. Assessing the Parent Share of Cost

Section 809.19 is amended to remove the provisions that are no longer effective as of December 1, 2023, and retains the sections that were previously adopted by the Commission with an effective date of December 1, 2023.

Specifically, the rules that became effective December 1, 2023, stated that the PSoC amount is established by TWC and determined on a sliding fee scale based on the family size and gross monthly income and represented by a percentage of the state median income, or SMI.

The rules effective December 1, 2023, removed the requirement that Board policy include the general criteria for determining affordability of the Board's PSoC, as the PSoC is no longer determined or established by the Board. The rules also removed the requirement that Boards have a definition of what constitutes frequent terminations and its process for assessing PSoC affordability.

Similarly, because the Board no longer determines the PSoC, the rules removed the requirement that Boards with frequent terminations for parent failure to pay the PSoC must reexamine their PSoC and adjust it to ensure the PSoC is not a barrier to assistance.

The proposed rule amendments also remove the option for Boards to reduce the PSoC based on the parent selection of Texas Rising Star program providers. The intent of this reduction was to encourage parents to choose a Texas Rising Star program provider. However, because participation in the Texas Rising Star program is now a requirement for all CCS providers, this PSoC reduction is no longer necessary.

Additionally, the proposed rule amendments include the requirement that the PSoC cannot exceed 7 percent of the family income, regardless of the number of children receiving child care services. The amended language complies with the recently amended CCDF regulations in CFR 45 §98.45(l). The US Department of Health and Human Services published the amended regulations in the Federal Register (89 FR 15366 - 15417) on March 1, 2024, with an effective date of April 30, 2024.

### §809.20. Maximum Provider Reimbursement Rates

Section 809.20 is amended to rename the section "Maximum Provider Payment Rates" and remove "reimbursement" from the title and the section to align with §809.93 of this chapter, which requires that regulated child care providers be paid prospectively rather than as a reimbursement. This change aligns with the recently amended CCDF regulations in 45 CFR 45 §98.45(m), which requires states to pay providers in advance of or at the beginning of the delivery of child care services.

TWC notes that unregulated relative providers will continue to be paid as a reimbursement rather than prospectively. This is in accordance with the CCDF regulation language in 45 CFR 45 §98.45(m), which allows states to exclude certain types of providers from prospective payments if paying in advance is not a generally accepted practice for that provider type. TWC contends that there is no generally accepted practice of parents paying in advance for unregulated relatives caring for children related to them.

This section is also amended to remove the age groups used for payments that are no longer effective as of December 1, 2023, and retains the age groups that were previously adopted by the Commission with an effective date of December 1, 2023.

Specifically, the rules that became effective December 1, 2023, aligned the age groups for payment with the age groups defined by CCR as required by Texas Government Code §2308.315. The new age groups for payment are:

- Infants ages 0 through 11 months
- Infants ages 12 through 17 months
- Toddlers ages 18 through 23 months
- Toddlers age 2 years
- Preschool age 3 years
- Preschool age 4 years
- Preschool age 5 years
- School-age 6 years and older

### §809.21. Determining the Amount of the Provider Reimbursement

Section 809.21 is amended to rename the section "Determining the Amount of the Provider Payment" and remove "reimbursement" from the title and the section to align with §809.93 of this chapter, which requires that child care providers be paid prospectively rather than as a reimbursement.

## SUBCHAPTER C. ELIGIBILITY FOR CHILD CARE SERVICES

TWC proposes the following amendments to Subchapter C:

### §809.42. Eligibility Verification, Determination, and Redetermination

Section 809.42(b) is amended to remove the child care during job search exception for a redetermination no sooner than 12 months. This clarifies that the eligibility period for child care during job search is for 12 months. Boards must not conduct a full eligibility redetermination following the initial 3-month job search period described in §809.56. Boards must only verify that the parent is meeting the work requirements outlined in §809.56(c).

### §809.51. Child Care during Temporary Interruptions in Work, Education, or Job Training

Section 809.51(a) is amended to remove the child care during job search exception for a redetermination no sooner than 12 months. This clarifies that the eligibility period for child care during job search is for 12 months. Similarly, the amended language also removes the 12-month redetermination exception during the 12-month eligibility period for children experiencing homelessness. Section 809.52 regarding child care for children experiencing homelessness states that the eligibility period is for 12 months; therefore, the exception for redetermination prior to the end of the 12-month eligibility period is not necessary for children experiencing homelessness.

#### §809.56. Child Care during Initial Job Search

Section 809.56(c) is amended to clarify that eligibility for child care during initial job search is for 12 months. The 12-month eligibility period consists of an initial 3-month job search period. The previous rule language stated that child care is limited to 3 months but shall continue for the remainder of a 12-month eligibility period if the parent meets work requirements before the end of the 3-month job search period. The amended language shifts the emphasis of the eligibility period from a 3-month initial period within a 12-month period that is contingent upon work requirements to a full 12-month eligibility period, with a 3-month initial job search period. The continuation of child care for the remainder of the 12-month eligibility period will continue to be contingent upon the parent meeting work requirements in §809.56(c). TWC makes this change to demonstrate compliance more fully with 45 CFR §98.21(a)(2)(iii).

#### SUBCHAPTER D. PARENT RIGHTS AND RESPONSIBILITIES

TWC proposes the following amendments to Subchapter D:

##### §809.73. Parent Reporting Requirements

Section 809.73(a) is amended to remove the references to child care during initial job search as a separate eligibility period from the general 12-month eligibility period described in §809.41. This change clarifies that the eligibility period for child care during job search is for 12 months and is aligned with the general 12-month eligibility period for child care services.

#### SUBCHAPTER E. REQUIREMENTS TO PROVIDE CHILD CARE

TWC proposes the following amendments to Subchapter E:

##### §809.92. Provider Responsibilities and Reporting Requirements

Section 809.92 is amended to change "reimbursement" to "payment" to align with §809.93, which requires that child care providers be paid prospectively rather than as a reimbursement.

##### §809.93. Provider Reimbursement

Section 809.93 is amended to rename the section from "Provider Reimbursement" to "Provider Payment" and remove "reimbursement" from the section to align with the requirement that child care providers be paid prospectively rather than through reimbursement.

Section 809.93 is amended to remove the effective date of December 1, 2023, specific to §809.93(f) relating to the requirement that Boards pay regulated child care providers prospectively every two weeks based on the enrollment authorization.

##### §809.94. Providers Placed on Corrective or Adverse Action by Child Care Regulation

Section 809.94 is amended to remove "reimbursement" from the language to align with §809.93 requiring providers be paid prospectively rather than through reimbursement.

##### §809.96. Contracted Slots Agreements

Section 809.96 is amended to add children with disabilities as a priority population that can be served using contracted slots agreements. The amended language complies with the recently amended CCDF regulations in CFR 45 §98.30(b), which requires states to increase the use of grants or contracts for the delivery of child care services, including at a minimum for children in underserved areas (for example, in child care deserts), for infants and toddlers, and for children with disabilities.

TWC's current rules at §809.96(e)(1) already provides for contracted slots in child care deserts and underserved areas, and §809.96(e)(4) provides for contracted slots for infant and toddler child care.

#### SUBCHAPTER G. TEXAS RISING STAR PROGRAM

TWC proposes the following amendments to Subchapter G:

##### §809.130. Short Title and Purpose

Section 809.130(d)(4) is amended to state that the Texas Rising Star guidelines include a description of high and medium-high CCR deficiencies points thresholds required in §809.132 relating to CCR deficiencies that impact the certification status of a Texas Rising Star certified provider.

##### §809.131. Requirements for the Texas Rising Star Program

Section 809.131(a) is amended to clarify that this section applies to a child care provider's initial certification under the Texas Rising Star Program. Specifically, the requirement for a permanent (non-expiring) license or registration is a requirement for initial certification. A Texas Rising Star certified provider's certification will not be affected if the provider changes its operations that requires CCR to issue an initial license or registration such as changes in ownership or location coupled with changes in administrative or program staff and previous noncompliance with minimum standards.

Section 809.131(a)(2) is amended to include a required points threshold for high and medium-high CCR deficiencies for a provider to meet Texas Rising Star certification requirements. TWC makes this change to require initial certification to include a CCR deficiency points threshold similar to the requirement for an Entry Level Designation.

Section 809.131(a)(2) is also amended to reduce the Texas Rising Star review period of CCR licensing deficiencies from 12 months to 6 months. This change will support the review of a child care provider's most recent licensing deficiencies to more accurately describe the current status of quality of care being provided. This change also aligns with the current 6-month CCR deficiency history for probationary and suspension periods.

Section 809.131(b)(2) is amended to clarify the current practice that the points threshold for Entry Level Designation is described in the Texas Rising Star guidelines. Section 809.131(d)(2) is also amended to reduce the licensing deficiency period from 12 months to 6 months.

Section 809.131(e) is amended to clarify that beginning on the 18th month of Entry Level designation, the provider's licensing history will be reviewed and if it is determined that the provider will not be eligible by the end of the 24th month based on the most recent 6-month licensing history, the provider will not be

able to receive referrals for new families. TWC has noted instances in which a provider would be eligible for certification following the 18th month but was not allowed to receive new referrals because of the current rule language. This rule change will allow a provider to receive new referrals if it is determined that the provider's licensing history will meet certification criteria by the end of the 24-month Entry Level period.

#### §809.132. Impacts on Texas Rising Star Certification

Section 809.132(a)(4) is amended to remove references to the number of high or medium-high CCR deficiencies that would place a Texas Rising Star certified provider on suspension status. The amended language states that a certified provider is placed on suspension status if the CCR deficiency points exceed the probationary status points threshold described in the Texas Rising Star guidelines.

Section 809.132(b) is amended to clarify that a provider placed on probation due to a "star level drop" will be reinstated at the provider's previous star level if CCR does not cite any additional specified star-level drop deficiencies during the probationary period. The previous rule language in §809.132(e) did not specify that the additional deficiencies must be related to the deficiencies that placed the provider on probation due to a star level drop. TWC makes this change to clarify that the additional deficiencies are related to the star level drop probationary deficiencies.

Similarly, §809.132(c) is amended to clarify that providers on probationary status due to specified probationary deficiencies and subsequently placed on a second probationary period that also included a star level drop will be reinstated at the provider's previous star level if CCR does not cite any additional probationary deficiencies during the second probationary period. The previous rule language in §809.132(e) that established this requirement did not specify that the additional deficiencies must be related to the deficiencies that placed the provider on probation.

Section 809.132(d) is amended to remove the total number of high or medium-high deficiencies required to place a certified provider on a probationary period. The amended language adds that certified providers whose total points for high or medium-high deficiencies fall within the points threshold described in the Texas Rising Star guidelines will be placed on a six-month probationary period.

Additionally, as with §809.132(c), §809.132(d) is amended to clarify that providers on a second probationary period that also included a star level drop will be reinstated at the provider's previous star level if CCR does not cite any high or medium-high deficiencies during the second probationary period. The previous rule language in §809.132(e) that established this requirement did not specify that the additional deficiencies must be related to the deficiencies that placed the provider on probation.

Section 809.132(b) through (d) is amended to reduce the licensing deficiency period from 12 months to 6 months.

TWC also makes technical changes in §809.132(c) and (d) to align applicable language in these two subsections.

TWC removes the previous §809.132(e), which stated that providers not on suspension status with a star level drop shall be reinstated at the former star level if no citations in subsections (b) through (d) are cited within six months. As explained previously, this language did not specify which deficiencies would be applicable to reinstating the provider's star level; thus, TWC has amended subsections (b) through (d) to clarify the process

for reinstating a star level based on the deficiencies specific to each level of probationary status.

Section 809.132 is also amended to change "reimbursement" to "payment" to align with §809.93, which requires that providers be paid prospectively and not as a reimbursement.

#### §809.133. Application and Assessments for Texas Rising Star Certification

Section 809.133 is amended to remove subsection (h), which requires Boards to be responsible for the tasks assigned to the Texas Rising Star assessor entity, within their respective local workforce development areas, until the assessor entity is procured and designated by TWC. TWC has designated an assessor entity and this provision is no longer applicable.

#### §809.134. Minimum Qualifications for Texas Rising Star Staff

Section 809.134(a) is amended to modify the background check requirement for Texas Rising Star staff. The intent of the amended language is to clarify that the background check does not need to be conducted using the same procedures and criteria used by CCR to conduct background checks for child care providers and caregivers as required by Chapter 745 of the HHSC child care regulations, which requires a Federal Bureau of Investigation fingerprint check. The background checks required under Chapter 745 are designed for caregivers and individuals who have unsupervised contact with children in a child care facility. Texas Rising Star staff do not meet this standard and are not required to undergo this type of background check.

However, TWC continues to emphasize that Texas Rising Star staff should undergo a standard background check as part of the basic requirements for employment. The amended language requires the Board and the TWC's designated Texas Rising Star assessment entity to conduct a background check on each staff member prior to hiring and again every five years.

Section 809.134(d) is amended to clarify that TWC, rather than the three-member Commission, may grant the waiver regarding the minimum education requirements for Texas Rising Star mentors.

#### §809.136. Roles and Responsibilities of Texas Rising Star Staff

Section 809.136 is amended to remove the requirements for dual-role staff (that is, individuals who perform the functions of a Texas Rising Star mentor and assessor). With the separation of mentors as Board staff and assessors as staff of the designated assessment entity, the system will no longer have individuals performing dual roles, making these requirements unnecessary.

### PART III. IMPACT STATEMENTS

Chris Nelson, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.



There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to individuals required to comply with the rules.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules.

Based on the analyses required by Texas Government Code §2001.024, TWC has determined that the requirement to repeal or amend a rule, as required by Texas Government Code §2001.0045, does not apply to this rulemaking.

#### Takings Impact Assessment

Under Texas Government Code §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the US Constitution or the Texas Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. TWC completed a Takings Impact Assessment for the proposed rulemaking action under Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to remove rule provisions that expired on December 1, 2023, and remove specific dates in provisions that became effective on December 1, 2023.

The proposed rulemaking action will not create any additional burden on private real property or affect private real property in a manner that would require compensation to private real property owners under the US Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

#### Government Growth Impact Statement

TWC has determined that during the first five years the rules will be in effect, they:

- will not create or eliminate a government program;
- will not require the creation or elimination of employee positions;
- will not require an increase or decrease in future legislative appropriations to TWC;
- will not require an increase or decrease in fees paid to TWC;
- will not create a new regulation;
- will not expand, limit, or eliminate an existing regulation;
- will not change the number of individuals subject to the rules; and
- will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the rules will not have an adverse economic impact on small businesses or rural communities, as the proposed rules place no requirements on small businesses or rural communities.

Mariana Vega, Director, Labor Market Information, has determined that there is not a significant negative impact upon employment conditions in the state as a result of the rules.

Reagan Miller, Director, Child Care & Early Learning, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to improve program quality, efficiency, and operational consistency.

TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

#### PART IV. COORDINATION ACTIVITIES

The Texas Rising Star 4-Year review involves the formation of a stakeholder workgroup consisting of Boards, child care advocates, and child care providers. CC&EL conducted workgroup meetings from August to December 2023 to get input on recommended changes to the Texas Rising Star program. Further, CC&EL conducted five public stakeholder meetings in February 2024 to solicit input on the Texas Rising Star program. The meetings were held in Abilene, Round Rock, Dallas, Houston, and McAllen.

CC&EL informed stakeholders of local stakeholder meetings via email outreach by the Boards. CC&EL also received input via [TRS4YearReview@twc.texas.gov](mailto:TRS4YearReview@twc.texas.gov).

Information on the potential changes and recommendations from the workgroup will be posted at: <https://www.twc.texas.gov/programs/texas-rising-star/2023-workgroup>. Information will also be provided at the stakeholder meetings.

#### PART V. PUBLIC COMMENTS

Comments on the proposed rules may be submitted to [TWCPolicyComments@twc.texas.gov](mailto:TWCPolicyComments@twc.texas.gov) and must be received no later than June 17, 2024.

#### SUBCHAPTER A. GENERAL PROVISIONS

##### 40 TAC §809.2

#### PART VI.

#### STATUTORY AUTHORITY

The rule is proposed under:

--Texas Government Code §2308.3155(b), which provides TWC with the specific authority to adopt rules to administer the Texas Rising Star Program;

--Texas Labor Code §301.0015(a)(6) and §302.002(d), which provide TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rule relates to Title 4, Texas Labor Code, Chapter 302, and Title 10, Texas Government Code, Chapter 2308.

#### §809.2. Definitions.

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

(1) Attending a job training or educational program--An individual is attending a job training or educational program if the individual:

(A) is considered by the program to be officially enrolled;

(B) meets all attendance requirements established by the program; and

(C) is making progress toward successful completion of the program as demonstrated through continued enrollment in the program upon eligibility redetermination as described in §809.42 of this chapter.

(2) Child--An individual who meets the general eligibility requirements contained in this chapter for receiving child care services.

(3) Child care contractor--The entity or entities under contract with the Board to manage child care services. This includes contractors involved in determining eligibility for child care services, contractors involved in the billing and provider payment [reimbursement] process related to child care, as well as contractors involved in the funding of quality improvement activities as described in §809.16 of this chapter.

(4) Child Care Desert--An area described in Texas Labor Code [§] §302.0461 in which the number of children under age six with working parents is at least three times greater than the capacity of licensed child care providers in the area, based on data published annually by the Commission.

(5) Child Care Regulation (CCR)--Division in the Texas Health and Human Services Commission responsible for protecting the health, safety, and well-being of children who attend or reside in regulated child care facilities and homes.

(6) Child care services--Child care subsidies and quality improvement activities funded by the Commission.

(7) Child care subsidies--Commission-funded child care payments [reimbursements] to an eligible child care provider for the direct care of an eligible child.

(8) Child experiencing homelessness--A child who is homeless, as defined in the McKinney-Vento Act (42 USC 11434(a)), Subtitle VII-B, §725.

(9) Child with disabilities--A child who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. Major life activities include, but are not limited to, caring for oneself; performing manual tasks; walking; hearing; seeing, speaking, or breathing; learning; and working.

(10) Educational program--A program that leads to:

(A) a high school diploma;

(B) a Certificate of High School Equivalency; or

(C) an undergraduate degree from an institution of higher education.

(11) Excessive unexplained absences--More than 40 unexplained absences within a 12-month eligibility period as described in §809.78 of this chapter.

(12) Family--Two or more individuals related by blood, marriage, or decree of court, who are living in a single residence and are included in one or more of the following categories:

(A) Two individuals, married--including by common-law, and household dependents; or

(B) A parent and household dependents.

(13) Household dependent--An individual living in the household who is:

(A) an adult considered a dependent of the parent for income tax purposes;

(B) a child of a teen parent; or

(C) a child or other minor living in the household who is the responsibility of the parent.

(14) Improper payments--Any payment of Child Care Development Fund (CCDF) funds that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements governing the administration of CCDF grant funds and includes payments:

(A) to an ineligible recipient;

(B) for an ineligible service;

(C) for any duplicate payment; and

(D) for services not received.

(15) Job training program--A program that provides training or instruction leading to:

(A) basic literacy;

(B) English proficiency;

(C) an occupational or professional certification or license; or

(D) the acquisition of technical skills, knowledge, and abilities specific to an occupation.

(16) Listed family home--A family home, other than the eligible child's own residence, that is listed, but not licensed or registered with, CCR pursuant to Texas Human Resources Code[§] §42.052(c).

(17) Military deployment--The temporary duty assignment away from the permanent military installation or place of residence for reserve components of the single military parent or the dual military parents. This includes deployed parents in the regular military, military reserves, or National Guard.

(18) Parent--An individual who is responsible for the care and supervision of a child and is identified as the child's natural parent, adoptive parent, stepparent, legal guardian, or person standing in loco parentis (as determined in accordance with Commission policies and procedures). Unless otherwise indicated, the term applies to a single parent or both parents.

(19) Protective services--Services provided when a child:

(A) is at risk of abuse or neglect in the immediate or short-term future and the child's family cannot or will not protect the child without Texas Department of Family and Protective Services (DFPS) Child Protective Services (CPS) intervention;

(B) is in the managing conservatorship of DFPS and residing with a relative or a foster parent; or

(C) has been provided with protective services by DFPS within the prior six months and requires services to ensure the stability of the family.

(20) Provider--A provider is defined as a:

- (A) regulated child care provider;
- (B) relative child care provider; or
- (C) listed family home subject to the requirements in §809.91(e) of this chapter.

(21) Regulated child care provider--A provider caring for an eligible child in a location other than the eligible child's own residence that is:

- (A) licensed by CCR;
- (B) registered with CCR; or
- (C) operated and monitored by the United States military services.

(22) Relative child care provider--An individual who is at least 18 years of age, and is, by marriage, blood relationship, or court decree, the child's:

- (A) grandparent;
- (B) great-grandparent;
- (C) aunt;
- (D) uncle; or
- (E) sibling (if the sibling does not reside in the same household as the eligible child).

(23) Residing with--Unless otherwise stipulated in this chapter, a child is considered to be residing with the parent when the child is living with, and physically present with, the parent during the time period for which child care services are being requested or received.

(24) Teen parent--A teen parent (teen) is an individual 18 years of age or younger, or 19 years of age and attending high school or the equivalent, who has a child.

(25) Texas Rising Star program--A quality-based rating system of child care providers participating in Commission-subsidized child care.

(26) Texas Rising Star provider--A regulated child care provider meeting the Texas Rising Star program standards. Texas Rising Star providers are:

- (A) designated as an Entry Level Provider;
- (B) certified as a Two-Star Provider;
- (C) certified as a Three-Star Provider; or
- (D) certified as a Four-Star Provider.

(27) Working--Working is defined as:

- (A) activities for which one receives monetary compensation such as a salary, wages, tips, and commissions;
- (B) participation in Choices or Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T) activities; or
- (C) engaging in job search at the time of eligibility determination or redetermination as described in §809.56 of this chapter.

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 April 30, 2024.

TRD-202401905  
 Les Trobman  
 General Counsel  
 Texas Workforce Commission  
 Earliest possible date of adoption: June 16, 2024  
 For further information, please call: (512) 850-8356



## SUBCHAPTER B. GENERAL MANAGEMENT

### 40 TAC §§809.18 - 809.21

The rules are proposed under:

--Texas Government Code §2308.3155(b), which provides TWC with the specific authority to adopt rules to administer the Texas Rising Star Program;

--Texas Labor Code §301.0015(a)(6) and §302.002(d), which provide TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules relate to Title 4, Texas Labor Code, Chapter 302, and Title 10, Texas Government Code, Chapter 2308.

#### §809.18. Maintenance of a Waiting List.

~~[(a) The following provisions are effective prior to December 1, 2023:]~~

~~[(1) A Board shall ensure that a list of parents and children waiting for child care services, because of the lack of funding or lack of providers, is maintained and available to the Commission upon request.]~~

~~[(2) A Board shall establish a policy for the maintenance of a waiting list that includes, at a minimum:]~~

~~[(A) the process for determining that the parent is potentially eligible for child care services before placing the parent on the waiting list; and]~~

~~[(B) the frequency in which the parent information is updated and maintained on the waiting list.]~~

~~[(3) A Board shall exempt children from the waiting list who are directly referred from a recognized pre-K or Head Start/Early Head Start (HS/EHS) partnership as described in §809.22 of this chapter to a child care provider to receive services in the contracted partnership program subject to the availability of funding and the availability of subsidized slots at the partnership site.]~~

~~[(b) The following provisions are effective December 1, 2023:]~~

~~(a) [(4)] A Board shall ensure that a list of parents and children waiting for child care services, because of the lack of funding or lack of providers, is maintained and available to the Commission upon request.~~

~~(b) [(2)] A Board shall ensure that the child is potentially eligible for child care services prior to placing the child on the waiting list.~~

~~(c) [(3)] A Board shall exempt children from the waiting list who are directly referred from a recognized pre-K or HS/EHS partnership, as described in §809.22 of this subchapter [chapter], to a child care provider to receive services in the contracted partnership program subject to the availability of funding and the availability of subsidized slots at the partnership site.~~

(d) [(4)] A Board shall contact the parent every three months and shall remove the child from the waiting list if the parent indicates that child care services are no longer required or does not respond to the Board regarding the continued need for child care services.

§809.19. *Assessing the Parent Share of Cost.*

[(a)] The following provisions are effective prior to December 1, 2023:;

[(1)] For child care funds allocated by the Commission pursuant to its allocation rules (generally, Chapter 800, Subchapter B of this title (relating to Allocations), and specifically, §800.58 of this title (relating to Child Care)), including local public transferred funds and local private donated funds, as provided in §809.17 of this subchapter, the following shall apply:;

[(A)] A Board shall set a parent share of cost policy that assesses the parent share of cost in a manner that results in the parent share of cost:;

[(i)] being assessed to all parents, except in instances when an exemption under subparagraph (B) of this paragraph applies;;

[(ii)] being an amount determined by a sliding fee scale based on the family's size and gross monthly income, including a possible reexamination of the sliding fee scale if there are frequent terminations for lack of payment pursuant to paragraph (4) of this subsection, which also may consider the number of children in care;;

[(iii)] being an amount that is affordable and does not result in a barrier to families receiving assistance;;

[(iv)] being assessed only at the following times:;

[(I)] initial eligibility determination;;

[(II)] 12-month eligibility redetermination;;

[(III)] upon the addition of a child in care;;

[(IV)] upon a parent's report of a change in income, family size, or number of children in care that would result in a reduced parent share of cost assessment; and;

[(V)] upon resumption of work, job training, or education activities following temporary changes described in §809.51(a)(2) of this chapter, and upon resumption of work, job training, or education activities during the three-month continuation of care period described in §809.51(e) of this chapter; and;

[(v)] not increasing above the amount assessed at initial eligibility determination or at the 12-month eligibility redetermination based on the factor in clause (ii) of this subparagraph, except upon the addition of a child in care as described in clause (iv)(III) of this subparagraph.;

[(B)] Parents who are one or more of the following are exempt from paying the parent share of cost:;

[(i)] Parents who are participating in Choices or who are in Choices child care described in §809.45 of this chapter;;

[(ii)] Parents who are participating in SNAP E&T services or who are in SNAP E&T child care described in §809.47 of this chapter;;

[(iii)] Parents of a child receiving Child Care for Children Experiencing Homelessness as described in §809.52 of this chapter; or;

[(iv)] Parents who have children who are receiving protective services child care pursuant to §809.49 and §809.54(e) of this chapter, unless DFPS assesses the parent share of cost.;

[(C)] Teen parents who are not covered under exemptions listed in subparagraph (B) of this paragraph shall be assessed a parent share of cost. The teen parent's share of cost is based solely on the teen parent's income and size of the teen's family as defined in §809.2 of this chapter.;

[(2)] A Board shall establish a policy stating whether or not the Board will reimburse providers when parents fail to pay the parent share of cost. If the Board does not reimburse providers under the adopted policy, the Board may establish a policy requiring the parent pay the provider before the family can be redetermined eligible for future child care services.;

[(3)] A Board shall establish a policy regarding termination of child care services within a 12-month eligibility period when a parent fails to pay the parent share of cost. The Board's policy must include:;

[(A)] a requirement to evaluate and document each family's financial situation for extenuating circumstances that may affect affordability of the assessed parent share of cost pursuant to subparagraph (B) of this paragraph, and a possible temporary reduction pursuant to paragraph (5) of this subsection before the Board or its child care contractor may terminate care under this section;;

[(B)] general criteria for determining affordability of a Board's parent share of cost, and a process to identify and assess the circumstances that may jeopardize a family's self-sufficiency under paragraph (5) of this subsection;;

[(C)] maintenance of a list of all terminations due to failure to pay the parent share of cost, for use when conducting evaluations of affordability, as required under subparagraph (D) of this paragraph; and;

[(D)] the Board's definition of what constitutes frequent terminations and its process for assessing the general affordability of the Board's parent share of cost schedule, pursuant to paragraph (4) of this subsection.;

[(4)] A Board with frequent terminations of care for lack of payment of the parent share of cost must reexamine its sliding fee scale and adjust it to ensure that fees are not a barrier to assistance for families at certain income levels.;

[(5)] The Board or its child care contractor may review the assessed parent share of cost for a possible temporary reduction if there are extenuating circumstances that jeopardize a family's self-sufficiency. The Board or its child care contractor may temporarily reduce the assessed parent share of cost if warranted by these circumstances. Following the temporary reduction, the parent share of cost amount immediately prior to the reduction shall be reinstated.;

[(6)] If the parent is not covered by an exemption as specified in paragraph (1)(B) of this subsection, then the Board or its child care contractor shall not waive the assessed parent share of cost under any circumstances.;

[(7)] If the parent share of cost, based on family income and family size, is calculated to be zero, then the Board or its child care contractor shall not charge the parent a minimum share of cost amount.;

[(8)] A Board may establish a policy to reduce the parent share of cost amount assessed pursuant to paragraph (1)(A)(ii) of this subsection upon the parent's selection of a Texas Rising Star-certified provider. Such Board policy shall ensure:;

[(A)] that the parent continues to receive the reduction if:;

[(i)] the Texas Rising Star provider loses Texas Rising Star certification; or;

~~[(ii) the parent moves or changes employment within the workforce area and no Texas Rising Star-certified providers are available to meet the needs of the parent's changed circumstances; and]~~

~~[(B) the parent no longer receives the reduction if the parent voluntarily transfers the child from a Texas Rising Star-certified provider to a non-Texas Rising Star-certified provider.]~~

~~[(9) A Board may establish a policy to reduce the parent share of cost amount assessed pursuant to paragraph (1)(A)(ii) of this subsection upon the child's referral for part-time or blended care. Such Board policy shall ensure that:]~~

~~[(A) the parent no longer receives the reduction if the referral is changed to full-time care; and]~~

~~[(B) a parent who qualifies for a reduction in parent share of cost for both selecting a Texas Rising Star-certified provider (as defined in paragraph (8) of this subsection) and a child's part-time or blended care referral will receive the greater of the two discounts.]~~

~~[(b) The following provisions are effective on December 1, 2023:]~~

~~(a) [(+) For child care funds allocated by the Commission pursuant to its allocation rules (generally, Chapter 800, Subchapter B of this title [(relating to Allocations)], and specifically [§] §800.58 of this title [(relating to Child Care)]), including local public transferred funds and local private donated funds, as provided in §809.17 of this subchapter, the following shall apply:~~

~~(1) [(A)] The parent share of cost shall [be]:~~

~~(A) [(+)] be assessed to all parents, except in instances when an exemption under paragraph (3) of this subsection [subparagraph (C) of this paragraph] applies; and~~

~~(B) [(+)] be established by the Commission and determined by a sliding fee scale based on the family's size and gross monthly income determined in §809.44 of this chapter and as represented by a percentage of the state median income (SMI) up to 85 percent SMI; and~~

~~(C) not exceed 7 percent of the family income, regardless of the number of children receiving child care services.~~

~~(2) [(B)] A Board shall assess the parent share of cost in accordance with subsection (a)(1)(B) of this section [subparagraph (A)(ii) of this paragraph] and in a manner that results in the parent share of cost:~~

~~(A) [(+)] being assessed only at the following times:~~

~~(i) [(+)] initial eligibility determination;~~

~~(ii) [(+)] 12-month eligibility redetermination;~~

~~(iii) [(+)] upon the addition of a child in care;~~

~~(iv) [(+)] upon a parent's report of a change in income, family size, or number of children in care that would result in a reduced parent share of cost assessment; and~~

~~(v) [(+)] upon resumption of work, job training, or education activities following temporary changes described in §809.51(a) of this chapter, and upon resumption of work, job training, or education activities during the three-month continuation of care period described in §809.51(c) of this chapter; and~~

~~(B) [(+)] not increasing above the amount assessed at initial eligibility determination or at the 12-month eligibility redetermination,~~

~~except upon the addition of a child in care as described in clause (A)(iii) of this paragraph [subclause (i)(III) of this subparagraph].~~

~~(3) [(C)] Parents who are one or more of the following are exempt from paying the parent share of cost:~~

~~(A) [(+)] Parents who are participating in Choices or who are in Choices child care described in §809.45 of this chapter;~~

~~(B) [(+)] Parents who are participating in SNAP E&T services or who are in SNAP E&T child care described in §809.47 of this chapter;~~

~~(C) [(+)] Parents of a child receiving Child Care for Children Experiencing Homelessness as described in §809.52 of this chapter; or~~

~~(D) [(+)] Parents who have children who are receiving protective services child care pursuant to §809.49 and §809.54(c) of this chapter, unless DFPS assesses the parent share of cost.~~

~~(4) [(D)] Teen parents who are not covered under exemptions listed in paragraph (3) of this section [subparagraph (C) of this paragraph] shall be assessed a parent share of cost. The teen parent's share of cost is based solely on the teen parent's income and size of the teen's family as defined in §809.2 of this chapter.~~

~~(b) [(2)] A Board shall establish a policy stating whether or not the Board will pay [reimburse] providers when parents fail to pay the parent share of cost. If the Board does not pay [reimburse] providers under the adopted policy, the Board may establish a policy requiring the parent pay the provider before the family can be redetermined eligible for future child care services.~~

~~(c) [(3)] A Board shall establish a policy regarding termination of child care services within a 12-month eligibility period when a parent fails to pay the parent share of cost. The Board's policy must include:~~

~~(1) [(A)] a requirement to evaluate and document each family's financial situation for extenuating circumstances that may affect affordability of the assessed parent share of cost pursuant to paragraph (2) of this subsection [subparagraph (B) of this paragraph], and a possible temporary reduction pursuant to subsection (d) of this section [paragraph (4)] of this subsection before the Board or its child care contractor may terminate care under this section;~~

~~(2) [(B)] a process to identify and assess the circumstances that may jeopardize a family's self-sufficiency under subsection (d) of this section [paragraph (4) of this subsection]; and~~

~~(3) [(C)] maintenance of a list of all terminations due to failure to pay the parent share of cost.~~

~~(d) [(4)] The Board or its child care contractor may review the assessed parent share of cost for a possible temporary reduction if there are extenuating circumstances that jeopardize a family's self-sufficiency. The Board or its child care contractor may temporarily reduce the assessed parent share of cost if warranted by these circumstances. Following the temporary reduction, the parent share of cost amount immediately prior to the reduction shall be reinstated.~~

~~(e) [(5)] If the parent is not covered by an exemption as specified in subsection (a)(3) of this section [paragraph (1)(C) of this subsection], then the Board or its child care contractor shall not waive the assessed parent share of cost under any circumstances.~~

~~(f) [(6)] If the parent share of cost, based on family income and family size, is calculated to be zero, then the Board or its child care contractor shall not charge the parent a minimum share of cost amount.~~

~~[(7) A Board may establish a policy to reduce the parent share of cost amount assessed pursuant to paragraph (1)(A) of this subsection upon the parent's selection of a Texas Rising Star-certified provider. Such Board policy shall ensure:]~~

~~[(A) that the parent continues to receive the reduction if:]~~

~~[(i) the Texas Rising Star provider loses Texas Rising Star certification; or]~~

~~[(ii) the parent moves or changes employment within the workforce area and no Texas Rising Star-certified providers are available to meet the needs of the parent's changed circumstances; and]~~

~~[(B) the parent no longer receives the reduction if the parent voluntarily transfers the child from a Texas Rising Star-certified provider to a non-Texas Rising Star-certified provider.]~~

~~[(g) A Board may establish a policy to reduce the parent share of cost amount assessed pursuant to subsection (a)(1) upon the child's referral for part-time or blended care. Such Board policy shall ensure that the parent no longer receives the reduction if the referral is changed to full-time care.]~~

~~[(8) A Board may establish a policy to reduce the parent share of cost amount assessed pursuant to paragraph (1)(A) of this subsection upon the child's referral for part-time or blended care. Such Board policy shall ensure that:~~

~~[(A) parent no longer receives the reduction if the referral is changed to full-time care; and]~~

~~[(B) a parent who qualifies for a reduction in parent share of cost for both selecting a Texas Rising Star-certified provider (as defined in paragraph (7) of this subsection) and a child's part-time or blended care referral will receive the greater of the two discounts.]~~

~~§809.20. Maximum Provider Payment [Reimbursement] Rates.~~

~~(a) Based on local factors, including a market rate survey provided by the Commission, a Board shall establish maximum provider payment [reimbursement] rates for child care subsidies at or above a level established by the Commission to ensure that the rates provide equal access to child care in the local market and in a manner consistent with state and federal statutes and regulations governing child care. At a minimum, Boards shall establish provider payment [reimbursement] rates for full-day and part-day units of service, as described in §809.93(f) of this chapter, for the following:~~

~~(1) Provider types:~~

~~(A) Licensed child care centers, including before- or after-school programs and school-age programs, as defined by CCR;~~

~~(B) Licensed child care homes as defined by CCR;~~

~~(C) Registered child care homes as defined by CCR; and~~

~~(D) Relative child care providers as defined in §809.2 of this chapter.~~

~~[(2) Age groups in each provider type effective prior to December 1, 2023:]~~

~~[(A) Infants age 0 to 17 months;]~~

~~[(B) Toddlers age 18 to 35 months;]~~

~~[(C) Preschool age children from 36 to 71 months; and]~~

~~[(D) School-age children 72 months and older.]~~

~~(2) [(3)] Age groups in each provider type [effective December 1, 2023]:~~

~~(A) Infants ages 0 through 11 months;~~

~~(B) Infants ages 12 through 17 months;~~

~~(C) Toddlers ages 18 through 23 months;~~

~~(D) Toddlers age 2 years;~~

~~(E) Preschool age 3 years;~~

~~(F) Preschool age 4 years;~~

~~(G) Preschool age 5 years; and~~

~~(H) School-age 6 years and older.~~

~~(b) A Board shall establish enhanced payment [reimbursement] rates:~~

~~(1) for all age groups at certified Texas Rising Star provider facilities; and~~

~~(2) only for infant, toddler, and preschool-age children at child care providers that participate in integrated school readiness models for those age groups pursuant to Texas Education Code [.] §29.160.~~

~~(c) The minimum enhanced payment [reimbursement] rates established under subsection (b) of this section shall be greater than the maximum rate established for providers not meeting the requirements of subsection (b) of this section for the same category of care up to, but not to exceed, the provider's published rate. The maximum rate must be at least:~~

~~(1) 5 percent greater for a:~~

~~(A) certified Two-Star Provider; or~~

~~(B) child care provider meeting the requirements of subsection (b)(2) of this section;~~

~~(2) 7 percent greater for a certified Three-Star Provider; and~~

~~(3) 9 percent greater for a certified Four-Star Provider.~~

~~(d) Boards may establish a higher enhanced payment [reimbursement] rate than those specified in subsection (c) of this section for certified Texas Rising Star providers, as long as there is a minimum 2 percentage point difference between each star level.~~

~~(e) A Board or its child care contractor shall ensure that providers that are paid [reimbursed] for additional staff or equipment needed to assist in the care of a child with disabilities are paid a rate up to 190 percent of the provider's payment [reimbursement] rate for a child of that same age. The higher rate shall take into consideration the estimated cost of the additional staff or equipment needed by a child with disabilities. The Board shall ensure that a professional, who is familiar with assessing the needs of children with disabilities, certifies the need for the higher payment [reimbursement] rate described in this subsection.~~

~~(f) The Board shall determine whether to pay [reimburse] providers that offer transportation as long as the combined total of the provider's published rate, plus the transportation rate, is subject to the maximum payment [reimbursement] rate established in subsection (a) of this section.~~

~~(g) A Board may establish a higher enhanced payment [reimbursement] rate for nontraditional hours, as defined by the Board.~~

~~§809.21. Determining the Amount of the Provider Payment [Reimbursement].~~

(a) The actual payment [~~reimbursement~~] that the Board or the Board's child care contractor pays to the provider shall be the Board's maximum daily rate or the provider's published daily rate, whichever is lower, less the following amounts:

(1) The parent share of cost assessed and adjusted when the parent share of cost is reduced; and

(2) Any child care funds received by the parent from other public or private entities.

(b) A Board or its child care contractor shall ensure that the provider's published daily rates are calculated according to Commission guidance and include the provider's enrollment fees, supply fees, and activity fees.

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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## SUBCHAPTER C. ELIGIBILITY FOR CHILD CARE SERVICES

### 40 TAC §§809.42, 809.51, 809.56

The rules are proposed under:

--Texas Government Code §2308.3155(b), which provides TWC with the specific authority to adopt rules to administer the Texas Rising Star Program;

--Texas Labor Code §301.0015(a)(6) and §302.002(d), which provide TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules relate to Title 4, Texas Labor Code, Chapter 302, and Title 10, Texas Government Code, Chapter 2308.

*§809.42. Eligibility Verification, Determination, and Redetermination.*

(a) A Board shall ensure that its child care contractor verifies all eligibility requirements for child care services prior to authorizing child care.

(b) A Board shall ensure that eligibility for child care services shall be redetermined no sooner than 12 months following the initial determination or most recent redetermination [~~, except for Child Care during Job Search as described in §809.56 of this chapter~~].

*§809.51. Child Care during Interruptions in Work, Education, or Job Training.*

(a) A child meeting [~~Except for a child experiencing homelessness, as described in §809.52 of this chapter, and for child care during job search, as described in §809.56 of this chapter, if the child met~~] all of the applicable eligibility requirements for child care services in this subchapter on the date of the most recent eligibility determination or redetermination, the child shall be considered to be eligible and

will receive services during the 12-month eligibility period described in §809.42 of this subchapter [~~chapter~~], regardless of any:

(1) change in family income, if that family income does not exceed 85 percent of SMI for a family of the same size; or

(2) temporary change in the ongoing status of the child's parent as working or attending a job training or education program. A temporary change shall include, at a minimum, any:

(A) time-limited absence from work for an employed parent for periods of family leave (including parental leave) or sick leave;

(B) interruption in work for a seasonal worker who is not working between regular industry work seasons;

(C) student holiday or breaks within a semester, between the fall and spring semesters, or between the spring and fall semesters, for a parent participating in training or education;

(D) reduction in work, training, or education hours, as long as the parent is still working or attending a training or education program;

(E) other cessation of work or attendance in a training or education program that does not exceed three months;

(F) change in age, including turning 13 years old or a child with disabilities turning 19 years old during the eligibility period; and

(G) change in residency within the state.

(b) During the period of time between eligibility redeterminations, a Board shall discontinue child care services due to a parent's loss of work or cessation of attendance at a job training or educational program that does not constitute a temporary change in accordance with subsection (a)(2) of this section. However, Boards must ensure that care continues at the same level for a period of not less than three months after such loss of work or cessation of attendance at a job training or educational program.

(c) If a parent resumes work or attendance at a job training or education program at any level and at any time during the period described in subsection (b) of this section, then the Board shall ensure that:

(1) care will continue to the end of the 12-month eligibility period at the same or greater level, depending upon any increase in the activity hours of the parent;

(2) the parent share of cost will not be increased during the remainder of the 12-month eligibility period, including for parents who are exempt from the parent share of cost pursuant to §809.19 of this chapter; and

(3) the Board's child care contractor verifies only:

(A) that the family income does not exceed 85 percent of SMI; and

(B) the resumption of work or attendance at a job training or education program.

(d) The Board may suspend child care services during interruptions in the parent's work, job training, or education status only at the concurrence of the parent.

*§809.56. Child Care during Initial Job Search.*

(a) A parent, including a parent in a dual-parent family, is eligible for child care services under this section if at initial eligibility determination the family does not meet the minimum participation require-

ments for At-Risk Child Care as described in §809.50 of this subchapter [chapter].

(b) A Board shall allow parents to self-attest that the:

(1) family meets the requirements of subsection (a) of this section; and

(2) family income does not exceed 85 percent of the state median income.

(c) The 12-month eligibility period for child care under this section consists of [~~Child care under this section is limited to~~] an initial three-month job search period. If total activity participation of at least 25 hours for a single-parent family or a total combined 50 hours per week for dual-parent families, which must include a minimum of 12 hours in employment for a single-parent family and a total combined 25 hours in employment for a dual-parent family, are met within the initial three months, eligibility will continue for the remainder of the 12-month eligibility period, [~~a total of 12 months, inclusive of the care provided during the initial job search period;~~] provided that the family income does not exceed 85 percent of the state median income. If the family does not meet minimum activity requirements under this subsection within three months, care must be terminated.

(d) For child care during the initial three-month job search period, the follow applies regarding the parent share of cost:

(1) A Board shall initially assess the parent share of cost at the highest amount based on the family size and number of children in care.

(2) The initially assessed amount will immediately be temporarily reduced to zero. This provision also applies to dual-parent families in which one parent is employed but the family meets the requirements in subsection (a) of this section for child care during initial job search.

(3) If the parent begins to meet participation requirements of subsection (c) of this section within or by the end of the three-month job search period, the parent share of cost shall be reinstated at the initially assessed amount or the amount based on the actual family income, whichever is lower.

(e) Eligibility for child care under this section is limited to one initial three-month job search period per family within a 12-month period.

(f) A Board shall ensure that the parent in child care for job search is registered with the state's labor exchange system and has access to appropriate services available through the one-stop delivery network described in §801.28 of this title.

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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### SUBCHAPTER D. PARENT RIGHTS AND RESPONSIBILITIES

### 40 TAC §809.73

The rule is proposed under:

--Texas Government Code §2308.3155(b), which provides TWC with the specific authority to adopt rules to administer the Texas Rising Star Program;

--Texas Labor Code §301.0015(a)(6) and §302.002(d), which provide TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rule relates to Title 4, Texas Labor Code, Chapter 302, and Title 10, Texas Government Code, Chapter 2308.

#### §809.73. Parent Reporting Requirements.

(a) Boards shall ensure that during the 12-month eligibility period described in §809.41 of this chapter [~~or during the three-month initial job search period and the subsequent eligibility period described in §809.56 of this chapter;~~] parents are only required to report items that impact a family's eligibility or that enable the Board or Board contractor to contact the family or pay the provider.

(b) Pursuant to subsection (a) of this section, parents shall report to the child care contractor, within 14 calendar days of the occurrence, the following:

(1) Changes in family income or family size that would cause the family to exceed 85 percent of SMI for a family of the same size;

(2) Changes in work or attendance at a job training or educational program not considered to be temporary changes, as described in §809.51 of this chapter; and

(3) Any change in family residence, primary phone number, or e-mail (if available).

(c) Failure to report changes described in subsection (a) of this section may result in fact-finding for suspected fraud as described in Subchapter F of this chapter.

(d) A Board shall allow parents to report, and the child care contractor shall take appropriate action, regarding changes in:

(1) income and family size, which may result in a reduction in the parent share of cost pursuant to §809.19 of this chapter; and

(2) work, job training, or education program participation that may result in an increase in the level of child care services.

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### SUBCHAPTER E. REQUIREMENTS TO PROVIDE CHILD CARE

### 40 TAC §§809.92 - 809.94, 809.96



The rules are proposed under:

--Texas Government Code §2308.3155(b), which provides TWC with the specific authority to adopt rules to administer the Texas Rising Star Program;

--Texas Labor Code §301.0015(a)(6) and §302.002(d), which provide TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules relate to Title 4, Texas Labor Code, Chapter 302, and Title 10, Texas Government Code, Chapter 2308.

§809.92. *Provider Responsibilities and Reporting Requirements.*

(a) A Board shall ensure that providers are given written notice of and agree to their responsibilities, reporting requirements, and requirements for payment [reimbursement] under this subchapter prior to enrolling a child.

(b) Providers shall:

(1) be responsible for collecting the parent share of cost as assessed under §809.19 of this chapter before child care services are delivered;

(2) be responsible for collecting other child care funds received by the parent as described in §809.21 of this chapter;

(3) report to the Board or the Board's child care contractor instances in which the parent fails to pay the parent share of cost; and

(4) follow attendance reporting and tracking procedures required by the Commission under §809.95 of this chapter, the Board, or, if applicable, the Board's child care contractor.

(c) Providers shall not charge more than the Board's payment [reimbursement] rate as determined under §809.21 of this chapter to parents:

(1) who are exempt from the parent share of cost assessment under §809.19 of this chapter;

(2) whose parent share of cost is calculated to be zero pursuant to §809.19 of this chapter; or

(3) parents in Child Care during Initial Job Search under §809.56 of this chapter during the initial three-month period.

(d) A Board may develop a policy that allows providers to charge parents more than the assessed parent share of cost in instances where the provider's published rate exceeds the Board's payment [reimbursement] rate (including the assessed parent share of cost) to all parents not included in subsection (c) of this section.

(e) For Boards that allow providers to charge additional amounts pursuant to subsection (d) of this section, the Board must ensure the provider reports to the Board each month:

(1) the specific families that were charged an additional amount above the assessed amount;

(2) the frequency with which each family was charged; and

(3) the amount of each additional charge.

(f) Boards that develop a policy under subsection (d) of this section must:

(1) provide the rationale for the Board's policy to allow providers to charge families additional amounts above the required co-payment, including a demonstration of how the policy promotes affordability and access for families; and

(2) describe the Board's analysis of the interaction between the additional amounts charged to families with the required parent share of cost and the ability of current payment [reimbursement] rates to provide access to care without additional fees.

(g) Providers shall not deny a child care referral based on the parent's income status, receipt of public assistance, or the child's protective service status.

(h) Providers shall not charge fees to a parent receiving child care subsidies that are not charged to a parent who is not receiving subsidies.

§809.93. *Provider Payment [Reimbursement].*

(a) A Board shall ensure that payment [reimbursement] for child care is made [paid] only to the provider.

(b) A Board or its child care contractor shall pay [reimburse] a regulated provider based on a child's monthly enrollment authorization, excluding periods of suspension at the concurrence of the parent, as described in §809.51(d) of this chapter.

(c) A Board shall ensure that a relative child care provider is not reimbursed for days on which the child is absent.

(d) A relative child care provider shall not be reimbursed for more children than permitted by the CCR minimum regulatory standards for Registered Child Care Homes. A Board may permit more children to be cared for by a relative child care provider on a case-by-case basis as determined by the Board.

(e) A Board shall not pay [reimburse] providers that are debarred from other state or federal programs unless and until the debarment is removed.

(f) Unless otherwise determined by the Board and approved by the Commission for automated reporting purposes, the monthly enrollment authorization described in subsection (b) of this section is based on the unit of service authorized, as follows:

(1) A full-day unit of service is 6 to 12 hours of care provided within a 24-hour period;

(2) A part-day unit of service is fewer than 6 hours of care provided within a 24-hour period; and

(3) A blended-day unit of service is for a child enrolled in a school program, pre-K, HS, or EHS in which child care is part-day with care provided occasionally on a full-day basis.

(g) A Board or its child care contractor shall ensure that providers are not paid for holding spaces open without a valid contracted slots agreement, as described in §809.96 of this chapter.

(h) The Board or its child care contractor shall not pay [reimburse] a provider retroactively for new Board maximum payment [reimbursement] rates or new provider published rates.

(i) A Board or its child care contractor shall ensure that the parent's travel time to and from the child care facility and the parent's work, school, or job training site is included in determining the enrollment authorized under subsection (f) of this section.

(j) A [Effective December 1, 2023, a] Board shall pay regulated child care providers prospectively every two weeks based on the enrollment authorization described in subsection (b) of this section.

§809.94. *Providers Placed on Corrective or Adverse Action by Child Care Regulation.*

(a) For a provider placed on probation corrective action (probationary status) by CCR, Boards shall ensure that:

(1) parents with children in Commission-funded child care are notified in writing of the provider's probationary status no later than five business days after receiving notification from the Agency of CCR's decision to place the provider on probationary status; and

(2) no new referrals are made to the provider while on probationary status.

(b) A parent receiving notification of a provider's probationary status with CCR pursuant to subsection (a) of this section may transfer the child to another eligible provider without being subject to the Board transfer policies described in §809.71 of this chapter if the parent requests the transfer within 14 calendar days of receiving such notification.

(c) For a provider placed on probationary status by CCR, Boards shall ensure that the provider is not paid [reimbursed] at the Boards' enhanced payment [reimbursement] rates described in §809.20 while on probationary status.

(d) For a provider against whom CCR is taking adverse action, Boards shall ensure that:

(1) parents with children enrolled in Commission-funded child care are notified no later than two business days after receiving notification from the Agency that CCR intends to take adverse action against the provider;

(2) children enrolled in Commission-funded child care with the provider are transferred to another eligible provider no later than five business days after receiving notification from the Agency that CCR intends to take adverse action against the provider; and

(3) no new referrals for Commission-funded child care are made to the provider while CCR is taking adverse action.

§809.96. *Contracted Slots Agreements.*

(a) In this section, the term "contracted slots agreement" is defined as a Board entering into a contract with a child care provider to reserve a specific number of places, or slots, for children participating in the child care subsidy program. This contract shall:

(1) define the number of slots to be reserved by age group (infant, toddler, preschool, or school-age); and

(2) meet the eligibility requirements as described in subsection (e) of this section.

(b) Boards may enter into a contracted slots agreement with providers that agree to provide subsidized child care services to eligible children residing in the Board's workforce area.

(c) A Board that enters into a contracted slots agreement shall include this strategy in the Board Plan, as described in §809.12 of this chapter.

(d) Each contract between a Board and a provider must identify the number of places (slots) to be reserved for children participating in the child care subsidy program.

(e) To be eligible for a contract, a child care provider must be a Texas Rising Star Three-Star or Four-Star provider and meet one of the following priorities:

(1) Be located in:

(A) a child care desert; or

(B) an underserved area that has been identified by a Board as having an inadequate supply of child care in accordance with the parameters described in the CCDF State Plan.

(2) Have a recognized partnership with local school districts to provide pre-K services;

(3) Have a recognized partnership with EHS or HS;

(4) Increase the number of places reserved for infants and toddlers by high-quality child care providers; ~~or~~

(5) Increase the number of places reserved for children with disabilities; or

(6) [(5)] Satisfy a priority identified in the Board's plan, as described in §809.12 of this chapter.

(f) A Board that enters into a contracted slots agreement may continue payment for reserved slots during times of transition between the time that one child leaves the program and another child is placed in the slot. The period of continued payment shall adhere to the Board's policy for contracted slots agreements and may not exceed one month following the month of the vacancy.

(g) Except for children directly referred from recognized partnerships, as described in §809.22 of this chapter, to fill open reserved slots, Boards shall contact families in order of the Board's waiting list:

(1) that requested care in the ZIP code where the provider with the open reserved slot is located; and

(2) whose child is in the age group for which a slot is available.

(h) In accordance with Commission guidelines, Boards that enter into contracted slots agreements shall submit a report to the Commission within six months of entering into a contract, determining the contract's effect on the:

(1) financial stability of providers participating in the contract;

(2) availability of high-quality child care options available to participants in the Commission's subsidy program;

(3) number of high-quality providers in any part of the workforce area with a high concentration of families that need child care;

(4) percentage of children participating in the Commission's subsidized child care program at each Texas Rising Star provider in the workforce area; and

(5) additional information as requested by the Commission.

(i) A Board shall resubmit the report every 12 months from the due date of the Board's initial report to the Commission.

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## SUBCHAPTER G. TEXAS RISING STAR PROGRAM

### 40 TAC §§809.130 - 809.134, 809.136

The rules are proposed under:

--Texas Government Code §2308.3155(b), which provides TWC with the specific authority to adopt rules to administer the Texas Rising Star Program;

--Texas Labor Code §301.0015(a)(6) and §302.002(d), which provide TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules relate to Title 4, Texas Labor Code, Chapter 302, and Title 10, Texas Government Code, Chapter 2308.

#### §809.130. Short Title and Purpose.

(a) The rules contained in this subchapter may be cited as the Texas Rising Star Program rules.

(b) The purpose of the Texas Rising Star Program rules is to interpret and implement Texas Government Code [§] §2308.3155, which requires the Commission to establish rules to administer the Texas Rising Star program, including guidelines for rating a child care provider for Texas Rising Star certification and designation of an Entry Level child care provider.

(c) The Texas Rising Star Program rules identify the organizational structure and categories of, and the scoring factors that shall be included in, the Texas Rising Star guidelines.

(d) The Texas Rising Star guidelines shall:

(1) describe measures for Texas Rising Star certification that contain, at a minimum, measures for child care providers regarding:

- (A) director and staff qualifications and training;
- (B) teacher-child interactions;
- (C) program administration; and
- (D) indoor/outdoor environments;

(2) specify measures that:

(A) must be met in order for a provider to be certified at each star level; and

(B) are observed and have points awarded through on-site assessments;

(3) specify the scoring methodology and scoring thresholds for each certified star level; ~~and~~

(4) describe the high and medium-high CCR deficiencies points threshold pursuant to §809.131 and §809.132 of this chapter and; ~~[the process for designating providers at the Entry Level.]~~

(5) the process for designating providers at the Entry Level.

(e) The Texas Rising Star guidelines:

(1) shall be reviewed and updated by the Commission at a minimum of every four years in conjunction with the rule review of this chapter, conducted pursuant to Texas Government Code [§] §2001.039 [§] and the Texas Rising Star guidelines review shall:

- (A) consider input from stakeholders; and
- (B) include at least one public hearing held prior to submitting the stakeholder input to the Commission;

(2) shall be adopted by the Commission subject to the requirements of the Texas Open Meetings Act; and

(3) may be reviewed and amended as determined necessary by the Commission in accordance with the requirements of the Texas Open Meetings Act.

#### §809.131. Requirements for the Texas Rising Star Program.

(a) A regulated child care provider is eligible for initial certification under the Texas Rising Star program if the provider has a current agreement to serve Commission-subsidized children and:

(1) has a permanent (nonexpiring) license or registration from CCR;

(2) has at least 12 months of licensing history with CCR and does not exceed the points threshold for high and medium-high CCR deficiencies within the most recent 6-month period as established in the Texas Rising Star guidelines pursuant to §809.130(d)(4), and is not on:

(A) corrective action with a Board pursuant to Subchapter F of this chapter;

(B) a "Notice of Freeze" with the Commission pursuant to Texas Labor Code, Chapter 213 (Enforcement of the Texas Unemployment Compensation Act) or Chapter 61 (Payment of Wages); or

(C) corrective or adverse action with CCR; ~~and~~

(3) meets the criteria for star-level certification in the Texas Rising Star guidelines pursuant to §809.130(d) of this subchapter; ~~and~~ [-]

(4) has at minimum, a center director account registered in the Texas Early Childhood Professional Development System Workforce Registry; or

(5) is regulated by and in good standing with the United States Military.

(b) Regulated child care providers not meeting the Texas Rising Star certification requirements described in this subchapter and established in the Texas Rising Star guidelines shall be initially designated as Entry Level if the child care provider:

(1) is not on corrective or adverse action with CCR; and

(2) does not exceed the points threshold for high and medium-high CCR deficiencies within the most recent 6-month ~~[12-month]~~ period as established in the Texas Rising Star guidelines pursuant to §809.130(d)(4) ~~[guidelines]~~.

(c) A provider initially meeting the requirements in subsection (b) of this section is eligible for mentoring services through the Texas Rising Star program during the time periods described in subsections (d) - (f) of this section.

(d) A provider shall be initially designated as Entry Level for no more than 24 months unless approved for a waiver under subsection (f) of this section.

(e) An Entry Level provider will be reviewed for Texas Rising Star certification no later than the end of the 12th month of the 24-month period. Beginning on the 18th month, an Entry Level provider will be reviewed monthly for Texas Rising Star certification, and if it is determined that they will not be eligible by the end of their 24-month timeframe based on the 6-month licensing review time period (as described in subsection (a)(2) of this section), [If an Entry Level provider is not eligible for certification as Texas Rising Star by the end of the 18th month,] the provider shall not receive referrals for new families as an Entry Level provider, unless the provider is located

in a child care desert or serves an underserved population [§] and is approved by the Agency to accept new family referrals.

(f) The Agency may approve a waiver to extend the time limit under subsection (d) of this section if the provider is:

(1) located in a child care desert or serves an underserved population as determined by the Agency;

(2) unable to meet the certification requirements due to a federal or state declared emergency/disaster; or

(3) unable to meet the certification requirements due to conditions that the Agency determines are outside the provider's control.

(g) Waivers approved under subsection (f) of this section shall not exceed a total of 36 months.

§809.132. *Impacts on Texas Rising Star Certification.*

(a) A Texas Rising Star-certified provider shall be placed on suspension status if the provider:

(1) is placed on corrective action with a Board pursuant to Subchapter F of this chapter;

(2) is under a "Notice of Freeze" with the Commission pursuant to Texas Labor Code, Chapter 213 (Enforcement of the Texas Unemployment Compensation Act) or Chapter 61 (Payment of Wages);

(3) is placed on corrective or adverse action by CCR

(4) exceeds the probationary status points threshold as described in the Texas Rising Star guidelines pursuant to §809.130(d)(4) [had 15 or more total high or medium-high weighted licensing deficiencies during the most recent 12-month licensing history];

(5) had more than four probationary impacts during its three-year certification period;

(6) had a consecutive third probationary impact;

(7) is cited for specified CCR minimum standards regarding weapons and ammunition; or

(8) is not meeting at least the Two-Star level due to non-compliance with Texas Rising Star guidelines at the most recent assessment of certification.

(b) Texas Rising Star-certified providers with any of the specified "star level drop" licensing deficiencies listed in the Texas Rising Star guidelines during the most recent 6-month [12-month] CCR licensing history shall be placed on a six-month Texas Rising Star probationary period. Furthermore:

(1) reduction of one star level for each deficiency cited, so a Four-Star certified provider is reduced to a Three-Star provider, a Three-Star provider is reduced to a Two-Star provider, and a Two-Star provider is placed on suspension status; and/or [or]

(2) if CCR does not cite any additional specified star-level drop deficiencies during the 6-month probationary period the provider shall be reinstated at the former star level [a Two-Star provider is placed on suspension status].

(c) Texas Rising Star-certified providers [Texas Rising Star certified providers] with any of the specified "probationary" licensing deficiencies listed in the Texas Rising Star guidelines during the most recent 6-month [12-month] CCR licensing history shall be placed on a six-month Texas Rising Star probationary period. Furthermore:

(1) Texas Rising Star-certified [Texas Rising Star] providers on a six-month [Texas Rising Star] probationary period that

are cited by CCR within the probationary period for any additional specified probationary deficiencies within the probationary period shall be placed on a second, consecutive probation and lose a star level, with a Two-Star certified provider being placed on suspension status;

(2) if CCR does not cite any additional specified probationary deficiencies during the probationary period, the provider can be removed from probation status and shall be reinstated at the former star level, if applicable; and

(3) if any additional specified probationary deficiencies are cited by CCR during the second six-month probationary period, the [Texas Rising Star] provider shall be placed on suspension status.

(d) Texas Rising Star-certified providers whose total points for high or medium-high deficiencies received [with 10 to 14 total high or medium-high weighted licensing deficiencies] during the most recent 6-month [12-month] CCR licensing history fall within the prescribed points threshold range as described in the Texas Rising Star guidelines pursuant to §809.130(d)(4), shall be placed on a six-month Texas Rising Star program probationary period. Furthermore:

(1) Texas Rising Star-certified providers on a six-month probationary period that are cited by CCR within the probationary period for any additional high or medium-high weighted deficiencies within the probationary period shall be placed on a second, consecutive probation and lose a star level, with a Two-Star certified provider being placed on suspension status;

(2) if CCR does not cite any [no] additional high or medium-high weighted deficiencies [are cited by CCR] during the probationary period, the provider can be removed from probation status and shall be reinstated at the former star level, if applicable; and

(3) if any additional [new] high or medium-high weighted deficiencies [—not to exceed 14 total deficiencies—] are cited by CCR during the second six-month probationary period, the [a] provider shall be placed on suspension status.

~~[(e) Certified providers not on suspension status losing a star level due to licensing deficiencies shall be reinstated at the former star level if no citations described in subsections (b) - (d) of this section occur within the six-month reduction time frame.]~~

~~(e) [(f)] Certified providers in suspension status shall be eligible for a reassessment after six months following the suspension date, as long as no deficiencies described in subsections (b) - (d) of this section are cited during the previous six months.~~

~~(f) [(g)] Certified providers in suspension status shall achieve at least a Two-Star certification no later than 15 months following the suspension date. Failure to achieve at least a Two-Star certification within the 15-month period will result in the provider's ineligibility to provide child care services under this chapter.~~

~~(g) [(h)] Certified providers on suspension status:~~

~~(1) shall be eligible to provide child care services under this chapter as long as the provider meets at least the Entry Level criteria described in §809.131(b) of this chapter;~~

~~(2) shall not be eligible for the enhanced payment [reimbursement] rate and shall be paid [reimbursed] at the Board's Entry Level [reimbursement] rate; and~~

~~(3) [the provider] shall not be able to receive referrals from a new family during the last six months of the 15-month period, unless the provider is located in a child care desert or serves an underserved population [§] and is approved by the Agency to accept new family referrals.~~

(h) [(i)] Certified providers in suspension status that fail to achieve at least a Two-Star certification by the end the 15-month suspension period:

- (1) are not eligible to provide child care services under this chapter;
- (2) are not eligible for the Entry Level designation time frame described in §809.131(e) of this chapter;
- (3) are not eligible for the extension waiver described in §809.131(f) of this chapter; and
- (4) must subsequently meet at least a Two-Star certification eligibility and screening requirements to provide child care services under this subchapter.

*§809.133. Application and Assessments for Texas Rising Star Certification.*

(a) Texas Rising Star certification applicants must complete:

- (1) an orientation on the Texas Rising Star guidelines, including an overview of the:
  - (A) Texas Rising Star program application process;
  - (B) Texas Rising Star program measures; and
  - (C) Texas Rising Star program assessment process;
- (2) the creation of a continuous quality improvement plan; and
- (3) a Texas Rising Star program self-assessment tool.

(b) The Agency's designated Texas Rising Star assessment entity shall ensure that:

- (1) written acknowledgment of receipt of the application and self-assessment is sent to the provider;
- (2) within 20 days of receipt of the application, the provider is sent an estimated time frame for scheduling the initial assessment;
- (3) an assessment is conducted for any provider that meets the eligibility requirements in §809.131 of this subchapter and requests certification under the Texas Rising Star program; and
- (4) Texas Rising Star certification is granted for any provider that is assessed and verified as meeting the Texas Rising Star provider certification criteria set forth in the Texas Rising Star guidelines.

(c) The Agency's designated Texas Rising Star assessment entity shall ensure that Texas Rising Star certification assessments are conducted as follows:

- (1) On-site assessment of 100 percent of the provider classrooms at the initial assessment for Texas Rising Star certification and at each scheduled recertification; and
- (2) Recertification of all certified Texas Rising Star providers every three years.

(d) The Agency's designated Texas Rising Star assessment entity shall ensure that certified Texas Rising Star providers are monitored on an annual basis and the monitoring includes:

- (1) at least one unannounced on-site visit; and
- (2) a review of the provider's licensing compliance as described in §809.132 of this chapter.

(e) The Agency's designated Texas Rising Star assessment entity shall ensure compliance with the process and procedures in the Texas Rising Star guidelines for conducting assessments of nationally

accredited child care facilities and child care facilities regulated by the United States Military.

(f) The Agency's designated Texas Rising Star assessment entity shall ensure compliance with the process and procedures in the Texas Rising Star guidelines for conducting assessments of certified Texas Rising Star providers that have a change of ownership, move, or expand locations.

(g) Boards shall ensure compliance with the process and procedures in the Texas Rising Star guidelines for implementing and supporting a continuous quality improvement framework.

~~[(h) Boards shall be responsible for the tasks assigned to the Texas Rising Star assessor entity in this subchapter, within their respective workforce areas, until the assessor entity is procured and designated by the Agency.]~~

*§809.134. Minimum Qualifications for Texas Rising Star Staff.*

(a) Boards and the Agency's designated Texas Rising Star assessment entity shall ~~[ensure that Texas Rising Star staff]:~~

(1) ~~conduct a background check on each Texas Rising Star staff member prior to hiring and again every five years [meets the background check requirement consistent with Chapter 745 of this title]; and~~

(2) ~~ensure that each Texas Rising Star staff~~ completes the Texas Rising Star standards training, as described in the Texas Rising Star guidelines.

(b) Boards shall ensure that Texas Rising Star mentor staff meets the minimum requirements in subsections (c) - (f) of this section.

(c) Texas Rising Star mentor staff shall meet the minimum education requirements as follows:

(1) Bachelor's degree from an accredited four-year college or university in early childhood education, child development, special education, child psychology, educational psychology, elementary education, or family consumer science;

(2) Bachelor's degree from an accredited four-year college or university with at least 18 credit hours in early childhood education, child development, special education, child psychology, educational psychology, elementary education, or family consumer science with at least 12 credit hours in child development; or

(3) Associate's degree in early childhood education, child development, special education, child psychology, educational psychology, elementary education, or family consumer science, and two years of suitable experience in early childhood education as determined by the Board.

(d) The ~~Agency~~ ~~[Commission]~~ may grant a waiver of no more than two years to obtain the minimum education requirements in subsection (c) of this section if a Board can demonstrate that no applicants in its workforce area meet the minimum education requirements.

(e) Texas Rising Star mentor staff shall meet the minimum work experience requirements of one year of full-time early childhood classroom experience in a child care, EHS, HS, or pre-K through third-grade school program.

(f) All mentors must attain mentor microcredentialing, as described in the Texas Rising Star Guidelines.

(g) The Agency's designated Texas Rising Star assessment entity shall ensure that Texas Rising Star assessor staff shall attain and maintain the Texas Rising Star Assessor Certification, as described in the Texas Rising Star Guidelines.

§809.136. *Roles and Responsibilities of Texas Rising Star Staff.*

Boards and the Agency's designated Texas Rising Star assessment entity shall ensure that Texas Rising Star staff members comply with their assigned responsibilities, as applicable.

(1) A mentor is defined as a Board or Board contract staff member who helps providers obtain, maintain, or achieve higher star levels of certification.

(2) An assessor is defined as a staff member or contractor of the Agency's designated Texas Rising Star assessment entity who assesses and monitors providers that obtain, maintain, and achieve higher levels of quality.

~~[(3) Dual-role staff is defined as an individual meeting the definitions of a mentor and assessor under this section.]~~

~~[(4) For dual-role staff, the Board and the Agency's designated Texas Rising Star assessment entity shall ensure that the individual providing Texas Rising Star mentoring services to a provider does not act as the assessor of that same provider when determining Texas Rising Star certification.]~~

(3) ~~[(5)]~~ Texas Rising Star staff members are required to complete annual professional development and continuing education

consistent with the Texas Rising Star annual minimum training hours requirement for a Texas Rising Star-certified child care center director.

(4) ~~[(6)]~~ Pursuant to Texas Family Code [5] §261.101, Texas Rising Star staff members are mandated reporters when observing serious incidents as described in the Texas Rising Star guidelines.

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 April 30, 2024.

TRD-202401910

Les Trobman

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: June 16, 2024

For further information, please call: (512) 850-8356



# WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

## TITLE 22. EXAMINING BOARDS

### PART 35. TEXAS STATE BOARD OF EXAMINERS OF MARRIAGE AND FAMILY THERAPISTS

#### CHAPTER 801. LICENSURE AND REGULATION OF MARRIAGE AND FAMILY THERAPISTS

##### SUBCHAPTER C. APPLICATIONS AND LICENSING

###### 22 TAC §801.143

The Texas State Board of Examiners of Marriage and Family Therapists withdraws proposed amendments to §801.143 which appeared in the April 12, 2024, issue of the *Texas Register* (49 TexReg 2244).

Filed with the Office of the Secretary of State on May 1, 2024.

TRD-202401941

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Marriage and Family Therapists

Effective date: May 1, 2024

For further information, please call: (512) 305-7706



###### 22 TAC §801.261

The Texas State Board of Examiners of Marriage and Family Therapists withdraws proposed amendments to §801.261 which appeared in the April 12, 2024, issue of the *Texas Register* (49 TexReg 2246).

Filed with the Office of the Secretary of State on May 1, 2024.

TRD-202401942

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Marriage and Family Therapists

Effective date: May 1, 2024

For further information, please call: (512) 305-7706



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 15. TEXAS FORENSIC SCIENCE COMMISSION

#### CHAPTER 651. DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES SUBCHAPTER C. FORENSIC ANALYST LICENSING PROGRAM

###### 37 TAC §651.202, §651.222

The Texas Forensic Science Commission withdraws proposed amendments to §651.202 and §651.222 which appeared in the February 16, 2024, issue of the *Texas Register* (49 TexReg 845).

Filed with the Office of the Secretary of State on May 1, 2024.

TRD-202401936

Leigh Tomlin

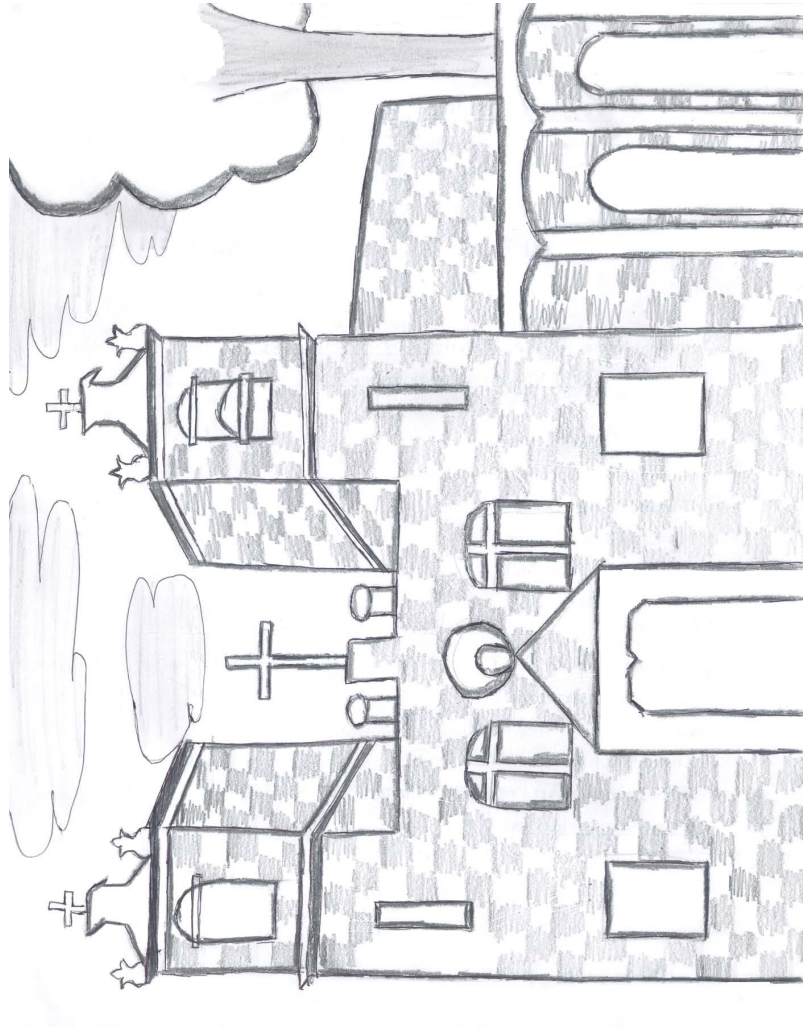
Associate General Counsel

Texas Forensic Science Commission

Effective date: May 1, 2024

For further information, please call: (512) 936-0661







# 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 4. AGRICULTURE

### PART 2. TEXAS ANIMAL HEALTH COMMISSION

#### CHAPTER 49. EQUINE

##### 4 TAC §49.5, §49.7

The Texas Animal Health Commission (commission) in a duly noticed meeting on April 30, 2024, adopted amendments to Title 4, Texas Administrative Code, Chapter 49 titled "Equine." Specifically, amendments are proposed to §49.5 regarding Piroplasmiasis: Testing, Identification of Infected Equine, and §49.7 regarding Persons or Laboratories Performing Equine Infectious Anemia Tests. The amendments are adopted with nonsubstantive changes to the proposed text published in the March 8, 2024, issue of the *Texas Register* (49 TexReg 1381) and will be republished.

##### JUSTIFICATION FOR RULE ACTION

The commission adopts amendments to §49.5 which establishes testing and identification requirements of equine piroplasmiasis. Equine piroplasmiasis is a tick-borne protozoal infection of horses. At least one species of tick, *Amblyomma cajennense*, has proven capable of transmitting the blood parasite. This species of tick is endemic to South Texas and several other southern states. Also, the disease may be spread between horses by unsafe animal husbandry practices such as sharing needles or equipment that is contaminated with blood. This has brought about the disclosure that there is a distinct group of positive animals which are for the purpose of racing, either through sanctioned events or otherwise.

In 2011, the commission took action to safeguard Texas equine population by requiring all equine participating in racing events at a sanctioned racetrack facility to have a negative piroplasmiasis test. The requirement was put in place to ensure that the positive animals are disclosed as well as to protect other animals participating in such events. Since 2010, there has not been a disclosed piroplasmiasis positive thoroughbred horse participating in sanctioned racing. As such, the commission approved a temporary waiver of the requirement that thoroughbred horses be tested for piroplasmiasis prior to entering a racetrack facility licensed by the Texas Racing Commission on July 26, 2022.

The adopted amendments to §49.5 incorporate the thoroughbred testing requirement waiver. The adopted amendments also streamline the existing testing and identification requirements for ease of use and readability.

Additionally, the commission adopts amendments to §49.7 regarding Persons or Laboratories Performing Equine Infectious Anemia Tests. The section previously referred readers to an out-

dated section in the Code of Federal Regulations. The adopted amendment updates the citation.

##### HOW THE RULES WILL FUNCTION

Section 49.5 details the testing and identification requirements for equine piroplasmiasis. The amendments streamline the rule for readability. The amendments also formally incorporate the waiver of testing requirements for thoroughbreds as approved by the commission in the 413th Meeting on July 26, 2022, into commission rules. The amendments to not change any other testing or identification requirements.

Section 49.7 sets requirements for individuals or laboratories performing EIA tests. The amendments update the citation to the relevant section in the Code of Federal Regulations. The amendments to not change the existing requirement.

##### SUMMARY OF COMMENTS RECEIVED AND COMMISSION RESPONSE

The 30-day comment period ended April 7, 2024.

During this period, the commission did not receive any comments regarding the proposed rules.

##### STATUTORY AUTHORITY

The amendments are adopted under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The commission is authorized, through §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock.

Pursuant to §161.046 of the Texas Agriculture Code, titled "Rules," the commission may adopt rules as necessary for the administration of enforcement of this chapter.

Pursuant to §161.048, entitled "Inspection of Shipment of Animals or Animal Products," the commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved.

Pursuant to §161.0602, entitled "Persons or Laboratories Performing Equine Infectious Anemia Tests," the commission shall adopt rules that require a person or laboratory to be approved by the commission if the person or laboratory performs an official equine infectious anemia test.

Pursuant to §161.113, entitled "Testing or Treatment of Livestock," if the commission requires testing or vaccination under this subchapter, the testing or vaccination must be performed by an accredited veterinarian or qualified person authorized by the commission.

No other statutes, articles, or codes are affected by the adoption of the proposed rules.

§49.5. *Piroplasmosis: Testing, Identification of Infected Equine.*

(a) Official Test. A complement fixation test (CFT) or competitive enzyme linked immunosorbent assay (cELISA) are the official tests for equine piroplasmosis.

(b) Authorization to conduct test. Only a test applied and reported by a laboratory approved by the commission will be considered an official test. Only samples collected by or under the direct supervision of an authorized veterinarian accompanied by a completed Equine Piroplasmosis Laboratory Test chart (form 10-07) will be accepted for official testing.

(c) Reactor. A reactor is any equine which discloses a positive reaction to the official test. The individual collecting the test sample must notify the equine's owner of the quarantine within 48 hours after receiving the results. Movement of all piroplasmosis positive equine and all equine epidemiologically determined to have been exposed to a piroplasmosis positive equine will be restricted. Retests of a reactor may only be performed by a representative of the commission.

(d) Official identification of reactors.

(1) A reactor must be identified with an implanted radio frequency microchip identification device that provides unique identification for each individual equine and complies with ISO 11784/11785 and one of the following methods as determined by the commission:

(A) The reactor may be identified with a branded letter "P" applied as a hot-iron brand, freeze-marking brand, hoof brand, or as approved by the commission. For a freeze or hot-iron brand, the "P" brand must be not less than two inches high and shall be applied to the left shoulder or left side of the neck of the reactor. For a hoof brand, the "P" brand must be applied to the front left hoof and reapplied as necessary to maintain visibility;

(B) Using an identification device or a unique tattoo, approved by the commission, that provides unique identification for each individual equine; or

(C) Using digital photographs sufficient to identify the individual equine.

(2) Reactors must be identified by an authorized veterinarian or representative of the commission within 10 days of the date the laboratory completes the test unless the equine is destroyed. Any equine destroyed prior to identification must be described in a written statement by the authorized veterinarian or other authorized personnel certifying to the destruction. This certification must be submitted to the commission within 10 days of the date the equine is destroyed.

(e) Equine entering a racetrack facility, with the exception of thoroughbred horses, must have a negative Piroplasmosis test within the past 12 months. A racetrack facility is grounds used to conduct live horse racing events and is not limited to facilities licensed by the Texas Racing Commission.

§49.7. *Persons or Laboratories Performing Equine Infectious Anemia Tests.*

A person or laboratory who performs an official equine infectious anemia test in the State of Texas must meet and be in compliance with the requirements found in Title 9 Code of Federal Regulations §71.22, which is entitled "Approval of laboratories to conduct official testing."

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 May 6, 2024.

TRD-202402018

Jeanine Coggeshall

General Counsel

Texas Animal Health Commission

Effective date: May 26, 2024

Proposal publication date: March 8, 2024

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



## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 104. ACCELERATED INSTRUCTION

##### 19 TAC §104.1001

The Texas Education Agency (TEA) adopts an amendment to §104.1001, concerning the accelerated instruction, modified teacher assignment, and accelerated learning committee. The amendment is adopted with changes to the proposed text as published in the February 16, 2024 issue of the *Texas Register* (49 TexReg 835) and will be republished. The adopted amendment implements House Bill (HB) 1416, 88th Texas Legislature, Regular Session, 2023, by providing approval criteria for instruction through products that use automated, computerized, or other augmented method; establishing school district or open-enrollment charter school waivers of accelerated instruction requirements; and clarifying supplemental instruction requirements for students repeating an entire course.

REASONED JUSTIFICATION: Section 104.1001 establishes the provision of accelerated instruction and related supports for students who have failed to perform satisfactorily on assessments required under Texas Education Code (TEC), §39.023. HB 1416, 88th Texas Legislature, Regular Session, 2023, changed the requirements for accelerated instruction by differentiating the required hours based on student performance, implementing the accelerated education plan, providing performance-based accelerated instruction waivers for qualifying school districts and open enrollment charter schools, and removing the ratio requirement for school districts and open enrollment charter schools using products that use automated, computerized, or other augmented method for providing supplemental instruction. The adopted amendment to §104.1001 implements HB 1416 as follows.

The term "supplemental accelerated instruction" has been changed throughout the rule. Where applicable, some uses of the term "accelerated instruction" as proposed were modified to "supplemental instruction" at adoption.

The requirements for accelerated instruction are modified in subsection (b)(1).

New subsection (b)(3) is added to clarify that school districts and open-enrollment charter schools cannot excuse students from receiving the required accelerated instruction because of the provisions of subsection (b)(2).

Subsection (c) is amended to modify the provisions related to required transportation for students attending accelerated instruction programs outside school hours.

New subsection (d)(1) and (2) is added to specify the hours of instruction that must be provided based on a student's per-

formance on an assessment instrument specified under TEC, §28.0211(a-1).

New subsection (e) is added to outline provisions related to accelerated education plans and notification of the plans to a student's parent or guardian.

Requirements for accelerated learning committees, including specific provisions for admission, review, and dismissal (ARD) committees serving as accelerated learning committees, are removed.

Based on public comment, proposed new subsection (g), related to waivers of accelerated instruction requirements, was removed to provide clarity.

New subsection (g), proposed as subsection (h), is added to allow for the provision of accelerated instruction by automated, computerized, or other augmented method. The new subsection describes this type of instruction; describes approval by TEA; lists school district and charter school responsibilities; and states that vendors seeking provider approval must follow the process established by TEA. At adoption, subsection (g) was modified to provide for the Ratio Waiver List. References to the acronym ACAM were replaced by references to products on the Ratio Waiver List. In addition, language was added to specify that products on the Ratio Waiver List do not require live, in-person or online educators to deliver primary mode of instruction.

New subsection (h) is added to clarify that accelerated instruction waivers focus only on mathematics and reading. The new subsection describes the conditions that will enable schools to qualify for the accelerated instruction waiver and explains how school districts and charter schools will be notified if they are included on the waiver list and how they can apply for a waiver using the Accelerated Instruction Waiver under TEA Login (TEAL). At adoption, a reference was added to TEC, §28.0211(q), which allows the commissioner to waive requirements of accelerated instruction for a school district or an open-enrollment charter school under certain circumstances.

New subsection (i) is added to clarify that repeating a high school course in its entirety is the equivalent to grade retention, which would remove accelerated instruction requirements for students repeating an entire course at the high school level. At adoption, the definition of credit recovery was modified to specify that, for purposes of §104.1001, credit recovery means completing assignments in the case of failure or completing seat hours in the case of excessive absences.

**SUMMARY OF COMMENTS AND AGENCY RESPONSES:** The public comment period on the proposal began February 16, 2024, and ended March 18, 2024. Following is a summary of public comments received and agency responses.

Comment: Amplify and Texas 2036, on behalf of Commit, Greater Houston Partnership, Texas Business Leadership Council, Texas Association of Business, DFER Texas, The Education Trust in Texas, Dallas Afterschool, Good Reason Houston, Longview Chamber of Commerce, E3 Alliance, and Teach for America Texas, commented in support of the changes implemented by HB 1416, 88th Texas Legislature, Regular Session, 2023.

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

Comment: The Texas Classroom Teachers Association (TCTA) supported separating the terms "supplemental" and "accelerated" instruction.

Response: The agency agrees that the separation of these terms clarifies that accelerated instruction helps students make grade-level progress and that supplemental instruction is one of two ways a school district or charter school can help accelerate students.

Comment: TCTA proposed that the phrase "and, if applicable, (a-4)" be removed from section (a).

Response: The agency disagrees. Supplemental instruction, as described by TEC, §28.0211(a-4), is included in accelerated instruction per TEC, §28.0211(a-1)(2).

Comment: TCTA proposed replacing accelerated instruction with supplemental instruction in subsection (d).

Response: The agency agrees and has amended the language in subsection (d) at adoption to reflect that the requirements in that subsection apply to supplemental instruction.

Comment: TCTA requested revising subsection (d) to clarify that supplemental instruction is one of two options for accelerating students.

Response: The agency agrees. The agency has amended language in subsection (d) at adoption to reflect that supplemental instruction is one of two options that will fulfill accelerated instruction requirements.

Comment: Texas Council of Administrators of Special Education (TCASE) stated that the proposed rule does not mention provisions for off-campus instructional placements nor requirements related to ARD meetings.

Response: The agency provides the following clarification. As mentioned in TEC, §28.0211(i), accelerated instruction participation and progress can be reviewed at the next annual review meeting for a student receiving special education services. As mentioned in TEC, §28.0211(i-1), the school district may choose to provide accelerated instruction to a student who is in a homebound or other off-campus instructional setting when the student returns to an on-campus instructional setting.

Comment: TPCSA requested that school districts and charter schools be allowed to select a product that uses an automated, computerized, or other augmented method for providing supplemental instruction in lieu of group instruction as long as they can demonstrate that the product results in improved student outcomes based on TEC, §28.0211(a-12).

Response: The agency disagrees. Statute states that a school district may use a service provider that is not on a list of service providers approved by TEA as long as the service provider provides face-to-face or virtual tutoring and abides by the four-to-one ratio requirement when providing supplemental instruction. Statute also provides for TEA to approve products that use an automated, computerized, or other augmented method for providing supplemental instruction that may be used in lieu of individual or group instruction if evidence indicates that the product is more effective than individual or group instruction and that the products on the approved list will be the only products that will waive ratio requirements for providing supplemental instruction.

Comment: Texas Public Charter Schools Association and Texas 2036, on behalf of Commit, Greater Houston Partnership, Texas Business Leadership Council, Texas Association of Business,

DFER Texas, The Education Trust in Texas, Dallas Afterschool, Good Reason Houston, Longview Chamber of Commerce, E3 Alliance, and Teach for America Texas, proposed clarifying the language related to the waivers for accelerated instruction by removing proposed subsection (g).

Response: The agency agrees. At adoption, subsection (g) has been removed and the language in subsection (i) has been modified.

Comment: A school district employee commented that credit recovery is more than seat hours for students who have previously failed a course and proposed removing the final statement in proposed subsection (j)(2).

Response: The agency disagrees. Credit recovery does not meet the statutory requirements for supplemental instruction since credit recovery allows a student to earn credit for a course he/she previously failed without having to retake the course in its entirety. However, the agency agrees there is a difference between credit recovery requirements after failing a course and credit recovery requirements after excessive absences, and subsection (j)(1) has been modified at adoption to reflect that the credit recovery definition in subsection (j)(1) is limited to the rule.

Comment: Amira applauded the fidelity-usage requirements for products that use an automated, computerized, or other augmented method for providing supplemental instruction.

Response: The agency agrees that student outcomes improve significantly when students use a product with fidelity.

Comment: Amira and Texas 2036, on behalf of Commit, Greater Houston Partnership, Texas Business Leadership Council, Texas Association of Business, DFER Texas, The Education Trust in Texas, Dallas Afterschool, Good Reason Houston, Longview Chamber of Commerce, E3 Alliance, and Teach for America Texas, requested that the rule define what qualifies as an automated, computerized, or other augmented method.

Response: The agency disagrees as statute does not require that this information be included in rule. However, the agency provides the following clarification. Subsection (g) has been modified at adoption to describe products that use an automated, computerized, or other augmented method for providing supplemental instruction as products that do not require live in-person or online educators to deliver primary mode of instruction.

Comment: Amplify, Amira, and Texas 2036, on behalf of Commit, Greater Houston Partnership, Texas Business Leadership Council, Texas Association of Business, DFER Texas, The Education Trust in Texas, Dallas Afterschool, Good Reason Houston, Longview Chamber of Commerce, E3 Alliance, and Teach for America Texas, requested that the rule define the approval criteria for products that use an automated, computerized, or other augmented method for providing supplemental instruction.

Response: The agency disagrees as statute does not require that this information be included in rule. However, the agency provides the following clarification. Products listed on the Ratio Waiver List described in subsection (g) must provide evidence indicating that the product is more effective than individual or group instruction. This evidence must reflect that high fidelity usage of the product yields higher student outcomes than students who did not use the product. This criterion will be provided in all communications and guidance regarding products waiving the four-to-one ratio requirement.

Comment: Texas 2036 and Texas 2036, on behalf of Commit, Greater Houston Partnership, Texas Business Leadership Council, Texas Association of Business, DFER Texas, The Education Trust in Texas, Dallas Afterschool, Good Reason Houston, Longview Chamber of Commerce, E3 Alliance, and Teach for America Texas, proposed that the agency create accelerated instruction waiver criteria that monitors discrepancies and ensures that qualifying students receive much needed support.

Response: The agency disagrees. The one-year accelerated instruction waiver requirements ensure that all students receive the support needed to be academically successful. Because school districts and charter schools must meet these requirements yearly, schools must ensure they continue to support all students even when the accelerated instruction waiver is in place.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §28.0211, as amended by House Bill 1416, 88th Texas Legislature, Regular Session, 2023, which requires that students are provided accelerated instruction each time a student fails to perform satisfactorily on an assessment instrument administered under TEC, §39.023(a), in Grades 3-8 or fails to perform satisfactorily on an end-of-course assessment instrument administered under TEC, §39.023(c).

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §28.0211, as amended by HB 1416, 88th Texas Legislature, Regular Session, 2023.

§104.1001. *Accelerated Instruction and Modified Teacher Assignment.*

(a) Definition of accelerated instruction. For purposes of this chapter, "accelerated instruction" means instruction required under Texas Education Code (TEC), §28.0211(a-1) and, if applicable, (a-4).

(b) Requirements for accelerated instruction.

(1) Each time a student fails to perform satisfactorily on an assessment instrument administered under TEC, §39.023(a), in Grades 3-8, or on an end-of-course assessment instrument administered under TEC, §39.023(c), other than an assessment instrument developed or adopted based on alternative academic achievement standards, the school district or open-enrollment charter school the student attends shall provide to the student accelerated instruction in the applicable subject area during the subsequent summer or school year and, subject to TEC, §28.0211(a-7) and (a-8), either:

(A) allow the student to be assigned a classroom teacher who is certified as a master, exemplary, or recognized teacher under TEC, §21.3521, for the subsequent school year in the applicable subject area; or

(B) provide the student supplemental instruction under TEC, §28.0211(a-4).

(2) The superintendent of each school district and chief administrative officer of each open-enrollment charter school shall establish procedures to ensure that each eligible student who is absent or does not receive a test score for any test administration shall receive appropriate accelerated instruction as warranted on an individual student basis.

(3) Paragraph (2) of this subsection may not be used to excuse a student from appropriate accelerated instruction required by this subsection.

(c) Participation in accelerated instruction. Accelerated instruction may require a student to participate before or after normal school hours and may include participation at times of the year out-

side normal school operations. Each school district and open-enrollment charter school shall be responsible for providing transportation to students required to attend accelerated instruction programs if the programs occur outside of regular school hours, unless the school district or charter school does not operate, contract, or agree with another entity to operate a transportation system.

(1) In providing accelerated instruction, a school district or an open-enrollment charter school may not remove a student from recess or from the foundation or enrichment curriculum as defined in TEC, §28.002, except under circumstances for which a student enrolled in the same grade level who is not receiving accelerated instruction would be removed. The foundation curriculum includes English language arts, mathematics, science, and social studies. Courses in the enrichment curriculum include languages other than English; health, with emphasis on physical health, proper nutrition, and exercise; mental health, including instruction about mental health conditions, substance abuse, skills to manage emotions, establishing and maintaining positive relationships, and responsible decision making; suicide prevention; physical education; fine arts; career and technical education; technology applications; religious literature; and personal financial literacy.

(2) In the event that a school week is three or less instructional days, the school is exempt from meeting the requirement of meeting once per week for accelerated instruction.

(d) Content and delivery of supplemental instruction. Supplemental instruction shall be based on, but not limited to, targeted instruction in the essential knowledge and skills for the applicable grade levels and subject areas and be provided by a person with training in the applicable instructional materials for the supplemental instruction and under the oversight of the school district or open-enrollment charter school. Supplemental instruction shall be provided as outlined in TEC, §28.0211(a-4)(1) and (2), to a student individually or in a group of no more than four students, unless the parent or guardian of each student in the group authorizes a larger group. School districts and charter schools choosing to provide supplemental instruction to a student under subsection (b)(1)(B) of this section shall provide students who fail to perform satisfactorily on an assessment instrument specified under TEC, §28.0211(a-1):

(1) no less than 15 hours of supplemental instruction; or

(2) no less than 30 hours of supplemental instruction for students who scored Low Did Not Meet Grade Level as indicated by state-provided district-level data files or failed to perform satisfactorily on any Grade 3 assessment.

(e) Accelerated education plans. For each student who does not perform satisfactorily on an assessment instrument specified under TEC, §28.0211(a-1), for two or more consecutive school years in the same subject area, the school district or open-enrollment charter school the student attends shall develop an accelerated education plan as described by TEC, §28.0211(f), and provide the student at least 30 hours of supplemental instruction. A school district or charter school shall make a good faith attempt to provide to the parent or guardian of a student to whom TEC, §28.0211(b), applies a parent-teacher conference with the student's primary teacher at the start and end of the subsequent school year. At the conference, the school district or charter school shall provide the student's parent or guardian with:

(1) the notice required under TEC, §28.0211(a-14); and

(2) an explanation of:

(A) the accelerated instruction to which the student is entitled under this section; and

(B) the accelerated education plan that must be developed for the student under TEC, §28.0211(f), and the manner in which the parent or guardian may participate in developing the plan.

(f) Request for teacher assignment. In accordance with TEC, §28.0211(a-5), the parent or guardian of a student who fails to perform satisfactorily on an assessment instrument specified under TEC, §28.0211(a-1), may follow established school district or open-enrollment charter school processes to request that the student be assigned to a particular classroom teacher in the applicable subject area for the subsequent school year if more than one classroom teacher is available.

(g) Approval of Ratio Waiver List products using automated, computerized, or other augmented method. The Texas Education Agency (TEA) shall approve one or more products that use an automated, computerized, or other augmented method for providing accelerated instruction under TEC, §28.0211(a-1)(2), that may be used in lieu of some or all of the individual or group instruction required under TEC, §28.0211(a-4)(6), as appropriate for the applicable grade level and subject area and a student's academic deficiency. Products on the Ratio Waiver List do not require live, in-person or online educators to deliver primary mode of instruction. TEA may approve a product under this subsection only if evidence indicates that the product is more effective than the individual or group instruction required under TEC, §28.0211(a-4)(6).

(1) For the purposes of this subsection, the Ratio Waiver List consists of products that use an automated, computerized, or other augmented method for providing accelerated instruction under TEC, §28.0211(a-1)(2), that may be used in lieu of some or all of the individual or group instruction required under TEC, §28.0211(a-4)(6), as appropriate for the applicable grade level and subject area and a student's academic deficiency.

(2) School districts and open-enrollment charter schools may provide accelerated instruction using a product on the Ratio Waiver List on the TEA website with information related to accelerated instruction. The 4:1 student-to-teacher ratio requirement in subsection (d) of this section does not apply to a school district or charter school using a listed product to provide accelerated instruction to its students.

(3) School districts and open-enrollment charter schools shall:

(A) notify the parent or guardian of the use of a product on the Ratio Waiver List for providing the required accelerated instruction;

(B) ensure that the required hours of supplemental instruction are completed prior to the subsequent State of Texas Assessments of Academic Readiness (STAAR®) administration;

(C) use a product on the Ratio Waiver List remotely, regardless of primary mode of instruction (i.e., in-person, virtual, or hybrid) only if the school district ensures that time spent by the student engaged in the product is aligned with approved product usage expectations documented by the school district;

(D) adhere to the product usage fidelity requirements by product as approved by TEA to waive ratio requirements. A school district not fulfilling usage fidelity with a product will be required to revert to the 4:1 ratio for supplemental instruction as specified in subsection (d) of this section; and

(E) be responsible for contracting and funding the selected vendors included on the TEA list of approved vendors.

(4) Entities seeking Ratio Waiver List vendor approval shall follow a process required by TEA.

(h) Accelerated instruction waivers. Under TEC, §28.0211(q), the commissioner of education may waive requirements of accelerated instruction for a school district or an open-enrollment charter school as outlined in this subsection.

(1) For the purposes of this subsection:

(A) "significantly below satisfactorily" is defined as achieving a performance level of Low Did Not Meet Grade Level on a STAAR® mathematics or reading administration;

(B) "satisfactorily" is defined as achieving a performance level of Approaches or better on a STAAR® mathematics or reading administration; and

(C) "educationally disadvantaged" is defined as being identified in the Texas Student Data System Public Education Information Management System (TSDS PEIMS) as being eligible to participate in the national free or reduced-price lunch program established under 42 U.S.C. §1751 et seq.

(2) Only those subject areas for which two consecutive years of assessment instrument distribution can be positively identified (i.e., mathematics and reading) for all students based on their grade level shall be considered in the determination of this waiver.

(3) A school district or an open-enrollment charter school shall be eligible for the one-year waiver if it meets all of the following conditions when reviewing the most recent available year of STAAR® data:

(A) 60% of total students eligible to receive accelerated instruction in mathematics and 60% of total students eligible to receive accelerated instruction in reading score satisfactorily on the applicable subject area assessment instrument;

(B) 60% of students eligible to receive accelerated instruction who scored significantly below satisfactorily in the prior year score satisfactorily on the applicable subject area assessment instrument(s). This condition is only applicable if at least 10 students receiving accelerated instruction scored significantly below satisfactorily in the prior year; and

(C) at least 50% of students receiving special education services or qualifying as educationally disadvantaged who received accelerated instruction in mathematics and/or reading score satisfactorily on the subsequent applicable subject area assessment instrument(s). This condition is only applicable if at least 10 students who received accelerated instruction receive special education services or qualified as educationally disadvantaged.

(4) TEA shall generate a yearly report that identifies all school districts and open-enrollment charter schools that meet all applicable conditions and are consequently eligible for the one-year waiver.

(5) Eligible school districts and open-enrollment charter schools shall be notified via TEA communication pathways upon the publication of the annual list.

(6) Upon distribution of the annual notification, eligible school districts and open-enrollment charter schools shall have 45 days to apply for the waiver using the Accelerated Instruction Waiver under TEA Login (TEAL).

(7) The one-year waiver application shall contain the following at minimum:

(A) the school district or open-enrollment charter school's name;

(B) the signature of the school district's superintendent or the chief administrative officer of an open-enrollment charter school;

(C) documentation of the approval of the board of trustees or governing board, as applicable; and

(D) an explanation of how the school district or open-enrollment charter school will evaluate the impact of the waiver on student performance.

(i) Repeating a high school course.

(1) For the purpose of this subsection, credit recovery means completing a certain number of assignments to satisfy the course requirements after failure or a certain number of seat hours after excessive absences.

(2) For courses taken for high school credit, a student who is required to repeat any course in which the student was enrolled in during the previous school year and who is eligible for accelerated instruction for the current school year is exempt from accelerated instruction requirements for that specific course if that course is retaken in its entirety (i.e., to earn a full credit). However, a student who is participating in credit recovery is still required to receive accelerated instruction.

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 May 2, 2024.

TRD-202401963

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: May 22, 2024

Proposal publication date: February 16, 2024

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



## CHAPTER 157. HEARINGS AND APPEALS SUBCHAPTER D. INDEPENDENT HEARING EXAMINERS

### 19 TAC §157.41

The State Board of Education (SBOE) adopts an amendment to §157.41, concerning certification criteria for independent hearing examiners. The amendment is adopted without changes to the proposed text as published in the March 1, 2024 issue of the *Texas Register* (49 TexReg 1241) and will not be republished. The adopted amendment reduces the length of time an attorney must be licensed and engaged in full-time practice to be eligible to serve as an independent hearing examiner and expands the experience requirements to include family law, criminal law, and personal injury law.

REASONED JUSTIFICATION: Chapter 157, Subchapter D, addresses criteria for the certification of hearing examiners eligible to conduct hearings.

During the rule review required under Texas Government Code, §2001.039, the SBOE requested that Texas Education Agency (TEA) staff present an amendment to §157.41 to modify the experience requirements for hearing examiners.

Subsection (d)(2) is amended to require that an independent hearing examiner must not have had his or her license reprimanded, suspended, or revoked within the last three years.

Subsection (d)(3) and (4) is amended to reduce the requirements that an independent hearing examiner must have been licensed to practice law and engaged in the practice of law on a full-time basis from five years to three years.

Subsection (e) is amended to expand the experience requirements to include family law, criminal law, and personal injury law.

These changes will allow more attorneys to qualify as hearing examiners. In some areas of the state, there are not sufficient numbers of hearing examiners.

The SBOE approved the amendment for first reading and filing authorization at its February 2, 2024 meeting and for second reading and final adoption at its April 12, 2024 meeting.

In accordance with Texas Education Code, §7.102(f), the SBOE approved the amendment for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2024-2025 school year. The earlier effective date will allow independent hearing examiners to be selected using the modified requirements as soon as possible. The effective date is 20 days after filing as adopted with the Texas Register.

**SUMMARY OF COMMENTS AND RESPONSES:** The public comment period on the proposal began March 1, 2024, and ended at 5:00 p.m. on April 1, 2024. The SBOE also provided an opportunity for registered oral and written comments at its April 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, §21.252(a), which requires the State Board of Education to establish certification criteria for independent hearing examiners.

**CROSS REFERENCE TO STATUTE.** The amendment implements Texas Education Code, §21.252(a).

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 May 6, 2024.

TRD-202402016

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Effective date: May 26, 2024

Proposal publication date: March 1, 2024

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



## PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

### CHAPTER 228. REQUIREMENTS FOR EDUCATOR PREPARATION PROGRAMS

The State Board for Educator Certification (SBEC) adopts the repeal of 19 Texas Administrative Code (TAC) §§228.1, 228.2, 228.10, 228.15, 228.17, 228.20, 228.30, 228.33, 228.35, 228.40, 228.50, 228.60, and 228.70 and new §§228.1, 228.2, 228.4, 228.6, 228.11, 228.13, 228.15, 228.17, 228.19, 228.21, 228.23, 228.25, 228.31, 228.33, 228.35, 228.37, 228.39, 228.41, 228.43, 228.45, 228.47, 228.49, 228.51, 228.53,

228.55, 228.57, 228.61, 228.63, 228.65, 228.67, 228.69, 228.71, 228.73, 228.75, 228.77, 228.79, 228.81, 228.91, 228.93, 228.95, 228.97, 228.99, 228.101, 228.103, 228.105, 228.107, 228.109, 228.111, 228.113, 228.115, 228.117, 228.121, and 228.123, concerning requirements for educator preparation programs (EPPs). The repeal of §§228.1, 228.2, 228.10, 228.15, 228.17, 228.20, 228.30, 228.33, 228.35, 228.40, 228.50, 228.60, and 228.70 and new §§228.1, 228.4, 228.6, 228.11, 228.13, 228.15, 228.17, 228.19, 228.21, 228.23, 228.25, 228.31, 228.33, 228.35, 228.37, 228.39, 228.41, 228.43, 228.45, 228.47, 228.49, 228.51, 228.53, 228.55, 228.57, 228.61, 228.63, 228.65, 228.67, 228.69, 228.71, 228.73, 228.75, 228.77, 228.79, 228.81, 228.91, 228.93, 228.95, 228.97, 228.99, 228.101, 228.103, 228.105, 228.107, 228.109, 228.111, 228.113, 228.115, 228.117, 228.121, and 228.123 are adopted without changes to the proposed text as published in the December 29, 2023, issue of the *Texas Register* (48 TexReg 8100) and will not be republished. New §228.2 is adopted with changes to the proposed text as published in the December 29, 2023, issue of the *Texas Register* (48 TexReg 8100) and will be republished. The adopted repeals and new sections reorganize the chapter to allow for improved readability; implement legislation; include technical updates to remove outdated provisions specific to the Residency Certificate; and reflect stakeholder feedback to further strengthen the rules.

**REASONED JUSTIFICATION:** The SBEC rules in 19 TAC Chapter 228, Requirements for Educator Preparation Programs, establish the requirements for educator preparation programs (EPPs) in the preparation of candidates for Texas educator certification.

The adopted repeal of and new 19 TAC Chapter 228 was initially driven by the following three primary goals prescribed by the SBEC and were informed by extensive stakeholder input. (1) Reorganize the chapter to support enhanced organization and readability, including the creation of subchapters and sections and the streamlining of redundancy to make the rules clearer and more user-friendly. Creating subchapters and sections enable the SBEC to update, modify, or remove requirements as SBEC priorities change and to implement legislation effectively and efficiently. (2) Create a residency preparation route leading to an enhanced standard certificate to recognize programs who have implemented this quality preparation pathway and recognize candidates who have completed this extensive preparation. A residency preparation route is an option for EPPs and is NOT a requirement. To both recognize and hold EPPs accountable, adding this into rule is a priority of the SBEC. (3) Codify foundational components of the SBEC's Educator Preparation Framework (EPF), which contain additional research-based best practices prioritized by the field.

Throughout extensive engagement with stakeholders in the Chapter 228 redesign process, additional opportunities to elevate the quality of educator preparation were surfaced and integrated into the draft rule text presented to the SBEC at its September 2023 meeting. The adopted new rules reflect additional edits informed by stakeholder input.

The following is a description of adopted new 19 TAC Chapter 228.

#### *Subchapter A. General Guidance*

##### *§228.1. General Provisions*

Adopted new §228.1 provides an overview of the purpose and goals of educator preparation in Texas.

## §228.2, Definitions.

Adopted new §228.2 includes definitions from the adopted repeal of §228.2, with the addition of definitions for *analysis*, *assignment start date*, *authentic school setting*, *clinical experience*, *completer*, *co-teaching*, *enactments*, *host teacher*, *performance task*, *representations*, and *residency*, and revised definitions for *campus supervisor*, *classroom teacher*, *clinical teaching*, *educator preparation program*, *cooperating teacher*, *field-based experiences*, *enhanced standard certificate*, *late hire*, and *standard certificate*.

The adopted new definition of *assignment start date* sets the point at which the teacher candidate's internship experience starts for the purpose of field supervision and ongoing support of candidates as required.

The adopted new definition of *clinical experience* provides a common term in which to categorize the supervised clinical requirement for each certificate class, including clinical teaching, internship, practicum, and residency.

The adopted new definition of *authentic school setting* establishes that a candidate cannot count professional development, extracurricular activities, workdays when students are not present, or before or after-school childcare or tutoring as field-based experiences, 30 hours of which are required as pre-requisites for an intern certificate, and that field-based experience hours are allowable in a summer school setting.

The adopted new definition of *completer* matches the definition in 19 TAC §229.2(10), Definitions, to create consistency between chapters of SBEC rules.

The adopted new definitions of *cooperating teacher*, *mentor and site supervisor* were streamlined to remove the qualifications and duties of these positions that appear in the adopted repeal of 19 TAC Chapter 228. The qualifications and duties are adopted in new §228.93, Cooperating Teacher Qualifications and Responsibilities, §228.97, Mentor Qualifications and Responsibilities, and §228.99, Site Supervisor Qualifications and Responsibilities, respectively. These adopted new sections increase clarity and ease of reference so that the public no longer has to go to §228.2 to find definitions for this critical information.

The adopted new definition of *entity* was updated with a more specific list of the types of entities that act as EPPs.

The adopted new definition of *educator preparation program* defines the role of an entity approved by the SBEC.

The adopted new definition of *field-based experiences* was updated to include the adopted new defined term *authentic school setting* and adds that field-based experiences include both observation and interaction and are an element of coursework.

The adopted new definition of *field supervisor* was modified to improve readability and clarity.

The adopted new definition of *school day* specifies that conference periods, lunch periods, professional development, and extracurricular activities do not count as part of the school day for purposes of determining the length of a clinical teaching or internship experience.

The adopted new definition of *late hire* specifies that after the 45th day before the first day of instruction, an individual must be both accepted into an EPP and hired for a teaching position at a school district.

Definitions are also adopted for the following five terms from the EPF: *analysis*, *co-teaching*, *enactments*, *performance task*, and *representations*. The additions offer clarity to EPPs and candidates around the intended meaning of the terms, how and when they are applied in preparation and practice, and relevance to improving quality practices in approved programs. The additional definitions provide a common language in the effective preparation of candidates for certification.

The adopted new definitions of *school day* and *school year* provide flexibility by aligning them with the school calendars of the campuses on which the candidates are completing the clinical experiences.

The adopted new definitions of *enhanced standard certificate* and *standard certificate* mirror definitions adopted in new §230.1, Definitions, and align with the inclusion of *intern certificate* and *probationary certificate*.

To implement the Residency preparation route, the adopted new language in §228.2, Definitions, amends the definition of *campus supervisor* to include residency candidates along with intern candidates, and adds definitions of *host teacher*, *residency*, and *co-teaching*, to standardize the meaning of those terms.

## §228.4, Declared State of Disaster

Adopted new §228.4 provides continuity of EPP processes during a declared state of disaster.

## §228.6, Implementation Date

Adopted new §228.6 confirms the repeal of Chapter 228 and the provisions of new Chapter 228 are effective September 1, 2024.

## Subchapter B. Approval of Educator Preparation Programs

### §228.11, New Entity Approval

Adopted new §228.11 identifies the requirements that must be met by an entity seeking approval from the SBEC as an EPP. The adopted new rule authorizes the Texas Education Agency (TEA) to develop and identify the approval components to be included in the application. TEA staff can revise EPP applications as needed to align with the TEC and TAC.

Adopted new §228.11(a) requires that entities seeking to become an EPP take part in a workshop conducted by TEA staff to familiarize the entity with the SBEC rules.

Adopted new §228.11(a)(2) creates a limitation that an entity seeking initial approval cannot apply to offer more than five certificate categories within one certificate class. This limitation allows an entity to focus on high-quality preparation and provides TEA staff time to review application materials more efficiently.

Adopted new §228.11(a)(3) requires that an entity seeking approval must demonstrate that it has the staff, knowledge, and expertise to support individuals in each certificate category and class requested.

Adopted new §228.11(d) establishes the timing of the post-approval site visit to occur after the first year in which the new EPP reports that it has completers.

Adopted new §228.11(f) requires an entity seeking approval to have at least one location in Texas that provides candidate's a face-to-face setting for interacting with EPP staff as necessary.

### §228.13, Continuing Educator Preparation Program Approval.

Adopted new §228.13 establishes the timeframe for EPP reviews.



Adopted new §228.13(b) establishes the types of continuing approval reviews--an onsite visit involves TEA staff going to the EPP's location, while a desk review is conducted remotely.

Adopted new §228.13(c) establishes the components of the risk assessment with regard to alignment with requirements in TEC, §21.0454.

Adopted new §228.13(d) requires a continuing approval review when an EPP consolidates with another EPP. This allows TEA staff to identify whether the surviving EPP is adequately supporting the candidates and certificate categories that it received.

Adopted new §228.13(e) requires an EPP undergoing a continuing approval review to pay the required fees prior to the start of the review. This prevents EPPs from attempting to evade or indefinitely delay payment.

Adopted new Figure: 19 TAC §228.13(f) sets out the required evidence of compliance that EPPs must create, maintain, and present during the continuing approval review.

Adopted new §228.13(f) incorporates the requirement that an EPP retain documents demonstrating a candidate's eligibility for admission and completion of requirements for five years from the date the candidate completes or leaves the EPP. The additions to adopted new §228.13(f) also specify that the EPP will be scored on a rubric developed and published by TEA staff and provide that 80% of records reviewed by TEA staff must meet or exceed the requirements.

Adopted new §228.13(g) allows EPPs participating in a Continuing Approval Review pilot to use that pilot to meet the requirements of the five-year continuing approval review.

#### *§228.15, Additional Approval.*

Adopted new §228.15(b) sets out the requirements for an EPP seeking approval from the SBEC to offer the residency route to certification. It requires the EPP to complete an application outlining its compliance with the residency requirements established within Chapter 228 and Chapter 230, which would be reviewed by the TEA and approved by the SBEC, and requires a post-approval site visit demonstrating compliance with rules once the EPP produces residency completers. Adopted new §228.15(b)(1) adopts in rule a figure that describes evidence sources to evaluate and approve residency applications. EPPs will be scored for approval on a rubric developed and published by TEA staff.

Adopted new §228.15(c) requires EPPs to apply for new certification classes or categories, references the applications that EPPs must complete when seeking to offer a new certificate class or category, and adds language about the parameters that must be used by TEA staff to develop the applications. The adopted new language in §228.15(c)(4) requires that an EPP have an accreditation status of Accredited to add new certificate categories and/or classes.

#### *§228.17, Limitations on Educator Preparation Program Amendment*

Adopted new §228.17 establishes the process through which an EPP can amend its program.

#### *§228.19, Contingency of Approval*

Adopted new §228.19 specifies that approval of an entity is contingent on approval by other governing bodies, including the Texas Higher Education Coordinating Board, board of regents,

and school district boards of trustees, and that continuing approval is contingent on compliance with state and federal law.

#### *Subchapter C. Administration and Governance of Educator Preparation Programs*

The subchapter title was updated to more accurately reflect that the adopted new rules focus on both the administration and governance of EPPs.

#### *§228.21, Program Consolidation or Closure*

Adopted new §228.21 states that closure rules apply to an EPP regardless of whether the EPP is closing fully or eliminating certificate classes and regardless of whether the closure is voluntarily or due to SBEC action.

Adopted new §228.21(a)(1) replaces August 31 as the effective date for EPP closure with a more flexible requirement that specifies an effective date of at least 90 days and no more than 270 days after the date of notification of closure or consolidation. This allows programs to choose a closure date that gives them enough time to fulfill the obligations to candidates.

Adopted new §228.21(a)(2) requires the EPP legal authority to communicate with the TEA on a scheduled basis so that staff from the closing program can seek guidance concerning questions and problems that arise during the close out phase, which ultimately benefits candidates and past finishers.

The adopted new rule text in §228.21(a)(3) expands the EPP's obligation to notify candidates of its closure to include candidates who have been enrolled within the last five years and completers within the last five years. This adopted new requirement ensures that candidates who may still need support or paperwork from the closing EPP are able to learn what options are available.

Adopted new §228.21(a)(5) requires closing EPPs to identify other EPPs to provide test approval and standard certification recommendations for completers at the closing EPP and to provide candidates with all necessary documentation to expedite the candidates' transfer. This allows candidates in a closing EPP an easier transition to another EPP and certification.

#### *§228.23, Change of Ownership and Name Change*

Adopted new §228.23(d) sets an exception to the general rule that EPPs cannot change their names without a change in ownership to allow colleges and universities to change their names when the entire college or university changes its name. The purpose of the original prohibition on EPP name changes was to prevent EPPs from changing names frequently to confuse or mislead the public.

Adopted new §228.23(e) requires EPPs to report to the SBEC annually any names that the EPP had used "doing business as" during the previous year so that the SBEC can make that information available to the public. By providing this information to consumers, the SBEC allows the public to better understand the true identity and performance history of an EPP.

#### *§228.25, Governance of Educator Preparation Programs*

Adopted new §228.25 establishes expectations of how EPPs should govern themselves and collaborate with other entities (i.e., education service centers or local education agencies) to effectively support the preparation and certification of candidates.

Adopted new §228.25(b) includes a specific requirement for the membership of EPP advisory committees that the committee

include at least three of the types of interest groups listed in adopted new §228.25(a).

Adopted new §228.25(d) sets out requirements for EPPs approved to offer a residency program to convene key personnel quarterly to review teacher residency implementation data, including candidate performance, to make shared programmatic decisions and inform the continuous improvement of the residency program.

#### *Subchapter D. Required Educator Coursework and Training*

##### *§228.31, Minimum Educator Preparation Program Obligations to All Candidates*

Adopted new §228.31 establishes general guidelines around expectations of services and supports that EPPs shall provide to all candidates.

Adopted new §228.31(a) specifies by when late hires need to complete admission, coursework, training, and field-based experience requirements.

Adopted new §228.31(b) requires EPPs to identify a dismissal point in their exit policy at which inactive candidates are removed from the EPP and allows a university-based EPP to adopt the university policy for inactive students that must reapply for admission.

Adopted new §228.31(c) requires an EPP to use benchmarks and formal and informal assessment data to design and implement appropriate interventions when needed to ensure continued, effective preparation for certification and teacher candidate support.

Adopted new §228.31(d) requires that an EPP must ensure candidates are adequately prepared to take all certification exams and not just the content pedagogy exams. This additional clarification was inadvertently left off during the initial reorganization of the chapter.

Adopted new §228.31(e) requires an EPP to grant test approval for a completer. If a candidate has returned to the EPP five or more years after completing the program requirements, the EPP may require the candidate to complete additional coursework or training.

Adopted new §228.31(f) limits when an EPP can prepare a candidate and grant test approval for a certificate category other than the one for which the candidate was initially admitted to the program. The candidate must meet the requirements for admission in the new certificate category, the EPP must provide coursework and training to the candidate in the new certificate category, and the EPP must ensure that the candidate is adequately prepared for the certification examination in the new certificate category. This prevents programs from admitting a candidate in one certificate category and switching them to another category for which the candidate is unqualified or unprepared.

Adopted new §228.31(h) requires the EPP to ensure candidates complete all requirements of coursework, training, and the clinical experience before being identified as a completer and being recommended for standard certification, unless the candidate qualifies for an exemption in §228.79, Exemptions from Required Clinical Experiences for Classroom Teacher Candidates.

##### *§228.33, Preparation Program Coursework and/or Training for All Certification Classes*

Adopted new §228.33 establishes coursework and training requirements that EPPs must provide to ensure candidate preparedness for certification and readiness for assignments.

Adopted new §228.33(a) specifies that educator effectiveness must be measured in the candidate's assignment.

Adopted new §228.33(b) creates specific requirements for the coursework and training EPPs provide candidates, including performance-based activities, evaluative tools, and required demonstration of proficiency by candidates.

Adopted new §228.33(c) clarifies that all coursework and/or training must be completed before a candidate is marked a finisher and recommended for either the standard or new enhanced standard certificate.

##### *§228.35, Substitution of Applicable Experience and Training*

Adopted new §228.35 specifies that EPPs must develop and implement procedures to allow military-related and non-military related candidates to substitute portions of educator certification requirements with applicable experience and training.

Adopted new §228.35(c) provides rule text specific to candidates seeking test approval for the Deafblind Supplemental Early Childhood-Grade 12 certification and candidates who have previously completed coursework related to the field in a program approved to offer the Deafblind Supplemental Early Childhood-Grade 12 certification. The language also indicates that programs may require additional coursework for test approval.

##### *§228.37, Coursework and Training for Classroom Teacher Candidate*

Adopted new §228.37 establishes the minimum required clock-hours of coursework and/or training required for initial classroom teacher certification and the Trade and Industrial Workforce Training certificate.

##### *§228.39, Intensive Pre-Service*

Adopted new §228.39(a) establishes the requirements that an EPP must provide prior to issuing an intern certificate under the intensive pre-service.

Adopted new §228.39(b) establishes the requirements for a candidate coach under intensive pre-service.

Adopted new §228.39(c) establishes the requirements that a candidate must complete to be eligible for an intern certificate under pre-intensive service.

Adopted new §228.39(d) provides that a candidate participating in intensive pre-service will be eligible for a probationary certificate as prescribed in §230.37(f), Probationary Certificates.

##### *§228.41, Pre-Service Coursework and Training for Classroom Teacher Candidates*

Adopted new §228.41(a) was revised in response to stakeholder feedback, increasing the hours required for field-based experiences from 30 to 50.

Adopted new §228.41(b)(11) requires coursework on instructional planning techniques and inclusive practices for students with disabilities to implement House Bill (HB) 159, 87th Texas Legislature, Regular Session, 2021.

Adopted new §228.41(b)(12) requires coursework on the use of open education resource instructional materials approved by the

State Board of Education (SBOE) to implement HB 1605, 88th Texas Legislature, Regular Session, 2023.

A reference to "performance tasks" reflects the incorporation of the EPF and its use of performance tasks that support integration of authentic performance tasks throughout the curriculum, in particular during the first 150 hours, which are required before the intern certificate."

#### *§228.43, Pre-Service Field-Based Experiences for Classroom Teacher Candidates*

Adopted new §228.43 establishes parameters around field-based experiences and related reflections and increase the required number of interactive hours from 15 to 25 and technology-based hours from 15 to 25 in response to stakeholder feedback.

Adopted new §228.43(c)(2) provides examples of activities in which candidates may engage during interactive experiences. Flexibility for completion of technology-based hours was added to allow substitute teaching hours.

#### *§228.45, Coursework and Training Requirements for Early Childhood: Prekindergarten-Grade 3 Certification*

Adopted new §228.45 requires that coursework and training provided is based on concepts and themes in §228.45(a) and not just in §228.45(a)(1).

#### *§228.47, Coursework and Training Requirements for Bilingual Special Education Certification*

Adopted new §228.47 sets the requirements for EPPs of candidates in bilingual special education and implements HB 2256, 87th Texas Legislature, Regular Session, 2021.

#### *§228.49, Coursework and Training Requirements for a Teacher of Students with Visual Impairments (TVI) Supplemental: Early Childhood-Grade 12*

Adopted new §228.49 provides specific language related to the minimum number of clock-hours of coursework and/or training requirements for EPPs offering and candidates who are seeking the Teacher of Students with Visual Impairments (TVI) Supplemental: Early Childhood-Grade 12 certificate.

#### *§228.51, Coursework and Training for a Deafblind Supplemental: Early Childhood-Grade 12*

Adopted new §228.51 provides specific language related to the minimum number of clock-hours of coursework and/or training requirements for EPPs offering and candidates who are seeking the Deafblind Supplemental: Early Childhood-Grade 12 certificate.

#### *§228.53, Coursework and Training for Non-Teacher Candidates*

Adopted new §228.53 establishes coursework and training requirements for certification areas other than classroom teacher and ensures consistency in candidates' preparation that is directly aligned with the educator standards.

#### *§228.55, Late Hire Candidates*

Adopted new §228.55 establishes flexibilities and responsibilities related to beginning employment later than originally anticipated for candidates, local employment agencies, and EPPs.

Adopted new §228.55(c) requires an EPP to deactivate a candidate's intern or probationary certificate if the candidate is a late hire and does not complete the required pre-internship coursework and training within 90 days of the start of the internship.

This incentivizes EPPs to ensure that their candidates receive the required training timely and prevent untrained educators from staying in Texas classrooms.

#### *§228.57, Educator Preparation Curriculum*

Adopted new §228.57 requires that the educator standards adopted by the SBEC serve as the curricular foundation for all educator preparation and, for each certificate, the curriculum must address the relevant Texas Essential Knowledge and Skills.

Adopted new §228.57(c) expands on the varied and rich types of instructional opportunities that EPPs shall support candidates in experiencing. This aligns with information in the EPF and reinforces the expectation that candidates are practicing, and receiving feedback on that practice, throughout the program and reinforces the connected relationship between coursework, practice, and coaching.

Adopted new §228.57(c)(8)(c) requires EPPs to teach candidates about assessing students who are receiving virtual instruction and about how to implement virtual learning curriculum to implement Senate Bill 226, 87th Texas Legislature, Regular Session, 2021.

Adopted new §228.57(10) requires coursework on the use of open education resource instructional materials approved by the SBOE for the subject area and grade level of the candidate's certification category and prohibits coursework on instructional materials that incorporated "three-cueing" into foundational skills reading instruction to implement HB 1605, 88th Texas Legislature, Regular Session, 2023.

#### *Subchapter E. Educator Candidate Clinical Experiences*

##### *§228.61, Required Clinical Experiences*

Adopted new §228.61 provides an overview of the clinical experience required for candidates prior to standard certification.

Adopted new §228.61(a) establishes clinical experience options for candidates seeking teacher certification (clinical teaching, internship, or residency) and includes an alternative residency certification route.

Adopted new §228.61(b) requires that teacher candidates participating in an internship experience a full range of professional responsibilities, including the start of the school year, and provides flexibility to utilize field-based experiences, as needed, to meet this requirement.

Adopted new §228.61(c) identifies the practicum requirement for candidates pursuing certification in non-teacher certificate classes and sets the minimum number of clock hours required for completion of a practicum.

##### *§228.63, Locations for Required Clinical Experiences*

Adopted new §228.63 establishes the limitations on the location in which a candidate can have an internship, a clinical teaching, or a practicum experience.

Adopted new §228.63(a) was updated from authentic school setting to in-person Prekindergarten-Grade 12 setting to restore the meaning that the candidate must be in an assignment that is in-person in a physical classroom and not in a distance learning or virtual learning classroom.

The requirement in adopted new §228.63(c)(2) was updated to add site supervisor and identifies that the candidate completing a practicum cannot be related to the site supervisor.

Adopted new §228.63 establishes "residency" as a clinical experience across subsections (a)-(g).

#### §228.65, *Residency*

Adopted new §228.65 requires that the residency clinical experience include programmatic requirements to issue an enhanced standard certificate and requires the program to provide candidates with one full school year of clinical teaching, to include in the first and last day of school, in a classroom with a qualified host teacher in the classroom teaching assignment(s) that matches the certification category sought by the candidate. It also requires that the residency include a minimum of 750 hours in total, with a minimum of 21 hours per week during a school week that does not include closures or disruptions, and the program must document reduced clinical experience hours during weeks with closures or disruptions (see adopted new §228.61(a)). Candidates must complete a minimum of 700 hours in the event of life events such as bereavement, illness, or FMLA.

Adopted new §228.65(b) requires that the instructional setting include one distinct field site, with some exceptions for candidates seeking more than one certification category, Early Childhood-Grade 12 certification, and/or a significant human resources concern, with a limit of two field placements. Exceptions require documentation from both the EPP and partner district. Additionally, it requires that a candidate is co-teaching as lead instructor for at least 400 hours of the residency program.

Adopted new §228.65(c) establishes the requirements for determining a candidate's readiness for teaching, including requiring the EPP to manage candidate progress toward mastery of educator standards through administration of performance gates at least twice per semester, totaling at least four times a year. It also requires field supervisors to be responsible for assessing and evaluating candidate progression through the program.

Adopted new §228.65(d) specifies the circumstances under which an EPP no longer needs to provide ongoing support to a candidate.

Adopted new §228.65(c) requires the EPP, the district personnel, and the candidate to inform one another of the candidate's departure for any of the reasons stated in adopted new §228.65(d).

Adopted new §228.65(f) establishes the requirements for a candidate's eligibility for an enhanced standard certificate, including the requirements for issuance in §230.39(b) and the requirements in adopted new §228.65(a)-(c). Additionally, it defines the requirement for candidates to meet a Proficient performance level for all pedagogical skill dimensions. The dimensions listed are the same as those in 19 TAC §150.1002, Assessment of Teacher Performance, with the addition of the Instruction Dimension 2.3: Communication.

Adopted new §228.65(g) defines the requirements for successful completion of a residency, including proficiency in the educator standards and a shared recommendation from the host teacher, field supervisor, and campus administrator. If there is no consensus on the recommendation, documentation of why the candidate is not being recommended for a certificate is required to be submitted to the candidate and the field supervisor, host teacher, and/or campus administrator.

#### §228.67, *Clinical Teaching*

Adopted new §228.67 includes language that reflects stakeholder feedback and clarifies the duration of clinical teaching in a uniform requirement of 490 hours (the equivalent of 70 days).

In adopted new §228.67(b), the abbreviated clinical teaching allowed for maternity leave was expanded to parental leave in the interest of shared parental responsibility.

Adopted new §228.67(c) provides guidance for candidates seeking certification in more than one subject area to complete clinical teaching and confirms EPP and LEA training responsibilities and supports to ensure candidate success.

Adopted new §228.67(d) requires EPPs to structure the clinical teaching assignment in such a manner that candidates are provided co-teaching opportunities and additional experiences to have greater responsibility for the instruction being provided over the course of the clinical teaching assignment. This directly aligns with the requirement for the residency certification pathway that explicitly includes co-teaching and a gradual release of responsibility.

Adopted new §228.67(g) specifies that only the certification of the candidate or the discharge, release, or withdrawal of the candidate from the EPP relieves the EPP of the duty to support the candidate during clinical teaching.

#### §228.69, *Clinical Teaching While Employed as Educational Aide*

Adopted new §228.69 aligns with the requirements for clinical teaching.

In adopted new §228.69(c), the clinical teaching requirement previously allowed for maternity leave was expanded to parental leave in recognition of shared parental responsibility.

#### §228.71, *Exceptions to Clinical Teaching Requirement*

Adopted new §228.71 establishes the process EPPs utilize if they are unable to support candidates through the clinical teaching process specified in adopted new §228.67, Clinical Teaching.

Adopted new §228.71(b) requires an EPP to request an exception to the clinical teaching requirement by September 15, which coincides with the existing requirement that an EPP submit a written report on the results of a clinical teaching exception by September 15.

Adopted new §228.71(c)(3) requires TEA staff to present the EPP's report to the SBEC to determine whether the exception should be renewed and requires EPPs approved for an exception before September 1, 2022, to submit a report to the TEA by September 1, 2024. This gives the SBEC an opportunity to decide whether to renew exceptions annually rather than continue indefinitely.

#### §228.73, *Internship*

Adopted new §228.73(a) requires EPPs to verify that a candidate participating in an internship hold an active intern or probationary certificate.

Adopted new §228.73(g)(5) requires EPPs to request deactivation of the certificate of a late-hire candidate that failed to meet training requirements in a timely manner to parallel the requirement in adopted new §228.55(c), Late Hire Candidates.

In adopted new §228.73(c), the abbreviated internship previously allowed for maternity leave was expanded to parental leave in recognition of shared parental responsibility.

*§228.75, Clinical Experience for Candidate Seeking Certification as Teacher of Students with Visual*

*Impairments (TVI) Supplemental: Early Childhood-Grade 12*

Adopted new §228.75 provides specific language related to the clinical teaching requirements for candidates seeking the Teacher of Students with Visual Impairments Supplemental: Early Childhood-Grade 12 certification.

*§228.77, Clinical Experience for Candidate Seeking Deafblind (DB) Supplemental: Early Childhood-Grade 12 Certification*

Adopted new §228.77 provides specific language related to the clinical teaching requirements for candidates seeking the Deafblind Supplemental: Early Childhood-Grade 12 certification.

*§228.79, Exemptions from Required Clinical Experiences for Classroom Teacher Candidates*

Adopted new §228.79 includes residency in existing exemptions included in subsections (a) and (b) to exempt candidates pursuing classroom teacher certificates from required clinical experiences.

*§228.81, Clinical Experience for Certification Other Than Classroom Teacher*

Adopted new §228.81 establishes requirements for EPPs and candidates on completing clinical experience in certificate classes other than classroom teacher.

Adopted new §228.81(f) specifies that only the certification of the candidate, or the discharge, release, or withdrawal of the candidate from the EPP, would relieve the EPP of the duty to support the candidate during the practicum experience.

Specificity was added to adopted new §228.81(d)(1) to include feedback from the candidate's site supervisor, which is responsive to stakeholder feedback and mirrors similar requirements added for clinical teaching and internships.

*Subchapter F. Support for Candidates During Required Clinical Experiences*

*§228.91, Mentors, Cooperating Teachers, Host Teachers and Site Supervisors*

Adopted new §228.91(a) establishes the shared responsibility of the EPP and district/campus administrator to determine selection criteria and develop a shared selection process to assign mentors, cooperating teachers, host teachers, and site supervisors to candidates as appropriate.

Adopted new §228.91(b) specifies for teacher residencies that the EPP and district/campus administrator share responsibility to assign host teachers to candidates, by determining the selection criteria and development of a scoring rubric.

Adopted new §228.91(c) requires a mentor or site supervisor be assigned within three-weeks of the start date of an internship or practicum and that a candidate not remain in a placement without an assigned mentor or site supervisor for longer than three weeks.

Adopted new §228.91(d) provides provisions for cooperating teacher, mentor, host teacher, or site supervisor selection if there is not an individual that matches the criteria for qualification.

Adopted new §228.91(e) requires the EPP to provide research-based training to mentors, cooperating teachers, host teachers, and site supervisors. An education service center or district en-

tity may provide that training with proper documentation of evidence shown in Figure: 19 TAC §228.13(f).

*§228.93, Cooperating Teacher Qualifications and Responsibilities*

Adopted new §228.93(a)(3) updates the training provided to the cooperating teacher by the EPP to include co-teaching strategies. The window of time in which training must be provided was expanded to twelve weeks before or three weeks after the candidate assignment.

In adopted new §228.93(a)(4), "not assigned to the clinical teacher" parallels language to the similar requirement for mentor teacher qualifications.

*§228.95, Host Teacher Qualifications and Responsibilities*

Adopted new §228.95(a) defines the requirements for host teachers as at least three creditable years of teaching experience (19 TAC Chapter 153, Subchapter CC, Commissioner's Rules on Creditable Years of Teaching Experience), recognition as an accomplished teacher demonstrated by at least three years of teacher evaluations with a proficient or above proficient appraisal rating, evidence of student growth and achievement impact, and other dispositional criteria defined by the EPP and district/campus administration partnership. Host teachers are required to be trained by the EPP at least twice per school year on best practices in coaching, mentoring, and co-teaching, cannot already be assigned as a field supervisor, and are required to hold a valid certificate in the certification category of the residency assignment.

Adopted new §228.95(b) establishes the duties of a host teacher to include supporting the candidate's development in a co-teaching model that allows for gradual release of the candidate to lead instruction, providing feedback and support on key dimensions such as classroom management and assessment, and reporting the candidate's progress during collaboration with the field supervisor at least monthly.

*§228.97, Mentor Qualifications and Responsibilities*

Adopted new §228.97(a)(5) provides flexibility to the training requirement for mentor teachers by expanding the window of time of the training to twelve weeks before or three weeks after the candidate's assignment start date.

*§228.99, Site Supervisor Qualifications and Responsibilities*

Adopted new §228.99 sets out the qualifications and responsibilities of a site supervisor in a separate subsection for ease of reference. Section 228.99(a)(3) provides flexibility to the training requirement for site supervisors by expanding the window of time in which the EPP must provide the training from three weeks to within twelve weeks before or three weeks after the candidate's assignment start date. This flexibility allows for training to occur before the start of school if needed.

*§228.101, Field Supervisor Qualifications and Responsibilities*

Adopted new §228.101(a) identifies the field supervisor must be an accomplished educator with experience and certification in the class of certificate being pursued by the candidate observed and the appropriate training for the role of field supervisor.

Adopted new §228.101(a)(4) requires that field supervisors of residency candidates are trained annually by the EPP in coaching, candidate evaluation, and co-teaching strategies and participate in school and district trainings as determined by the part-

nership. All other qualifications remain consistent with field supervisor qualifications for all other candidates.

Adopted new §228.101(a)(8) and (9) establish that a field supervisor must hold a current certification in which supervision is provided or, at a minimum, a master's degree in the academic area or field related to the certification area being supervised and compliance with continuing professional education requirements in Chapter 232, Subchapter A, Certificate Renewal and Continuing Professional Education Requirements.

Adopted new §228.101(b)(1) requires the supervision of each candidate be conducted by a field supervisor that has been trained annually by the EPP and completes the TEA-approved field supervisor training every three years. Field supervisors that have previously completed the TEA-approved training must renew the training by September 1, 2026. Field supervisors that hold valid Texas Teacher Evaluation and Support System (T-TESS) certification do not need to complete the TEA-approved field supervisor training.

Adopted new §228.101(b)(5)(A) requires that, at a minimum, field supervisors must provide informal observations and ongoing coaching, informed by the areas identified for improvement in the formal post-observation conference, at least three times per semester for at least 15 minutes for candidates in clinical teaching, internships, and practicum assignments, and must include observation and feedback on targeted skills.

The language in adopted new §228.101(b)(5)(B) requires that the first informal observation must occur within the first six weeks of the clinical teaching or internship assignment and must be in person, while providing flexibility for the remainder of informal observations to be conducted in person or virtually.

Adopted new §228.101(b)(5)(C) establishes that all informal observations for practicums may be conducted virtually.

Adopted new §228.101(b)(6) requires the first two informal observations for late hire candidates to be conducted in person within the first eight weeks of the candidate's start date to ensure early responsive support for teacher candidates who are entering the classroom as a teacher of record with limited previous preparation.

Adopted new §228.101(b)(7) requires informal observations for candidates in residency assignments.

Adopted new §228.101(b)(9)-(12) requires that the field supervisor must collaborate with the candidate and cooperating teacher, mentor and campus supervisor, or site supervisor, as applicable throughout the clinical experience and defines quality and frequency of the collaboration to ensure candidates receive consistent support.

#### *§228.103, Formal Observations for Candidates in Residency Assignments*

Adopted new §228.103(a) requires the EPP to provide the first formal observation within the first six weeks of the residency assignment.

Adopted new §228.103(b) requires two in-person 45-minute formal observations per semester that include pre- and post-observation conference with the candidate.

#### *§228.105, Formal Observations for All Candidates for Initial Classroom Teacher Certification*

Adopted new §228.105 sets out the requirements for formal observations that apply to all classroom teacher certification candidates regardless of their certification route.

#### *§228.107, Formal Observations for Candidates in Clinical Teaching Assignments*

Adopted new §228.107 sets out the observation requirements that apply specifically to clinical teaching. The observation requirements align with the duration of clinical teaching in adopted new §228.67, Clinical Teaching.

#### *§228.109, Formal Observations for Candidates in Internship Assignments*

Adopted new §228.109 sets out the observation requirements that apply specifically to internships. In response to stakeholder feedback, the number of formal observations conducted for candidates holding Probationary certificates was increased from three to five.

#### *§228.111, Formal Observations for Candidates Employed as Educational Aides*

Adopted new §228.111 sets out the observation requirements that apply specifically to candidates seeking to complete their clinical teaching while working as educational aides. In response to stakeholder feedback, the number of formal observations conducted was increased from three to four.

#### *§228.113, Support and Formal Observations for Candidates Seeking Certification as Teacher of Students with Visual Impairments (TVI) Supplemental: Early Childhood-Grade 12*

Adopted new §228.113 sets out the observation requirements that apply specifically to candidates seeking supplemental certification as a Teacher of Students with Visual Impairments (TVI) Supplemental: Early Childhood-Grade 12.

Adopted new §228.113(c)(3) provides specification regarding the pre- and post-observation activities that must be conducted relative to the observation.

#### *§228.115, Support and Formal Observations for Candidates Seeking the Deafblind Supplemental: Early Childhood-Grade 12 Certification*

Adopted new §228.115 sets out the observation requirements that apply specifically to candidates seeking supplemental certification as a teacher of Deafblind Supplemental: Early Childhood-Grade 12 certification.

#### *§228.117, Support and Formal Observations for Candidates Other Than Classroom Teacher*

Adopted new §228.117 establishes the requirements for EPPs supporting candidates seeking certificates other than classroom teacher during the candidates' practicums.

Adopted new §228.117(b)(3) provides specification regarding when the pre-observation and post-observation activities should be conducted relative to the observation.

#### *Subchapter G. Complaints and Investigations*

#### *§228.121, Complaints and Investigations Procedures*

Adopted new §228.121(d)(3)(B) requires the EPP to respond to requests for more information during a complaint's investigation within 10 business days.

Adopted new §228.121(d)(4)(D) requires TEA staff to provide written notice to the EPP under investigation when TEA staff closes an investigation.

*§228.123, Educator Preparation Program Responsibilities for Candidate Complaints*

Adopted new §228.123(a) establishes that an EPP must adopt and send to TEA staff a complaint procedure that requires the EPP to timely attempt to resolve complaints at the EPP level before a complaint is filed with TEA staff.

**SUMMARY OF COMMENTS AND RESPONSES:** The public comment period on the proposal began December 29, 2023, and ended January 29, 2024. The SBEC also provided an opportunity for registered oral and written comments on the proposal at the February 16, 2024, meeting's public comment period in accordance with the SBEC board operating policies and procedures. The following public comments were received on the proposal.

**Comment:** Several commenters stated that the proposed changes in 19 TAC Chapter 228 provide flexibility to EPPs and implement the residency program, creating well-prepared teachers to enter Texas classrooms.

**Response:** The SBEC agrees. The addition of the residency pathway, the inclusion of additional support for teacher candidates, and the added flexibility for EPPs to implement the rules are all strengths of new 19 TAC Chapter 228.

**Comment:** An individual commented that field-based experience should be increased to 50 hours for programs offering a full year of student teaching and that the requirement to include the first and last day of instruction will create additional hurdles for both districts and university based EPPs.

**Response:** The SBEC disagrees. The repeal of and new 19 TAC Chapter 228 sets the floor for required training hours. The increase to 50 field-based experience (FBE) hours and the requirement to include FBE as part of instructional experiences is required of all teacher candidates so that all will have equitable and meaningful pre-service experiences regardless of their certification route or clinical experience model. The SBEC disagrees with removing the requirement for first and last day of instruction from the Residency requirements. Existing residency EPPs, district stakeholders, and former residents have all been clear and consistent that the value of having residents experience the first and last day of school outweighs initial planning challenges.

**Comment:** An individual opposed the revision to §228.101(b)(1) because it would be costly to the field supervisor and/or EPP and unnecessary. Additionally, the commenter suggested that it should not be a requirement to retrain supervisors in the Texas Teacher Evaluation and Support System (T-TESS) every three years since there is no requirement to utilize T-TESS when observing candidates. The commenter noted that their own EPP uses the National Institute for Excellence in Teaching Rubric and is already required to recertify every year. The commenter suggested that EPPs have the ability to retain a waiver to not have to retrain field supervisors every three years in T-TESS if they use their own reliable rubric of choice.

**Response:** The SBEC disagrees. The rule does not require retraining in T-TESS but rather to maintain an active T-TESS certification as one of the options for field supervisor training. Field supervisors also can complete TEA's Field Supervisor Training every three years if that is preferable to T-TESS. Standardizing the training for field supervisors and requiring the approved train-

ing be completed every three years maintains equity in the field and ensures that all educators acting in a field supervisory role are utilizing up-to-date methods and best practices according to the SBEC.

**Comment:** An individual opposed the proposed repeal of and new 19 TAC Chapter 228. The commenter stated that the residency pathway is inequitable because it provides an advantage to EPPs and candidates who can afford a residency option and to districts who can afford to pay residents. The commenter argued that many districts are at a loss as to how they can locate funds to compensate residents without funding from the legislature. The commenter also stated that some candidates may be unable to secure a residency that matches their certification being sought and that residency programs are costly to EPPs because they require additional compensation for field supervisors. The commenter expressed concern that candidates will be able to complete clinical experience in one semester and that the September 1, 2024, implementation date does not provide EPPs enough time to make adjustments to the proposed changes. The commenter also expressed concern that proposed changes are not being communicated well enough with school district stakeholders.

**Response:** The SBEC disagrees. Implementation of a Residency route is completely optional for EPPs and would only be implemented by EPPs who establish the structures and partnerships necessary to support the Residency pathway. EPPs who choose to offer Residency pathways would collaborate with their partnering districts to recruit and prepare candidates in the needed certificate categories. A variety of programs currently offer residency-like supports in diverse geographical and programmatic settings, and technical assistance has been made available to EPPs and partnership districts since 2022 to implement sustainably paid residency models. In addition, the current options that allow candidates to complete clinical teaching in one semester or across two semesters per individual EPP requirements will continue to be available to all candidates in new Chapter 228. In preparation for implementation of the new requirements, EPPs should begin working on quality updates ahead of the September 1, 2024, implementation date, but EPPs will not be accountable for demonstrating the updates in a 5-year continuing approval review until the 2025-2026 academic year.

**Comment:** An individual opposed several components of the proposed repeal of and new 19 TAC Chapter 228. The commenter stated that §228.101(b)(5) and §228.107(b) will increase field observation costs at The University of Texas at San Antonio (UTSA) from approximately \$237,000 to almost \$500,000, which the commenter considers an unfunded mandate because Texas university systems promised the Texas Legislature not to raise fees. The commenter stated that the required nine observations in fourteen weeks in two-assignment situations as proposed in §228.107 is excessive and will likely result in UTSA no longer placing all-grades candidates in two assignments. The commenter questioned whether the extra observations are more valuable than the multi-grade experience. The commenter suggested that §228.31 is bad for candidates and universities in a myriad of ways.

**Response:** The SBEC disagrees. Regarding informal observations: the requirement to conduct informal observations exists in the current Chapter 228 and, therefore, would presumably already be built into the EPP's budget. The revised Chapter 228 adds specificity to improve clarity related to the SBEC's prioritization of the critical role informal observation and coaching plays in

teacher development. Furthermore, multiple EPP stakeholders have shared that they either were already conducting the minimum number of required informal observations in alignment with the previous Chapter 228 guidance, or that—because of the flexible nature of the rule—they will be able to implement informal observations in a cost neutral way. Regarding all-grade candidates in two placement assignments, additional formal observations are required in the currently adopted version of 19 TAC Chapter 228 for teacher candidates who complete clinical experiences in more than one certificate category that cannot be observed concurrently in the same class period. Finally, much of the new 19 TAC §228.31, Minimum Educator Preparation Program Obligations to All Candidates, is already existing in the current version of Chapter 228. Updates to areas, such as the EPP exit policy and requirements for candidates who request changes to their certification area after admission, provide more definition to rules that previously were not clear to EPPs or transparent for candidates and districts.

**Comment:** An individual commented in favor of the proposed repeal of and new 19 TAC Chapter 228. The commenter advised that one of the barriers to the implementation of a residency program for EPPs are the current regulations under 19 TAC Chapter 228, and that the proposed changes will provide EPPs the flexibility to engage in residency models and will favor a more rigorous preparation pathway. The commenter believes that the proposed repeal will lead to teacher candidates entering the profession with greater experience and confidence, helping teaching students reach their full potential.

**Response:** The SBEC agrees. The addition of the residency pathway, the inclusion of additional support for teacher candidates, and the added flexibility for EPPs to implement the rules are all strengths of new 19 TAC Chapter 228.

**Comment:** An individual opposed the proposed changes and advocated for the inclusion of all activities during a school day (including professional development, tutoring, conference periods, and extracurricular activities) be included as clinical teaching hours.

**Response:** The SBEC disagrees. Clinical teachers can participate in all school activities; however, only those hours that meet the subject area and grade level requirements can count for actual clinical teaching. This ensures that the candidate has authentic opportunities to learn and practice within the core instructional setting where they will be serving as a teacher of record.

**Comment:** Multiple commenters agreed with additional support such as non-evaluative observation and feedback for novice teachers through informal observations and coaching by their field supervisors. Multiple commenters stated that providing targeted touchpoints and supports at the beginning of the year will help teacher—candidates build a relationship with their EPP and specifically with their assigned field supervisor, so they see them as a resource meant to support their growth as a novice teacher.

**Response:** The SBEC agrees. The addition of specificity related to informal observations will ensure that candidates receive coaching and development rather than just formal evaluation. Concentrating field supervisor / candidate interactions at the beginning of the year will foster a strong connection between the candidate and their field supervisor.

The SBOE took no action on the review of the repeal of 19 TAC §§228.1, 228.2, 228.10, 228.15, 228.17, 228.20, 228.30, 228.33, 228.35, 228.40, 228.50, 228.60, and 228.70 and new

§§228.1, 228.2, 228.4, 228.6, 228.11, 228.13, 228.15, 228.17, 228.19, 228.21, 228.23, 228.25, 228.31, 228.33, 228.35, 228.37, 228.39, 228.41, 228.43, 228.45, 228.47, 228.49, 228.51, 228.53, 228.55, 228.57, 228.61, 228.63, 228.65, 228.67, 228.69, 228.71, 228.73, 228.75, 228.77, 228.79, 228.81, 228.91, 228.93, 228.95, 228.97, 228.99, 228.101, 228.103, 228.105, 228.107, 228.109, 228.111, 228.113, 228.115, 228.117, 228.121, and 228.123 at the April 12, 2024, SBOE meeting.

**19 TAC §§228.1, 228.2, 228.10, 228.15, 228.17, 228.20, 228.30, 228.33, 228.35, 228.40, 228.50, 228.60, 228.70**

**STATUTORY AUTHORITY.** The repeals are adopted under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by TEC, Chapter 21, Subchapter B; TEC, §21.031, which authorizes the State Board for Educator Certification (SBEC) to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; 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 TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2)-(4), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the period for which each class of educator certificate is valid; and the requirements for the issuance and renewal of an educator certificate; TEC, §21.044, as amended by House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023, which authorizes the SBEC to propose rules specifying what each educator is expected to know and be able to do, particularly with regard to students with disabilities, establishing the training requirements a person must accomplish to obtain a certificate, or enter an internship, and specifying the minimum academic qualifications required for a certificate. It also sets requirements for training, coursework, and qualifications that the SBEC is required to include; TEC, §21.0441, which requires the SBEC to set admission requirements for candidates entering educator preparation programs (EPPs) and specifies certain requirements that must be included in the rules; TEC, §21.0442(c), which requires the SBEC to create an abbreviated EPP for a person seeking certification in trade and industrial workforce training with a minimum of 80 hours of classroom instruction in certain specified topics; TEC, §21.0443, which requires the SBEC to set standards for approval and renewal of approval for EPPs, sets certain requirements for approval and renewal, and requires that the SBEC review each program at least every five years; TEC, §21.045(a), which requires the SBEC to create an accountability system for EPPs based on the results of certification examinations, teacher appraisals, student achievement, compliance with the requirements for candidate support, and the results of a teacher satisfaction survey; TEC, §21.0452, which requires the SBEC to make information about EPPs available to the public through its internet website and gives the SBEC authority to require any person to give information to the Board for this purpose; TEC, §21.0453, which sets requirements for information that EPPs must provide candidates and gives the SBEC rulemaking authority to implement the provision and ensure that EPPs give candidates accurate information; TEC, §21.0454, which gives the SBEC rulemaking authority to set



risk factors to determine the Board's priorities in conducting monitoring, inspections, and compliance audits and sets out certain factors that must be included among the factors; TEC, §21.0455, which gives the SBEC rulemaking authority to establish a process for a candidate for teacher certification to direct a complaint against an EPP to the agency, requires that EPPs notify candidates of the complaints process, states that the SBEC must post the complaint process on its website, and states that the SBEC has no authority to resolve disputes over contractual or commercial issues between programs and candidates; TEC, §21.046(b), which requires the SBEC to allow outstanding teachers to substitute approved experience and professional training for part of the educational requirements in lieu of classroom hours; TEC, §21.046(c), which requires the SBEC to ensure that principal candidates are of the highest caliber and that there is a multi-level screening process, along with assessment programs, and flexible internships to determine whether a candidate has the necessary skills for success; TEC, §21.048(a), which requires the SBEC to prescribe comprehensive certification examinations for each class of certificate issued by the Board; TEC, §21.0485, which states that to be eligible for certification to teach students with visual impairments, a person must complete all coursework required for that certification in an approved EPP or alternative EPP, perform satisfactorily on required certification exams, and satisfy other requirements established by the SBEC; TEC, §21.0487(c), which requires the SBEC to propose rules related to approval of educator preparation programs to offer the Junior Reserve Officer Training Corps (JROTC) teacher certification and to recognize applicable military training and experience and prior employment by a school district as a JROTC instructor to support completion of certification requirements; TEC, §21.0489(c), which sets out the requirements for Early Childhood certification; TEC, §21.04891, which sets out the requirements for the Bilingual Special Education certification; TEC, §21.049(a), which requires the SBEC to propose rules providing for educator preparation programs as an alternative for traditional preparation programs; TEC, §21.0491, which requires the SBEC to create a probationary and standard trade and industrial workforce training certificate; TEC, §21.050(a), which requires an applicant for teacher certification to have a bachelor's degree in a relevant field; TEC, §21.050(b), which allows the Board to require additional credit hours for certification in bilingual education, English as a second language, early childhood education, or special education; TEC, §21.050(c), which exempts people who receive a bachelor's degree while receiving an exemption from tuition and fees under TEC, §54.363, from having to participate in field-based experiences or internships as a requirement for educator certification; and TEC, §21.051, as amended by HB 4545, 88th Texas Legislature, Regular Session, 2023, which requires that candidates complete at least 15 hours of field-based experiences in which the candidate is actively engaged in instructional or educational activities under supervision involving a diverse student population at a public-school campus or an approved private school, allows 15 hours of experience as a long-term substitute to count as field-based experience, and gives the SBEC rulemaking authority related to field-based experiences; and Texas Occupations Code, §55.007, which requires all state agencies that issue licenses or certifications to credit military experience toward the requirements for the license or certification.

**CROSS REFERENCE TO STATUTE.** The repeals implement Texas Education Code (TEC), §§21.003(a); 21.031; 21.041(b)(1)-(4); 21.044, as amended by House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023; 21.0441;

21.0442(c); 21.0443; 21.045(a); 21.0452, 21.0453; 21.0454; 21.0455; 21.046(b)-(c); 21.048(a); 21.0485; 21.0487(c); 21.0489(c); §21.04891; 21.049(a); 21.0491; 21.050(a)-(c); and 21.051, as amended by HB 4545, 88th Texas Legislature, Regular Session, 2023; and Texas Occupations Code, §55.007.

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 April 29, 2024.

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State Board for Educator Certification

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



## SUBCHAPTER A. GENERAL GUIDANCE

### 19 TAC §§228.1, 228.2, 228.4, 228.6

**STATUTORY AUTHORITY.** The new sections are adopted under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by TEC, Chapter 21, Subchapter B; TEC, §21.031, which authorizes the State Board for Educator Certification (SBEC) to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; 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 TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2)-(4), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the period for which each class of educator certificate is valid; and the requirements for the issuance and renewal of an educator certificate; TEC, §21.044, as amended by House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023, which authorizes the SBEC to propose rules specifying what each educator is expected to know and be able to do, particularly with regard to students with disabilities, establishing the training requirements a person must accomplish to obtain a certificate, or enter an internship, and specifying the minimum academic qualifications required for a certificate. It also sets requirements for training, coursework, and qualifications that the SBEC is required to include; TEC, §21.0441, which requires the SBEC to set admission requirements for candidates entering educator preparation programs (EPPs) and specifies certain requirements that must be included in the rules; TEC, §21.0442(c), which requires the SBEC to create an abbreviated EPP for a person seeking certification in trade and industrial workforce training with a minimum of 80 hours of classroom instruction in certain specified topics; TEC, §21.0443, which requires the SBEC to set standards for approval and renewal of approval for EPPs, sets certain requirements for approval and renewal, and requires that the SBEC review each program at least every five years; TEC, §21.045(a), which requires the SBEC to create an

accountability system for EPPs based on the results of certification examinations, teacher appraisals, student achievement, compliance with the requirements for candidate support, and the results of a teacher satisfaction survey; TEC, §21.0452, which requires the SBEC to make information about EPPs available to the public through its internet website and gives the SBEC authority to require any person to give information to the Board for this purpose; TEC, §21.0453, which sets requirements for information that EPPs must provide candidates and gives the SBEC rulemaking authority to implement the provision and ensure that EPPs give candidates accurate information; TEC, §21.0454, which gives the SBEC rulemaking authority to set risk factors to determine the Board's priorities in conducting monitoring, inspections, and compliance audits and sets out certain factors that must be included among the factors; TEC, §21.0455, which gives the SBEC rulemaking authority to establish a process for a candidate for teacher certification to direct a complaint against an EPP to the agency, requires that EPPs notify candidates of the complaints process, states that the SBEC must post the complaint process on its website, and states that the SBEC has no authority to resolve disputes over contractual or commercial issues between programs and candidates; TEC, §21.046(b), which requires the SBEC to allow outstanding teachers to substitute approved experience and professional training for part of the educational requirements in lieu of classroom hours; TEC, §21.046(c), which requires the SBEC to ensure that principal candidates are of the highest caliber and that there is a multi-level screening process, along with assessment programs, and flexible internships to determine whether a candidate has the necessary skills for success; TEC, §21.048(a), which requires the SBEC to prescribe comprehensive certification examinations for each class of certificate issued by the Board; TEC, §21.0485, which states that to be eligible for certification to teach students with visual impairments, a person must complete all coursework required for that certification in an approved EPP or alternative EPP, perform satisfactorily on required certification exams, and satisfy other requirements established by the SBEC; TEC, §21.0487(c), which requires the SBEC to propose rules related to approval of educator preparation programs to offer the Junior Reserve Officer Training Corps (JROTC) teacher certification and to recognize applicable military training and experience and prior employment by a school district as a JROTC instructor to support completion of certification requirements; TEC, §21.0489(c), which sets out the requirements for Early Childhood certification; TEC, §21.04891, which sets out the requirements for the Bilingual Special Education certification; TEC, §21.049(a), which requires the SBEC to propose rules providing for educator preparation programs as an alternative for traditional preparation programs; TEC, §21.0491, which requires the SBEC to create a probationary and standard trade and industrial workforce training certificate; TEC, §21.050(a), which requires an applicant for teacher certification to have a bachelor's degree in a relevant field; TEC, §21.050(b), which allows the Board to require additional credit hours for certification in bilingual education, English as a second language, early childhood education, or special education; TEC, §21.050(c), which exempts people who receive a bachelor's degree while receiving an exemption from tuition and fees under TEC, §54.363, from having to participate in field-based experiences or internships as a requirement for educator certification; and TEC, §21.051, as amended by HB 4545, 88th Texas Legislature, Regular Session, 2023, which requires that candidates complete at least 15 hours of field-based experiences in which the candidate is actively engaged in instructional

or educational activities under supervision involving a diverse student population at a public-school campus or an approved private school, allows 15 hours of experience as a long-term substitute to count as field-based experience, and gives the SBEC rulemaking authority related to field-based experiences; and Texas Occupations Code, §55.007, which requires all state agencies that issue licenses or certifications to credit military experience toward the requirements for the license or certification.

**CROSS REFERENCE TO STATUTE.** The new sections implement Texas Education Code (TEC), §§21.003(a); 21.031; 21.041(b)(1)-(4); 21.044, as amended by House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023; 21.0441; 21.0442(c); 21.0443; 21.045(a); 21.0452, 21.0453; 21.0454; 21.0455; 21.046(b)-(c); 21.048(a); 21.0485; 21.0487(c); 21.0489(c); §21.04891; 21.049(a); 21.0491; 21.050(a)-(c); and 21.051, as amended by HB 4545, 88th Texas Legislature, Regular Session, 2023; and Texas Occupations Code, §55.007.

§228.2. *Definitions.*

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

(1) **Academic year**--If not referring to the academic year of a particular public, private, or charter school or institution of higher education (IHE), September 1 through August 31.

(2) **Accredited institution of higher education**--An IHE that, at the time it conferred the degree, was accredited or otherwise approved by an accrediting organization recognized by the Texas Higher Education Coordinating Board.

(3) **Alternative certification program**--An approved educator preparation program, delivered by entities described in §228.25(a) of this title (relating to Governance of Educator Preparation Programs), specifically designed as an alternative to a traditional undergraduate certification program, for individuals already holding at least a bachelor's degree from an accredited IHE.

(4) **Analysis**--examining teaching and/or instructional resources (e.g., student work samples, a video of teaching practices) to recognize key teaching practices enacted in a variety of ways, build understanding of the practice through repeated review, develop a shared vision for a teacher practice, and compare their own practice for improvement.

(5) **Assignment start date**--For an internship, clinical teaching, or residency, the first day of instruction with students. For a non-teacher practicum experience, the first day of the window in which the candidate is authorized by the EPP to begin the practicum experience.

(6) **Authentic school setting**--For the purpose of field-based experiences, during the school day and the school year and including summer school; not to include professional development, extracurricular activities, workdays when students are not present, and before- or after-school childcare or tutoring.

(7) **Benchmarks**--Reference points throughout the preparation process where candidates are assessed for progress toward completing EPP requirements (e.g., admission, passing a specific course or courses, passing a certification exam, completing preservice requirements).

(8) **Campus supervisor**--A school administrator or designee responsible for the annual performance appraisal of an intern or a candidate pursuing a residency certificate.

(9) **Candidate**--An individual who has been formally or contingently admitted into an EPP; also referred to as an enrollee or participant.

(10) Candidate coach--A person as defined in §228.39(b)(1)-(3) of this title (relating to Intensive Pre-Service) who participates in a minimum of four observation/feedback coaching cycles provided by program supervisors, completes a Texas Education Agency (TEA)-approved observation training or has completed a minimum of 150 hours of observation/feedback training, and has current certification in the class in which supervision is provided.

(11) Certification category--A certificate type within a certification class, as described in Chapter 233 of this title (relating to Categories of Classroom Teaching Certificates).

(12) Certification class--A certificate, as described in §230.33 of this title (relating to Classes of Certificates), that has defined characteristics; may contain one or more certification categories, as described in Chapter 233 of this title.

(13) Classroom teacher--An educator who is employed by a school or district and who, not less than an average of four hours each day, teaches in an academic instructional setting or a career and technical instructional setting. This term does not include an educational aide, a full-time administrator, or a substitute teacher.

(14) Clinical experience--A supervised educator assignment through an EPP at a public school accredited by the TEA or other school approved by the TEA for this purpose where candidates demonstrate proficiency in the standards for the certificate sought and that may lead to completion of a standard certificate. Clinical experience includes clinical teaching, internship, practicum, and residency.

(15) Clinical teaching--A supervised teacher assignment through an EPP in the classroom of a cooperating teacher at a public school accredited by the TEA or other school approved by the TEA for this purpose that may lead to completion of a standard certificate; also referred to as student teaching.

(16) Clock-hours--The actual number of hours of coursework or training provided; for purposes of calculating the training and coursework required by this chapter, one semester credit hour at an accredited IHE is equivalent to 15 clock-hours. Clock-hours of field-based experiences, clinical teaching, internship, residency, and practicum are actual hours spent in the required educational activities and experiences.

(17) Contingency admission--Admission as described in §227.15 of this title (relating to Contingency Admission).

(18) Completer--A person who has met all the requirements of an approved EPP; also referred to as finisher. In applying this definition, the fact that a person has or has not been recommended for a standard certificate or passed a certification examination shall not be used as criteria for determining who is a completer.

(19) Cooperating teacher--For a clinical teacher candidate, an educator who is collaboratively assigned by the EPP and campus administrator who supports the candidate during the clinical teaching experience.

(20) Co-teaching--A practice in which two or more teachers share instructional responsibility for a single group of students to address specific content and related learning objectives through a variety of approaches that best support the students' learning needs.

(21) Educator--An individual who is required to hold a certificate issued under TEC, Chapter 21, Subchapter B.

(22) Educator preparation program--An entity that is approved by the SBEC to prepare and recommend candidates for certification in one or more educator certification classes.

(23) Enactments--Opportunities to engage teacher candidates in sheltered/protected practice to develop a skill through such examples as doing student work, role playing student interactions, coached lesson rehearsals, and peer run throughs of a proposed lesson. Candidates should have the opportunity to receive feedback on current practice and integrate feedback into future practices.

(24) Enhanced standard certificate--A type of certificate issued to an individual who has met all requirements as specified in §230.39(b) of this title (relating to Enhanced Standard Certificates) under the teacher class of certificates.

(25) Entity--The individual, corporation, partnership, IHE, public school or school district that is approved to deliver an EPP.

(26) Field-based experiences--Introductory experiences for a classroom teacher certification candidate, incorporated with preparation coursework that involve, at the minimum, reflective observation of and interaction with Early Childhood-Grade 12 students, teachers, and faculty/staff members engaging in educational activities in an authentic school setting.

(27) Field supervisor--A currently certified educator, who preferably has advanced credentials, hired by the EPP to observe candidates, monitor their performance, and provide constructive feedback to improve their effectiveness as educators.

(28) Formal admission--Admission as described in §227.17 of this title (relating to Formal Admission).

(29) Head Start Program--The federal program established under the Head Start Act (42 United States Code (USC), §9801 et seq.) and its subsequent amendments.

(30) Host teacher--for a teacher resident candidate, an educator who is jointly assigned by the EPP and the campus administrator who supports the candidate through co-teaching and coaching during their teacher residency field placement.

(31) Initial certification--The first Texas certificate in a class of certificate issued to an individual based on participation in an approved EPP.

(32) Intensive pre-service--An educator assignment supervised by an EPP accredited and approved by the SBEC prior to a candidate meeting the requirements for issuance of intern and probationary certificates.

(33) Intern certificate--A type of certificate as specified in §230.36 of this title (relating to Intern Certificates) that is issued to a candidate who has passed all required content pedagogy certification examinations and is completing requirements for initial certification through an approved EPP.

(34) Internship--A paid supervised classroom teacher assignment for one full school year at a public school accredited by the TEA or other school approved by the TEA for this purpose that may lead to completion of a standard certificate.

(35) Late hire--An individual who is both accepted into an EPP after the 45th day before the first day of instruction and hired for a teaching assignment by a school after the 45th day before the first day of instruction or after the school's academic year has begun.

(36) Long-term substitute--An individual that has served in place of a teacher of record in a classroom for at least 30 consecutive days; also referred to as a permanent substitute.

(37) Mentor--For an internship candidate, an educator who is employed as a classroom teacher on the candidate's campus and who is assigned to support the candidate during the internship experience.

(38) Pedagogy--The art and science of teaching that incorporates instructional methods that are developed from scientifically based research.

(39) Performance task--An assessment in which the teacher candidate applies learning and demonstrates a discrete set of skills, resulting in a tangible product or performance that serves as evidence of learning. The assessment must be evaluated using a standard rubric or set of criteria and must not include multiple-choice questions.

(40) Post-baccalaureate program--An EPP, delivered by an accredited IHE and approved by the SBEC to recommend candidates for certification, that is designed for individuals who already hold at least a bachelor's degree and are seeking an additional degree.

(41) Practicum--A supervised educator assignment at a public school accredited by the TEA or other school approved by the TEA for this purpose that is in a school setting in the particular class for which a certificate in a class other than classroom teacher is sought.

(42) Probationary certificate--A type of certificate as specified in §230.37 of this title (relating to Probationary Certificates) that is issued to a candidate who has passed all required certification examinations and is completing requirements for certification through an approved EPP.

(43) Representations--Artifacts and illustrations of instruction used to help teacher candidates see and analyze strong teaching practices. Representations expose teacher candidates to and build understanding of specific criteria of effective teacher practices, as well as deepen their content knowledge for teaching. May include teacher educator modeling, student work, videos and transcripts.

(44) Residency--A supervised educator assignment for an entire school year through a partnership between an EPP and a public school accredited by the TEA or other school approved by the TEA for this purpose that may lead to completion of an enhanced standard certificate.

(45) School day--Actual school attendance days during the regular academic school year, including a partial day that students attend school for instructional purposes as adopted by the district or governing body of the school, excluding weekends, holidays, summer school, etc. For the purpose of completing clinical experiences, the school day must be at least four hours, including intermissions and recesses, but not including lunch periods, professional development, or extracurricular activities.

(46) School year--The period of time starting with the first instructional day for students through the last instructional day for students as identified on the calendar of the campus or district for the school year in which the candidate is completing the clinical experience.

(47) Site supervisor--For a practicum candidate, an educator who is assigned collaboratively by the campus or district administrator and the EPP and who supports the candidate during the practicum experience.

(48) Standard certificate--A type of certificate issued to an individual who has met all requirements for a given class of certification, as specified in §230.33 of this title.

(49) Students with disabilities--A student who is eligible to participate in a school district's special education program under Texas Education Code, §29.003, is covered by Section 504, Rehabilitation Act of 1973 (29 USC Section 794), or is covered by the Individuals with Disabilities Education Act (20 USC Section 1400 et seq.).

(50) Substitute teacher--An individual that serves in place of a teacher of record in a classroom in an accredited public or private school.

(51) Teacher of record--An educator who is employed by a school or district and who teaches in an academic instructional setting or a career and technical instructional setting not less than an average of four hours each day and is responsible for evaluating student achievement and assigning grades.

(52) Texas Education Agency staff--Staff of the TEA assigned by the commissioner of education to perform the SBEC's administrative functions and services.

(53) Texas Essential Knowledge and Skills (TEKS)--The Kindergarten-Grade 12 state curriculum in Texas adopted by the State Board of Education and used as the foundation of all state certification examinations.

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 April 29, 2024.

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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



## SUBCHAPTER B. APPROVAL OF EDUCATOR PREPARATION PROGRAMS

### 19 TAC §§228.11, 228.13, 228.15, 228.17, 228.19

STATUTORY AUTHORITY. The new sections are adopted under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by TEC, Chapter 21, Subchapter B; TEC, §21.031, which authorizes the State Board for Educator Certification (SBEC) to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; 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 TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2)-(4), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the period for which each class of educator certificate is valid; and the requirements for the issuance and renewal of an educator certificate; TEC, §21.044, as amended by House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023, which authorizes the SBEC to propose rules specifying what each educator is expected to know and be able to do, particularly with regard to students with disabilities, establishing the training requirements a person must accomplish to obtain a certificate, or enter an internship, and specifying the minimum academic qualifications required for a certificate. It also sets requirements

for training, coursework, and qualifications that the SBEC is required to include; TEC, §21.0441, which requires the SBEC to set admission requirements for candidates entering educator preparation programs (EPPs) and specifies certain requirements that must be included in the rules; TEC, §21.0442(c), which requires the SBEC to create an abbreviated EPP for a person seeking certification in trade and industrial workforce training with a minimum of 80 hours of classroom instruction in certain specified topics; TEC, §21.0443, which requires the SBEC to set standards for approval and renewal of approval for EPPs, sets certain requirements for approval and renewal, and requires that the SBEC review each program at least every five years; TEC, §21.045(a), which requires the SBEC to create an accountability system for EPPs based on the results of certification examinations, teacher appraisals, student achievement, compliance with the requirements for candidate support, and the results of a teacher satisfaction survey; TEC, §21.0452, which requires the SBEC to make information about EPPs available to the public through its internet website and gives the SBEC authority to require any person to give information to the Board for this purpose; TEC, §21.0453, which sets requirements for information that EPPs must provide candidates and gives the SBEC rulemaking authority to implement the provision and ensure that EPPs give candidates accurate information; TEC, §21.0454, which gives the SBEC rulemaking authority to set risk factors to determine the Board's priorities in conducting monitoring, inspections, and compliance audits and sets out certain factors that must be included among the factors; TEC, §21.0455, which gives the SBEC rulemaking authority to establish a process for a candidate for teacher certification to direct a complaint against an EPP to the agency, requires that EPPs notify candidates of the complaints process, states that the SBEC must post the complaint process on its website, and states that the SBEC has no authority to resolve disputes over contractual or commercial issues between programs and candidates; TEC, §21.046(b), which requires the SBEC to allow outstanding teachers to substitute approved experience and professional training for part of the educational requirements in lieu of classroom hours; TEC, §21.046(c), which requires the SBEC to ensure that principal candidates are of the highest caliber and that there is a multi-level screening process, along with assessment programs, and flexible internships to determine whether a candidate has the necessary skills for success; TEC, §21.048(a), which requires the SBEC to prescribe comprehensive certification examinations for each class of certificate issued by the Board; TEC, §21.0485, which states that to be eligible for certification to teach students with visual impairments, a person must complete all coursework required for that certification in an approved EPP or alternative EPP, perform satisfactorily on required certification exams, and satisfy other requirements established by the SBEC; TEC, §21.0487(c), which requires the SBEC to propose rules related to approval of educator preparation programs to offer the Junior Reserve Officer Training Corps (JROTC) teacher certification and to recognize applicable military training and experience and prior employment by a school district as a JROTC instructor to support completion of certification requirements; TEC, §21.0489(c), which sets out the requirements for Early Childhood certification; TEC, §21.04891, which sets out the requirements for the Bilingual Special Education certification; TEC, §21.049(a), which requires the SBEC to propose rules providing for educator preparation programs as an alternative for traditional preparation programs; TEC, §21.0491, which requires the SBEC to create a probationary and standard trade and industrial workforce training certificate;

TEC, §21.050(a), which requires an applicant for teacher certification to have a bachelor's degree in a relevant field; TEC, §21.050(b), which allows the Board to require additional credit hours for certification in bilingual education, English as a second language, early childhood education, or special education; TEC, §21.050(c), which exempts people who receive a bachelor's degree while receiving an exemption from tuition and fees under TEC, §54.363, from having to participate in field-based experiences or internships as a requirement for educator certification; and TEC, §21.051, as amended by HB 4545, 88th Texas Legislature, Regular Session, 2023, which requires that candidates complete at least 15 hours of field-based experiences in which the candidate is actively engaged in instructional or educational activities under supervision involving a diverse student population at a public-school campus or an approved private school, allows 15 hours of experience as a long-term substitute to count as field-based experience, and gives the SBEC rulemaking authority related to field-based experiences; and Texas Occupations Code, §55.007, which requires all state agencies that issue licenses or certifications to credit military experience toward the requirements for the license or certification.

**CROSS REFERENCE TO STATUTE.** The new sections implement Texas Education Code (TEC), §§21.003(a); 21.031; 21.041(b)(1)-(4); 21.044, as amended by House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023; 21.0441; 21.0442(c); 21.0443; 21.045(a); 21.0452, 21.0453; 21.0454; 21.0455; 21.046(b)-(c); 21.048(a); 21.0485; 21.0487(c); 21.0489(c); §21.04891; 21.049(a); 21.0491; 21.050(a)-(c); and 21.051, as amended by HB 4545, 88th Texas Legislature, Regular Session, 2023; and Texas Occupations Code, §55.007.

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) 475-1497



## SUBCHAPTER C. ADMINISTRATION AND GOVERNANCE OF EDUCATOR PREPARATION PROGRAMS

### 19 TAC §§228.21, 228.23, 228.25

**STATUTORY AUTHORITY.** The new sections are adopted under Texas Education Code (TEC), §§21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by TEC, Chapter 21, Subchapter B; TEC, §21.031, which authorizes the State Board for Educator Certification (SBEC) to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; 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 TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2)-(4), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the period for which each class of educator certificate is valid; and the requirements for the issuance and renewal of an educator certificate; TEC, §21.044, as amended by House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023, which authorizes the SBEC to propose rules specifying what each educator is expected to know and be able to do, particularly with regard to students with disabilities, establishing the training requirements a person must accomplish to obtain a certificate, or enter an internship, and specifying the minimum academic qualifications required for a certificate. It also sets requirements for training, coursework, and qualifications that the SBEC is required to include; TEC, §21.0441, which requires the SBEC to set admission requirements for candidates entering educator preparation programs (EPPs) and specifies certain requirements that must be included in the rules; TEC, §21.0442(c), which requires the SBEC to create an abbreviated EPP for a person seeking certification in trade and industrial workforce training with a minimum of 80 hours of classroom instruction in certain specified topics; TEC, §21.0443, which requires the SBEC to set standards for approval and renewal of approval for EPPs, sets certain requirements for approval and renewal, and requires that the SBEC review each program at least every five years; TEC, §21.045(a), which requires the SBEC to create an accountability system for EPPs based on the results of certification examinations, teacher appraisals, student achievement, compliance with the requirements for candidate support, and the results of a teacher satisfaction survey; TEC, §21.0452, which requires the SBEC to make information about EPPs available to the public through its internet website and gives the SBEC authority to require any person to give information to the Board for this purpose; TEC, §21.0453, which sets requirements for information that EPPs must provide candidates and gives the SBEC rulemaking authority to implement the provision and ensure that EPPs give candidates accurate information; TEC, §21.0454, which gives the SBEC rulemaking authority to set risk factors to determine the Board's priorities in conducting monitoring, inspections, and compliance audits and sets out certain factors that must be included among the factors; TEC, §21.0455, which gives the SBEC rulemaking authority to establish a process for a candidate for teacher certification to direct a complaint against an EPP to the agency, requires that EPPs notify candidates of the complaints process, states that the SBEC must post the complaint process on its website, and states that the SBEC has no authority to resolve disputes over contractual or commercial issues between programs and candidates; TEC, §21.046(b), which requires the SBEC to allow outstanding teachers to substitute approved experience and professional training for part of the educational requirements in lieu of classroom hours; TEC, §21.046(c), which requires the SBEC to ensure that principal candidates are of the highest caliber and that there is a multi-level screening process, along with assessment programs, and flexible internships to determine whether a candidate has the necessary skills for success; TEC, §21.048(a), which requires the SBEC to prescribe comprehensive certification examinations for each class of certificate issued by the Board; TEC, §21.0485, which states that to be eligible for certification to teach students with visual impairments, a person must complete all coursework required for that certification in an approved EPP or alternative EPP, perform satisfactorily on

required certification exams, and satisfy other requirements established by the SBEC; TEC, §21.0487(c), which requires the SBEC to propose rules related to approval of educator preparation programs to offer the Junior Reserve Officer Training Corps (JROTC) teacher certification and to recognize applicable military training and experience and prior employment by a school district as a JROTC instructor to support completion of certification requirements; TEC, §21.0489(c), which sets out the requirements for Early Childhood certification; TEC, §21.04891, which sets out the requirements for the Bilingual Special Education certification; TEC, §21.049(a), which requires the SBEC to propose rules providing for educator preparation programs as an alternative for traditional preparation programs; TEC, §21.0491, which requires the SBEC to create a probationary and standard trade and industrial workforce training certificate; TEC, §21.050(a), which requires an applicant for teacher certification to have a bachelor's degree in a relevant field; TEC, §21.050(b), which allows the Board to require additional credit hours for certification in bilingual education, English as a second language, early childhood education, or special education; TEC, §21.050(c), which exempts people who receive a bachelor's degree while receiving an exemption from tuition and fees under TEC, §54.363, from having to participate in field-based experiences or internships as a requirement for educator certification; and TEC, §21.051, as amended by HB 4545, 88th Texas Legislature, Regular Session, 2023, which requires that candidates complete at least 15 hours of field-based experiences in which the candidate is actively engaged in instructional or educational activities under supervision involving a diverse student population at a public-school campus or an approved private school, allows 15 hours of experience as a long-term substitute to count as field-based experience, and gives the SBEC rulemaking authority related to field-based experiences; and Texas Occupations Code, §55.007, which requires all state agencies that issue licenses or certifications to credit military experience toward the requirements for the license or certification.

**CROSS REFERENCE TO STATUTE.** The new sections implement Texas Education Code (TEC), §§21.003(a); 21.031; 21.041(b)(1)-(4); 21.044, as amended by House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023; 21.0441; 21.0442(c); 21.0443; 21.045(a); 21.0452, 21.0453; 21.0454; 21.0455; 21.046(b)-(c); 21.048(a); 21.0485; 21.0487(c); 21.0489(c); §21.04891; 21.049(a); 21.0491; 21.050(a)-(c); and 21.051, as amended by HB 4545, 88th Texas Legislature, Regular Session, 2023; and Texas Occupations Code, §55.007.

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. REQUIRED EDUCATOR COURSEWORK AND TRAINING

**19 TAC §§228.31, 228.33, 228.35, 228.37, 228.39, 228.41, 228.43, 228.45, 228.47, 228.49, 228.51, 228.53, 228.55, 228.57**

STATUTORY AUTHORITY. The new sections are adopted under Texas Education Code (TEC), §§21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by TEC, Chapter 21, Subchapter B; TEC, §21.031, which authorizes the State Board for Educator Certification (SBEC) to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; 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 TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2)-(4), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the period for which each class of educator certificate is valid; and the requirements for the issuance and renewal of an educator certificate; TEC, §21.044, as amended by House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023, which authorizes the SBEC to propose rules specifying what each educator is expected to know and be able to do, particularly with regard to students with disabilities, establishing the training requirements a person must accomplish to obtain a certificate, or enter an internship, and specifying the minimum academic qualifications required for a certificate. It also sets requirements for training, coursework, and qualifications that the SBEC is required to include; TEC, §21.0441, which requires the SBEC to set admission requirements for candidates entering educator preparation programs (EPPs) and specifies certain requirements that must be included in the rules; TEC, §21.0442(c), which requires the SBEC to create an abbreviated EPP for a person seeking certification in trade and industrial workforce training with a minimum of 80 hours of classroom instruction in certain specified topics; TEC, §21.0443, which requires the SBEC to set standards for approval and renewal of approval for EPPs, sets certain requirements for approval and renewal, and requires that the SBEC review each program at least every five years; TEC, §21.045(a), which requires the SBEC to create an accountability system for EPPs based on the results of certification examinations, teacher appraisals, student achievement, compliance with the requirements for candidate support, and the results of a teacher satisfaction survey; TEC, §21.0452, which requires the SBEC to make information about EPPs available to the public through its internet website and gives the SBEC authority to require any person to give information to the Board for this purpose; TEC, §21.0453, which sets requirements for information that EPPs must provide candidates and gives the SBEC rulemaking authority to implement the provision and ensure that EPPs give candidates accurate information; TEC, §21.0454, which gives the SBEC rulemaking authority to set risk factors to determine the Board's priorities in conducting monitoring, inspections, and compliance audits and sets out certain factors that must be included among the factors; TEC, §21.0455, which gives the SBEC rulemaking authority to establish a process for a candidate for teacher certification to direct a complaint against an EPP to the agency, requires that EPPs notify candidates of the complaints process, states that

the SBEC must post the complaint process on its website, and states that the SBEC has no authority to resolve disputes over contractual or commercial issues between programs and candidates; TEC, §21.046(b), which requires the SBEC to allow outstanding teachers to substitute approved experience and professional training for part of the educational requirements in lieu of classroom hours; TEC, §21.046(c), which requires the SBEC to ensure that principal candidates are of the highest caliber and that there is a multi-level screening process, along with assessment programs, and flexible internships to determine whether a candidate has the necessary skills for success; TEC, §21.048(a), which requires the SBEC to prescribe comprehensive certification examinations for each class of certificate issued by the Board; TEC, §21.0485, which states that to be eligible for certification to teach students with visual impairments, a person must complete all coursework required for that certification in an approved EPP or alternative EPP, perform satisfactorily on required certification exams, and satisfy other requirements established by the SBEC; TEC, §21.0487(c), which requires the SBEC to propose rules related to approval of educator preparation programs to offer the Junior Reserve Officer Training Corps (JROTC) teacher certification and to recognize applicable military training and experience and prior employment by a school district as a JROTC instructor to support completion of certification requirements; TEC, §21.0489(c), which sets out the requirements for Early Childhood certification; TEC, §21.04891, which sets out the requirements for the Bilingual Special Education certification; TEC, §21.049(a), which requires the SBEC to propose rules providing for educator preparation programs as an alternative for traditional preparation programs; TEC, §21.0491, which requires the SBEC to create a probationary and standard trade and industrial workforce training certificate; TEC, §21.050(a), which requires an applicant for teacher certification to have a bachelor's degree in a relevant field; TEC, §21.050(b), which allows the Board to require additional credit hours for certification in bilingual education, English as a second language, early childhood education, or special education; TEC, §21.050(c), which exempts people who receive a bachelor's degree while receiving an exemption from tuition and fees under TEC, §54.363, from having to participate in field-based experiences or internships as a requirement for educator certification; and TEC, §21.051, as amended by HB 4545, 88th Texas Legislature, Regular Session, 2023, which requires that candidates complete at least 15 hours of field-based experiences in which the candidate is actively engaged in instructional or educational activities under supervision involving a diverse student population at a public-school campus or an approved private school, allows 15 hours of experience as a long-term substitute to count as field-based experience, and gives the SBEC rulemaking authority related to field-based experiences; and Texas Occupations Code, §55.007, which requires all state agencies that issue licenses or certifications to credit military experience toward the requirements for the license or certification.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code (TEC), §§21.003(a); 21.031; 21.041(b)(1)-(4); 21.044, as amended by House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023; 21.0441; 21.0442(c); 21.0443; 21.045(a); 21.0452, 21.0453; 21.0454; 21.0455; 21.046(b)-(c); 21.048(a); 21.0485; 21.0487(c); 21.0489(c); §21.04891; 21.049(a); 21.0491; 21.050(a)-(c); and 21.051, as amended by HB 4545, 88th Texas Legislature, Regular Session, 2023; and Texas Occupations Code, §55.007.

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 E. EDUCATOR CANDIDATE CLINICAL EXPERIENCES

**19 TAC §§228.61, 228.63, 228.65, 228.67, 228.69, 228.71, 228.73, 228.75, 228.77, 228.79, 228.81**

STATUTORY AUTHORITY. The new sections are adopted under Texas Education Code (TEC), §§21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by TEC, Chapter 21, Subchapter B; TEC, §21.031, which authorizes the State Board for Educator Certification (SBEC) to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; 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 TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2)-(4), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the period for which each class of educator certificate is valid; and the requirements for the issuance and renewal of an educator certificate; TEC, §21.044, as amended by House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023, which authorizes the SBEC to propose rules specifying what each educator is expected to know and be able to do, particularly with regard to students with disabilities, establishing the training requirements a person must accomplish to obtain a certificate, or enter an internship, and specifying the minimum academic qualifications required for a certificate. It also sets requirements for training, coursework, and qualifications that the SBEC is required to include; TEC, §21.0441, which requires the SBEC to set admission requirements for candidates entering educator preparation programs (EPPs) and specifies certain requirements that must be included in the rules; TEC, §21.0442(c), which requires the SBEC to create an abbreviated EPP for a person seeking certification in trade and industrial workforce training with a minimum of 80 hours of classroom instruction in certain specified topics; TEC, §21.0443, which requires the SBEC to set standards for approval and renewal of approval for EPPs, sets certain requirements for approval and renewal, and requires that the SBEC review each program at least every five years; TEC, §21.045(a), which requires the SBEC to create an accountability system for EPPs based on the results of certification examinations, teacher appraisals, student achievement, compliance with the requirements for candidate support, and the

results of a teacher satisfaction survey; TEC, §21.0452, which requires the SBEC to make information about EPPs available to the public through its internet website and gives the SBEC authority to require any person to give information to the Board for this purpose; TEC, §21.0453, which sets requirements for information that EPPs must provide candidates and gives the SBEC rulemaking authority to implement the provision and ensure that EPPs give candidates accurate information; TEC, §21.0454, which gives the SBEC rulemaking authority to set risk factors to determine the Board's priorities in conducting monitoring, inspections, and compliance audits and sets out certain factors that must be included among the factors; TEC, §21.0455, which gives the SBEC rulemaking authority to establish a process for a candidate for teacher certification to direct a complaint against an EPP to the agency, requires that EPPs notify candidates of the complaints process, states that the SBEC must post the complaint process on its website, and states that the SBEC has no authority to resolve disputes over contractual or commercial issues between programs and candidates; TEC, §21.046(b), which requires the SBEC to allow outstanding teachers to substitute approved experience and professional training for part of the educational requirements in lieu of classroom hours; TEC, §21.046(c), which requires the SBEC to ensure that principal candidates are of the highest caliber and that there is a multi-level screening process, along with assessment programs, and flexible internships to determine whether a candidate has the necessary skills for success; TEC, §21.048(a), which requires the SBEC to prescribe comprehensive certification examinations for each class of certificate issued by the Board; TEC, §21.0485, which states that to be eligible for certification to teach students with visual impairments, a person must complete all coursework required for that certification in an approved EPP or alternative EPP, perform satisfactorily on required certification exams, and satisfy other requirements established by the SBEC; TEC, §21.0487(c), which requires the SBEC to propose rules related to approval of educator preparation programs to offer the Junior Reserve Officer Training Corps (JROTC) teacher certification and to recognize applicable military training and experience and prior employment by a school district as a JROTC instructor to support completion of certification requirements; TEC, §21.0489(c), which sets out the requirements for Early Childhood certification; TEC, §21.04891, which sets out the requirements for the Bilingual Special Education certification; TEC, §21.049(a), which requires the SBEC to propose rules providing for educator preparation programs as an alternative for traditional preparation programs; TEC, §21.0491, which requires the SBEC to create a probationary and standard trade and industrial workforce training certificate; TEC, §21.050(a), which requires an applicant for teacher certification to have a bachelor's degree in a relevant field; TEC, §21.050(b), which allows the Board to require additional credit hours for certification in bilingual education, English as a second language, early childhood education, or special education; TEC, §21.050(c), which exempts people who receive a bachelor's degree while receiving an exemption from tuition and fees under TEC, §54.363, from having to participate in field-based experiences or internships as a requirement for educator certification; and TEC, §21.051, as amended by HB 4545, 88th Texas Legislature, Regular Session, 2023, which requires that candidates complete at least 15 hours of field-based experiences in which the candidate is actively engaged in instructional or educational activities under supervision involving a diverse student population at a public-school campus or an approved private school, allows 15 hours of experience as a long-term



substitute to count as field-based experience, and gives the SBEC rulemaking authority related to field-based experiences; and Texas Occupations Code, §55.007, which requires all state agencies that issue licenses or certifications to credit military experience toward the requirements for the license or certification.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code (TEC), §§21.003(a); 21.031; 21.041(b)(1)-(4); 21.044, as amended by House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023; 21.0441; 21.0442(c); 21.0443; 21.045(a); 21.0452, 21.0453; 21.0454; 21.0455; 21.046(b)-(c); 21.048(a); 21.0485; 21.0487(c); 21.0489(c); §21.04891; 21.049(a); 21.0491; 21.050(a)-(c); and 21.051, as amended by HB 4545, 88th Texas Legislature, Regular Session, 2023; and Texas Occupations Code, §55.007.

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 F. SUPPORT FOR CANDIDATES DURING REQUIRED CLINICAL EXPERIENCES

**19 TAC §§228.91, 228.93, 228.95, 228.97, 228.99, 228.101, 228.103, 228.105, 228.107, 228.109, 228.111, 228.113, 228.115, 228.117**

STATUTORY AUTHORITY. The new sections are adopted under Texas Education Code (TEC), §§21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by TEC, Chapter 21, Subchapter B; TEC, §21.031, which authorizes the State Board for Educator Certification (SBEC) to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; 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 TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2)-(4), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the period for which each class of educator certificate is valid; and the requirements for the issuance and renewal of an educator certificate; TEC, §21.044, as amended by House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023, which authorizes the SBEC to propose rules specifying what each educator is expected to know and be able to do, particularly with regard to students with disabilities, establishing the training requirements a person must accomplish to obtain a certificate,

or enter an internship, and specifying the minimum academic qualifications required for a certificate. It also sets requirements for training, coursework, and qualifications that the SBEC is required to include; TEC, §21.0441, which requires the SBEC to set admission requirements for candidates entering educator preparation programs (EPPs) and specifies certain requirements that must be included in the rules; TEC, §21.0442(c), which requires the SBEC to create an abbreviated EPP for a person seeking certification in trade and industrial workforce training with a minimum of 80 hours of classroom instruction in certain specified topics; TEC, §21.0443, which requires the SBEC to set standards for approval and renewal of approval for EPPs, sets certain requirements for approval and renewal, and requires that the SBEC review each program at least every five years; TEC, §21.045(a), which requires the SBEC to create an accountability system for EPPs based on the results of certification examinations, teacher appraisals, student achievement, compliance with the requirements for candidate support, and the results of a teacher satisfaction survey; TEC, §21.0452, which requires the SBEC to make information about EPPs available to the public through its internet website and gives the SBEC authority to require any person to give information to the Board for this purpose; TEC, §21.0453, which sets requirements for information that EPPs must provide candidates and gives the SBEC rulemaking authority to implement the provision and ensure that EPPs give candidates accurate information; TEC, §21.0454, which gives the SBEC rulemaking authority to set risk factors to determine the Board's priorities in conducting monitoring, inspections, and compliance audits and sets out certain factors that must be included among the factors; TEC, §21.0455, which gives the SBEC rulemaking authority to establish a process for a candidate for teacher certification to direct a complaint against an EPP to the agency, requires that EPPs notify candidates of the complaints process, states that the SBEC must post the complaint process on its website, and states that the SBEC has no authority to resolve disputes over contractual or commercial issues between programs and candidates; TEC, §21.046(b), which requires the SBEC to allow outstanding teachers to substitute approved experience and professional training for part of the educational requirements in lieu of classroom hours; TEC, §21.046(c), which requires the SBEC to ensure that principal candidates are of the highest caliber and that there is a multi-level screening process, along with assessment programs, and flexible internships to determine whether a candidate has the necessary skills for success; TEC, §21.048(a), which requires the SBEC to prescribe comprehensive certification examinations for each class of certificate issued by the Board; TEC, §21.0485, which states that to be eligible for certification to teach students with visual impairments, a person must complete all coursework required for that certification in an approved EPP or alternative EPP, perform satisfactorily on required certification exams, and satisfy other requirements established by the SBEC; TEC, §21.0487(c), which requires the SBEC to propose rules related to approval of educator preparation programs to offer the Junior Reserve Officer Training Corps (JROTC) teacher certification and to recognize applicable military training and experience and prior employment by a school district as a JROTC instructor to support completion of certification requirements; TEC, §21.0489(c), which sets out the requirements for Early Childhood certification; TEC, §21.04891, which sets out the requirements for the Bilingual Special Education certification; TEC, §21.049(a), which requires the SBEC to propose rules providing for educator preparation programs as an alternative for traditional preparation programs; TEC,

§21.0491, which requires the SBEC to create a probationary and standard trade and industrial workforce training certificate; TEC, §21.050(a), which requires an applicant for teacher certification to have a bachelor's degree in a relevant field; TEC, §21.050(b), which allows the Board to require additional credit hours for certification in bilingual education, English as a second language, early childhood education, or special education; TEC, §21.050(c), which exempts people who receive a bachelor's degree while receiving an exemption from tuition and fees under TEC, §54.363, from having to participate in field-based experiences or internships as a requirement for educator certification; and TEC, §21.051, as amended by HB 4545, 88th Texas Legislature, Regular Session, 2023, which requires that candidates complete at least 15 hours of field-based experiences in which the candidate is actively engaged in instructional or educational activities under supervision involving a diverse student population at a public-school campus or an approved private school, allows 15 hours of experience as a long-term substitute to count as field-based experience, and gives the SBEC rulemaking authority related to field-based experiences; and Texas Occupations Code, §55.007, which requires all state agencies that issue licenses or certifications to credit military experience toward the requirements for the license or certification.

**CROSS REFERENCE TO STATUTE.** The new sections implement Texas Education Code (TEC), §§21.003(a); 21.031; 21.041(b)(1)-(4); 21.044, as amended by House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023; 21.0441; 21.0442(c); 21.0443; 21.045(a); 21.0452, 21.0453; 21.0454; 21.0455; 21.046(b)-(c); 21.048(a); 21.0485; 21.0487(c); 21.0489(c); §21.04891; 21.049(a); 21.0491; 21.050(a)-(c); and 21.051, as amended by HB 4545, 88th Texas Legislature, Regular Session, 2023; and Texas Occupations Code, §55.007.

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 April 29, 2024.

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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



## SUBCHAPTER G. COMPLAINTS AND INVESTIGATIONS

### 19 TAC §228.121, §228.123

**STATUTORY AUTHORITY.** The new sections are adopted under Texas Education Code (TEC), §§21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by TEC, Chapter 21, Subchapter B; TEC, §21.031, which authorizes the State Board for Educator Certification (SBEC) to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; 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 TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2)-(4), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the period for which each class of educator certificate is valid; and the requirements for the issuance and renewal of an educator certificate; TEC, §21.044, as amended by House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023, which authorizes the SBEC to propose rules specifying what each educator is expected to know and be able to do, particularly with regard to students with disabilities, establishing the training requirements a person must accomplish to obtain a certificate, or enter an internship, and specifying the minimum academic qualifications required for a certificate. It also sets requirements for training, coursework, and qualifications that the SBEC is required to include; TEC, §21.0441, which requires the SBEC to set admission requirements for candidates entering educator preparation programs (EPPs) and specifies certain requirements that must be included in the rules; TEC, §21.0442(c), which requires the SBEC to create an abbreviated EPP for a person seeking certification in trade and industrial workforce training with a minimum of 80 hours of classroom instruction in certain specified topics; TEC, §21.0443, which requires the SBEC to set standards for approval and renewal of approval for EPPs, sets certain requirements for approval and renewal, and requires that the SBEC review each program at least every five years; TEC, §21.045(a), which requires the SBEC to create an accountability system for EPPs based on the results of certification examinations, teacher appraisals, student achievement, compliance with the requirements for candidate support, and the results of a teacher satisfaction survey; TEC, §21.0452, which requires the SBEC to make information about EPPs available to the public through its internet website and gives the SBEC authority to require any person to give information to the Board for this purpose; TEC, §21.0453, which sets requirements for information that EPPs must provide candidates and gives the SBEC rulemaking authority to implement the provision and ensure that EPPs give candidates accurate information; TEC, §21.0454, which gives the SBEC rulemaking authority to set risk factors to determine the Board's priorities in conducting monitoring, inspections, and compliance audits and sets out certain factors that must be included among the factors; TEC, §21.0455, which gives the SBEC rulemaking authority to establish a process for a candidate for teacher certification to direct a complaint against an EPP to the agency, requires that EPPs notify candidates of the complaints process, states that the SBEC must post the complaint process on its website, and states that the SBEC has no authority to resolve disputes over contractual or commercial issues between programs and candidates; TEC, §21.046(b), which requires the SBEC to allow outstanding teachers to substitute approved experience and professional training for part of the educational requirements in lieu of classroom hours; TEC, §21.046(c), which requires the SBEC to ensure that principal candidates are of the highest caliber and that there is a multi-level screening process, along with assessment programs, and flexible internships to determine whether a candidate has the necessary skills for success; TEC, §21.048(a), which requires the SBEC to prescribe comprehensive certification examinations for each class of certificate issued by the Board; TEC, §21.0485, which states that to be eligible for certification to teach students with visual impairments, a person must complete all coursework required for that certification in

an approved EPP or alternative EPP, perform satisfactorily on required certification exams, and satisfy other requirements established by the SBEC; TEC, §21.0487(c), which requires the SBEC to propose rules related to approval of educator preparation programs to offer the Junior Reserve Officer Training Corps (JROTC) teacher certification and to recognize applicable military training and experience and prior employment by a school district as a JROTC instructor to support completion of certification requirements; TEC, §21.0489(c), which sets out the requirements for Early Childhood certification; TEC, §21.04891, which sets out the requirements for the Bilingual Special Education certification; TEC, §21.049(a), which requires the SBEC to propose rules providing for educator preparation programs as an alternative for traditional preparation programs; TEC, §21.0491, which requires the SBEC to create a probationary and standard trade and industrial workforce training certificate; TEC, §21.050(a), which requires an applicant for teacher certification to have a bachelor's degree in a relevant field; TEC, §21.050(b), which allows the Board to require additional credit hours for certification in bilingual education, English as a second language, early childhood education, or special education; TEC, §21.050(c), which exempts people who receive a bachelor's degree while receiving an exemption from tuition and fees under TEC, §54.363, from having to participate in field-based experiences or internships as a requirement for educator certification; and TEC, §21.051, as amended by HB 4545, 88th Texas Legislature, Regular Session, 2023, which requires that candidates complete at least 15 hours of field-based experiences in which the candidate is actively engaged in instructional or educational activities under supervision involving a diverse student population at a public-school campus or an approved private school, allows 15 hours of experience as a long-term substitute to count as field-based experience, and gives the SBEC rulemaking authority related to field-based experiences; and Texas Occupations Code, §55.007, which requires all state agencies that issue licenses or certifications to credit military experience toward the requirements for the license or certification.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code (TEC), §§21.003(a); 21.031; 21.041(b)(1)-(4); 21.044, as amended by House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023; 21.0441; 21.0442(c); 21.0443; 21.045(a); 21.0452, 21.0453; 21.0454; 21.0455; 21.046(b)-(c); 21.048(a); 21.0485; 21.0487(c); 21.0489(c); §21.04891; 21.049(a); 21.0491; 21.050(a)-(c); and 21.051, as amended by HB 4545, 88th Texas Legislature, Regular Session, 2023; and Texas Occupations Code, §55.007.

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 230. PROFESSIONAL EDUCATOR PREPARATION AND CERTIFICATION

*(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 figure in 19 TAC §230.21(e) is not included in the print version of the Texas Register. The figure is available in the on-line version of the May 17, 2024, issue of the Texas Register.)*

The State Board for Educator Certification (SBEC) adopts amendments to 19 Texas Administrative Code (TAC) §§230.1, 230.21, 230.31, 230.101, and 230.105, and new §230.39, concerning professional educator preparation and certification. The amendments to §§230.1, 230.31, 230.101, and 230.105 and new §230.39 are adopted without changes to the proposed text as published in the December 29, 2023 issue of the *Texas Register* (48 TexReg 8137) and will not be republished. The amendment to §230.21 is adopted with changes to the proposed text as published in the December 29, 2023 issue of the *Texas Register* (48 TexReg 8137) and will be republished. The adopted revisions redefine *pilot exam*; specify the timeline by which a passing score on a certification exam can be used for certification purposes; decrease the number of days to request a test limit waiver after an unsuccessful examination attempt; update the figure specifying the required pedagogy and content pedagogy certification exams for issuance of the probationary or standard certificate; remove certificate categories and examinations that are no longer operational; establish an Enhanced Standard certificate and fees for the teacher residency preparation route specified in adopted new 19 TAC Chapter 228, Requirements for Educator Preparation Programs; and update the list of ineligible certification by examination certificates to include the new Deafblind: Early Childhood-Grade 12 certificate. The adopted revisions also include technical edits to comply with Texas Register formatting and style requirements.

REASONED JUSTIFICATION: The SBEC rules in 19 TAC Chapter 230, Subchapter A, General Provisions, specify the general guidelines regarding professional educator preparation and certification. The SBEC rules in 19 TAC Chapter 230, Subchapter C, Assessment of Educators, specify the testing requirements for initial certification and for additional certificates based on examination. The SBEC rules in 19 TAC Chapter 230, Subchapter D, Types and Classes of Certificates Issued, define the types, classes, and issuance requirements for certificates. The SBEC rules in 19 TAC Chapter 230, Subchapter G, Certificate Issuance Procedures, specify appropriate procedures for the issuance of educator certificates. These requirements ensure educators are qualified and professionally prepared to instruct the schoolchildren of Texas.

The following is a description of the adopted revisions to 19 TAC Chapter 230, Subchapters A, C, D, and G. The adopted revisions are reflective of the broader certification redesign efforts the SBEC has led since 2017 to develop rigorous and relevant certification exams in alignment with their statutory charge in Texas Education Code (TEC), §21.031, Purpose, to "ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state;" are responsive to associated rulemaking in the adopted repeal of and new 19 TAC Chapter 228, Requirements for Educator Preparation Programs, to implement a teacher residency preparation route and associated certificate; and implement House Bill (HB) 2256, 87th Texas Legislature, Regular Session, 2021.

## Subchapter A. General Provisions

### *Adopted Amendment to 19 TAC §230.1*

The adopted amendment adds §230.1(13) to define *enhanced standard certificate* to implement the certificate for the residency preparation route included in the 19 TAC Chapter 228 adoption. The adopted amendment to §230.1(18) amends the definition for *pilot exam*. This adopted amendment allows the SBEC to annually review, pilot, and collect data for certification exams to examine the impact of the exam's implementation on Texas candidates. The adopted amendment to §230.1(12) aligns the definition for *educator preparation program (EPP)* with 19 TAC Chapter 228 and Chapter 229, Accountability System for Educator Preparation Programs. Additional technical edits renumber the definitions to accommodate the addition of §230.1(13) and apply style requirements to cross references to statute, where applicable.

## Subchapter C. Assessment of Educators

### *Adopted Amendment to 19 TAC §230.21(a)(3)(A)*

The adopted amendment to §230.21(a)(3)(A) provides technical edits to align with the titles of §232.17 and §232.19.

### *Adopted Amendment to 19 TAC §230.21(a)(5)(D)*

The adopted amendment to 19 TAC §230.21(a)(5)(D)(i) decreases the number of days a candidate can request a waiver after their fourth retake from 45 to 30 calendar days. The adopted amendment strikes 19 TAC §230.21(a)(5)(D)(ii) to remove the required delay before a candidate can reapply for a test limit waiver if the candidate's initial application was denied. This change allows candidates to become certified sooner if they are able to pass the examination on their next attempt.

### *Adopted Amendment to 19 TAC §230.21(e)*

The adopted amendment to §230.21(e) updates the testing requirements for educator certification indicated in Figure: 19 TAC §230.21(e).

The adopted amendment to §230.21(e) specifies that for issuance of a probationary or standard certificate in more than one certification category, a candidate must pass the appropriate pedagogy examination under Figure: 19 TAC §230.21(e) for any one of the certificates sought. This change allows for educators to be issued probationary or standard certificates in more than one certification category by passing only one pedagogy certification exam. The rule had required that for issuance of each individual certificate, educators must take and pass the aligned pedagogy exam, which meant that educators pursuing certification in two certification categories through completion of the edTPA are required to take two edTPA certification exams. This change aligns with feedback from EPPs participating in the edTPA pilot that expressed concern about the expense and duplicative effort caused by the current rule.

### *Update to Figure Titles and Content Pedagogy Exam Requirements*

The adopted amendment to Figure: 19 TAC §230.21(e) updates the column title from "Pedagogical Requirement(s)" to "Required Pedagogy Test(s)" to align the language of the title to the other test column in the figure, "Required Content Pedagogy Test(s)."

Published in the Adopted Rules section of this issue, the SBEC adopted amendments to 19 TAC Chapter 233, Categories of Classroom Teaching Certificates, that create six new classroom teacher certificate categories: Core/Special Education with the

Science of Teaching Reading/Special Education: Early Childhood-Grade 6; Core/Fine Arts/Physical Education/Health with the Science of Teaching Reading: Early Childhood-Grade 6; Core/Bilingual Education Spanish with the Science of Teaching Reading: Early Childhood-Grade 6; Core/English as a Second Language with the Science of Teaching Reading: Early Childhood-Grade 6; Core with the Science of Teaching Reading: Early Childhood-Grade 6; and Bilingual Special Education Supplemental: Early Childhood-Grade 12.

The adopted amendment to Figure: 19 TAC §230.21(e) adds certification exams, which are in development for the certification fields. The adopted amendment creates examinations for the Core with the Science of Teaching Reading: Early Childhood-Grade 6; Core/Fine Arts/Physical Education/Health with the Science of Teaching Reading: Early Childhood-Grade 6; and Core/Special Education with the Science of Teaching Reading: Early Childhood-Grade 6 certificates and sets out a timeline for test development that matches the timeline for certificate issuance in the adopted amendments to 19 TAC Chapter 233 to begin no earlier than September 1, 2027.

The adopted amendment creates examinations for the Core/Bilingual Education Spanish with the Science of Teaching Reading: Early Childhood-Grade 6 and the Core/English as a Second Language with the Science of Teaching Reading: Early Childhood-Grade 6 certificates and sets out a timeline for test development that matches the timeline for the certificate issuance in the adopted amendments to 19 TAC Chapter 233 to begin no earlier than September 1, 2028.

The adopted set of Core: Early Childhood-Grade 6 certification exams aim to streamline exam content in the elementary grade band, removing the Fine Arts/Health/Physical Education subtest from the base Core Subjects assessment and adopting a set of redesigned assessments that integrate additional content areas, including English as a second language (ESL), special education, and bilingual education, with the goal of reducing the overall number of exams educators are required to take for certification. These redesigned exams are also informed by the redesign of 19 TAC Chapter 235, Classroom Teacher Certification Standards, pedagogy and English language arts and reading (ELAR) and math content pedagogy standards currently under development at the direction of the SBEC.

Finally, the adopted amendment establishes the required examinations for the Bilingual Special Education Supplemental: Spanish certificate, as required in HB 2256, 87th Texas Legislature, Regular Session, 2021. Based on stakeholder input, the certificate focuses specifically on Spanish language bilingual education and requires candidates to demonstrate proficiency in the adopted 187 Bilingual Special Education Texas Examinations of Educator Standards (TExES), which will be operational beginning September 2027, and the adopted 165 Bilingual Educator Spanish Supplemental TExES, which will be operational beginning September 2026.

Similarly, the adopted amendment to the figure specifies the exam requirements for the certificates recently adopted by the SBEC, including the Special Education Specialist: Early Childhood-Grade 12 and Deafblind: Early Childhood-Grade 12, which will be operational for candidates on September 1, 2025, to align with the initial issuance dates for the new certificates. When operational, the tests and certificates will replace the Special Education: Early Childhood-Grade 12 and Special Education Supplemental certificates. Therefore, the adopted amendment sets

August 31, 2025, as the last operational date for the Special Education: Early Childhood-Grade 12 exam.

The SBEC adopted updates to 19 TAC Chapter 233, Categories of Classroom Teaching Certificates, to include the creation of a certification category, Tamil: Early Childhood-Grade 12, and the adopted amendment to Figure: 19 TAC §230.21(e) adds a certification exam for Tamil: Early Childhood-Grade 12. The exam will become operational for candidates on September 1, 2025, to align with the date for issuance of the certificate in 19 TAC Chapter 233.

The adopted amendment to Figure: 19 TAC §230.21(e) also adds the last operational date of August 31, 2024, for the following exams: English Language Arts and Reading 7-12 and Physical Education EC-12. These examinations are being replaced with updated exams, and the adopted amendment adds a first operational date of September 1, 2024, for English Language Arts and Reading 7-12 and Physical Education EC-12.

The adopted amendment to Figure: 19 TAC §230.21(e) adds an implementation timeline of no earlier than September 1, 2027, for the following exams: Reading Specialist EC-12 and School Librarian EC-12. These exams are necessary due to updates to the educator standards for the certificates in 19 TAC Chapter 239, Student Services Certificates. The timeline aligns with the test development timeline.

The adopted amendment to Figure: 19 TAC §230.21(e) also transitions to a new content pedagogy exam for Health: Early Childhood-Grade 12 on September 1, 2024. This amendment updates the exam based on current Texas Essential Knowledge and Skills and adds the last operational date of August 31, 2024, for the current Health: Early Childhood-Grade 12 exam.

#### *Updates to Pedagogy Exam Requirements*

The adopted amendment to Figure: 19 TAC §230.21(e) strikes "pilot exam" for all edTPA exams to indicate that the exams would no longer be considered pilot exams under adopted §230.1(18) and would be fully operational. The adopted changes maintain the current flexibility that provides a choice of either the Pedagogy and Professional Responsibilities (PPR) TEXES or the edTPA as a required pedagogy exam while ensuring that EPPs are held accountable for candidate performance on both exam options via the Accountability System for Educator Preparation (ASEP) by removing the "pilot" label from the edTPA.

#### *EPP and Candidate Choice in edTPA Exams*

The adopted amendment to Figure: 19 TAC §230.21(e) adds the 2151 edTPA: Career and Technical Education exam as a pedagogy exam option for the following certificates beginning on September 1, 2024: Technology Education: Grades 6-12; Family and Consumer Sciences, Composite: Grades 6-12; Human Development and Family Studies: Grades 8-12; Hospitality, Nutrition, and Food Sciences: Grades 8-12; Agriculture, Food, and Natural Resources: Grades 6-12; Business and Finance: Grades 6-12; and Marketing: Grades 6-12. This adopted amendment provides flexibility for EPPs and candidates to select the edTPA exam that best aligns with their given instructional context if the EPP chose to require candidates to take the edTPA rather than the PPR for Trade and Industrial Education exam.

For the Core Subjects with the Science of Teaching Reading (STR): Early Childhood-Grade 6 certificate, the adopted amendment to Figure: 19 TAC §230.21(e) adds the following eight edTPA exams as pedagogy exam options in addition to the existing 2110 edTPA: Elementary Education: Literacy with

Mathematics Task 4 exam, beginning on September 1, 2024: 2001 edTPA: Elementary Literacy; 2002 edTPA: Elementary Mathematics; 2149 edTPA Elementary Education: Mathematics with Literacy Task 4; 2014 edTPA: Early Childhood Education; 2016 edTPA: Middle Childhood Mathematics; 2017 edTPA: Middle Childhood Science; 2018 edTPA: Middle Childhood English Language Arts; and 2019 edTPA: Middle Childhood History/Social Studies. The addition to the edTPA exams for certification in Core Subjects with STR: Early Childhood-Grade 6 provides flexibility for EPPs and candidates to select the edTPA exam that best aligns with their given instructional context from the permitted exams. For example, a candidate teaching in a fourth-grade science classroom would have the option to take the edTPA: Middle Childhood Science exam. This change is informed by feedback from EPPs participating in the edTPA pilot, that the requirements of the edTPA Elementary Education: Literacy with Mathematics Task 4 were difficult to meet given the candidate's classroom setting. This change allows flexible options for strong alignment between the classroom setting and edTPA exam for certification. Additionally, the adopted edTPA exam options allow candidates to choose a 15-rubric exam, such as for edTPA Elementary Literacy, which is less than the 18-rubric edTPA Elementary Education: Literacy with Mathematics Task 4 exam. This change reduces the overall number of tasks that elementary candidates would be required to complete in the submission of their edTPA portfolio.

#### *Alternatives to edTPA for CTE and Junior Reserve Officers' Training Corps (JROTC) Candidates*

The adopted amendment to Figure: 19 TAC §230.21(e) adds the option for candidates seeking CTE certificates to take the 370 Pedagogy and Professional Responsibilities for Trade and Industrial Education 6-12 TExES exam. The adopted implementation date is September 1, 2024.

The adopted amendment to Figure: 19 TAC §230.21(e) updates the content pedagogy exam requirement for the Junior Reserve Officer Training Corps (JROTC): Grades 6-12 certificate to be the 370 Pedagogy and Professional Responsibilities (PPR) for Trade and Industrial Education 6-12 TExES exam. There is no specific edTPA exam for JROTC certification, but the requirements for the certification field align with the requirements for trade and industrial education fields as these candidates can attain certification based on a certificate issued by one of the military branches. The 370 PPR for Trade and Industrial Education 6-12 exam is the most appropriately aligned pedagogy exam for JROTC.

#### *Remove Retired Exams and Certificates*

The adopted amendment to Figure: 19 TAC §230.21(e) also removes the following retired certificates and their associated exam requirements: Core Subjects: Early Childhood-Grade 6; Core Subjects: Grades 4-8; English Language Arts and Reading: Grades 4-8; and English Language Arts and Reading/Social Studies: Grades 4-8. Each of the certificates was discontinued and replaced by the new certificate name including "with the Science of Teaching Reading" and the required examinations in October 2020.

The adopted amendment to Figure: 19 TAC §230.21(e) strikes the following retired certification exams: 270 Pedagogy and Professional Responsibilities for Trade and Industrial 6-12; 153 Educational Diagnostician EC-12; 152 School Counselor EC-12; 117 English Language Arts and Reading: Grades 4-8; and 291 Core Subjects: EC-6.

## Technical Edits

The adopted amendment to Figure: 19 TAC §230.21(e) removes the section headers labeled "Certification Type (continued)" to support streamlining and readability of the figure.

### Adopted Amendment to 19 TAC §230.21(f)

The adopted amendment to §230.21(f) clarifies that a passing score on a certification exam can be used for certification for up to one year after the last operational date of the exam. This amendment provides clarity to the field on the last date that an educator may be recommended for certification with a passing score on an exam that is no longer operational.

## Subchapter D. Types and Classes of Certificates Issued

### Adopted Amendment to 19 TAC §230.31

The adopted amendment to §230.31 adds §230.31(a)(9), which includes the enhanced standard certificate to the types of certificates issued by the SBEC. Additionally, adopted new §230.31(e) creates an implementation date of September 1, 2024, for the issuance of the enhanced standard certificate; establishes that the certificate type is only issued for the teacher class of certificates, is valid for five years, and is subject to renewal; and requires individuals to meet requirements as specified in adopted new §230.39, Enhanced Standard Certificates.

### Adopted New 19 TAC §230.39

Adopted new §230.39 describes the requirements for issuance of an enhanced standard certificate upon successful completion of a teacher residency, as prescribed in the 19 TAC Chapter 228 adoption and includes the requirements for renewal of the certificate.

## Subchapter G. Certificate Issuance Procedures

### Adopted Amendment to 19 TAC §230.101(a)

The adopted amendment to §230.101(a) adds the fee for the enhanced standard certificate in §230.101(a)(3) and the fee for on-time renewal in renumbered §230.101(a)(16).

Technical edits were also made in cross references to statute, where applicable, to implement style requirements.

### Adopted Amendment to 19 TAC §230.105

The adopted amendment to §230.105 adds the Deafblind Supplemental: Early Childhood-Grade 12 certificate to the list of certificates that are not eligible for certification by examination in §230.105(4) and renumbers subsequent provisions to §230.105(5) and (6). This amendment emphasizes the specialized skills, knowledge, and training required to receive the Deafblind Supplemental: Early Childhood-Grade 12 certificate and aligns with statutory requirements in TEC, §21.0485. The adopted amendment to §230.105 adds the enhanced standard certificate to the types of certificates a teacher may hold to be eligible to add an additional certificate via the certification by examination route.

**SUMMARY OF COMMENTS AND RESPONSES:** The public comment period on the proposal began December 29, 2023, and ended January 29, 2024. The SBEC also provided an opportunity for registered oral and written comments on the proposal at the February 16, 2024 meeting's public comment period in accordance with the SBEC board operating policies and procedures. The following public comments were received on the proposal.

**Comment:** A representative from the Texas Coalition of Educator Preparation commented in support of revisions to §230.1(18) and §230.21(e) of 19 TAC Chapter 230, Professional Educator Preparation and Certification, stating that the proposed revisions would allow for the expanded choice of exam instruments, allowing programs and candidates to choose an instrument that best met their programmatic needs. The commenter also commented in opposition to requiring a performance assessment as a certification exam, stating that performance assessments are appropriate only as formative tools to be embedded within program requirements.

**Response:** The SBEC agrees and disagrees. The SBEC agrees that the proposed update to the definition of pilot exam and the inclusion of a Texas-specific performance assessment would provide candidates and programs additional pedagogy exam options to meet their specific programmatic needs. The SBEC disagrees with the statement that performance assessments are appropriate only as formative tools. Performance assessments are appropriate for use as certification exams, and the SBEC is statutorily required to prescribe comprehensive examinations. The SBEC currently requires a performance assessment as a summative assessment for Principal as Instructional Leader certification.

**Comment:** A representative from Educate Texas commented in support of proposed new §230.39 commending the emphasis on hands-on, practice-based training and the differentiated residency preparation route and enhanced standard certificate. The commenter stated that the enhanced standard certificate would provide a clear signal to hiring districts about the additional practical preparation candidates received and their readiness to teach. The commenter stated that many Texas programs have been leading the way in implementing innovative residency models and the proposed new rule ensures more students have access to these types of opportunities.

**Response:** The SBEC agrees. The new Enhanced Standard certificate would distinguish candidates who successfully completed the residency preparation route and provide meaningful information to hiring districts.

**Comment:** An individual commented on proposed new §230.39, stating that a residency certificate should be approached with caution. The commenter stated that the success of the residency certificate would hinge on adequate funding, that the financial aspect would pose challenges for smaller rural schools, and that there would need to be standardization in terms of financial commitment from districts. The commenter stated that it would be crucial to emphasize the need for financial support from the TEA and State Board of Education (SBOE), stating that EPPs and districts would incur costs in implementing the residency model, which TEA and the SBOE should support.

**Response:** The SBEC disagrees. Implementation of the Residency Route associated with the Enhanced Standard certificate is completely optional for EPPs and would only be implemented by EPPs that establish the structures and partnerships necessary to support the Residency pathway leading to issuance of the certificate. EPPs that choose to offer Residency pathways would collaborate with their partnering districts to recruit and prepare candidates in the needed certificate categories. A variety of programs currently offer residency-like support in diverse geographical and programmatic settings and have done so for years without additional state funding sources. In addition, TEA has made technical assistance available to EPPs and partnership districts since 2022 to implement sustainably paid residency models.

Comment: An individual commented in opposition to the removal of the two-year classroom teaching requirement for certification as a school counselor, requesting the following proposed language be added to rule.

*(a) completed a minimum 48-hour master's degree in school counseling; or (b) completed a minimum 48-hour master's degree in counseling and: (1) has been licensed or certified as a school counselor in good standing in another state for at least two years immediately prior to application; (2) completes a mentorship under a certified school counselor for an entire school year; or (3) completes a graduate non-degreed program of study in school counseling that aligns with the Texas Model for Comprehensive School Counseling Programs and is approved by the State Board for Educator Certification.*

Response: The SBEC neither agrees nor disagrees. The public comment is outside the scope of the proposed rulemaking, as counselor requirements are included in 19 TAC Chapter 239, Student Services Certificates. The SBEC was directed to begin the rulemaking process in separate SBEC rulemaking to implement the change in requirements to issue the school counselor certificate no later than January 1, 2024, to comply with Senate Bill 798, 88th Texas Legislature, Regular Session, 2023.

## SUBCHAPTER A. GENERAL PROVISIONS

### 19 TAC §230.1

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §21.041(b)(1), (2), and (4), which require the State Board for Educator Certification (SBEC) to propose rules that provide for the regulation of educators and the general administration of TEC, Chapter 21, Subchapter B, in a manner consistent with TEC, Chapter 21, Subchapter B; specify the classes of educator certificates to be issued, including emergency certificates; and specify the requirements for the issuance and renewal of an educator certificate; TEC, §21.044(a)-(f), which requires SBEC to make rules specifying what each educator is expected to know and be able to do, establishing training requirements that a candidate must accomplish to attain a certificate, and setting out the minimum academic qualifications required for certification. It also specifies certain required training and minimum academic qualifications for certification; TEC, §21.048, which states the SBEC shall propose rules prescribing comprehensive examinations for each class of certificate issued by the board that includes not requiring more than 45 days elapsing between examination retakes and that starting January 1, 2021, all candidates teaching prekindergarten through grade six must demonstrate proficiency in the science of teaching reading on a certification examination; TEC, §21.0485, which states that to be eligible for certification to teach students with visual impairments, a person must complete all coursework required for that certification in an approved EPP or alternative EPP, perform satisfactorily on required certification exams, and satisfy other requirements established by the SBEC; TEC, §21.050(a), which states a person who applies for a teaching certificate must possess a bachelor's degree; TEC, §21.050(b), which states the SBEC shall provide for a minimum number of semester credit hours of field-based experience or internship; TEC, §21.050(c), which states a person who receives a bachelor's degree required for a teaching certificate on the basis of higher education coursework completed while receiving an exemption from tuition and fees under TEC, §54.363, which may not be required to participate in any field experience or internship consisting of student teaching to receive a teaching certificate; and TEC, §22.082, which requires SBEC to subscribe to the criminal history clear-

inghouse as provided by Texas Government Code, §411.0845, and may obtain any law enforcement or criminal history records that relate to a specific applicant for or holder of a certificate issued under Chapter 21, Subchapter B; and Texas Occupations Code, §54.003, which states a licensing authority shall provide accommodations and eligibility criteria for examinees diagnosed as having dyslexia.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code (TEC), §§21.041(b)(1), (2), and (4); 21.044(a)-(f); 21.048; 21.0485; 21.050; 22.082; and Texas Occupations Code, §54.003.

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

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## SUBCHAPTER C. ASSESSMENT OF EDUCATORS

### 19 TAC §230.21

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §21.041(b)(1), (2), and (4), which require the State Board for Educator Certification (SBEC) to propose rules that provide for the regulation of educators and the general administration of TEC, Chapter 21, Subchapter B, in a manner consistent with TEC, Chapter 21, Subchapter B; specify the classes of educator certificates to be issued, including emergency certificates; and specify the requirements for the issuance and renewal of an educator certificate; TEC, §§21.044(a)-(f), which requires SBEC to make rules specifying what each educator is expected to know and be able to do, establishing training requirements that a candidate must accomplish to attain a certificate, and setting out the minimum academic qualifications required for certification. It also specifies certain required training and minimum academic qualifications for certification; TEC, §21.048, which states the SBEC shall propose rules prescribing comprehensive examinations for each class of certificate issued by the board that includes not requiring more than 45 days elapsing between examination retakes and that starting January 1, 2021, all candidates teaching prekindergarten through grade six must demonstrate proficiency in the science of teaching reading on a certification examination; TEC, §21.0485, which states that to be eligible for certification to teach students with visual impairments, a person must complete all coursework required for that certification in an approved EPP or alternative EPP, perform satisfactorily on required certification exams, and satisfy other requirements established by the SBEC; TEC, §21.050(a), which states a person who applies for a teaching certificate must possess a bachelor's degree; TEC, §21.050(b), which states the SBEC shall provide for a minimum number of semester credit hours of field-based experience or internship; TEC, §21.050(c), which

states a person who receives a bachelor's degree required for a teaching certificate on the basis of higher education coursework completed while receiving an exemption from tuition and fees under TEC, §54.363, may not be required to participate in any field experience or internship consisting of student teaching to receive a teaching certificate; TEC, §22.082, which requires SBEC to subscribe to the criminal history clearinghouse as provided by Texas Government Code, §411.0845, and may obtain any law enforcement or criminal history records that relate to a specific applicant for or holder of a certificate issued under Chapter 21, Subchapter B; and Texas Occupations Code, §54.003, which states a licensing authority shall provide accommodations and eligibility criteria for examinees diagnosed as having dyslexia.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code (TEC), §§21.041(b)(1), (2), and (4); 21.044(a)-(f); 21.048; 21.0485; 21.050; 22.082; and Texas Occupations Code (TOC) §54.003.

§230.21. *Educator Assessment.*

(a) A candidate seeking certification as an educator must pass the examination(s) required by Texas Education Code (TEC), §21.048, and the State Board for Educator Certification (SBEC) in §233.1(e) of this title (relating to General Authority) and shall not retake an examination more than four times, unless the limitation is waived for good cause. The burden of proof shall be upon the candidate to demonstrate good cause.

(1) For the purposes of the retake limitation described by TEC, §21.048, an examination retake is defined as a second or subsequent attempt to pass any examination required for the issuance of a certificate, including an individual core subject examination that is part of the overall examination required for the issuance of a Core Subjects certificate as described in §233.2 of this title (relating to Early Childhood; Core Subjects).

(A) A canceled examination score is not considered an examination retake.

(B) An examination taken by an educator during a pilot period is not considered part of an educator's five-time test attempt limit.

(C) Pursuant to TEC, §21.0491(d), the limit on number of test attempts does not apply to the trade and industrial workforce training certificate examination prescribed by the SBEC.

(D) A candidate who fails a computer- or paper-based examination cannot retake the examination before 30 days have elapsed following the candidate's last attempt to pass the examination.

(2) Good cause is:

(A) the candidate's highest score on an examination is within one conditional standard error of measurement (CSEM) of passing, and the candidate has completed 50 clock-hours of educational activities. CSEMs will be published annually on the Texas Education Agency (TEA) website;

(B) the candidate's highest score on an examination is within two CSEMs of passing, and the candidate has completed 100 clock-hours of educational activities;

(C) the candidate's highest score on an examination is within three CSEMs of passing, and the candidate has completed 150 clock-hours of educational activities;

(D) the candidate's highest score on an examination is not within three CSEMs of passing, and the candidate has completed 200 clock-hours of educational activities;

(E) if the candidate needs a waiver for more than one of the individual core subject examinations that are part of the overall examination required for the issuance of a Core Subjects certificate, the candidate has completed the number of clock-hours of educational activities required for each individual core subject examination as described in subparagraphs (A)-(D) of this paragraph up to a maximum of 300 clock-hours. The number of clock-hours for each examination may be divided equally based on the number of examinations in the waiver request, but the number of clock-hours for an examination shall not be less than 50; or

(F) if a CSEM is not appropriate for an examination, the TEA staff will identify individuals who are familiar and knowledgeable with the examination content to review the candidate's performance on the five most recent examinations, identify the deficit competency or competencies, and determine the number of clock-hours of educational activities required.

(3) Educational activities are defined as:

(A) institutes, workshops, seminars, conferences, interactive distance learning, video conferencing, online activities, undergraduate courses, graduate courses, training programs, in-service, or staff development given by an approved continuing professional education provider or sponsor, pursuant to §232.17 of this title (relating to Pre-Approved Continuing Professional Education Provider or Sponsor) and §232.19 of this title (relating to Approval of Private Companies, Private Entities, and Individuals as Continuing Professional Education Providers), or an approved educator preparation program (EPP), pursuant to Chapter 228, Subchapter B, of this title (relating to Approval of Educator Preparation Programs); and

(B) being directly related to the knowledge and skills included in the certification examination competency or competencies in which the candidate answered less than 70 percent of competency questions correctly. The formula for identifying a deficit competency is the combined total of correct answers for each competency on the five most recent examinations divided by the combined total of questions for each competency on the five most recent examinations.

(4) Documentation of educational activities that a candidate must submit includes:

(A) the provider, sponsor, or program's name, address, telephone number, and email address. The TEA staff may contact the provider, sponsor, or program to verify an educational activity;

(B) the name of the educational activity (e.g., course title, course number);

(C) the competency or competencies addressed by the educational activity as determined by the formula described in paragraph (3)(B) of this subsection;

(D) the provider, sponsor, or program's description of the educational activity (e.g., syllabus, course outline, program of study); and

(E) the provider, sponsor, or program's written verification of the candidate's completion of the educational activity (e.g., transcript, certificate of completion). The written verification must include:

(i) the provider, sponsor, or program's name;

(ii) the candidate's name;



- (iii) the name of the educational activity;
- (iv) the date(s) of the educational activity; and

(v) the number of clock-hours completed for the educational activity. Clock-hours completed before the most recent examination attempt or after a request for a waiver is submitted shall not be included. One semester credit hour earned at an accredited institution of higher education is equivalent to 15 clock-hours.

(5) To request a waiver of the limitation, a candidate must meet the following conditions:

(A) the candidate is otherwise eligible to take an examination. A candidate seeking a certificate based on completion of an EPP must have the approval of an EPP to request a waiver;

(B) beginning September 1, 2016, the candidate pays the non-refundable waiver request fee of \$160;

(C) the candidate requests the waiver of the limitation in writing on forms developed by the TEA staff; and

(D) the request for the waiver is postmarked not earlier than:

(i) 30 calendar days after an unsuccessful attempt at the fourth retake of an examination as defined in TEC, §21.048; or

(ii) 90 calendar days after the date of the most recent unsuccessful examination attempt that was the result of the most recently approved request for waiver of the limitation.

(6) The TEA staff shall administratively approve each application that meets the criteria specified in paragraphs (2)-(5) of this subsection.

(7) An applicant who does not meet the criteria in paragraphs (2)-(5) of this subsection may appeal to the SBEC for a final determination of good cause. A determination by the SBEC is final and may not be appealed.

(b) A candidate seeking a standard certificate as an educator based on completion of an approved EPP may take the appropriate certification examination(s) required by subsection (a) of this section only at such time as the EPP determines the candidate's readiness to take the examinations, or upon successful completion of the EPP, whichever comes first.

(c) The holder of a lifetime Texas certificate effective before February 1, 1986, must pass examinations prescribed by the SBEC to be eligible for continued certification, unless the individual has passed the Texas Examination of Current Administrators and Teachers (TECAT).

(d) The commissioner of education approves the satisfactory level of performance required for certification examinations, and the SBEC approves a schedule of examination fees and a plan for administering the examinations.

(e) The appropriate examination(s) required for certification are specified in the figure provided in this subsection. For issuance of a probationary or standard certificate in more than one certification category, a candidate must pass the appropriate pedagogy examination specified in the figure provided in this subsection for any one of the certificates sought.

Figure: 19 TAC §230.21(e)

(f) Scores from examinations required under this title must be made available to the examinee, the TEA staff, and, if appropriate, the EPP from which the examinee will seek a recommendation for certification. Candidates may use passing scores on an examination required

under this section for certification if the candidate is recommended for certification up to one year after the last operational date for the examination as prescribed in Figure: 19 TAC §230.21(e).

(g) The following provisions concern ethical obligations relating to examinations.

(1) An educator or candidate who participates in the development, design, construction, review, field testing, scoring, or validation of an examination shall not reveal or cause to be revealed the contents of the examination to any other person.

(2) An educator or candidate who administers an examination shall not:

(A) allow or cause an unauthorized person to view any part of the examination;

(B) copy, reproduce, or cause to be copied or reproduced any part of the examination;

(C) reveal or cause to be revealed the contents of the examination;

(D) correct, alter, or cause to be corrected or altered any response to a test item contained in the examination;

(E) provide assistance with any response to a test item contained in the examination or cause assistance to be provided; or

(F) deviate from the rules governing administration of the examination.

(3) An educator or candidate who is an examinee shall not:

(A) copy, reproduce, or cause to be copied or reproduced any test item contained in the examination;

(B) provide assistance with any response to a test item contained in the examination, or cause assistance to be provided;

(C) solicit or accept assistance with any response to a test item contained in the examination;

(D) deviate from the rules governing administration of the examination; or

(E) otherwise engage in conduct that amounts to cheating, deception, or fraud.

(4) An educator, candidate, or other test taker shall not:

(A) solicit information about the contents of test items on an examination that the educator, candidate, or other test taker has not already taken from an individual who has had access to those items, or offer information about the contents of specific test items on an examination to individuals who have not yet taken the examination;

(B) fail to pay all test costs and fees as required by this chapter or the testing vendor; or

(C) otherwise engage in conduct that amounts to violations of test security or confidentiality integrity, including cheating, deception, or fraud.

(5) A person who violates this subsection is subject to:

(A) sanction, including, but not limited to, disallowance and exclusion from future examinations either in perpetuity or for a period of time that serves the best interests of the education profession, in accordance with the provisions of TEC, §21.041(b)(7), and Chapter 249 of this title (relating to Disciplinary Proceedings, Sanctions, and Contested Cases); and/or

(B) denial of certification in accordance with the provisions of TEC, §21.041(b)(7), and Chapter 249 of this title; and/or

(C) voiding of a score from an examination in which a violation specified in this subsection occurred as well as a loss of a test attempt for purposes of the retake limit in subsection (a) of this section.

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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Director, Rulemaking

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## SUBCHAPTER D. TYPES AND CLASSES OF CERTIFICATES ISSUED

### 19 TAC §230.31

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §21.041(b)(1), (2), and (4), which require the State Board for Educator Certification (SBEC) to propose rules that provide for the regulation of educators and the general administration of TEC, Chapter 21, Subchapter B, in a manner consistent with TEC, Chapter 21, Subchapter B; specify the classes of educator certificates to be issued, including emergency certificates; and specify the requirements for the issuance and renewal of an educator certificate; TEC, §§21.044(a)-(f), which requires SBEC to make rules specifying what each educator is expected to know and be able to do, establishing training requirements that a candidate must accomplish to attain a certificate, and setting out the minimum academic qualifications required for certification. It also specifies certain required training and minimum academic qualifications for certification; TEC, §21.048, which states the SBEC shall propose rules prescribing comprehensive examinations for each class of certificate issued by the board that includes not requiring more than 45 days elapsing between examination retakes and that starting January 1, 2021, all candidates teaching prekindergarten through grade six must demonstrate proficiency in the science of teaching reading on a certification examination; TEC, §21.0485, which states that to be eligible for certification to teach students with visual impairments, a person must complete all coursework required for that certification in an approved EPP or alternative EPP, perform satisfactorily on required certification exams, and satisfy other requirements established by the SBEC; TEC, §21.050(a), which states a person who applies for a teaching certificate must possess a bachelor's degree; TEC, §21.050(b), which states the SBEC shall provide for a minimum number of semester credit hours of field-based experience or internship; TEC, §21.050(c), which states a person who receives a bachelor's degree required for a teaching certificate on the basis of higher education coursework completed while receiving an exemption from tuition and fees under TEC, §54.363, may not be required to participate in any field experience or internship consisting of student teaching to receive a teaching certificate; TEC, §22.082, which requires

SBEC to subscribe to the criminal history clearinghouse as provided by Texas Government Code, §411.0845, and may obtain any law enforcement or criminal history records that relate to a specific applicant for or holder of a certificate issued under Chapter 21, Subchapter B; and Texas Occupations Code, §54.003, which states a licensing authority shall provide accommodations and eligibility criteria for examinees diagnosed as having dyslexia.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code (TEC), §§21.041(b)(1), (2), and (4); 21.044(a)-(f); 21.048; 21.0485; 21.050; 22.082; and Texas Occupations Code (TOC) §54.003.

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

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### 19 TAC §230.39

STATUTORY AUTHORITY. The new section is adopted under Texas Education Code (TEC), §21.041(b)(1), (2), and (4), which require the State Board for Educator Certification (SBEC) to propose rules that provide for the regulation of educators and the general administration of TEC, Chapter 21, Subchapter B, in a manner consistent with TEC, Chapter 21, Subchapter B; specify the classes of educator certificates to be issued, including emergency certificates; and specify the requirements for the issuance and renewal of an educator certificate; TEC, §§21.044(a)-(f), which requires SBEC to make rules specifying what each educator is expected to know and be able to do, establishing training requirements that a candidate must accomplish to attain a certificate, and setting out the minimum academic qualifications required for certification. It also specifies certain required training and minimum academic qualifications for certification; TEC, §21.048, which states the SBEC shall propose rules prescribing comprehensive examinations for each class of certificate issued by the board that includes not requiring more than 45 days elapsing between examination retakes and that starting January 1, 2021, all candidates teaching prekindergarten through grade six must demonstrate proficiency in the science of teaching reading on a certification examination; TEC, §21.0485, which states that to be eligible for certification to teach students with visual impairments, a person must complete all coursework required for that certification in an approved EPP or alternative EPP, perform satisfactorily on required certification exams, and satisfy other requirements established by the SBEC; TEC, §21.050(a), which states a person who applies for a teaching certificate must possess a bachelor's degree; TEC, §21.050(b), which states the SBEC shall provide for a minimum number of semester credit hours of field-based experience or internship; TEC, §21.050(c), which states a person who receives a bachelor's degree required for a teaching certificate on the basis of higher education coursework

completed while receiving an exemption from tuition and fees under TEC, §54.363, may not be required to participate in any field experience or internship consisting of student teaching to receive a teaching certificate; TEC, §22.082, which requires SBEC to subscribe to the criminal history clearinghouse as provided by Texas Government Code, §411.0845, and may obtain any law enforcement or criminal history records that relate to a specific applicant for or holder of a certificate issued under Chapter 21, Subchapter B; and Texas Occupations Code, §54.003, which states a licensing authority shall provide accommodations and eligibility criteria for examinees diagnosed as having dyslexia.

**CROSS REFERENCE TO STATUTE.** The new section implements Texas Education Code (TEC), §§21.041(b)(1), (2), and (4); 21.044(a)-(f); 21.048; 21.0485; 21.050; 22.082; and Texas Occupations Code (TOC) §54.003.

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

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## SUBCHAPTER G. CERTIFICATE ISSUANCE PROCEDURES

### 19 TAC §230.101, §230.105

**STATUTORY AUTHORITY.** The amendments are adopted under Texas Education Code (TEC), §21.041(b)(1), (2), and (4), which require the State Board for Educator Certification (SBEC) to propose rules that provide for the regulation of educators and the general administration of TEC, Chapter 21, Subchapter B, in a manner consistent with TEC, Chapter 21, Subchapter B; specify the classes of educator certificates to be issued, including emergency certificates; and specify the requirements for the issuance and renewal of an educator certificate; TEC, §§21.044(a)-(f), which requires SBEC to make rules specifying what each educator is expected to know and be able to do, establishing training requirements that a candidate must accomplish to attain a certificate, and setting out the minimum academic qualifications required for certification. It also specifies certain required training and minimum academic qualifications for certification; TEC, §21.048, which states the SBEC shall propose rules prescribing comprehensive examinations for each class of certificate issued by the board that includes not requiring more than 45 days elapsing between examination retakes and that starting January 1, 2021, all candidates teaching prekindergarten through grade six must demonstrate proficiency in the science of teaching reading on a certification examination; TEC, §21.0485, which states that to be eligible for certification to teach students with visual impairments, a person must complete all coursework required for that certification in an approved EPP or alternative EPP, perform satisfactorily on required certification exams, and satisfy other requirements

established by the SBEC; TEC, §21.050(a), which states a person who applies for a teaching certificate must possess a bachelor's degree; TEC, §21.050(b), which states the SBEC shall provide for a minimum number of semester credit hours of field-based experience or internship; TEC, §21.050(c), which states a person who receives a bachelor's degree required for a teaching certificate on the basis of higher education coursework completed while receiving an exemption from tuition and fees under TEC, §54.363, may not be required to participate in any field experience or internship consisting of student teaching to receive a teaching certificate; TEC, §22.082, which requires SBEC to subscribe to the criminal history clearinghouse as provided by Texas Government Code, §411.0845, and may obtain any law enforcement or criminal history records that relate to a specific applicant for or holder of a certificate issued under Chapter 21, Subchapter B; and Texas Occupations Code, §54.003, which states a licensing authority shall provide accommodations and eligibility criteria for examinees diagnosed as having dyslexia.

**CROSS REFERENCE TO STATUTE.** The amendments implement Texas Education Code (TEC), §§21.041(b)(1), (2), and (4); 21.044(a)-(f); 21.048; 21.0485; 21.050; 22.082; and Texas Occupations Code (TOC) §54.003.

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

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## CHAPTER 233. CATEGORIES OF CLASSROOM TEACHING CERTIFICATES

### 19 TAC §233.2, §233.8

The State Board for Educator Certification (SBEC) adopts amendments to 19 Texas Administrative Code (TAC) §233.2 and §233.8, concerning categories of classroom teaching certificates. The amendments are adopted without changes to the proposed text as published in the December 29, 2023 issue of the *Texas Register* (48 TexReg 8150) and will not be republished. The adopted amendments to 19 TAC §233.2, Early Childhood; Core Subjects, adds five new core subjects-related certificates, and the adopted amendment to 19 TAC §233.8, Special Education, adds a new Bilingual Special Education Supplemental certificate.

**REASONED JUSTIFICATION:** The SBEC rules in 19 TAC Chapter 233, Categories of Classroom Teaching Certificates, establish separate certificate categories within the certificate class for the classroom teacher. These categories identify the content area or special population the holder may teach, the grade levels the holder may teach, and the earliest date the certificate may be issued.

Following is a description of the adopted amendments.

### §233.2. *Early Childhood; Core Subjects.*

The adopted amendment in §233.2 adds the following five new certificates as new subsections (d)-(h): Core/Fine Arts/Physical Education/Health with the Science of Teaching Reading: Early Childhood-Grade 6; Core/Special Education with the Science of Teaching Reading: Early Childhood-Grade 6; Core/Bilingual Education Spanish with the Science of Teaching Reading: Early Childhood-Grade 6; Core/English as a Second Language Supplemental with the Science of Teaching Reading: Early Childhood-Grade 6; and Core with the Science of Teaching Reading: Early Childhood-Grade 6.

The SBEC adopts the creation of these new certificates in response to stakeholder feedback and a longstanding goal to consolidate the total number of examinations individuals must take to become certified in various high-needs areas.

### §233.8. *Special Education.*

The adopted amendment in §233.8 adds the Bilingual Special Education Supplemental certificate as new subsection (a) to ensure there are teachers with special training in providing instruction to students of limited English proficiency with disabilities. To qualify for issuance of the Bilingual Special Education Supplemental certificate, individuals must complete an EPP, pass a certification examination, and successfully complete any other requirements prescribed by the SBEC.

The SBEC deleted former §233.8(a), Core Subjects with Science of Teaching Reading/Special Education: Early Childhood-Grade 6, because the certificate is replaced by adopted new §233.2(e), Core/Special Education with the Science of Teaching Reading: Early Childhood-Grade 6.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began December 29, 2023, and ended January 29, 2024. The SBEC also provided an opportunity for registered oral and written comments on the proposal at the February 16, 2024 meeting's public comment period in accordance with the SBEC board operating policies and procedures. No public comments were received on the proposal.

The State Board of Education (SBOE) took no action on the review of the amendments to §233.2 and §233.8 at the April 12, 2024 SBOE meeting.

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031, which authorizes the State Board for Educator Certification (SBEC) to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators, and states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; 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; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, includ-

ing emergency certificates; TEC, §21.041(b)(3), which requires the SBEC to propose rules that specify the period for which each class of educator certificate is valid; TEC, §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; TEC, §21.041(b)(6), which requires the SBEC to propose rules that provide for special or restricted certification of educators, including certification of instructors of American Sign Language; TEC, §21.044(e), which provides the requirements that SBEC rules must specify for a person to obtain a certificate to teach a health science technology education course; TEC, §21.044(f), which provides that SBEC rules for obtaining a certificate to teach a health science technology education course shall not specify that a person must have a bachelor's degree or establish any other credential or teaching experience requirements that exceed the requirements under TEC, §21.044(e); TEC, §21.0442, which requires the SBEC to create an abbreviated educator preparation program (EPP) for trade and industrial workforce training; TEC, §21.048(a), which requires the SBEC to propose rules prescribing comprehensive examinations for each class of certificate issued by the SBEC. TEC, §21.048(a), also specifies that the commissioner of education shall determine the satisfactory level of performance required for each certification examination and require a satisfactory level of examination performance in each core subject covered by the generalist certification examination; TEC, §21.048(a-2), which requires the SBEC to adopt rules to require individuals teaching any grade level from Prekindergarten-Grade 6 to demonstrate proficiency in the science of teaching reading; TEC, §21.0487, which requires the SBEC to establish a standard Junior Reserve Officer Training Corps teaching certificate; TEC, §21.0489, which requires the SBEC to create a Prekindergarten-Grade 3 certificate; TEC, §21.04891, which requires the SBEC to create a Bilingual Special Education certificate; TEC, §21.0491, which requires the SBEC to create a probationary and standard trade and industrial workforce training certificate; and TEC, §22.0831(f)(1) and (2), which state the SBEC may propose rules regarding the deadline for the national criminal history check and implement sanctions for persons failing to comply with the requirements.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code (TEC), §§21.003(a); 21.031; 21.041(b)(1)-(4) and (6); 21.044(e) and (f); 21.0442; 21.048(a) and (a-2); 21.0487; 21.0489; 21.04891; 21.0491; and 22.0831(f).

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

Filed with the Office of the Secretary of State on April 29, 2024.

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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



## CHAPTER 239. STUDENT SERVICES CERTIFICATES

## SUBCHAPTER A. SCHOOL COUNSELOR CERTIFICATE

### 19 TAC §239.20

The State Board for Educator Certification (SBEC) adopts an amendment to 19 Texas Administrative Code (TAC) §239.20, concerning requirements for the issuance of the standard school counselor certificate. The amendment is adopted without changes to the proposed text as published in the December 29, 2023 issue of the *Texas Register* (48 TexReg 8152) and will not be republished. The adopted amendment implements the statutory requirement of Senate Bill (SB) 798, 88th Texas Legislature, Regular Session, 2023, and updates the certificate issuance rules to remove the requirement that an individual must have two years of classroom teaching experience to receive a school counselor certificate.

**REASONED JUSTIFICATION:** The SBEC rules in 19 TAC Chapter 239, Student Services Certificates, Subchapter A, School Counselor Certificate, establish requirements for minimum admission, preparation, standards, certificate issuance, renewal, and transition and implementation dates for the school counselor certificate. These requirements ensure educators are qualified and professionally prepared to instruct the schoolchildren of Texas.

*SB 798, 88th Texas Legislature, Regular Session, 2023, Requirements*

SB 798, 88th Texas Legislature, Regular Session, 2023, took effect on September 1, 2023, and requires the SBEC to propose rules not later than January 1, 2024, to remove the requirement that a candidate for school counselor certification must have experience as a classroom teacher. The adopted amendment complies with the deadline given in legislation to initiate SBEC rulemaking.

Following is a description of the adopted amendment to 19 TAC Chapter 239, Subchapter A, §239.20, that updates the school counselor certificate issuance rule and implements the provisions of SB 798.

*§239.20. Requirements for the Issuance of the School Counselor Certificate.*

The adopted amendment to 19 TAC §239.20(4) strikes the text in its entirety and complies with provisions in SB 798 to remove the requirement of two creditable years of teaching experience as a classroom teacher as a condition for issuance of the school counselor certificate. Additional minor technical edits were made to reflect the deletion of this requirement.

**SUMMARY OF COMMENTS AND RESPONSES:** The public comment period on the proposal began December 29, 2023, and ended January 29, 2024. The SBEC also provided an opportunity for registered oral and written comments on the proposal at the February 16, 2024 meeting's public comment period in accordance with the SBEC board operating policies and procedures. The following public comments were received on the proposal.

**Comment:** Many individuals, including the Texas School Counselor Association, Texas Counseling Association, and current and retired school counselors, opposed the removal of the two-year classroom teaching requirement for certification as a school counselor. Among the individuals, the prevalent suggested rule change to 19 TAC §239.20, Requirements for Issuance of the Standard School Counselor Certificate, was as follows:

*(a) completed a minimum 48-hour master's degree in school counseling; or (b) completed a minimum 48-hour master's degree in counseling and: (1) has been licensed or certified as a school counselor in good standing in another state for at least two years immediately prior to application; (2) completes a mentorship under a certified school counselor for an entire school year; or (3) completes a graduate non-degreed program of study in school counseling that aligns with the Texas Model for Comprehensive School Counseling Programs and is approved by the State Board for Educator Certification.*

Numerous individuals stated that their time as classroom teachers was crucial to their success as school counselors and that the proposal to eliminate the two-year classroom teaching requirement for the school counseling certificate would be detrimental to the success of school counselors. The individuals presented several points in support of this opinion, including that school counselors are often in classrooms delivering lessons to students and must be familiar with classroom management, the basics of how a classroom works, and how to plan and deliver effective, engaging, and age-appropriate instruction. Several individuals also stated that being a classroom teacher for at least two years gives school counselors the unique opportunity to understand the dynamics and issues that students and teachers face in a school setting and can, therefore, better serve their campus population. One individual suggested that the two-year teaching requirement should be increased to five years.

**Response:** The SBEC neither agrees nor disagrees. The SBEC was directed to begin the rulemaking process to implement this change in requirements to issue the school counselor certificate no later than January 1, 2024, to comply with SB 798, 88th Texas Legislature, Regular Session, 2023.

**Comment:** Several individuals shared dismay that the legislature removed the two-year classroom teaching qualification and recommended that the language in 19 TAC §239.20, Requirements for Issuance of the Standard School Counselor Certificate, be revised to include a mentorship requirement of one year for prospective school counseling certification candidates in order to ensure that school counselor certificate holders without classroom experience are adequately prepared to meet the demands of the position.

**Response:** The SBEC neither agrees nor disagrees. The SBEC was directed to begin the rulemaking process to implement this change in requirements to issue the school counselor certificate no later than January 1, 2024, to comply with SB 798, 88th Texas Legislature, Regular Session, 2023. Any additional feedback on these rules that is not contradictory to the intent of SB 798 could be considered in the future following completion of the current rulemaking process.

**Comment:** An individual commented in support of removing the two-year classroom teaching requirement from 19 TAC §239.20, Requirements for Issuance of the Standard School Counselor Certificate, but recommended that language be added to provide for additional training to provide counseling services to Kindergarten-Grade 12 students. The commenter requested the addition of the following language in lieu of the two-year classroom teaching requirement:

*That to be a school counselor, the person: (a) completed a minimum 48-hour master's degree in school counseling; or (b) completed a minimum 48-hour master's degree in counseling and: (1) has been licensed or certified as a school counselor in good standing in another state for at least two years immediately*

prior to application; (2) completes a mentorship under a certified school counselor for an entire school year, completes a graduate non-degreed program of study in school counseling that aligns with the Texas Model for Comprehensive School Counseling Programs and is approved by the State Board for Educator Certification.

Response: The SBEC neither agrees nor disagrees. The SBEC was directed to begin the rulemaking process to implement this change in requirements to issue the school counselor certificate no later than January 1, 2024, to comply with SB 798, 88th Texas Legislature, Regular Session, 2023. Any additional feedback on these rules that is not contradictory to the intent of SB 798 could be considered in the future following completion of the current rulemaking process.

Comment: An individual commented in support of removing the two-year teaching requirement for school counselors from 19 TAC §239.20, Requirements for Issuance of the Standard School Counselor Certificate, because it will create more opportunities for those seeking to work in schools.

Response: The SBEC neither agrees nor disagrees. The SBEC was directed to begin the rulemaking process to implement this change in requirements to issue the school counselor certificate no later than January 1, 2024, to comply with SB 798, 88th Texas Legislature, Regular Session, 2023.

Comment: An individual commented that they would like to see counselors (licensed professional counselors) have a pathway to add a school counseling certification through the licensing board or university programs.

Response: This comment is outside the scope of the required rulemaking to implement SB 798, 88th Texas Legislature, Regular Session, 2023.

The State Board of Education (SBOE) took no action on the review of the amendment to §239.20 at the April 12, 2024 SBOE meeting.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §21.031(a), which charges the State Board for Educator Certification (SBEC) with regulating and overseeing all aspects of the certification, continuing education, and standards of conduct for public school educators; TEC, §21.040(2), which states that the SBEC shall, for each class of educator certificate, appoint an advisory committee composed of members of that class to recommend standards for that class to the board; TEC, §21.041(a), which authorizes the SBEC to adopt rules as necessary to implement its procedures; 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; TEC, §21.041(b)(2)-(4), which require the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the period for which each class of educator certificate is valid; and the requirements for issuance and renewal of an educator certificate; TEC, §21.041(b)(5), which requires the SBEC to provide for the issuance of an educator certificate to a person who holds a similar certificate issued by another state or foreign country, subject to §21.052; TEC, §21.041(b)(9), which requires the SBEC to provide for continuing education requirements; TEC, §21.044(a)(2), which requires the SBEC to propose rules establishing training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program; TEC, §21.0462,

as added by Senate Bill 798, 88th Texas Legislature, Regular Session, 2023, which prohibits requiring candidates have experience as a classroom teacher; TEC, §21.048(a), which requires the SBEC to propose rules prescribing comprehensive examinations for each class of certificate issued by the SBEC and requires the commissioner of education to determine the satisfactory level of performance required for each certification examination and each core subject covered by the generalist certification examination; TEC, §21.054, as amended by House Bill 2929, 88th Texas Legislature, Regular Session, 2023, which requires classroom teachers, principals, and school counselors to earn continuing professional education units in specific areas and directs the SBEC to propose rules relating to continuing professional education courses and programs for educators; and TEC, §22.0831(f), which states the board may propose rules to implement this section, including rules establishing: (1) deadlines for a person to submit fingerprints and photographs in compliance with this section; and (2) sanctions for a person's failure to comply with the requirements of this section, including suspension or revocation of a certificate or refusal to issue a certificate.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§21.031(a); 21.040(2); 21.041(a), (b)(1)-(5), and (9); 21.044(a)(2); 21.0462, as added by Senate Bill 798, 88th Texas Legislature, Regular Session, 2023; 21.048(a); 21.054, as amended by House Bill 2929, 88th Texas Legislature, Regular Session, 2023; and 22.0831(f).

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

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Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

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## TITLE 22. EXAMINING BOARDS

### PART 5. STATE BOARD OF DENTAL EXAMINERS

#### CHAPTER 101. DENTAL LICENSURE

##### 22 TAC §101.6

The State Board of Dental Examiners (Board) adopts this amendment to 22 TAC §101.6, concerning dental licensing for military service members, military veterans, and military spouses. This rule is adopted with no changes to the proposed text published in the March 22, 2024, issue of the *Texas Register* (49 TexReg 1842), and will not be republished.

The purpose of the adoption is to implement Senate Bill (S.B.) 422, 88th Legislature, Regular Session (2023), which amended Texas Occupations Code Chapter 55, Licensing of Military Service Members, Military Veterans, and Military Spouses. Specifically, this amendment requires the board to process a military service member, military spouse, or military veteran's applica-

tion for alternative licensing within 30 days from receipt of the application and to issue a license to a qualified applicant. Additionally, the amendment includes language to specify that this rule does not modify or alter rights that may be provided under federal law.

No comments were received regarding adoption of this rule.

This rule is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

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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Lauren Studdard  
General Counsel  
State Board of Dental Examiners  
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For further information, please call: (512) 305-8910



## 22 TAC §101.14

The State Board of Dental Examiners (Board) adopts this amendment to 22 TAC §101.14, concerning exemption from licensure for certain military service members and military spouses. This rule is adopted with no changes to the proposed text published in the March 22, 2024, issue of the *Texas Register* (49 TexReg 1843), and will not be republished.

The purpose of the adoption is to implement Senate Bill (S.B.) 422, 88th Legislature, Regular Session (2023), which amended Texas Occupations Code Chapter 55, Licensing of Military Service Members, Military Veterans, and Military Spouses. Specifically, the adopted amendment includes "military service members" in the title and makes the rule applicable to military service members in addition to military spouses. The adopted amendment also adds a requirement that the Board verify the licensure and issue an authorization to practice recognizing the licensure within 30 days of the date a military service member or military spouse submits the information required by the rule. The adopted amendment further provides that, in the event of a divorce or similar event that affects a person's status as a military spouse, the spouse may continue to engage in the business or occupation until the third anniversary of the date the spouse received the authorization to practice. Additionally, the adopted amendment includes language to specify that this rule does not modify or alter rights that may be provided under federal law, and corrects clerical errors.

No comments were received regarding adoption of this rule.

This rule is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

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Lauren Studdard  
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For further information, please call: (512) 305-8910



## CHAPTER 102. FEES

### 22 TAC §102.1

The State Board of Dental Examiners (Board) adopts this amendment to 22 TAC §102.1, concerning fees. This rule is adopted with no changes to the proposed text published in the March 22, 2024, issue of the *Texas Register* (49 TexReg 1845), and will not be republished.

The adopted amendment implements Section 257.002(c) - (c-1) of the Texas Occupations Code by requiring licensees whose license is expired for 90 days or less to pay a renewal fee that is equal to 1 1/2 times the normally required renewal fee, and whose license is expired for more than 90 days but less than one year to pay a renewal fee that is equal to two times the normally required renewal fee.

The adopted amendment requires dental hygienists to pay a fee to apply for a local infiltration anesthesia certificate in accordance with Sections 258.001 and 262.002 of the Texas Occupations Code, and 22 TAC §115.10.

The adopted amendment requires registered dental assistants to pay a fee to reactivate a retired registration, and to reinstate a cancelled registration, in accordance with 22 TAC §114.8 and §114.13.

The adopted amendment changes the Texas Online fee to implement the Fiscal Year 2024 Texas.gov Fee Schedule. The updated fees were lower resulting in an overall smaller fee.

The adopted amendment changes the National Practitioner Data Bank (NPDB) fee to implement the NPDB's increased continuous query fee from \$2.00 to \$2.50.

No comments were received regarding adoption of this rule.

This rule is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety, and Texas Occupations Code §254.004, which directs the Board to establish reasonable and necessary fees sufficient to cover the cost of administering the Board's duties.

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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General Counsel  
State Board of Dental Examiners  
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For further information, please call: (512) 305-8910



## CHAPTER 103. DENTAL HYGIENE LICENSURE

### 22 TAC §103.10

The State Board of Dental Examiners (Board) adopts amendments to 22 TAC §103.10, concerning exemption from licensure for certain military service members and military spouses. This rule is adopted with no changes to the proposed text as published in the March 22, 2024, issue of the *Texas Register* (49 TexReg 1846), and will not be republished.

The purpose of the adoption is to implement Senate Bill (S.B.) 422, 88th Legislature, Regular Session (2023), which amended Texas Occupations Code Chapter 55, Licensing of Military Service Members, Military Veterans, and Military Spouses. Specifically, the adopted amendment includes "military service members" in the title and makes the rule applicable to military service members in addition to military spouses. The adopted amendment also adds a requirement that the Board verify the licensure and issue an authorization to practice recognizing the licensure within 30 days of the date a military service member or military spouse submits the information required by the rule. The adopted amendment further provides that, in the event of a divorce or similar event that affects a person's status as a military spouse, the spouse may continue to engage in the business or occupation until the third anniversary of the date the spouse received the authorization to practice. Additionally, the adopted amendment includes language to specify that this rule does not modify or alter rights that may be provided under federal law, and corrects clerical errors.

No comments were received regarding adoption of this rule.

This rule is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

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 114. EXTENSION OF DUTIES OF AUXILIARY PERSONNEL--DENTAL ASSISTANTS

### 22 TAC §114.5

The State Board of Dental Examiners (Board) adopts this amendment to 22 TAC §114.5, concerning coronal polishing requirements for dental assistants. This rule is adopted with no changes to the proposed text published in the March 22, 2024, issue of the *Texas Register* (49 TexReg 1847), and will not be republished.

The intent of the adopted amendment is (1) to make it easier for dental assistants who have completed their training at a CODA-accredited program to begin coronal polishing without having to wait on gaining one year of work experience, and (2) to reduce the work experience requirement from two years to one year for dental assistants who did not graduate from a CODA-accredited program. Accordingly, the adopted amendment removes the work experience requirement for a dental assistant who graduated from a CODA-accredited program, and requires one-year work experience for a dental assistant who has not graduated from a CODA-accredited program before the dental assistant can apply to a CODA-accredited program to obtain coronal polishing education.

The following is a summary of the written comments the Board received, and the Board's responses:

The Texas Dental Hygienists' Association (TDHA) provided a written comment in opposition of adoption of the rule as proposed. TDHA attests the proposed changes will allow a non-CODA dental assistant with at least one-year experience to perform coronal polishing on a live patient. This length of time is less than that of a dental hygiene student enrolled in an accredited dental hygiene program, who must obtain two or more years of education prior to being able to perform coronal polishing. Additionally, one-year experience does not allow a dental assistant to acquire knowledge on such things as the principles of coronal polishing, intraoral anatomy, indications, contraindications, and complications associated with improper coronal polishing, infection control procedures, and jurisprudence related to coronal polishing. The Board disagrees with this comment because non-CODA dental assistants will need to complete an 8-hour course in accordance with subsection (c)(2) of this rule before they can perform coronal polishing on patients. No changes were made to this rule as a result of the comment.

The Texas Academy of Pediatric Dentistry (TAPD) provided a written comment in support of adoption of the rule as proposed. The TAPD supports the Board's recommendation to continue the eight-hour clinical and didactic education requirements in coronal polishing for dental assistants who obtain one year of experience. TAPD does not believe that reducing the work experience requirement of a dental assistant performing coronal polishing will harm patients, and 82% of its members agree the experience requirement for a dental assistant to perform coronal polishing should be reduced from the current two-year requirement. TAPD would like to continue working with the Board to revise this rule, including expanding the ways dental assistants can obtain coronal polishing education. Finding courses that provide coronal polishing education is difficult for Texans who do not live in areas where there is a dental school, dental hygiene school or dental assisting program. Expanding who can teach a coronal polishing education course to include dentists who have com-



pleted teaching training modules approved by the TSBDE will allow greater access to coronal polishing education. No changes were made to this rule as a result of the comment.

The Texas Academy of General Dentistry (TAGD) provided a written comment in support of adoption of the rule as proposed. No changes were made to this rule as a result of the comment.

The Texas Dental Association (TDA) provided a written comment in support of adoption of the rule as proposed. No changes were made to this rule as a result of the comment.

Cathy Nobles, RDH provided a written comment in opposition of adoption of the rule as proposed. She does not believe dental assistants with less than two years of experience would be ready to coronal polish patients. She asks: Is coronal polishing included in the curriculum in the CODA-accredited assisting classes? Or would those graduates of the one-year CODA accredited schools still have to take the coronal polishing class upon graduation? She states if they do not have polishing included in the curriculum, they would not be wasting what they learned by staying on the two-year waiting period. The Board made no changes to this rule as a result of this comment because a CODA-accredited school is required to follow the requirements set by the Board. Since this rule requires coronal polishing education, coronal polishing will be included in the CODA-accredited school's curriculum.

Prashant Harjai (Program Manager, HCC Coleman College for Health Sciences) provided a written comment, but did not indicate whether he supported or opposed adoption of the rule as proposed. Rather, he asked whether the proposed changes in this rule will also be implemented to the pit and fissure sealant requirements for dental assistants. He states implementing the same changes to the pit and fissure sealant rule may make it easier to track the eligibility and scope of practice requirements for dental assistants, unless the Board anticipates that it may negatively impact the health and safety of patients. The Board anticipates that it will review board rule 22 TAC §114.3, which pertains to dental assistants applying pit and fissure sealants, to determine whether to implement the same changes that were proposed in this rule. No changes were made to this rule as a result of the comment.

This rule is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

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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Lauren Studdard  
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State Board of Dental Examiners  
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For further information, please call: (512) 305-8910



## 22 TAC §114.7

The State Board of Dental Examiners (Board) adopts this amendment to 22 TAC §114.7, concerning exemption from licensure for certain military service members and military spouses. This rule is adopted with no changes to the proposed text published in the March 22, 2024, issue of the *Texas Register* (49 TexReg 1848), and will not be republished.

The purpose of the adoption is to implement Senate Bill (S.B.) 422, 88th Legislature, Regular Session (2023), which amended Texas Occupations Code Chapter 55, Licensing of Military Service Members, Military Veterans, and Military Spouses. Specifically, the adopted amendment includes "military service members" in the title and makes the rule applicable to military service members in addition to military spouses. The adopted amendment also adds a requirement that the Board verify the registration and issue an authorization to practice recognizing the registration within 30 days of the date a military service member or military spouse submits the information required by the rule. The adopted amendment further provides that, in the event of a divorce or similar event that affects a person's status as a military spouse, the spouse may continue to engage in the business or occupation until the third anniversary of the date the spouse received the authorization to practice. Additionally, the adopted amendment includes language to specify that this rule does not modify or alter rights that may be provided under federal law, and corrects clerical errors.

No comments were received regarding adoption of this rule.

This rule is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

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 115. EXTENSION OF DUTIES OF AUXILIARY PERSONNEL--DENTAL HYGIENE 22 TAC §115.10

The State Board of Dental Examiners (Board) adopts new rule 22 TAC §115.10, concerning the administration of local infiltration anesthesia by a dental hygienist. The adopted new rule pertains to the certification and standards for the administration of a local anesthetic agent by a dental hygienist as set out in House Bill 3824 of the 88th Texas Legislature, Regular Session (2023), and codified at Sections 258.001 and 262.002 of the Texas Occupations Code. This rule is adopted with no changes to the proposed text published in the March 22, 2024, issue of the *Texas Register* (49 TexReg 1850), and will not be republished.

This rule was initially published in the December 15, 2023, issue of the *Texas Register*. As a result of stakeholder feedback, the Board voted to re-propose this rule with changes at its February 16, 2024 meeting. The re-proposal was published in the March 22, 2024, issue of the *Texas Register*.

The following is a summary of the written comments the Board received, and the Board's responses:

The Texas Dental Hygienists' Association (TDHA) provided a written comment in support of adoption of the rule as proposed. No changes to this rule were made as a result of the comment.

The Texas Dental Association (TDA) provided a written comment in support of adoption of the rule as proposed. No changes to this rule were made as a result of the comment.

The Texas Society of Periodontists (TSP) provided a written comment in support of adoption of the rule as initially proposed in the December 15, 2023, issue of the *Texas Register* with a request to lower the required amount of continuing education hours from 6 hours to 4 hours every two years. The Board lowered the amount of required continuing education hours to 2 hours every two years. Additionally, the continuing education requirement is in addition to any additional courses required for licensure.

The Texas Academy of General Dentistry (TAGD) provided a written comment in support of adoption of the rule as initially proposed in the December 15, 2023, issue of the *Texas Register* with a request (1) to lower the required amount of continuing education hours from 6 hours to 2 hours every two years, and (2) that the rule use the same "direct supervision" definition found in board rule 22 TAC §115.1, but to also include that a hygienist should be required to make the dentist aware of any changes in the patient's condition while undergoing a procedure. The Board agreed to lower the amount of required continuing education hours to 2 hours every two years. Additionally, the continuing education requirement is in addition to any additional courses required for licensure. The Board agreed to include a definition of "direct supervision", however the Board decided to mirror the definition found in board rule 22 TAC §110.1(7) and the language in Section 258.001(5)(B).

The Texas Society of Anesthesiologists (TSA) provided a written comment in support of adoption of the rule as initially proposed in the December 15, 2023, issue of the *Texas Register* with a request that the rule use the same "direct supervision" definition found in board rule 22 TAC §110.1(7). The Board agreed, and implemented the request by mirroring the definition found in 22 TAC §110.1(7) and the language in Section 258.001(5)(B).

One commenter provided a written comment, but did not indicate whether he supported or opposed adoption of the rule as proposed. Rather, he asked the following questions: (1) Will the provider be required to submit the course to the Board for review and approval? (2) Will the provider be required to submit the course to approvers specified by the Board for review and approval? or (3) Will there be other guidelines for course approval? The Board will not need to approve any courses because the rule requires a CODA-approved program and/or a substantially equivalent education with three years of practice. No changes to this rule were made as a result of the comment.

This rule is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with

state laws relating to the practice of dentistry to protect the public health and safety; and Texas Occupations Code §254.004, which give the Board authority to establish reasonable and necessary fees.

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 May 3, 2024.

TRD-202401994

Lauren Studdard

General Counsel

State Board of Dental Examiners

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For further information, please call: (512) 305-8910



## TITLE 26. HEALTH AND HUMAN SERVICES

### PART 1. HEALTH AND HUMAN SERVICES COMMISSION

#### CHAPTER 88. STATE LONG-TERM CARE OMBUDSMAN PROGRAM

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts amendments to §§88.2, 88.101, 88.102, 88.104, 88.105, 88.201, 88.305, 88.307, 88.403, 88.404, 88.406, and 88.501; new §§88.106, 88.107, 88.202, 88.405, 88.407, 88.408, 88.409, 88.601, 88.602, and 88.603; and the repeal of §§88.309, 88.405, and 88.407.

The amendments to §§88.101, 88.305, 88.307, new §§88.106, 88.107, 88.202, 88.405, 88.407, 88.409, 88.601, 88.602, and 88.603, and repeal of §§88.309, 88.405, and 88.407 are adopted without changes to the proposed text as published in the February 2, 2024, issue of the *Texas Register* (49 TexReg 466). These rules will not be republished.

The amendments to §§88.2, 88.102, 88.104, 88.105, 88.201, 88.403, 88.404, 88.406, and 88.501, and new §88.408, are adopted with changes to the proposed text as published in the February 2, 2024, issue of the *Texas Register* (49 TexReg 466). These rules will be republished.

#### BACKGROUND AND JUSTIFICATION

The State Long-Term Care Ombudsman Program (Ombudsman Program) is a federally and state funded program authorized by §711 and §712 of the Older Americans Act (Title 42 United States Code §3058f and §3058g). The Ombudsman Program protects and advocates for the health, safety, welfare, and rights of residents of nursing facilities and assisted living facilities.

The adopted rules implement a recent change to §306(a)(9) of the Older Americans Act regarding the minimum expenditure an Area Agency on Aging must make under its area plan in carrying out the Ombudsman Program. The adopted rules also provide that, at the discretion of the State Ombudsman, certain state general revenue funds allocated for Ombudsman Program functions may not be included in determining the amount of funds spent to meet this expenditure requirement to ensure that a larger amount of funds is used for the Ombudsman Program.

In response to a public comment, the adopted rules add a nursing facility component to the funding formula for allocation of state general revenue funds to allow for a more equitable distribution of funds to host agencies.

The adopted rules address Title 45, Code of Federal Regulations (45 CFR), §1324.19(b)(7) regarding a certified ombudsman's referral of a complaint about actions of a resident's legally authorized representative to the appropriate agency for investigation. The rules address 45 CFR §1324.11(e) and §1324.19(b) regarding documentation of consent.

The adopted rules address a requirement in 45 CFR §1324.11(e)(2), regarding the Office of the State Long-Term Care Ombudsman (the Office) and a certified ombudsman obtaining a copy of a record from a long-term care (LTC) facility upon request.

The adopted rules include the term "informed consent," including a description of how informed consent may be given, to be consistent with 45 CFR Part 1324.

In response to a public comment, the adopted rules add a definition of "incident report" to clarify the meaning of the term.

The adopted rules require a certified ombudsman to, at the request of an LTC facility, provide a completed HHSC form to the facility at the time the certified ombudsman is requesting access to a confidential record concerning a facility resident to help ensure a record of the request for access exists.

The adopted rules require a host agency to submit a plan of correction to the Office for review and approval by the Office if, as the result of a desk review, the Office sends a written report containing a finding to the host agency and local ombudsman entity.

The adopted rules describe the actions taken if the Office determines that a host agency is not in compliance with Chapter 88, Subchapter E and the determination is not based on onsite monitoring or a desk review.

The adopted rules describe the sanctions that may be imposed on a host agency if the host agency does not complete an action in accordance with an approved plan of correction or an approved modified plan of correction resulting from onsite monitoring, a desk review, or a determination of non-compliance not based on onsite monitoring or a desk review.

The adopted rules include additional performance measures that relate to current Ombudsman Program requirements so that the Office can more thoroughly monitor the progress of a local ombudsman entity's compliance with the requirements. In addition, the adopted rules remove a performance measure regarding the number of assisted living facilities that will receive at least one visit by a certified ombudsman. This performance measure is being removed because it is not as meaningful a marker of compliance as the performance measure regarding the number of visits to assisted living facilities by certified ombudsmen that will occur during a federal fiscal year.

The adopted rules remove the process that allows a host agency to request that an approved performance measure projection be revised. This process was established by the HHSC Office of Area Agencies on Aging and is being removed because the process is no longer in place.

The adopted rules change the term "state fiscal year" to "federal fiscal year" to make time periods consistent and to make compliance with requirements related to the time periods less compli-

cated. The adopted rules increase the variance that measures whether a local ombudsman entity is in compliance with certain performance measures and performance measure projections. This increase in variance will help compensate for unforeseen circumstances that hinder compliance by a local ombudsman entity.

The adopted rules include a process for the submission of a grievance about the performance of the State Ombudsman or a representative of the Office who is an employee or volunteer of HHSC.

The adopted rules change the timeframe by which a local ombudsman entity must enter information about activities and casework into the ombudsman database to help ensure the accuracy and completeness of the information entered.

The adopted rules incorporate current policies and procedures related to the Ombudsman Program, including the submission and review of an Ombudsman Staffing Plan form and not reimbursing a host agency if the form is not approved by the Office, and the process for investigating a complaint about the conduct of a legally authorized representative. In response to a public comment, the adopted rules incorporate the process for documentation of consent related to accessing a resident record, and investigating a complaint, including disclosing confidential information to investigate the complaint.

The adopted rules restructure and reorganize some rules to consolidate subject matter. The adopted rules repeal several rules and replace them with new rules.

#### COMMENTS

The 31-day comment period ended March 4, 2024.

During this period, HHSC received comments from nine commenters, including a representative of the North Central Texas Council of Governments, Texas Caregivers for Compromise, Texas Assisted Living Association, Capital Area Council of Governments, Leading Age of Texas, South East Texas Council of Governments, the Dallas County local ombudsman entity, family member advocates, and a nursing facility resident. A summary of comments relating to the rules and HHSC responses follows.

Comment: Commenters expressed support for the Ombudsman Program and the proposed rules. Commenters expressed support for several amendments and additions to the definitions in §88.2; the amendments to the description of the records a representative of the Office has access to and a representative of the Office's access to obtain a copy of a record in §88.201; the process for an LTC facility, upon request, to receive a form confirming the certified ombudsman's consent to access a confidential record in §88.202; and a certified ombudsman's requirement to comply with the Ombudsman Policies and Procedures Manual (OPPM) regarding complaints of abuse, neglect, or exploitation in §88.305. Commenters also expressed support for changes made to make the rules to make consistent with federal law and regulations and for changes made for reorganization and clean-up purposes.

Response: HHSC appreciates the support.

Comment: Two commenters suggested that certain new policies in the rules be included in the OPPM rather than in Texas Administrative Code (TAC). One commenter expressed concern that describing requirements in TAC will limit the ability of the State Ombudsman to make changes to the requirements.

Response: HHSC did not make changes to the rules in response to this comment. The commenters did not specify which policies they suggest be included in the OPPM instead of the rules. The amendments and new rules in Chapter 88 address or clarify topics and processes currently in the rules.

Comment: One commenter stated that "informed consent" has a specific meaning within federal regulations other than those related to the Ombudsman Program and recommended that if this term is needed in the rules, it should be defined in the rules.

Response: HHSC declines to make changes in response to this comment. The rules include the term "informed consent" in various sections and define the term in §88.2(16), renumbered as §88.2(17), to be consistent with 45 CFR Part 1324.

Comment: Two commenters requested amending the definition of "informed consent" in §88.2(16), renumbered as §88.2(17), by adding language to identify the action the person is consenting to.

Response: HHSC declines to make the requested change because the rules include a description of the action that the person is consenting to when this term is used. For example, in §88.201(c) informed consent allows a certified ombudsman to access a resident's records. In §88.305(b), informed consent allows a certified ombudsman to investigate a complaint regarding a resident.

Comment: One commenter requested that, based on federal regulations, the rules be revised to allow informed consent to be communicated in writing, orally, visually, or through the use of auxiliary aids and services and to require informed consent to be documented by an ombudsman.

Response: HHSC agrees with the commenter and revised the definition of "informed consent" in §88.2(16), renumbered as §88.2(17), to provide that informed consent may be communicated in writing, orally, visually, or through the use of auxiliary aids and services. Section 88.305(b)(1)(D)(iv) requires a certified ombudsman to document information about consent obtained to investigate a complaint. Although §620(f) of the OPPM requires a certified ombudsman to document consent for a certified ombudsman to access a resident record and disclose confidential information, HHSC revised rules in Chapter 88 to include these requirements. Specifically, HHSC revised §88.201 to add a new subsection (e) to require a certified ombudsman to document information about consent obtained to access a resident record and revised §88.305(b)(2) to add new subparagraph (E) and §88.305(b)(3) to add new subparagraph (G) to require a certified ombudsman to document information about consent to disclose confidential information to investigate a complaint.

Comment: One commenter recommended including a person who was an applicant for a position at an LTC facility in the definition of an "individual conflict of interest" in §88.2(18). The commenter expressed concern that this person, if later hired as an ombudsman for the LTC facility, could retaliate or harass the person hired for the facility position.

Response: HHSC declines to make the requested change. The definition of an "individual conflict of interest" in §88.2(18) is based on 45 CFR §1324.21(c). Further, the situation presented by the commenter does not constitute a conflict of interest but may be a performance concern that should be brought to the attention of the certified ombudsman's supervisor.

Comment: One commenter requested that, in §88.104(d), the notification from the Office to the local ombudsman entity and host agency of a decision to remove the designation of a local ombudsman entity include the rationale for the decision.

Response: HHSC agrees with the comment and revised §88.104(d) to provide that the Office includes the reasons for the decision to remove the designation of a local ombudsman entity in the written notification of the decision to the local ombudsman entity and host agency.

Comment: Two commenters requested that §88.105(b)(3) be revised to include the number of nursing facilities in the ombudsman service area and in the ombudsman service area located in a rural area as factors upon which state funding for a host agency is based. One commenter explained that the current formula disadvantages regions without assisted living facilities. The other commenter explained that since the rule allows state funds to be used for both nursing facilities and assisted living facilities, the funding formula should have a factor for both settings.

Response: HHSC agrees with the commenters and revised §88.105(b)(3)(A) and (B) to include the number of nursing facilities in the ombudsman service area and the number of nursing facilities in the ombudsman service area located in a rural area as factors upon which state general revenue funding for a host agency is based.

Comment: One commenter requested that §88.105(b) be revised to provide that host agencies are allocated federal funding under Title VII and Title III-B of the Older Americans Act in the amounts required to fulfill the minimum expenditure requirements in §88.405(e) and §88.406(a). The commenter also requested that §88.105(b) be revised to provide that host agencies are allocated any additional Title VII funding and state general revenue needed to provide additional ombudsman services beyond what the minimum expenditure requirements would accomplish.

Response: HHSC declines to make changes in response to this comment because the requested change requires additional analysis and stakeholder input.

Comment: One commenter requested that HHSC allow state general revenue funds described in §88.105(b)(3) that are restricted for use in assisted living facilities to be used for ombudsman functions performed in assisted living facilities and nursing facilities.

Response: HHSC declines to make the changes in response to this comment. Prior to the effective date of these rules, the Office prohibited host agencies from using state general revenue funding described in §88.105(b)(3) for the performance of ombudsman program functions in nursing facilities. Beginning the effective date of these rules, host agencies may use state general revenue funds for the performance of ombudsman program functions in nursing facilities and assisted living facilities. The Office informed host agency representatives of this change during a Texas Association of Regional Councils Meeting in September 2023 and will issue a memo with more specific information to all host agencies in September 2024.

Comment: One commenter expressed opposition to §88.106(g) and §88.107(g), which allow HHSC to impose a level two or level three sanction if a host agency or local ombudsman entity does not complete an action in accordance with an approved plan of correction. The commenter was concerned that allowing HHSC to sanction a host agency by restricting the host agency's

ability to draw down administrative funds would impact the host agency's ability to provide services. Also, the commenter stated that administrative funds cannot be used for the Ombudsman Program and, therefore, a sanction restricting a host agency's ability to draw on administrative funds could decimate Title-III community based-services on the basis of unrelated Ombudsman Program issues. The commenter indicated that failure of the local ombudsman entity to comply with a plan of correction should be addressed by the Office, not the host agency. The commenter recommended that HHSC not be allowed to impose sanctions but instead remove the designation of a local ombudsman entity for failing to complete an action in accordance with an approved plan of correction.

Response: HHSC declines to make changes in response to the comment. HHSC is authorized under 26 TAC §213.5 to impose sanctions for failure of a host agency to complete an action in accordance with an approved plan of correction. The provisions in §88.106(g) and §88.107(g) allowing HHSC to impose a level two or level three sanction for such failure are a clarification of current HHSC authority in 26 TAC §213.5. Removing HHSC authority in 26 TAC §213.5 to impose sanctions for failure of a host agency to complete an action in accordance with an approved plan of correction is outside the scope of this rule project. The position of HHSC is that removal of a local ombudsman entity's designation is a more severe penalty than imposition of a level two or level three sanction. Removal of a local ombudsman entity's designation prevents the local ombudsman entity from providing any Ombudsman Program services and results in residents of long-term facilities in the local ombudsman entity's service area being deprived of certified ombudsman assistance. In addition, while the Office has programmatic oversight of the Ombudsman Program, 45 CFR §1324.17(a) provides that the host agency is responsible for personnel management. Because the issues that may result in sanctions relate to personnel performance, the host agency is responsible for resolving these issues. Host agencies are allowed a percentage of allocated funds for administrative costs and these funds may be used to support the Ombudsman Program.

Comment: One commenter recommended including in §88.107(i) the timeframe for which the Office will provide technical assistance to a local ombudsmen entity or host agency related to a plan of correction.

Response: HHSC declines to make this requested change because the amount of time the Office needs to provide technical assistance to a local ombudsmen entity or host agency will vary depending on the request.

Comment: One commenter recommended revising §88.201(c)(1) to remove a reference to an incident report as an example of resident record that a certified ombudsman may access from an LTC facility and prevent a certified ombudsman from obtaining an incident report from an LTC facility. The commenter expressed concern that an incident report is not defined in the rules and that the term "incident report" could refer to a variety of documents. The commenter stated that a certified ombudsman's access to incident reports is not included in federal regulations or statute. The commenter asserted that incident reports are quality assurance documents and, therefore, are exempted from disclosure requirements. The commenter further expressed concern that an incident report may include information about a resident other than the resident who gave consent to the certified ombudsman to obtain the report. The commenter stated that, to obtain information about

an incident at an LTC facility, a certified ombudsman should request HHSC Form 3613-A from HHSC Long-term Care Regulation because LTC facilities report incidents to HHSC on that form. The commenter stated that certified ombudsmen accessing incident reports is irresponsible as it encourages certified ombudsmen to involve themselves in lawsuits.

Response: HHSC agrees with the commenter's suggestion to define "incident report" and has added a definition of "incident report" to §88.2, based on the definition of "incident" in §554.101(53). HHSC declines to revise §88.201(c)(1) to prevent a certified ombudsman from obtaining an incident report from an LTC facility or remove a reference to an incident report as an example of resident record that an ombudsman may access from an LTC facility. The provision in §88.201(c)(1) allowing the State Ombudsman and a certified ombudsman immediate access to all medical, social, and other records relating to a resident, regardless of format if certain criteria are met, is based on the Older Americans Act, §712(b)(1)(B) and 45 CFR §1324.11(e)(2). An incident report is a record relating to a resident. HHSC disagrees with the commenter's statement that incident reports are quality assurance documents and, therefore, are not subject to disclosure. Based on the state court decision of *Parkview Nursing and Rehabilitation Center v. Texas Department of Aging and Disability Services*, 03-11-00480-CV (Tex. App. 2014), an incident report may be reviewed by a quality assessment and assurance committee, but it is not created by or a product of the committee and, therefore, is not a record of the committee.

Regarding the commenter's concern that an incident report may include information about a resident other than the resident who gave consent to the certified ombudsman to obtain the report, an LTC facility may redact the name and information of any resident for whom the certified ombudsman does not have consent. Regarding the commenter's concern that the certified ombudsman would be encouraged to become involved in a lawsuit by obtaining an incident report, ombudsmen are rarely involved in lawsuits but, a certified ombudsman's responsibility to investigate and resolve complaints is not preempted by a potential involvement in litigation.

Comment: Several commenters expressed support for a certified ombudsman's access to incident reports in §88.201(c)(1). These commenters expressed opposition to any changes that would make resident records less available to a certified ombudsman. The commenters said that a certified ombudsman's access to an incident report is not a new provision in the rules. Two commenters asserted that the state has the ability to create more specific rules than what is in federal regulation. These commenters stated that they have experience with an LTC facility withholding records and concern that removal of the term "incident report" will allow LTC facilities to attempt to withhold records.

Response: HHSC appreciates the statement of support for a certified ombudsman to access an incident report.

Comment: Several commenters expressed concerns regarding the requirement in §88.202 for a certified ombudsman, upon request, to provide a form to an LTC facility confirming the certified ombudsman's consent to access a confidential resident record. One commenter stated that the form should only be used to document an ombudsman's access to a resident record, including an incident report. Two commenters expressed concern that the HHSC form would require a witness, certification, notary, or third-party notification or approval by an administrator or corpo-

rate office and impede a certified ombudsman's investigation. One commenter stated that facilities will need to be trained on the new form.

Response: HHSC did not make changes to the rules in response to these comments. The requirement in §88.202 was added to help to ensure a record of the request for access exists when a certified ombudsman provides a form to an LTC facility, upon request, at the time the certified ombudsman is requesting access to a confidential record concerning a resident. The Office will create a simple form for a certified ombudsman to use. The form will not require a witness, notary, or third-party notification. As provided by §88.202, the form is provided only when requesting access to a confidential record of a resident. Completing the form will not delay or impede a certified ombudsman's investigation. HHSC plans to provide training to LTC facilities on the requirement regarding the form in §88.202.

Comment: One commenter requested that §88.305(b)(2)(F), renumbered as §88.305(b)(2)(G), be revised to allow plans of action for complaint resolution to be shared with LTC facilities, upon request by a facility, and that the shared plans of action not contain information identifying a complainant.

Response: HHSC declines to make the requested change. A plan of action to resolve a complaint required by §88.305(b)(2)(F), renumbered as §88.305(b)(2)(G), is a confidential Ombudsman Program record and may only be disclosed to an LTC facility in accordance with §88.305(b).

Comment: One commenter requested that §88.305(b)(3)(G) be revised to require a certified ombudsman to inform the resident or legally authorized representative of the option to report a potential crime to the appropriate regulatory or law enforcement agency.

Response: HHSC did not make changes in response to this comment. HHSC declines to require ombudsmen to routinely determine if a complaint relates to a potential crime because certified ombudsmen may not have the knowledge base to make that determination.

Comment: One commenter requested that HHSC revise §88.305(b)(5)(A)(ii) to require a certified ombudsman to report the resolution of a complaint to HHSC and the LTC facility.

Response: HHSC declines to make the requested change. Complaint resolution information is a confidential ombudsman program record and may only be disclosed to an LTC facility in accordance with consent and disclosure requirements.

Comment: One commenter requested that HHSC revise §88.405(a)(5) to require a certified ombudsman to report the number of complaints that did not result in regulatory violations or violations of law.

Response: HHSC declines to make a change in response to this comment. Section 88.405 addresses performance measures for local ombudsman entities and subsection (a)(5) of that section is a performance measure for a local ombudsman entity to comply with the complaint response requirements described in §88.305(a)(3) and §88.305(c)(2). Requiring a local ombudsman entity to report the number of complaints that did not result in regulatory violations or violations of law is not a performance measure.

Comment: One commenter requested that HHSC revise §88.405(a)(3) and (4) to allow host agencies to develop their own performance measure regarding number of visits to LTC fa-

ilities instead of complying with the minimum visit requirements in the OPPM. The commenter stated that the Ombudsman Program is the only Older Americans Act program in Texas that has performance measures not based on funding and that performance measures should be based on the amount of funding provided to a host agency. The commenter expressed concern that the minimum visit requirements in the OPPM prevent a host agency from complying with §88.405(b) to develop their own projections for the performance measures in §88.405(a)(3) and (4) regarding visits to LTC facilities.

Response: HHSC declines to make changes in response to this comment. The performance measures in §88.405(a)(3) and (4) are indirectly based on the funding a host agency receives. The performance measure regarding number of required visits is based on the number of LTC facilities in a host agency's service area and the funding allocated to a host agency is based on the number of LTC facilities in a host agency service area. In addition, §88.405(b) requires a host agency to develop its own projection for the performance measures §88.405(a)(1) and (2) but does not require a host agency to develop a projection for the performance measures in §88.405(a)(3) and (4) because those performance measures are established in the OPPM.

Comment: One commenter requested that HHSC revise §88.405(b) to include the Office of the Area Agencies on Aging (OAAA) in the approval of projections of performance measures developed by the host agency to provide consistency in the review and approval of a host agency's performance measure projections for all Older Americans Act services. Also, the commenter requested that §88.405(b) be revised to give host agencies the opportunity to appeal a rejection of a performance measure projection to the OAAA.

Response: HHSC declines to make a change in response to the comment. The State Ombudsman's authority to approve or not approve a host agency's performance measure projects is based on 45 CFR §1324.13 and §1324.11(e)(1)(iii), which gives the State Ombudsman the responsibility to establish standards for the administration of the Ombudsman Program, including monitoring the performance of the local ombudsman entities.

Comment: One commenter requested that HHSC revise §88.406(a) to allow HHSC to waive, as needed, the requirement that a host agency must, for the Ombudsman Program, expend for a federal fiscal year at least the amount of federal funds expended as required by the Older Americans Act, §306(a)(9). Further, the commenter requested that HHSC revise §88.405(e) to allow a variance of minus 10 percent of the performance measure in §88.405(a)(7) regarding the minimum expenditure requirement.

Response: HHSC declines to make changes in response to this comment. The minimum expenditure requirement in §88.406(a) implements §306(a)(9) of the Older Americans Act, which requires an Area Agency on Aging's (AAA) (host agency's) area plan to provide an assurance that, in carrying out the State Long-Term Care Ombudsman program, the AAA (host agency) will expend not less than the total amount of funds appropriated under this Act and expended by the AAA (host agency) in fiscal year 2019 in carrying out such a program. The Older Americans Act does not allow for any exceptions to the requirement in §306(a)(9).

Comment: One commenter asked for clarification regarding 45 CFR §1321.9(c)(2)(vii)(A).

Response: The federal regulation at 45 CFR §1321.9(c)(2)(vii)(A) concerns Ombudsman Program minimum expenditure requirements for a state agency and is outside the scope of this rule project.

Comment: One commenter requested that HHSC revise §88.406(a) to either allow flexibility for state funding to be counted toward the amount of funds expended for the Ombudsman Program for a federal fiscal year or to include the new language in 45 CFR §1321.9(c)(2)(vii)(A) regarding minimum expenditures by state agencies. Further, the commenter suggested that §88.406(a) be revised to replace the year 2019 with a reference to §306(a)(9) of the Older Americans Act.

Response: HHSC agrees with the commenter and revised §88.406(a) to provide that the State Ombudsman has discretion to determine an amount of state general revenue funds that may be included to meet the minimum expenditure requirement. Further, HHSC revised §88.406 to use a reference to the Older Americans Act §306(a)(9) instead of the specific federal fiscal year.

Comment: One commenter suggested rewording §88.408(a)(2)(A) because the language requires a grammatical change.

Response: HHSC declines to make the requested change. Section 88.408(a)(2)(A) is grammatically correct and provides that "A host agency must not retaliate against the State Ombudsman or a representative of the Office with respect to a resident, employee of an LTC facility, or other person filing a complaint with, providing information to, or otherwise cooperating with, a representative of the Office."

In addition to the changes made to the rules in response to comments, HHSC made changes to the rules that are not in response to comments. HHSC revised the definition of "individual conflict of interest" in §88.2(17)(B), renumbered as §88.2(18)(B), to provide that a conflict of interest may include a person having an ownership or investment interest in "an association of LTC facilities, HCSSAs, or DAHS facilities" in addition to having an ownership or investment interest in an LTC facility, a HCSSA, a DAHS facility. HHSC revised the definition in §88.2(17)(C), renumbered as §88.2(18)(C), to provide that a conflict of interest may include a person managing or being employed in "an association of LTC facilities, HCSSAs, or DAHS facilities" in addition to managing or being employed in an LTC facility, a HCSSA, a DAHS facility. HHSC revised the definition in §88.2(17)(L), renumbered as §88.2(18)(M), to provide that a conflict of interest may include a person "having management responsibility for, or operating under the supervision of, a person with management responsibility for adult protective services, as described in Texas Human Resources Code, Chapter 48." These changes were made to be consistent with §712(f)(1)(C)(iii) of the Older Americans Act and 45 CFR §1324.21(c).

## SUBCHAPTER A. PURPOSE AND DEFINITIONS

### 26 TAC §88.2

#### STATUTORY AUTHORITY

The amendment is authorized by 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, and Texas

Human Resources Code §101A.051, which provides that the HHSC Executive Commissioner shall adopt rules regarding the administration by HHSC of programs and services for older individuals.

#### §88.2. Definitions.

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

- (1) Business day--Any day except a Saturday, Sunday, or legal holiday listed in Texas Government Code, §662.021.
- (2) Certified ombudsman--A staff ombudsman or a volunteer ombudsman.
- (3) CFR--Code of Federal Regulations.
- (4) Complainant--A person who makes a complaint.
- (5) Complaint--A statement of dissatisfaction or concern made by or on behalf of a resident, that relates to action, inaction, or a decision by any of the following entities or persons, that may adversely affect the health, safety, welfare, or rights of the resident:
  - (A) a long-term care (LTC) facility or LTC facility staff;
  - (B) a governmental entity, including a health and human services agency; or
  - (C) any other person who provides care or makes decisions related to a resident.
- (6) DAHS facility--A day activity and health services facility. A facility licensed in accordance with Texas Human Resources Code, Chapter 103.
- (7) Day--A calendar day.
- (8) Federal fiscal year--A 12-month period of time from October 1 through September 30.
- (9) Governmental entity--An entity that is:
  - (A) a state agency;
  - (B) a district, authority, county, municipality, regional planning commission, or other political subdivision of the state; or
  - (C) an institution of higher education, as defined in Texas Education Code, §61.003.
- (10) Grievance--A statement of dissatisfaction or concern regarding a representative of the Office of the State Long-Term Care Ombudsman (Office) or the State Ombudsman and the performance of their functions, responsibilities, and duties described in 45 CFR §1324.13, 45 CFR §1324.19, and this chapter.
- (11) Grievant--A person who makes a grievance.
- (12) HCSSA--Home and community support services agency. An entity licensed in accordance with Texas Health and Safety Code Chapter 142.
- (13) HHSC--The Texas Health and Human Services Commission or its designee.
- (14) Host agency--A governmental entity or nonprofit organization that contracts with HHSC to ensure that the local ombudsman entity implements the State Long-Term Care Ombudsman Program (Ombudsman Program) in an ombudsman service area.
- (15) Incident report--A document created by an LTC facility about an abnormal event involving a resident, including an accident or injury.

(16) Immediate family member--A member of the same household or a relative with whom there is a close personal or significant financial relationship.

(17) Informed consent--Consent from a resident or legally authorized representative after the State Ombudsman or a representative of the Office explains the options for ombudsman action and possible outcomes of such options in a manner and language in which the resident or legally authorized representative understands, as determined by the State Ombudsman or a representative of the Office. Informed consent may be communicated in writing, orally, visually, or through the use of auxiliary aids and services.

(18) Individual conflict of interest--A situation in which a person is involved in multiple interests, financial or otherwise, that could affect the effectiveness and credibility of the Ombudsman Program and includes a person:

(A) having direct involvement in the licensing, surveying, or certification of an LTC facility, a HCSSA, a DAHS facility, a nursing facility administrator, or a nurse aide;

(B) having ownership or investment interest (represented by equity, debt, or other financial relationship) in an LTC facility, a HCSSA, a DAHS facility, or an association of LTC facilities, HCSSAs, or DAHS facilities;

(C) managing or being employed in an LTC facility, a HCSSA, a DAHS facility, or an association of LTC facilities, HCSSAs, or DAHS facilities;

(D) being employed by an LTC facility within the 12 months before performing functions of the Ombudsman Program;

(E) accepting gifts, gratuities, or other consideration from an LTC facility or from a resident of such an LTC facility or the resident's family;

(F) accepting money or any other consideration from anyone other than the local ombudsman entity or host agency for performing functions of the Ombudsman Program;

(G) receiving or having the right to receive, directly or indirectly, remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of an LTC facility, a HCSSA, or a DAHS facility;

(H) being involved in PASRR screenings for LTC facility placements other than responding to a complaint made to the Ombudsman Program;

(I) determining eligibility regarding Medicaid or other public benefits for residents;

(J) being employed by a managed care organization that provides services to residents;

(K) serving as a representative of the Office for an LTC facility in the ombudsman service area and in which a relative of the representative resides or works;

(L) acting as a decision-maker or legally authorized representative for a resident in the ombudsman service area;

(M) having management responsibility for, or operating under the supervision of, a person with management responsibility for adult protective services as described in Texas Human Resources Code, Chapter 48;

(N) being a resident;

(O) being a member of a board or council that represents the interests of an LTC facility; or

(P) having an immediate family member who meets any of the descriptions in subparagraphs (A) - (O) of this paragraph.

(19) Legally authorized representative--A person authorized by law to act on behalf of another person with regard to a matter described in this chapter, including:

(A) a parent, guardian, or managing conservator of a minor;

(B) the guardian of an adult;

(C) an agent to whom authority to make health care decisions is delegated under a medical power of attorney or durable power of attorney in accordance with state law; or

(D) the representative of a deceased person.

(20) Local ombudsman entity--One of the following:

(A) an identifiable unit of a host agency that:

(i) consists of representatives of the Office who are employees, independent contractors, or volunteers of the host agency; and

(ii) implements the Ombudsman Program in an ombudsman service area; or

(B) an identifiable unit of a governmental entity or nonprofit organization that:

(i) consists of representatives of the Office who are employees, independent contractors, or volunteers of the governmental entity or nonprofit organization; and

(ii) contracts with a host agency to implement the Ombudsman Program in an ombudsman service area.

(21) LTC facility--Long-term care facility. A nursing facility licensed or required to be licensed in accordance with Texas Health and Safety Code, Chapter 242, and or an assisted living facility licensed or required to be licensed in accordance with Texas Health and Safety Code, Chapter 247.

(22) Managing local ombudsman--A person who:

(A) is certified as a staff ombudsman to serve as a managing local ombudsman in accordance with §88.102 of this chapter (relating to Certification of an Ombudsman); and

(B) works with a host agency and the Office to oversee the implementation of the Ombudsman Program in an ombudsman service area.

(23) Office--The Office of the State Long-Term Care Ombudsman. An organizational unit within HHSC that:

(A) is headed by the State Ombudsman;

(B) consists of representatives of the Office who are employees of HHSC; and

(C) oversees the statewide implementation of the Ombudsman Program.

(24) Older Americans Act--A federal law (Title 42, United States Code, §3011 et seq.) that establishes and funds a comprehensive service system for persons 60 years of age or older and certain caregivers and family members of persons 60 years of age or older.

(25) Ombudsman database--The statewide reporting system required by §712(c) of the Older Americans Act that is a web-based application in which Ombudsman Program data is entered, stored, maintained, and analyzed.



(26) Ombudsman intern--A person who is being trained to be a volunteer ombudsman in accordance with the Ombudsman Certification Training Manual but has not been certified as a volunteer ombudsman.

(27) Ombudsman Program--The State Long-Term Care Ombudsman Program as defined in 45 CFR §1324.1. The program through which the functions of the Office are carried out by the State Ombudsman and representatives of the Office.

(28) Ombudsman Program records--The files, records, and other information created or maintained by the State Ombudsman or a representative of the Office in the performance of functions of the Ombudsman Program, including:

- (A) information relating to complaint investigations;
- (B) emails and documentation of phone conversations;
- (C) documentation related to the budget and expenditures for the Ombudsman Program; and
- (D) information contained in the ombudsman database.

(29) Ombudsman service area--The county or counties, specified in the contract between HHSC and a host agency, in which the local ombudsman entity performs functions of the Ombudsman Program.

(30) Organizational conflict of interest-- A situation in which an organization is involved in multiple interests, financial or otherwise, that could affect the effectiveness and credibility of the Ombudsman Program and includes an organization:

- (A) having any ownership, operational, or investment interest in, or receiving grants or donations from, an LTC facility;
- (B) being an association of LTC facilities or an affiliate of such an association;
- (C) having responsibility for licensing, surveying, or certifying LTC facilities;
- (D) having a governing board member with an ownership, investment, or employment interest in an LTC facility;
- (E) providing long-term care to residents of LTC facilities, including the provision of personnel for LTC facilities or the operation of programs that control access to, or services of, LTC facilities;
- (F) providing long-term care coordination or case management for residents of LTC facilities;
- (G) setting reimbursement rates for LTC facilities;
- (H) providing adult protective services, as described in Texas Human Resources Code, Chapter 48;
- (I) determining eligibility regarding Medicaid or other public benefits for residents of LTC facilities;
- (J) conducting PASRR screening for LTC facility placements;
- (K) making decisions regarding admission of residents to, or discharge of residents from, LTC facilities; or
- (L) providing guardianship, conservatorship, or other fiduciary or surrogate decision-making services for residents of LTC facilities.

(31) PASRR--Preadmission Screening and Resident Review. A review performed in accordance with 42 CFR Part 483, Subpart C.

(32) Private and unimpeded access--Has the following meanings:

(A) as used in §88.201(a)(1) of this chapter (relating to Access to Facilities, Residents, and Resident Records), access to enter an LTC facility without interference or obstruction from facility employees, volunteers, or contractors; and

(B) as used in §88.201(a)(2) of this chapter, access to communicate with a resident outside of the hearing and view of other persons without interference or obstruction from facility employees, volunteers, or contractors.

(33) Representative of the Office--A staff ombudsman, volunteer ombudsman, or ombudsman intern.

(34) Resident--A person of any age who resides in an LTC facility.

(35) Resident representative--A person chosen by a resident, through formal or informal means, to act on behalf of the resident to:

- (A) support the resident in decision-making;
- (B) access medical, social, or other personal information of the resident;
- (C) manage financial matters; or
- (D) receive notifications.

(36) Staff ombudsman--A person who meets the following criteria, including a managing local ombudsman:

(A) is certified as a staff ombudsman in accordance with §88.102 of this chapter;

(B) performs functions of the Ombudsman Program; and

- (C) is an employee or independent contractor of:
- (i) a host agency;
  - (ii) a governmental entity or nonprofit organization that contracts with a host agency, as described in paragraph (16)(B) of this section; or
  - (iii) HHSC.

(37) State Ombudsman--The State Long-term Care Ombudsman, as defined in 45 CFR §1324.1. The person who heads the Office and performs the functions, responsibilities, and duties described in §88.101 of this chapter (relating to Responsibilities of the State Ombudsman and the Office).

(38) Volunteer ombudsman--A person who:

(A) is certified as a volunteer ombudsman in accordance with §88.102 of this chapter;

(B) performs functions of the Ombudsman Program; and

- (C) is not an employee or independent contractor of:
- (i) HHSC;
  - (ii) a host agency; or
  - (iii) a governmental entity or nonprofit organization that contracts with a host agency, as described in paragraph (16)(B) of this section.

(39) Willfully interfere--To act or not act to intentionally prevent, interfere with, or impede or to attempt to intentionally prevent, interfere with, or impede.

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## SUBCHAPTER B. ESTABLISHMENT OF THE OFFICE

### 26 TAC §§88.101, 88.102, 88.104 - 88.107

#### STATUTORY AUTHORITY

The amendments and new sections are authorized by 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, and Texas Human Resources Code §101A.051, which provides that the HHSC Executive Commissioner shall adopt rules regarding the administration by HHSC of programs and services for older individuals.

#### §88.102. *Certification of an Ombudsman.*

(a) The State Ombudsman initially certifies a person described in §88.2(36)(C)(i) or (ii) of this chapter (relating to Definitions) as a staff ombudsman, other than a managing local ombudsman, if:

(1) the person has one of the following:

(A) a bachelor's or advanced degree from an accredited college or university; or

(B) a high school diploma or a certificate recognized by the state in which it was issued as the equivalent of a high school diploma and at least four years of one, or a combination, of the following:

(i) paid experience in a social, behavioral, health, or human service field; or

(ii) experience as a certified ombudsman;

(2) the person has not been convicted of an offense listed under Texas Health and Safety Code §250.006 during the time periods set forth in Texas Health and Safety Code §250.006, according to a criminal history record of the person obtained by the Office from the Texas Department of Public Safety;

(3) the person:

(A) does not have an individual conflict of interest according to HHSC form "Individual Conflict of Interest Screening of a Representative of the Office" completed by the person; or

(B) has an individual conflict of interest that has been remedied, as described in §88.303 of this chapter (relating to Individual Conflicts of Interest Regarding a Local Ombudsman Entity);

(4) the person successfully completes the certification training provided by the local ombudsman entity in accordance with the Ombudsman Policies and Procedures Manual; and

(5) the local ombudsman entity recommends to the Office, using HHSC form "Certified Ombudsman Application," that the person be approved as a certified ombudsman in accordance with §88.301(a) of this chapter (relating to Requirements to Recommend Certification as an Ombudsman).

(b) The State Ombudsman initially certifies a person as a staff ombudsman to serve as the managing local ombudsman if:

(1) the person meets the criteria in subsection (a)(1) - (3) of this section;

(2) the person successfully completes certification training provided by the Office; and

(3) the person demonstrates competency to serve as a managing local ombudsman.

(c) The State Ombudsman initially certifies a person as a volunteer ombudsman if:

(1) the person meets the criteria in subsection (a)(2) - (4) of this section;

(2) the local ombudsman entity recommends to the Office, using HHSC form "Certified Ombudsman Application," that the person be approved as a certified ombudsman in accordance with §88.301(b) of this chapter; and

(3) the person successfully completes an internship in accordance with the Ombudsman Policies and Procedures Manual.

(d) The State Ombudsman initially certifies a person to be a staff ombudsman or volunteer ombudsman by signing HHSC form "Certified Ombudsman Application."

(e) The State Ombudsman certifies a person to be a staff ombudsman or volunteer ombudsman for a period of two years. After initial certification, the Office renews the certification of a staff ombudsman or volunteer ombudsman if:

(1) for a staff ombudsman, the staff ombudsman:

(A) meets the requirements in subsection (a)(1) - (3) of this section;

(B) completes continuing education provided by the Office; and

(C) demonstrates compliance with the Ombudsman Certification Training Manual and the Ombudsman Policies and Procedures Manual; and

(2) for a volunteer ombudsman, the volunteer ombudsman:

(A) meets the requirements in subsection (a)(2) and (3) of this section;

(B) completes continuing education provided by the local ombudsman entity in accordance with the Ombudsman Policies and Procedures Manual; and

(C) demonstrates compliance with the Ombudsman Certification Training Manual and the Ombudsman Policies and Procedures Manual.

(f) The State Ombudsman certifies a person described in §88.2(36)(C)(iii) of this chapter as a staff ombudsman if the person:

(1) has not been convicted of an offense listed under Texas Health and Safety Code §250.006 during the time periods set forth in

Texas Health and Safety Code §250.006, according to a criminal history record of the person obtained by the Office from the Texas Department of Public Safety;

(2) meets one of the following;

(A) does not have an individual conflict of interest according to HHSC form "Individual Conflict of Interest Screening of a Representative of the Office" completed by the person; or

(B) has an individual conflict of interest that has been remedied by the State Ombudsman; and

(3) successfully completes the certification training provided by the Office.

§88.104. *Designation of a Local Ombudsman Entity.*

(a) The State Ombudsman may designate a local ombudsman entity to perform the functions of the Ombudsman Program in an ombudsman service area.

(b) The State Ombudsman does not designate a local ombudsman entity if the host agency or a governmental entity or nonprofit organization contracting with the host agency, as described in §88.2(20)(B) of this chapter (relating to Definitions):

(1) has an organizational conflict of interest described in §88.2(30)(A) - (C) of this chapter; or

(2) has an organizational conflict of interest described in §88.2(30)(D) - (L) of this chapter that has not been removed or remedied as approved by the State Ombudsman in accordance with §88.403(d) of this chapter (relating to Conflicts of Interest Regarding a Host Agency).

(c) The State Ombudsman may remove the designation of a local ombudsman entity if:

(1) the host agency or local ombudsman entity has policies, procedures, or practices that the State Ombudsman determines to be in conflict with the laws, rules, policies, or procedures governing the Ombudsman Program; or

(2) the host agency or local ombudsman entity fails to comply with the requirements of this chapter including:

(A) not removing or remedying an organizational or individual conflict of interest as described in §88.303 of this chapter (relating to Individual Conflicts of Interest Regarding a Local Ombudsman Entity) and §88.403 of this chapter;

(B) not submitting:

(i) a written plan of correction required by:

(I) §88.106(d) of this subchapter (relating to On-site Monitoring of a Local Ombudsman Entity and a Host Agency);

(II) §88.107(d) of this subchapter (relating to Desk Review Monitoring of a Local Ombudsman Entity); and

(III) §88.409(b) of this chapter (relating to Non-compliance by a Host Agency); or

(ii) a modified written plan of correction required by:

(I) §88.106(e) of this subchapter;

(II) §88.107(e) of this subchapter; and

(III) §88.409(c) of this chapter; or

(C) not completing actions in accordance with an approved plan of correction or an approved modified plan of correction as required by:

(i) §88.106(d) of this subchapter;

(ii) §88.107(d) of this subchapter; and

(iii) §88.409(b) of this chapter.

(d) If the State Ombudsman removes the designation of a local ombudsman entity, the Office notifies the local ombudsman entity and host agency, in writing, of the decision to remove the designation and includes the reasons for the decision in the notification.

(e) A host agency may request reconsideration of the State Ombudsman's decision to remove the designation of the local ombudsman entity. To request a reconsideration of the decision, the host agency must, within 10 days after receiving the notification of removal of the designation, submit a written request for reconsideration and additional information supporting the request to the State Ombudsman.

(f) If the removal of designation of a local ombudsman entity results in termination of the contract between HHSC and the host agency, the host agency may appeal the termination in accordance with §213.7 of this title (relating to Appeal Procedures for Area Agency on Aging Contractors).

§88.105. *Fiscal Management of a Local Ombudsman Entity.*

(a) The State Ombudsman:

(1) determines the use of the federal and state funds appropriated for the operation of the Office;

(2) approves the allocation of federal and state funds to a host agency for the operation of the Ombudsman Program in accordance with subsection (b) of this section; and

(3) determines that Ombudsman Program budgets and expenditures are for an appropriate amount and relate to functions of the Ombudsman Program.

(b) The State Ombudsman distributes funds through the HHSC Office of the Area Agencies on Aging to a host agency for the operation of the Ombudsman Program in accordance with the Older Americans Act, §712(a)(2). Annually, a host agency is allocated:

(1) a base amount of \$3,000 from federal funds appropriated or otherwise available for the Ombudsman Program;

(2) additional federal funds:

(A) 75 percent of which is based on the licensed capacity of nursing facilities in the ombudsman service area; and

(B) 25 percent of which is based on the number of certified ombudsmen in the ombudsman service area who actively performed functions of the Ombudsman Program during the previous federal fiscal year; and

(3) state general revenue funds for the performance of Ombudsman Program functions based on the following factors:

(A) the number of assisted living facilities and nursing facilities in the ombudsman service area on or about July 1 of each year;

(B) the number of assisted living facilities and nursing facilities in the ombudsman service area located in a rural area, as determined by the State Ombudsman, on or about July 1 of each year; and

(C) the type and licensed capacity of assisted living facilities in the ombudsman service area on or about July 1 of each year.

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## SUBCHAPTER C. ACCESS BY THE STATE OMBUDSMAN AND REPRESENTATIVES OF THE OFFICE

### 26 TAC §88.201, §88.202

#### STATUTORY AUTHORITY

The amendment and new section are authorized by 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, and Texas Human Resources Code §101A.051, which provides that the HHSC Executive Commissioner shall adopt rules regarding the administration by HHSC of programs and services for older individuals.

§88.201. *Access to Facilities, Residents, and Resident Records.*

(a) The State Ombudsman and a representative of the Office have:

(1) immediate, private, and unimpeded access to enter an LTC facility, in accordance with the Older Americans Act, §712(b)(1)(A) and 45 CFR §1324.11(e)(2)(i):

(A) at any time during a facility's regular business hours or regular visiting hours; and

(B) at a time other than regular business hours or visiting hours, if the State Ombudsman or a certified ombudsman determines access may be required by the circumstances to be investigated;

(2) immediate, private, and unimpeded access to a resident, in accordance with the Older Americans Act, §712(b)(1)(A) and 45 CFR §1324.11(e)(2)(ii); and

(3) access to the name and contact information of a resident representative, if any, when the State Ombudsman or representative of the Office determines the information is needed to perform functions of the Ombudsman Program, in accordance with 45 CFR §1324.11(e)(2)(iii).

(b) Disclosure of information by the State Ombudsman or a representative of the Office related to any complaint, including a description of the circumstances to be investigated, is subject to requirements in the Ombudsman Policies and Procedures Manual related to disclosure of confidential information.

(c) The State Ombudsman and a certified ombudsman have immediate access:

(1) in accordance with the Older Americans Act, §712(b)(1)(B) and 45 CFR §1324.11(e)(2), to all medical, social, and

other records relating to a resident regardless of format, including an incident report involving the resident, if:

(A) in accordance with 45 CFR §1324.11(e)(2)(iv)(A) or (B), the State Ombudsman or certified ombudsman has the informed consent of the resident or legally authorized representative;

(B) in accordance with the Older Americans Act, §712(b)(1)(B)(i)(II), the resident is unable to communicate informed consent to access and has no legally authorized representative; or

(C) in accordance with 45 CFR §1324.11(e)(2)(iv)(C), such access is necessary to investigate a complaint and the following occurs:

(i) the resident's legally authorized representative refuses to give consent to access the medical, social, and other records;

(ii) the State Ombudsman or certified ombudsman has reasonable cause to believe that the legally authorized representative is not acting in the best interests of the resident; and

(iii) if it is the certified ombudsman seeking access to the medical, social, and other records the certified ombudsman obtains the approval of the State Ombudsman to access the medical, social, and other records, without the legally authorized representative's consent; and

(2) in accordance with 45 CFR §1324.11(e)(2)(v), to the administrative records, policies, and documents of an LTC facility to which the residents or general public have access.

(d) In accordance with 45 CFR §1324.11(e)(2), access by the State Ombudsman and a certified ombudsman to a record, as described in subsection (c) of this section, includes obtaining a copy of the record upon request.

(e) In accordance with the Ombudsman Policies and Procedures Manual, a certified ombudsman must document one of the following in the ombudsman database:

(1) whether a resident who is able to communicate informed consent communicated informed consent for the ombudsman to access a record described in subsection (c)(1) of this section;

(2) whether the legally authorized representative communicated informed consent to access a record described in subsection (c)(1) of this section;

(3) whether the certified ombudsman has authority to access a record described in subsection (c)(1) of this section without consent because the resident is unable to communicate informed consent and does not have a legally authorized representative; or

(4) whether the State Ombudsman has given approval to access a record described in subsection (c)(1) of this section accordance with subsection (c)(1)(C) of this section.

(f) The rules adopted under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 45 CFR Part 160 and 45 CFR Part 164, subparts A and E, do not preclude an LTC facility from releasing protected health information or other identifying information regarding a resident to the State Ombudsman or a certified ombudsman if the requirements of subsections (a)(3) and (c) of this section are otherwise met. The State Ombudsman and a certified ombudsman are each a "health oversight agency" as that phrase is defined in 45 CFR §164.501.

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. REQUIREMENTS OF A LOCAL OMBUDSMAN ENTITY

### 26 TAC §§88.305, §§88.307

#### STATUTORY AUTHORITY

The amendment and new section are authorized by 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, and Texas Human Resources Code §101A.051, which provides that the HHSC Executive Commissioner shall adopt rules regarding the administration by HHSC of programs and services for older individuals.

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### 26 TAC §88.309

#### STATUTORY AUTHORITY

The repeal is authorized by 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, and Texas Human Resources Code §101A.051, which provides that the HHSC Executive Commissioner shall adopt rules regarding the administration by HHSC of programs and services for older individuals.

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## SUBCHAPTER E. REQUIREMENTS OF A HOST AGENCY

### 26 TAC §§88.403 - 88.409

#### STATUTORY AUTHORITY

The amendments and new sections are authorized by 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, and Texas Human Resources Code §101A.051, which provides that the HHSC Executive Commissioner shall adopt rules regarding the administration by HHSC of programs and services for older individuals.

#### §88.403. *Conflicts of Interest Regarding a Host Agency.*

(a) If a host agency, or a governmental entity or nonprofit organization contracting with a host agency, as described in §88.2(20)(B) of this chapter (relating to Definitions), has an organizational conflict of interest, the host agency must, within 30 days after identifying the conflict of interest:

(1) complete HHSC form "Conflict of Interest Identification, Removal, and Remedy," including a recommended action to:

(A) remove a conflict of interest described in §88.2(30)(A) - (C) of this chapter (relating to Definitions); and

(B) remove or remedy a conflict of interest described in §88.2(30)(D) - (L) of this chapter; and

(2) submit the completed form to the Office.

(b) A host agency must ensure that HHSC form "Individual Conflict of Interest Screening of a Representative of the Office," is completed by a managing local ombudsman:

(1) at least once a year; and

(2) if the host agency identifies an individual conflict of interest involving the managing local ombudsman.

(c) Within five business days after identifying an individual conflict of interest regarding a managing local ombudsman, the host agency must:

(1) complete HHSC form "Conflict of Interest Identification, Removal, and Remedy," including a recommended action to remove or remedy the conflict of interest; and

(2) submit the completed form to the Office.

(d) If the Office receives a completed form described in subsection (a) or (c) of this section, the State Ombudsman reviews the form and approves, modifies, or rejects the recommended action to remove or remedy the conflict of interest.

(1) If it is not possible to remove or remedy an organizational conflict of interest of the host agency, the State Ombudsman removes the designation of the local ombudsman entity, as described in §88.104(c)(2)(A) of this chapter (relating to Designation of a Local Ombudsman Entity).

(2) If it is not possible to remove or remedy an individual conflict of interest of the managing local ombudsman, the State Ombudsman refuses to initially certify or terminates certification of the managing local ombudsman as described in §88.103(a)(2) and (d)(4) of this chapter (relating to Refusal, Suspension, and Termination of Certification of an Ombudsman).

§88.404. *Provision of Records to the Office, Disclosure of Confidential Information, and Allegations of Abuse, Neglect, or Exploitation.*

(a) In accordance with the Older Americans Act, §712(d)(2)(A) and 45 CFR §1324.13(e)(1), the State Ombudsman has the sole authority to make determinations concerning the disclosure of confidential information, as described in §88.304(a) of this chapter (relating to Disclosure of Confidential Information, Exclusion from Reporting Requirements Regarding Abuse, Neglect, and Exploitation, and Provision of Records to the Office).

(b) A request to disclose written confidential information is responded to in accordance with this subsection.

(1) If a person who is not a representative of the Office but works for a host agency or governmental entity or nonprofit organization contracting with a host agency, as described in §88.2(20)(B) of this chapter (relating to Definitions), receives a request to disclose written confidential information, as described in §88.304(a) of this chapter, the host agency must ensure that the State Ombudsman is immediately:

- (A) notified of the request; and
- (B) provided any communication from the requestor.

(2) If the State Ombudsman receives a request to disclose written confidential information, the State Ombudsman:

- (A) sends written acknowledgement of receipt of the request to the host agency;
- (B) reviews the request and responds to the requestor within a time frame required by applicable state or federal law; and
- (C) sends a copy of the response to the host agency.

(c) A host agency must ensure that, except as provided in 45 CFR §1324.19(b)(5) - (8), a representative of the Office is not required to report allegations of abuse, neglect, or exploitation under state law, including Texas Human Resources Code, Chapter 48, without appropriate consent or court order.

(d) A host agency must, at the request of the Office, immediately provide Ombudsman Program records that do not contain confidential information, such as timesheets and evidence supporting mileage reimbursement for representatives of the Office, to the Office.

§88.406. *Requirements Regarding Expenditures for the Ombudsman Program.*

(a) A host agency must, for the Ombudsman Program implemented by a local ombudsman entity, expend for a federal fiscal year at least the amount of federal funds expended as required by the Older Americans Act, §306(a)(9). In determining the amount of funds expended, the host agency may include all funds except, in the discretion of the State Ombudsman, an amount of state general revenue funds allocated to the host agency described in §88.105(b)(3) of this chapter (relating to Fiscal Management of a Local Ombudsman Entity). The State Ombudsman will notify host agencies of the specific amount of state general revenue funds to be excepted from the determination of funds expended by a communication published on the Long-Term Care Ombudsman website.

(b) A function of the Ombudsman Program performed by a local ombudsman entity that is paid for with funds allocated by HHSC

must be an allowable activity in accordance with the Ombudsman Policies and Procedures Manual.

(c) A purchase of a service, material, equipment, or good by a host agency for the Ombudsman Program implemented by a local ombudsman entity with funds allocated by HHSC must meet the criteria described in 45 CFR Part 75.

§88.408. *Prohibition of Interference and Retaliation by a Host Agency.*

(a) A host agency must not:

(1) willfully interfere with the State Ombudsman or a representative of the Office performing any of the functions of the Ombudsman Program, which includes:

(A) prohibiting a representative of the Office from:

(i) commenting or recommending changes, as described in §88.302(a)(1)(F) of this chapter (relating to Requirement to Ensure a Representative of the Office Performs Functions of the Ombudsman Program);

(ii) submitting comments to the Office regarding proposed legislation; or

(iii) responding to a question from a legislator or the media regarding a problem that pertains to an LTC facility or service, or to the health, safety, welfare, and rights of residents; and

(B) requiring a representative of the Office to obtain approval from the host agency before submitting testimony at a legislative hearing;

(2) retaliate against the State Ombudsman or a representative of the Office:

(A) with respect to a resident, employee of an LTC facility, or other person filing a complaint with, providing information to, or otherwise cooperating with, a representative of the Office; or

(B) for performance of the functions, responsibilities, or duties described in 45 CFR §1324.13 and §1324.19 and this chapter; or

(3) have personnel policies or practices that prohibit a representative of the Office from performing the functions of the Ombudsman Program or from adhering to the requirements of the Older Americans Act, §712.

(b) A host agency must ensure that a governmental entity or nonprofit organization contracting with a host agency, as described in §88.2(20)(B) of this chapter (relating to Definitions), complies with subsection (a) of this section as if the entity or organization is a host agency.

(c) A host agency may require a representative of the Office to notify the host agency of:

(1) comments or recommendations made in accordance with §88.302(a)(1)(F) of this chapter; and

(2) subject to disclosure requirements in §88.304 of this chapter (relating to Disclosure of Confidential Information; Exclusion from Reporting Requirements Regarding Abuse, Neglect, or Exploitation; and Provision of Records to the Office):

(A) information being sent to a legislator or the media regarding a problem or concern about a resident or a recommendation related to the problem or concern, as described in §88.302(a)(2)(A)(ii) of this chapter; and

(B) a response to a request for information from a legislator or the media, as described in §88.302(a)(2)(C) of this chapter.

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 May 2, 2024.

TRD-202401978

Karen Ray

Chief Counsel

Health and Human Services Commission

Effective date: May 22, 2024

Proposal publication date: February 2, 2024

For further information, please call: (512) 438-4281



## 26 TAC §88.405, §88.407

### STATUTORY AUTHORITY

The repeals are authorized by 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, and Texas Human Resources Code §101A.051, which provides that the HHSC Executive Commissioner shall adopt rules regarding the administration by HHSC of programs and services for older individuals.

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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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-4281



## SUBCHAPTER F. REQUIREMENTS OF HHSC

### 26 TAC §88.501

#### STATUTORY AUTHORITY

The amendment is authorized by 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, and Texas Human Resources Code §101A.051, which provides that the HHSC Executive Commissioner shall adopt rules regarding the administration by HHSC of programs and services for older individuals.

*§88.501. HHSC Responsibilities Regarding Individual Conflicts of Interest.*

(a) For purposes of determining if the State Ombudsman or a representative of the Office has an individual conflict of interest, the state of Texas is the ombudsman service area.

(b) HHSC requires an applicant for the position of State Ombudsman to complete HHSC form "Individual Conflict of Interest Screening of a Representative of the Office" to identify an individual conflict of interest of the applicant.

(c) HHSC requires the State Ombudsman to complete HHSC form "Individual Conflict of Interest Screening of a Representative of the Office" on or about January 15th of each year and if the State Ombudsman identifies an individual conflict of interest.

(d) The Executive Commissioner or designee reviews a form completed by an applicant or the State Ombudsman as described in subsection (b) or (c) of this section to determine if an identified conflict of interest can be removed or remedied.

(e) Except as provided in subsection (f) of this section, HHSC does not employ the State Ombudsman or a representative of the Office who has an individual conflict of interest.

(f) HHSC may employ the State Ombudsman or a representative of the Office who has an individual conflict of interest described in §88.2(17)(K), (L), or (O) of this chapter (relating to Definitions) if:

(1) the Executive Commissioner or designee approves a remedy for the conflict of interest of the State Ombudsman; or

(2) the State Ombudsman approves a remedy for the conflict of interest of a representative of the Office.

(g) HHSC ensures that no person involved in selecting or terminating the State Ombudsman has an individual conflict of interest.

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 May 2, 2024.

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-4281



## SUBCHAPTER G. GRIEVANCES

### 26 TAC §§88.601 - 88.603

#### STATUTORY AUTHORITY

The new sections are authorized by 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, and Texas Human Resources Code §101A.051, which provides that the HHSC Executive Commissioner shall adopt rules regarding the administration by HHSC of programs and services for older individuals.

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 May 2, 2024.

TRD-202401981

Karen Ray  
Chief Counsel  
Health and Human Services Commission  
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For further information, please call: (512) 438-4281



## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

#### CHAPTER 3. LIFE, ACCIDENT, AND HEALTH INSURANCE AND ANNUITIES

##### SUBCHAPTER V. COORDINATION OF BENEFITS

###### 28 TAC §§3.3502, 3.3503, 3.3510

The commissioner of insurance adopts amendments to 28 TAC §§3.3502, 3.3503, and 3.3510, concerning the applicability of coordination of benefits (COB) to vision and eye care plans. The amendments implement Senate Bill 861, 88th Legislature, 2023, and Senate Bill 1367, 83rd Legislature, 2013. The amendments are adopted without changes to the proposed text published in the February 9, 2024, issue of the *Texas Register* (49 TexReg 626). Figure: 28 TAC §3.3510(d) was republished for consistency and clarity in the March 1, 2024, issue of the *Texas Register* (49 TexReg 1315) without markup and with all proposed changes incorporated. The sections will not be republished.

**REASONED JUSTIFICATION.** The amendments are necessary to enact changes in accordance with SB 1367, which abolished the Texas Health Insurance Pool, and SB 861, which specified COB requirements for vision benefit plans under Insurance Code Chapter 1203, Subchapter C. SB 861 set out provisions for the coordination of vision and eye care benefits. It also specified the responsibilities of the primary and secondary issuers of an applicable health or vision benefit plan for an enrollee who is covered by at least two different health or vision benefit plans that provide the enrollee coverage for the same vision or medical eye care services, procedures, or products.

The amendments to the sections are described in the following paragraphs.

Section 3.3502. To implement SB 861, an amendment to §3.3502 expands the applicability of the subchapter to include individual and group health benefit plans or vision benefit plans, as described by Insurance Code Chapter 1203, Subchapter C, by adding new subsection (a)(6) listing such plans.

A nonsubstantive amendment relocates an exclusion addressing disability income protection coverage exclusion, removing it from subsection (a)(1) and addressing it with new text in (b)(1). Another amendment to subsection (a)(1) adds the title of Chapter 1251. And the acronym "(HMO)" is added to subsection (a)(2).

An amendment also removes a reference in subsection (b)(1) to the Texas Health Insurance Pool. The Texas Health Insurance Pool was dissolved by SB 1367, effective September 1, 2015.

Subsections (c) - (f) are also eliminated. The dates specified in these subsections have passed, and the transition period they

establish is no longer needed. Existing subsection (g) is redesignated as new subsection (c).

Section 3.3503. To implement SB 861, the definition of "plan" under §3.3503(15) is expanded to include vision plans. An amendment to paragraph (15)(A)(iii) adds the terms "self-funded" and "self-insured" in parentheses to clarify the types of arrangements that are included in the definition. A nonsubstantive amendment to paragraph (15)(B) conforms to the changes made in §3.3502 by replacing the reference to the Texas Health Insurance Pool with a clarification of the exclusion of disability income protection coverage. An Insurance Code reference is also added to paragraph (15)(B)(v).

Section 3.3510. Amendments to Figure: 28 TAC §3.3510(d) update the definition of "plan" to add a reference to vision coverage and remove a reference to the Texas Health Insurance Pool, consistent with changes made in §3.3502 and §3.3503. These changes ensure the model COB contract provisions are consistent with the rules. Use of the model COB contract provisions contained in Figure: 28 TAC §3.3510(d) is optional. Issuers may use the model COB provisions or make nonsubstantive changes to the provisions, as long as the contract provisions accurately reflect the COB rules. TDI also makes nonsubstantive amendments to Figure: 28 TAC §3.3510(e) to update the model COB notice to use more plain language and make the information easier for consumers to understand. The model COB notice is a resource for health benefit plan issuers. The notice provides a summary of the most common COB circumstances and does not replace or change the contract provisions.

**SUMMARY OF COMMENTS.** TDI provided an opportunity for public comment on the rule proposal for a period that ended on March 11, 2024. TDI did not receive any comments on the proposed amendments.

**STATUTORY AUTHORITY.** The commissioner adopts the amendments to §§3.3502, 3.3503, and 3.3510 under Insurance Code §1203.107 and §36.001.

Insurance Code §1203.107 provides that the commissioner may adopt rules necessary to implement Chapter 1203, Subchapter C.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

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

Filed with the Office of the Secretary of State on April 29, 2024.

TRD-202401884

Jessica Barta

General Counsel

Texas Department of Insurance

Effective date: May 19, 2024

Proposal publication date: February 9, 2024

For further information, please call: (512) 676-6555



## TITLE 34. PUBLIC FINANCE



# PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

## CHAPTER 41. HEALTH CARE AND INSURANCE PROGRAMS

### SUBCHAPTER A. RETIREE HEALTH CARE BENEFITS (TRS-CARE)

#### 34 TAC §41.15

The Board of Trustees of the Teacher Retirement System of Texas (TRS) adopts new §41.15 relating to Optional Dental Benefits Plan, of Subchapter A, Chapter 41, Title 34, Part 3, of the Texas Administrative Code without changes to the proposed text as originally published in the March 15, 2024, issue of the *Texas Register* (49 TexReg 1701). The rule will not be republished.

#### REASONED JUSTIFICATION

TRS adopts new §41.15 to administer and implement new §1575.1601 of the Insurance Code which was introduced and enacted by Senate Bill (S.B.) 1854, 88th Legislature, Regular Session, 2023.

S.B. 1854 amended Chapter 1575 of the Insurance Code (TRS-Care) by adding a new §1575.1601, concerning Group Benefits for Dental and Vision Care, which requires the Board of Trustees ("the trustee") to establish or contract for and make available under the group program an optional plan that provides coverage for dental care.

New §41.15 establishes the rules that will apply to the optional dental benefits plan, including eligibility terms, definition of the plan year, enrollment and disenrollment terms, payment of contributions towards coverage, effective dates of coverage, expulsion for fraud, and competitive bidding.

#### COMMENTS

No comments on the proposed adoption were received.

#### STATUTORY AUTHORITY

New §41.15 is being adopted under the authority of Chapter 1575, Insurance Code, which establishes the Texas Public School Retired Employees Group Benefits Act (TRS-Care), §1575.052, which allows the trustee to adopt rules, plans, procedures, and orders reasonably necessary to implement Chapter 1575; Chapter 825, Government Code, which governs the administration of TRS; §825.102 of the Government Code, which authorizes the Board of Trustees to adopt rules for the transaction of the business of the board, and Senate Bill (S.B.) 1854 as enrolled by the 88th Legislature, Regular Session, on May 26, 2023 and effective on September 1, 2023.

#### CROSS-REFERENCE TO STATUTE

New §41.15 implements Insurance Code §1575.1601, concerning Group Benefits for Dental and Vision Care.

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 May 6, 2024.

TRD-202402001

Don Green

Chief Financial Officer

Teacher Retirement System of Texas

Effective date: May 26, 2024

Proposal publication date: March 15, 2024

For further information, please call: (512) 542-3528



#### 34 TAC §41.16

The Board of Trustees of the Teacher Retirement System of Texas (TRS) adopts new §41.16 relating to Optional Vision Benefits Plan, of Subchapter A, Chapter 41, in Title 34, Part 3, of the Texas Administrative Code without changes to the proposed text as originally published in the March 15, 2024, issue of the *Texas Register* (49 TexReg 1703). The rule will not be republished.

#### REASONED JUSTIFICATION

TRS adopts new §41.16 to administer and implement new §1575.1601 of the Insurance Code which was introduced and enacted by Senate Bill (S.B.) 1854, 88th Legislature, Regular Session, 2023.

S.B. 1854 amended Chapter 1575 of the Insurance Code (TRS-Care) by adding a new § 1575.1601, concerning Group Benefits for Dental and Vision Care, which requires the Board of Trustees ("the trustee") to establish or contract for and make available under the group program an optional plan that provides coverage for vision care.

New §41.16 establishes the rules that will apply to the optional vision benefits plan, including eligibility terms, definition of the plan year, enrollment and disenrollment terms, payment of contributions towards coverage, effective dates of coverage, expulsion for fraud, and competitive bidding.

#### COMMENTS

No comments on the proposed adoption were received.

#### STATUTORY AUTHORITY

New §41.16 is being adopted under the authority of Chapter 1575, Insurance Code, which establishes the Texas Public School Retired Employees Group Benefits Act (TRS-Care), §1575.052, which allows the trustee to adopt rules, plans, procedures, and orders reasonably necessary to implement Chapter 1575; Chapter 825, Government Code, which governs the administration of TRS; §825.102 of the Government Code, which authorizes the Board of Trustees to adopt rules for the transaction of the business of the board, and Senate Bill (S.B.) 1854 as enrolled by the 88th Legislature, Regular Session, on May 26, 2023 and effective on September 1, 2023.

#### CROSS-REFERENCE TO STATUTE

New §41.16 implements Insurance Code §1575.1601 concerning Group Benefits for Dental and Vision Care.

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 May 6, 2024.

TRD-202402002

Don Green  
Chief Financial Officer  
Teacher Retirement System of Texas  
Effective date: May 26, 2024  
Proposal publication date: March 15, 2024  
For further information, please call: (512) 542-3528



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 15. TEXAS FORENSIC SCIENCE COMMISSION

#### CHAPTER 651. DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES

##### SUBCHAPTER A. ACCREDITATION

###### 37 TAC §651.7

The Texas Forensic Science Commission (Commission) adopts an amendment to rule 37 Texas Administrative Code §651.7 without changes to the text as published in the February 16, 2024, issue of the *Texas Register* (49 TexReg 843) to exempt from accreditation requirements any College of American Pathologist (CAP)-accredited testing or Substance Abuse and Mental Health Services Administration of the Department of Health and Human Services (SAMHSA/HHS)-certified testing limited to analysis of urine testing. The exemption is limited to testing for approved classes of drugs on human specimens conducted by or under contract with a community supervision or corrections department of a county or municipality, the parole division of the Texas Department of Criminal Justice, the Board of Pardons and Paroles, or any other government agency. The results of such testing are subsequently entered into evidence in an action to revise or revoke the terms of an individual's bail, bond, community supervision, or parole. The amendments are necessary to reflect a rule adoption made by the Commission at its April 26, 2024 quarterly meeting.

**Reasoned Justification for Rule.** The current exemption in §651.7(a)(17) does not expressly include bail or bond testing on human specimens conducted by or under contract with a community supervision or corrections department of a county or municipality, the parole division of the Texas Department of Criminal Justice, the Board of Pardons and Paroles, or any other governmental agency where the results of such testing are subsequently entered into evidence in an action to revise or revoke terms of probation or parole. The current rule only states that the exemption applies to community supervision or parole. The current rule does not state that the rule exemption applies to scenarios where such testing is used for pretrial diversion or intervention purposes. The rule amendments clarify for criminal justice stakeholders that the exemption applies in the context of pretrial diversion or intervention, too, which was the original intent of the rulemaking.

**Summary of Comments.** The public comment period on the rule proposal began on February 16, 2023 and ended on March 18, 2024. No comments were received.

**Statutory Authority.** The amendments are made in accordance with the Commission's accreditation authority under Code of Criminal Procedure, Art. 38.35(a)(4)(D), which addresses

examinations or tests that do not fall within the definition of forensic analysis, and the Commission's rulemaking authority under Art. 38.01 § 3-a, which directs the Commission to adopt rules necessary to implement Code of Criminal Procedure, Art. 38.01.

Cross reference to statute. Code of Criminal Procedure Art. 38.01 and Code of Criminal Procedure, Art. 38.35(a)(4)(D).

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 May 1, 2024.

TRD-202401934  
Leigh Tomlin  
Associate General Counsel  
Texas Forensic Science Commission  
Effective date: May 21, 2024  
Proposal publication date: February 16, 2024  
For further information, please call: (512) 936-0661



## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### PART 12. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS

#### CHAPTER 367. CONTINUING EDUCATION

##### 40 TAC §§367.1 - 367.3

The Texas Board of Occupational Therapy Examiners adopts amendments to 40 Texas Administrative Code §367.1, Continuing Education; §367.2, Categories of Education; and §367.3, Continuing Education Audit. The amendments are adopted to revise current continuing education requirements, including to update requirements and assist the board in ensuring that continuing education activities taken for license renewal ensure the health, safety, and welfare of the public and directly concern occupational therapy. The amendments are also adopted to enhance the clarity of the requirements contained in and the general consistency of the chapter, to further refine the requirements for continuing education activities to ensure that relevant documentation is required and that licensees have complied with continuing education requirements, and to ensure that continuing education documentation is adequately retained. In tandem with the changes, the general structure of the sections has been reorganized for clarity. The amendments to §367.1 is adopted without changes and the amendments to §367.2 and §367.3 are adopted with changes to the proposed text as published in the February 23, 2024, issue of the *Texas Register* (49 TexReg 996). The amendments will be republished. The changes are to add "for" to §367.2(b)(5)((B)(i) before "each hour" and "the" to §367.3.(c) before "expiration month."

The amendments to the sections include changes to redefine acceptable continuing education activities. The revisions enumerate two general types of acceptable activities, which are eligible for continuing education credit: those that are pre-approved for continuing education credit and other activities that meet further requirements in Chapter 367, Continuing Education, of the board

rules. These two types of activities generally correspond to those that are currently eligible for continuing education credit.

The amendments to §367.1, Continuing Education, relocate and centralize general continuing education requirements in the section for the two subtypes of pre-approved continuing education activities, which include up to two hours of a human trafficking training course approved by the Texas Health and Human Services Commission (HHSC) and activities approved or offered by the American Occupational Therapy Association (AOTA) or the Texas Occupational Therapy Association (TOTA). These preapproved activities are those that currently exist in the chapter. For clarification, the amendments also add information that addresses the conversion of AOTA continuing education units to hours or contact hours, as licensees attest to their continuing education in terms of hours or contact hours when renewing, and add clarifying information concerning documentation requirements for a required human trafficking training course. The amendments also relocate information from §367.3, Continuing Education Audit, concerning general documentation requirements to §367.1 so such is collocated with the requirements for the preapproved activities described therein. Furthermore, the amendments include the addition of a provision noting that a human trafficking training course approved or offered by AOTA or TOTA may not be used to satisfy the human trafficking training requirement unless it is also approved by the Texas Health and Human Services Commission, as described under that subsection. This addition reinforces requirements concerning the human trafficking training requirements in the current section.

The amendments to the chapter, concomitantly include revisions that revise the requirements for those activities that fall under this second type of acceptable continuing education, namely, other acceptable activities, which are not preapproved, but that meet further requirements of the chapter and may be counted for continuing education. The amendments concentrate the requirements specific to this type of continuing education in the renamed §367.2, Other Acceptable Activities, and the opening provision of the amended §367.2 clarifies that activities that are pre-approved do not need to meet the additional requirements contained in the section.

The amendments to §367.2 revise the criteria for the content that these other acceptable activities must concern and revise the activities considered unacceptable for continuing education. Such changes will help to ensure that professional development activities taken for license renewal ensure the health, safety, and welfare of the public and directly concern occupational therapy.

The amendments to the section also clarify that these activities must fall under the acceptable categories of continuing education, which include varied categories such as those related to courses, the supervision of students completing their occupational therapy education, the publication of materials, and other activity types.

The revised §367.2 contains the same categories of continuing education as currently contained in the section. The current board rules, likewise, include that such activities must concern acceptable content, described in the current rules under the definition of continuing education, not be an unacceptable activity, and fall under such categories of activities, though related revisions have been made to these requirements in the amendments.

The requirements for the categories of education in §367.2 have also been revised for clarification and to clean up the text and increase its consistency.

The amendments to §367.2, for example, include the restructuring of the category concerning the supervision of students to clarify the requirements of the category, in general, and to include an hourly breakdown of possible CE credit for certain types of supervision, rather than just expressing such in terms of weeks.

Like the amendments to §367.1, Continuing Education, the amendments to §367.2 also include for clarification the relocation of certain information concerning documentation from §367.3, Continuing Education, to those areas of the section that concern the corresponding activity types.

The amendments to §367.2 include further changes to certain categories to ensure that relevant documentation is required and contains necessary identifying information, such as that related to names of licensees and information concerning providers, and that licensees have complied with requirements. Such changes, for example, include adding language that ensures that the section articulates that documentation of fieldwork supervision identify the licensee by name and include information concerning the authorized signer, information that already typically appears on such documentation, and that when a supervisor shares a student with another individual, the supervisor include an attestation addressing the dates of supervision provided.

The amendments to the section also include the removal of the category concerning the AOTA Benchmark as access to the activity has been indefinitely suspended by AOTA.

The amendments to §367.3, Continuing Education, in addition to, as noted, relocating for clarity certain information from the section to other sections of the chapter, also include further changes to increase the retention period for continuing education documentation. Increasing the retention period will help ensure that licensees are required to retain documentation for a sufficient period of time that may substantiate, when applicable, that specific activities were not counted more frequently than allowed by board rules.

Public comment from CE Broker by Propelus was received regarding the proposed amendments. CE Broker was neither for nor against the adoption and addressed what it referred to as the modernization of audit processes nationwide and in Texas. CE Broker urged the Board to modernize continuing education processes, including by digitizing continuing education audits, and noted that licensees do not deserve to be penalized for misunderstanding requirements, losing a certificate, or missing a notice letter in the mail related to an audit.

The Board disagrees with CE Broker's comment. The Board's audit process is designed to assess the CE compliance of licensees specifically with regard to Chapter 367 of the Board Rules. Licensees may select CE activities from a number of categories, including from a category concerning courses, and may take courses from any provider, provided such meet requirements. Licensees are responsible for retaining the required documentation of their CE activities and ensuring such meets the requirements for the specific category of CE under which such fall. The Board's audit process is adaptable and does not restrict licensees to submitting their documentation through a specific external entity or in a specific manner. The audit process is almost entirely paperless, allowing licensees to submit by paper items as needed, which are then subsequently digitized. The agency contacts licensees through a variety of means, reduc-

ing the likelihood of missing an audit notice letter. Further, the agency gives licensees an opportunity to respond before initiating any disciplinary action. The Board strives to implement a CE process that is modernized, adaptable, and customized to its specific licensing population and regulations.

The amendments are adopted under Texas Occupations Code §454.102, Rules, which authorizes the Board to adopt rules to carry out its duties under Chapter 454, and adopted under Texas Occupations Code §454.254, Mandatory Continuing Education, which authorizes the Board to assess the continuing education needs of license holders, establish a minimum number of hours of continuing education required to renew a license, and develop a process to evaluate and approve continuing education courses.

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

§367.2. *Other Acceptable Activities.*

(a) Except for the pre-approved activities described under §367.1(d)(1) of this title (relating to Continuing Education), in order to be eligible for continuing education, activities must meet the following requirements.

(1) **Acceptable Content.** Activities must be professional development activities that ensure the health, safety, and welfare of the public and directly concern the maintenance or enhancement of knowledge and proficiencies relevant to occupational therapy practice or the pedagogy, education, ethics, or theory development of occupational therapy.

(2) **Categories of Activities.** Activities must fall under one or more of the categories described under subsection (b) of this section (relating to Categories of Other Acceptable Activities).

(3) **Unacceptable Activities.** Activities may not be unacceptable activities. Unacceptable professional development activities not eligible for continuing education include but are not limited to:

(A) Any non-instructional time frames such as breaks, meals, introductions, and pre/post testing.

(B) Business meetings.

(C) Exhibit hall attendance.

(D) Activities that provide information about the work setting's philosophy, policies, or procedures or educate employees about a specific work setting.

(E) Activities that concern business development, general professional behaviors/standards, or customer service.

(F) Activities that concern the self-promotion of the provider's or licensee's programs, products, or services.

(G) Activities that concern general topics such as social work; defensive driving; water safety; team building; Graduate Record Examinations (GRE)®, Graduate Management Admissions Test™ (GMAT), and Medical College Admission Test® (MCAT) preparation; general foreign languages; disposal of hazardous waste; patient privacy/rights or abuse of patients; cardiopulmonary resuscitation (CPR); First Aid; Health Insurance Portability and Accountability Act (HIPAA); and Family Educational Rights and Privacy Act (FERPA).

(b) **Categories of Other Acceptable Activities.**

(1) **Formal Academic Courses from an Occupational Therapy Program.**

(A) Completion of course work at or through an accredited college or university. No maximum. 3 contact hours for each credit hour of a course with a grade of A, B, C, or P (Pass). Examples: A 3 credit course counts for 9 contact hours and a 4 credit course counts for 12 contact hours. Documentation shall include a transcript from the accredited college or university. Documentation must include the name of the licensee, accredited college or university, and program and the titles, number of credit hours, and dates of the courses. When semesters are listed on the documentation instead of dates, it must be accompanied by documentation from the accredited college or university showing the dates of the semesters.

(B) Development of a course or courses at or through an accredited college or university may be counted for up to a maximum of 10 contact hours. Documentation shall include a letter from the Program Director that attests to the licensee's development of the course and includes the name of the school, academic program, and course and the name and signature of the Program Director, and an attestation by the licensee of the dates and duration of the development activities completed.

(2) **Courses or Training Programs.** CE credit may be earned for in-service educational programs, training programs, institutes, seminars, workshops, facility-based courses, internet-based courses, conference sessions, and home-study courses with specified learning objectives. Hour for hour credit on program content only, no maximum. Documentation shall include a certificate of completion, letter of verification, transcript, or sign-in/attendance sheet. Documentation must identify the licensee by name and include the date and title of the activity; the name of the authorized signer; either the signature of the authorized signer or the official seal, letterhead, or logo of the authorized signer if an area designated for a signature is not included; and the number of hours or contact hours awarded for the activity. When the documentation lists a unit of credit other than hours or contact hours, such as continuing education units (CEUs), professional development units (PDUs), or other units or credits, it must be accompanied by documentation from the continuing education provider noting the equivalence of the units or credits in terms of hours or contact hours.

(3) **Development of Publications or Software, or Grant/Research Activities.** Documentation shall include an attestation by the licensee of the dates and duration of the development or grant/research activities completed. For publications/software, documentation shall also include a copy of the actual publication/software or a letter of verification documenting acceptance for publication or distribution. For grant/research proposals, documentation shall also include the title page and receipt of proposal.

(A) **Scholarly Works in Peer-Reviewed Journals.**

(i) Primary or second author, up to a maximum of 15 contact hours.

(ii) Other author, consultant, reviewer, or editor, up to a maximum of 5 contact hours.

(B) **Grant or Research Proposals Accepted for Consideration.**

(i) Principal investigator or co-principal investigator, up to a maximum of 10 contact hours.

(ii) Consultant or reviewer, up to a maximum of 4 contact hours.

(C) **Books.**

(i) Primary author or book editor, up to a maximum of 15 contact hours.

(ii) Second or other author, up to a maximum of 7 contact hours.

(iii) Consultant or reviewer, up to a maximum of 5 contact hours.

(D) Book Chapters or Monographs.

(i) Primary author, up to a maximum of 7 contact hours.

(ii) Second or other author, consultant, reviewer, or editor, up to a maximum of 2 contact hours.

(E) Author, Consultant, Reviewer, or Editor of other Practice Related Publications such as Newsletters, Blogs, and Trade Magazines. Up to a maximum of 2 contact hours.

(F) Developer of Practice Related or Instructional Software Designed to Advance the Professional Skills of Others (not for proprietary use). Up to a maximum of 15 contact hours.

(4) Presentations by Licensee. Documentation shall include verification of presentation and must identify the presenter by name and include the date, title, and number of hours of the presentation; the type of presentation (e.g., 2 hour poster, 3 hour workshop); the name of the authorized signer; and either the signature of the authorized signer or the official seal, letterhead, or logo of the authorized signer if an area designated for a signature is not included. Any presentation may be counted only once.

(A) Professional Presentations, e.g. in-services, workshops, institutes. Hour for hour credit. Up to a maximum of 10 contact hours.

(B) Community/Service Organization Presentations. Hour for hour credit. Up to a maximum of 10 contact hours.

(C) The development of professional presentations and community/service organization presentations may be counted toward the maximum credit available for the presentation type. Documentation shall include an attestation by the licensee of the development activities completed, including the date and duration of each. The development of any presentation may be counted only once.

(5) Supervision of Students completing an Accredited Educational Program or Re-Entry Course. Up to a maximum of 10 contact hours may be earned for student supervision per renewal period.

(A) Fieldwork Level 1 and 2 Supervision.

(i) Supervision of Level 1 Fieldwork Students. Up to a maximum of .025 contact hours may be earned for each hour of supervision provided to a student. Examples: A licensee may earn up to a maximum of 1 contact hour for 40 hours or 2 contact hours for 80 hours of supervision provided to a student.

(ii) Supervision of Level 2 Fieldwork Students.

(I) Up to a maximum of .75 contact hours may be earned for each week of supervision provided to a student. Examples: A licensee may earn up to a maximum of 6 contact hours for 8 weeks or 9 contact hours for 12 weeks of supervision provided to a student.

(II) Licensees may divide credit for a fieldwork rotation with another supervisor based on the supervision provided by each.

(iii) Documentation shall include verification provided by the school and must identify the licensee by name and include the name of the student and school; level of fieldwork; dates of fieldwork, in addition to total hours for Level 1 students; the name of the authorized signer; and either the signature of the authorized signer or

the official seal, letterhead, or logo of the authorized signer if an area designated for a signature is not included. Documentation for a licensee who divides a fieldwork rotation shall also include an attestation by the licensee of the dates of supervision.

(B) Student Project Supervision.

(i) Up to a maximum of .025 contact hours may be earned for each hour of supervision provided to a student completing a supervised project for the accredited educational program. Examples: A licensee may earn up to a maximum of 1 contact hour for 40 hours or 2 contact hours for 80 hours of supervision provided to a student.

(ii) Documentation shall include the following:

(I) verification provided by the school. The documentation must identify the licensee by name and include the name of the student, school, and academic program; dates of the semester for which the project was completed; the name of the authorized signer; and either the signature of the authorized signer or the official seal, letterhead, or logo of the authorized signer if an area designated for a signature is not included; and

(II) an attestation signed by the licensee and the student or school attesting to the dates and hours of supervision and the activities completed.

(C) Supervision of Students completing Fieldwork for a Re-Entry Course through an Accredited College or University.

(i) Up to a maximum of .75 contact hours may be earned for each week of supervision provided to a student. Examples: A licensee may earn up to a maximum of 3 contact hours for 4 weeks or 6 contact hours for 8 weeks of supervision provided to a student.

(ii) Licensees may divide credit for a fieldwork rotation with another supervisor based on the supervision provided by each.

(iii) Documentation shall include verification provided by the school and must identify the licensee by name and include the name of the student, school, and re-entry program; the dates and total hours of the fieldwork; the name of the authorized signer; and either the signature of the authorized signer or the official seal, letterhead, or logo of the authorized signer if an area designated for a signature is not included. Documentation for a licensee who divides a fieldwork rotation shall also include an attestation by the licensee of the dates of supervision.

(6) Mentorship.

(A) Participation as a mentor or mentee for the purpose of the development of occupational therapy skills by a mentee under the guidance of a mentor skilled in a particular occupational therapy area. Both the mentor and mentee must hold a regular OT or OTA license in a state or territory of the U.S.

(B) Documentation shall include a signed mentorship agreement between a mentor and mentee that outlines specific goals and objectives and designates the plan of activities that are to be met by the mentee; the names of both mentor and mentee and their license numbers and issuing states; an activity log that corresponds to the mentorship agreement and lists dates and hours spent on each objective-based activity; a final evaluation of the outcomes of the mentorship agreement completed by the mentor; and a final evaluation of the outcomes of the mentorship agreement completed by the mentee.

(C) Participation as a Mentee. 1 contact hour may be earned for each 3 hours spent on activities as a mentee directly related to the achievement of goals and objectives up to a maximum of 15 contact hours.

(D) Participation as Mentor. 1 contact hour may be earned for each 5 hours spent on activities as a mentor up to a maximum of 10 contact hours.

(7) Volunteer Activities for Published Outcomes. CE credit may be earned for participation in volunteer activities related to occupational therapy, including service on a committee, board, or commission of a state occupational therapy association, AOTA, or NBCOT, for the purpose of tangible, published outcomes, not for proprietary use, such as official documents, publications, and official reports. Up to a maximum of 10 contact hours. Documentation shall include an attestation by the licensee of the activities, including the date and duration of each, in addition to a copy of the actual publication or official document/report that reflects the licensee's name or verification from the entity attesting to the individual's contribution. A verification must include the name of the authorized signer and either the signature of the authorized signer or the official seal, letterhead, or logo of the authorized signer if an area designated for a signature is not included.

(8) NBCOT Navigator® Activities. CE credit may be earned for the completion of NBCOT Navigator activities. For such activities, 1 NBCOT CAU is the equivalent of 1 contact hour. No maximum. Documentation is a certificate of completion or letter of verification. Documentation must identify the licensee by name and include the date and title of the activity; the name of the authorized signer; either the signature of the authorized signer or the official seal, letterhead, or logo of the authorized signer if an area designated for a signature is not included; and the number of hours, contact hours, or CAUs awarded for the activity. When the documentation lists a unit of credit other than hours, contact hours, or CAUs, such as continuing education units (CEUs), professional development units (PDUs), or other units or credits, it must be accompanied by documentation from NBCOT noting the equivalence of the units or credits in terms of hours or contact hours. Self-reflections and self-assessments, reading list and research portal activities, professional development plans, or similar activities are not eligible for CE credit.

(9) Independent Studies. Up to a maximum of 10 contact hours may be earned for the completion of independent studies of published materials. Hour for hour credit on the completion of objective-based activities comprised of the listening to or the reading or viewing of materials. Documentation shall include a study plan outlining the specific goals and objectives of the study and an activity log corresponding to such with the dates and hours spent on each objective-based activity; the titles, publication dates, and media types (ex: journal article, book, video) of the materials; a synopsis of the materials and their implications for occupational therapy; and a final evaluation of the outcomes of the study.

(10) Any deviation from the continuing education categories will be reviewed on a case by case basis by the Coordinator of Occupational Therapy or by the Continuing Education Committee. A request for special consideration must be submitted in writing a minimum of 60, though no more than 270, days prior to expiration of the license.

§367.3. *Continuing Education Audit.*

(a) The Board shall select for audit a random sample of licensees. The audit will cover a period for which the licensee has already completed the continuing education requirement.

(b) Licensees randomly selected for the audit must provide to the Board appropriate documentation within 30 days of notification.

(c) The licensee is solely responsible for keeping accurate documentation of all continuing education requirements. Continuing education documentation must be maintained for auditing purposes for

four years from the end of the expiration month of the corresponding renewal period or for a late renewal or a restoration, for four years from the end of the month when the late renewal or restoration was completed.

(d) Knowingly providing false information or failure to respond during the audit process or the renewal process is grounds for disciplinary action.

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 May 6, 2024.

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Ralph A. Harper

Executive Director

Texas Board of Occupational Therapy Examiners

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



## PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

### CHAPTER 702. GENERAL ADMINISTRATION SUBCHAPTER B. AGENCY RECORDS AND INFORMATION

#### 40 TAC §702.223

The Department of Family and Protective Services (DFPS) adopts new §702.223 in the Texas Administrative Code, Title 40, Part 19, Chapter 702, Subchapter B, relating to Agency Records and Information. The new rule is adopted without changes to the proposed text published in the March 29, 2024, issue of the *Texas Register* (49 TexReg 2052) and will not be republished.

#### BACKGROUND AND JUSTIFICATION

The new rule §702.223 is required by House Bill 63 of the Texas 88th Regular legislative session (2023) and directs DFPS to adopt rules concerning employee access to the identity of an individual who reports child abuse and neglect.

Under adopted rule §702.223, only certain DFPS and SSCC employees are allowed access to the identity of an individual who makes a report of child abuse or neglect. Subsection (a)(1) allows access to a reporter's identity if the employee is directly involved with an investigation, case, or other process involving the child who is the subject of the report or the child's parent or the person who has legal custody of the child. Subsection (a)(2) allows access to a reporter's identity if the employee supervises, directly or indirectly an employee described in subsection (a)(1) of this section. Lastly, Subsection (a)(3) allows access to a reporter's identity if the employee has a legitimate professional interest in an investigation, case, or other process involving the child who is the subject of the report or the child's parent or other person who has legal custody of the child that requires access to the reporter's identity. Subsection (b) defines that "other process" includes but is not limited to quality assurance, locating a missing child, new and ongoing training of DFPS or SSCC staff, and necessary technical support to maintain or update the case

management system. Finally, under subsection (c) a reporter's identity is confidential and may only be disclosed if waived in writing by the individual making the report, as provided by Texas Family Code §261.201, or to a law enforcement officer for the purposes of conducting a criminal investigation of the report.

#### COMMENTS

The 30-day comment period ended April 28, 2024. During this period, DFPS did not receive any comments regarding the new rule.

#### STATUTORY AUTHORITY

The new rule §702.223 is authorized pursuant to Texas Human Resources Code §40.027, which provides that the DFPS Commissioner shall adopt rules for the operation and provision of services by the agency, and pursuant to Texas Family Code §261.201(n), which directs DFPS to adopt rules concerning employee access to the identity of a reporter who makes a report of child abuse or neglect.

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 May 2, 2024.

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Quyona Gregg

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Proposal publication date: March 29, 2024

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## CHAPTER 707. CHILD PROTECTIVE INVESTIGATIONS

### SUBCHAPTER A. INVESTIGATIONS

#### DIVISION 1. INTAKE, INVESTIGATION AND ASSESSMENT

#### 40 TAC §707.489

The Department of Family and Protective Services (DFPS) adopts amendments to 40 TAC §707.489, relating to Child Protective Services Intake, Investigation, and Assessment. The amendments are adopted without changes to the proposed text published in the March 29, 2024, issue of the *Texas Register* (49 TexReg 2054), and will not be republished.

#### BACKGROUND AND JUSTIFICATION

The new rule section §707.489(c)(1)(D) is required by House Bill 63 of the Texas 88th Regular legislative session (2023) and clarifies that investigation tasks performed on anonymous reports pursuant to Texas Family Code §261.304(a) are only those reports that are referred to DFPS by local or state law enforcement.

Adopted rule section 707.489(c)(1)(D) clarifies that tasks performed on anonymous reports pursuant to Texas Family Code §261.304(a) are those reports that are referred to DFPS by local or state law enforcement.

#### COMMENTS

The 30-day comment period ended April 28, 2024. During this period, DFPS did not receive any comments regarding the new rule amendment.

#### STATUTORY AUTHORITY

The new amendment to section 707.489(c)(1)(D) is authorized pursuant to Texas Human Resources Code §40.027.

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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## PART 20. TEXAS WORKFORCE COMMISSION

### CHAPTER 811. CHOICES

The Texas Workforce Commission (TWC) adopts amendments to the following sections of Chapter 811, relating to Choices:

Subchapter A. General Provisions, §§811.1 - 811.5

Subchapter B. Choices Services Responsibilities, §§811.11, 811.13, and 811.14

Subchapter C. Choices Services, §811.22 and §811.30

Subchapter D. Choices Activities, §811.50

Subchapter E. Support Services and Other Initiatives, §811.65 and §811.66

Amended §§811.1 - 811.5, 811.11, 811.13, 811.14, 811.22, 811.30, 811.50, 811.65, and 811.66 are adopted without changes to the proposal, as published in the March 8, 2024, issue of the *Texas Register* (49 TexReg 1443), and, therefore, the adopted rule text will not be published.

#### PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the Chapter 811 rule change is to update rule language to conform with present terminology, update definitions to conform with federal statute and regulations under the Social Security Act and Title 45 of the Code of Federal Regulations (CFR), and update Temporary Assistance for Needy Families (TANF) purpose statements to conform with federal regulations.

#### PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

#### SUBCHAPTER A. GENERAL PROVISIONS

TWC adopts the following amendments to Subchapter A:

§811.1. Purpose and Goal

Section 811.1(a)(3) updates one of the TANF purposes to align with current language found in Title IV, Social Security Act, §401.

Section 811.1(c) is amended to change "Texas Workforce Commission" to "Agency."

#### §811.2. Definitions

Section 811.2(18) amends the definition of secondary school to replace "GED" with "high school equivalency."

Section 811.2(20) is amended to replace "TWIST" with "the TWC case management system. The TWIST case management system is being replaced."

Section 811.2(23) is amended to align the definition of "Work-eligible individual" with the definition of "Work-eligible individual" in CFR Title 45, Subtitle B, Chapter II, Part 261.

Section 811.2(26)(D), is amended to replace "GED" with "high school equivalency."

#### §811.3. Choices Service Strategy

Section 811.3(b)(2)(B) is amended to change "One-Stop Service Delivery Network" to "One-Stop Service Delivery System."

#### §811.4. Policies, Memoranda of Understanding, and Procedures

Section 811.4(b)(1) is amended to refer to the current eligible training system and Chapter 840 of this title.

Section 811.4(d)(1) is amended to change "One-Stop Service Delivery Network" to "One-Stop Service Delivery System."

#### §811.5. Documentation, Verification, and Supervision of Work Activities

Section 811.5(a), (c), and (d) are amended to replace "TWIST" with "the TWC case management system."

Section 811.5(d) is amended to replace "GED" with "high school equivalency."

### SUBCHAPTER B. CHOICES SERVICES RESPONSIBILITIES

TWC adopts the following amendments to Subchapter B:

#### §811.11. Board Responsibilities

Section 811.11(a) is amended to change "One-Stop Service Delivery Network" to "One-Stop Service Delivery System."

Section 811.11(f) and (h) are amended to replace "TWIST" with "the TWC case management system."

#### §811.13. Responsibilities of Choices Participants

Section 811.13(c)(3) is amended to change "Commission's" to "Agency's."

#### §811.14. Noncooperation

Section 811.14(e) is amended to replace "TWIST" with "the TWC case management system."

### SUBCHAPTER C. CHOICES SERVICES

TWC adopts the following amendments to Subchapter C:

#### §811.22. Assessment

Section 811.22(a)(1)(B) and (e) are amended to replace "GED" with "high school equivalency."

Section 811.22(b)(5) changes "substance abuse" to "substance use that impairs daily life" to align with the new universal needs assessment provided in the new case management system.

Section 811.22(e)(1)(B) is amended to replace "literacy level" with "functional educational level" to align with Human Resources Code, Title 2, Subtitle C, Chapter 31, Subchapter A, Section 31.0065(f)(1).

#### §811.30. Special Provisions for Teen Heads of Household

Section 811.30(a) and (b) are amended to replace "GED" with "high school equivalency."

### SUBCHAPTER D. CHOICES ACTIVITIES

TWC proposes the following amendments to Subchapter D:

#### §811.50. Educational Services for Choices Participants Who Have Not Completed Secondary School or Received a General Educational Development Credential

Section 811.50 is amended to rename the section "Educational Services for Choices Participants Who Have Not Completed Secondary School or Received a High School Equivalency Credential."

Section 811.50(a) is amended to replace "GED" with "high school equivalency."

### SUBCHAPTER E. SUPPORT SERVICES AND OTHER INITIATIVES

TWC adopts the following amendments to Subchapter E:

#### §811.65. Wheels to Work

Section 811.65(a) is amended to change "Commission" to "Agency."

#### §811.66. General Educational Development Credential Testing Payments

Section 811.66 is amended to rename the section "High School Equivalency Credential Testing Payments."

Section 811.66 is amended to replace "GED" with "high school equivalency."

### PART III. PUBLIC COMMENTS

The public comment period closed on April 8, 2024. No comments were received.

## SUBCHAPTER A. GENERAL PROVISIONS

### 40 TAC §§811.1 - 811.5

#### PART IV. STATUTORY AUTHORITY

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules make changes to the implementation of the Temporary Assistance for Needy Families and Choices programs to conform with statute and regulations under Title IV, Social Security Act, and Title 45, CFR.

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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Les Trobman  
General Counsel  
Texas Workforce Commission  
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**SUBCHAPTER B. CHOICES SERVICES  
RESPONSIBILITIES**

**40 TAC §§811.11, 811.13, 811.14**

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules make changes to the implementation of the Temporary Assistance for Needy Families and Choices programs to conform with statute and regulations under Title IV, Social Security Act, and Title 45, CFR.

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 C. CHOICES SERVICES**

**40 TAC §§811.22, §811.30**

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules make changes to the implementation of the Temporary Assistance for Needy Families and Choices programs to conform with statute and regulations under Title IV, Social Security Act, and Title 45, CFR.

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) 850-8356

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**SUBCHAPTER D. CHOICES ACTIVITIES**

**40 TAC §811.50**

The rule is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rule makes changes to the implementation of the Temporary Assistance for Needy Families and Choices programs to conform with statute and regulations under Title IV, Social Security Act, and Title 45, CFR.

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 E. SUPPORT SERVICES AND  
OTHER INITIATIVES**

**40 TAC §§811.65, §811.66**

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules make changes to the implementation of the Temporary Assistance for Needy Families and Choices programs to conform with statute and regulations under Title IV, Social Security Act, and Title 45, CFR.

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 843. JOB MATCHING SERVICES  
SUBCHAPTER A. GENERAL PROVISIONS**

**40 TAC §843.2**

The Texas Workforce Commission (TWC) adopts amendments to the following section of Chapter 843, relating to Job Matching Services:

Subchapter A. General Provisions, §843.2

Amended §843.2 is adopted without changes to the proposal, as published in the March 8, 2024, issue of the *Texas Register* (49 TexReg 1452), and, therefore, the adopted rule text will not be published.

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the Chapter 843 rule change is to amend references to "Veteran Preference for Public Employment" to "Military Employment Preference" in accordance with changes to Texas Government Code Chapters 656 and 657 resulting from the passage of Senate Bill (SB) 1376 by the 88th Texas Legislature, Regular Session (2023).

SB 1376 expands the categories of eligibility for military employment preference, formerly known as "veterans preference." The expanded eligibility provides military employment preference to spouses of active members of the United States armed forces or Texas National Guard, as well as spouses of veterans where the spouse is the primary source of income for the household.

Texas Government Code §2001.039 requires that every four years each state agency review and consider for readoption, revision, or repeal each rule adopted by that agency. TWC has conducted a rule review of Chapter 843, Job Matching Services, and any changes are described in Part II of this preamble.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

TWC adopts the following amendments to Subchapter A:

§843.2. Public Employer Requirements Regarding Veterans Preference

Section 843.2 is amended to change "veterans preferences" to "military employment preferences." The section title is also

amended to change Public Employer Requirements Regarding Veterans Preference to Public Employer Requirements Regarding Military Employment Preference.

TWC hereby certifies that the rules have been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

PART III. PUBLIC COMMENTS

The public comment period closed on April 8, 2024. No comments were received.

PART IV. STATUTORY AUTHORITY

The rules are adopted under:

--Texas Government Code §657.009(c), which provides TWC with the specific authority to adopt rules to facilitate the exchange of employment information between state agencies and individuals entitled to military preference; and

--Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules implement changes made to Texas Government Code Chapters 656 and 657 by SB 1376 of the 88th Texas Legislature, Regular Session (2023).

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 April 30, 2024.

TRD-202401916

Les Trobman

General Counsel

Texas Workforce Commission

Effective date: May 20, 2024

Proposal publication date: March 8, 2024

For further information, please call: (512) 850-8356



# REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039.

Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

## Proposed Rule Reviews

State Board of Dental Examiners

### Title 22, Part 5

The Texas State Board of Dental Examiners (Board) files this Notice of Intent to Review to consider for re-adoption, revision, or repeal the chapters listed below, in their entirety, contained in Title 22, Part 5, of the Texas Administrative Code. This review is being conducted in accordance with Texas Government Code §2001.039.

#### Rule Chapters Under Review

Chapter 107, Dental Board Procedures

Chapter 111, Standards for Prescribing Controlled Substances and Dangerous Drugs

During the review, the Board will assess whether the reasons for adopting or readopting the rules in these chapters continue to exist. The Board will review each rule to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current Board procedures. This review is required every four years.

Written comments regarding the review of these chapters may be submitted to Carol Pepper, Legal Assistant at 1801 Congress Avenue, Suite 8.600, Austin, Texas 78701; by facsimile to (512) 649-2482; or by email to [official\\_rules\\_comments@tsbde.texas.gov](mailto:official_rules_comments@tsbde.texas.gov). The deadline for comments is 30 days after publication in the *Texas Register*.

Any proposed changes to the rules in these chapters as a result of the rule review will be published in the Proposed Rules section of the *Texas Register*. The proposed rules will be open for public comment before final adoption by the Board in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

TRD-202402017

Lauren Studdard

General Counsel

State Board of Dental Examiners

Filed: May 6, 2024



## Adopted Rule Reviews

Texas Department of Agriculture

### Title 4, Part 1

Pursuant to the Texas Government Code, §2001.039, the Texas Department of Agriculture (Department) has completed its review of Texas

Administrative Code (TAC), Title 4, Part 1, Chapter 14, Perishable Commodities Handling and Marketing Program. The notice of intent to review was published in the July 2, 2021, issue of the *Texas Register* (46 TexReg 4027).

The Produce Recovery Fund Board (Board) is charged by statute to advise the Department on its rules related to payment of claims from the Produce Recovery Fund pursuant to Section 103.012 of the Texas Agriculture Code. Section 103.012 constitutes the Department's authority to adopt rules related to the Handling and Marketing of Perishable Commodities (HMPC) Program. At its November 15, 2023 meeting, the Board considered the Department's proposal to adopt the rule review with proposed rule amendments and approved the Department's proposal in open meeting by a unanimous vote.

The Department received no public comment in response to the notice of intent to review the rules within 4 TAC Chapter 14. In conjunction with this rule review, the Department also issued informal advance notice of the proposed rule review to license holders under the Department's HMPC Program. In response, the Department received 13 informal comments. While seven comments did not address the rule review in their response, four comments approved of the rules and recommended no changes, and one comment offered general criticism of the rules with no specific discussion of proposed changes. The final comment proposed changing the term, "warehouseman," in §14.2 to "warehouse person" or "warehouse worker."

The Department reviewed and considered these informal comments as part of its rule review process and determined the comments did not necessitate changes to the existing rules at this time. The term, "warehouseman," is defined in Chapter 101 of the Texas Agriculture Code, which governs the Department's HMPC Program. The Department will retain language in Chapter 14 in its current form for consistency with the corresponding statutory authority for the HMPC Program.

The Department finds that the reasons for initially adopting the rules in this chapter continue to exist and readopts this chapter with amendments. The proposed amendments can be found in the Proposed Rules section of this *Texas Register* issue.

TRD-202402023

Susan Maldonado

General Counsel

Texas Department of Agriculture

Filed: May 6, 2024



Department of State Health Services

### Title 25, Part 1

The Texas Health and Human Services Commission (HHSC), in its own capacity and on behalf of the Texas Department of State Health Services (DSHS), adopts the review of the chapter below in Title 25, Part 1, of the Texas Administrative Code (TAC):

Chapter 205, Product Safety

Notice of the review of this chapter was published in the March 15, 2024, issue of the *Texas Register* (49 TexReg 1740). HHSC received no comments concerning this chapter.

HHSC and DSHS have reviewed Chapter 205 in accordance with Texas Government Code §2001.039, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist.

The agencies determined that the original reasons for adopting rules in the chapter continue to exist and readopts Chapter 205 except for:

Subchapter A Bedding Rules

- §205.1, Purpose and Scope;
- §205.2, Definitions;
- §205.3, General Requirements;
- §205.4, Labeling Requirements;
- §205.5, Definitions and Designations of Filling Materials;
- §205.6, Adjunctive Terms;
- §205.7, Suggested Terminology for Various Fiber By-Products;
- §205.8, Germicidal Treatment Requirements; Methods;
- §205.9, Sanitary Premises;
- §205.10, Adjustments to the Minimum Requirements;
- §205.11, Permit Requirements; Types; Application; Conditions; Suspension;
- §205.12, Administrative Penalty;
- §205.13, Detained or Embargoed Bedding;
- §205.14, Removal Order for Detained or Embargoed Bedding;
- §205.15, Condemnation;
- §205.16, Recall Orders; and
- §205.17, Inspection.

The identified repeals were proposed for repeal in the May 3, 2024, issue of the *Texas Register*. Any amendments, if applicable, to Chapter 205 identified by HHSC and DSHS in the rule review will be proposed in a future issue of the *Texas Register*.

This concludes HHSC's and DSHS' review of 25 TAC Chapter 205 as required by the Texas Government Code §2001.039.

TRD-202401949  
Jessica Miller  
Director, Rules Coordination Office  
Department of State Health Services  
Filed: May 2, 2024



Texas Health and Human Services Commission

**Title 26, Part 1**

The Texas Health and Human Services Commission (HHSC) adopts the review of the chapter below in Title 26, Part 1, of the Texas Administrative Code (TAC):

Chapter 904, Continuity of Services--State Facilities

Notice of the review of this chapter was published in the March 1, 2024, issue of the *Texas Register* (49 TexReg 1289). HHSC received no comments concerning this chapter.

HHSC has reviewed Chapter 904 in accordance with Texas Government Code §2001.039, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist.

The agency determined that the original reasons for adopting all rules in the chapter continue to exist and readopts Chapter 904. Any amendments, if applicable, to Chapter 904 identified by HHSC in the rule review will be proposed in a future issue of the *Texas Register*.

This concludes HHSC's review of 26 TAC Chapter 904 as required by the Texas Government Code §2001.039.

TRD-202401982  
Jessica Miller  
Director, Rules Coordination Office  
Texas Health and Human Services Commission  
Filed: May 3, 2024



Texas Board of Occupational Therapy Examiners

**Title 40, Part 12**

The Texas Board of Occupational Therapy Examiners readopts the rules in the following chapters of Title 40, Part 12 of the Texas Administrative Code in accordance with Texas Government Code §2001.039: Chapter 361, Statutory Authority; Chapter 362, Definitions; Chapter 363, Consumer/Licensee Information; Chapter 364, Requirements for Licensure; Chapter 367, Continuing Education; Chapter 368, Open Records; Chapter 369, Display of Licenses; Chapter 370, License Renewal; Chapter 371, Inactive and Retired Status; Chapter 372, Provision of Services; Chapter 373, Supervision; Chapter 374, Disciplinary Actions/Detrimental Practice/Complaint Process/Code of Ethics/Licensure of Persons with Criminal Convictions; and Chapter 375, Fees. The notice of intent to review these rules was published in the February 23, 2024, issue of the *Texas Register* (49 TexReg 1106).

No comments were received on the proposed rule review.

The Board has assessed whether the reasons for adopting the rules continue to exist. As a result of the review, the Board finds the reasons for adopting the rules continue to exist and readopts the rules in accordance with the requirements of Texas Government Code §2001.039.

TRD-202402025  
Ralph A. Harper  
Executive Director  
Texas Board of Occupational Therapy Examiners  
Filed: May 6, 2024



# IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

## Office of Consumer Credit Commissioner

### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 05/13/24 - 05/19/24 is 18.00% for consumer<sup>1</sup> credit.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 05/13/24 - 05/19/24 is 18.00% for commercial<sup>2</sup> credit.

<sup>1</sup> Credit for personal, family, or household use.

<sup>2</sup> Credit for business, commercial, investment, or other similar purpose.

TRD-202402060

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: May 8, 2024

## Court of Criminal Appeals

### Availability of Funds Announcement

#### Availability of Grant Funds:

#### Judicial and Court Personnel Training FY25

The Court of Criminal Appeals announces the availability of funds to be provided in the form of grants to statewide professional associations and other entities for the purpose of providing continuing legal education courses, programs, and technical assistance projects for prosecutors, prosecutor office personnel, criminal defense attorneys and criminal defense attorney office personnel who regularly represent indigent defendants in criminal matters, clerks, judges, and other court personnel of the appellate courts, district courts, county courts at law, county courts, justice courts and municipal courts of this State, individuals responsible for providing court security, or other persons as provided by statute.

The Court of Criminal Appeals also announces the availability of funds to be provided in the form of grants to statewide professional associations and other entities for the purpose of providing continuing legal education courses, programs, and technical assistance projects on actual innocence for law enforcement officers, law students, criminal defense attorneys, prosecuting attorneys, judges, or other persons as provided by statute.

Funds are subject to the provisions of Chapter 56 of the Texas Government Code and the General Appropriations Act (Article IV, Court of Criminal Appeals, Strategy B.1.1, Judicial Education).

The grant period is September 1, 2024 through August 31, 2025.

The deadline for applications is July 1, 2024.

Applicants may request an application packet by contacting the Judicial Education Office at the Texas Court of Criminal Appeals: 201

West 14th Street, Suite 103, Austin, Texas 78701, (512) 475-2312, judicial.education@txcourts.gov.

TRD-202402030

Alexander Comsudi

Grant Attorney & Administrator

Court of Criminal Appeals

Filed: May 7, 2024

### Availability of Funds Announcement

The Court of Criminal Appeals announces the availability of funds to be provided in the form of grants to statewide professional associations and other entities whose purposes include providing continuing legal education, courses, and programs for judges and court staff, prosecuting attorneys, and criminal defense attorneys on mental health issues and pre-trial diversion. Judicial education shall include information for judges and staff on mental health care resources available in the court's geographic region.

The Court of Criminal Appeals also announces the availability of funds to be provided in the form of grants to statewide professional associations and other entities for continuing a training program to educate and inform judges and their staff on mental health care resources available in the State of Texas.

Funds are subject to the provisions of Chapter 56 of the Texas Government Code and the General Appropriations Act (Article IV, Court of Criminal Appeals, Strategy B.1.1, Judicial Education). The grant period is September 1, 2024 through August 31, 2025. The deadline for applications is July 1, 2024.

Applicants may request application instructions by contacting the Judicial Education Office at the Texas Court of Criminal Appeals: 201 West 14th Street, Suite 103, Austin, Texas 78701, (512) 475-2312, judicial.education@txcourts.gov.

TRD-202402031

Alexander Comsudi

Grant Attorney & Administrator

Court of Criminal Appeals

Filed: May 7, 2024

## Texas Commission on Environmental Quality

### Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **June 18, 2024**. TWC, §7.075, also requires

that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **June 18, 2024**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: Abubaker Yusuf; DOCKET NUMBER: 2023-1656-PST-E; IDENTIFIER: RN102339405; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: \$6,012; ENFORCEMENT COORDINATOR: Ramya Wendt, (512) 239-2513; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(2) COMPANY: Brad T. Archer; DOCKET NUMBER: 2023-0515-WOC-E; IDENTIFIER: RN103750212; LOCATION: Denton, Denton County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §30.5(a) and §30.381(b), TWC, §37.003, and Texas Health and Safety Code, §341.034(b), by failing to have a current, valid water system operator's license prior to performing process control duties in production or distribution of public drinking water; PENALTY: \$686; ENFORCEMENT COORDINATOR: Claudia Bartley, (512) 239-1116; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(3) COMPANY: CHANDLERS LANDING COMMUNITY ASSOCIATION, INCORPORATED; DOCKET NUMBER: 2023-1358-WR-E; IDENTIFIER: RN111560942; LOCATION: Rockwall, Rockwall County; TYPE OF FACILITY: operator; RULES VIOLATED: TWC, §11.081 and §11.121, by failing to obtain authorization prior to appropriating any state water or beginning construction of any work designed for the storage, taking, or diversion of water; PENALTY: \$350; ENFORCEMENT COORDINATOR: Mistie Gonzales, (254) 761-3056; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(4) COMPANY: City of Gruver; DOCKET NUMBER: 2023-0101-PWS-E; IDENTIFIER: RN102672219; LOCATION: Gruver, Hansford County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(i), by failing to adopt an adequate plumbing ordinance, regulations, or service agreement with provisions for proper enforcement to ensure that neither cross-connections nor other unacceptable plumbing practices are permitted; and 30 TAC §290.46(j), by failing to complete a customer service inspection certificate prior to providing continuous water service to new construction, on any existing service when the water purveyor has reason to believe cross-connection or other potential contamination hazards exist, or after any ma-

terial improvement, correction, or addition to the private water distribution facilities; PENALTY: \$1,950; ENFORCEMENT COORDINATOR: Ashley Lemke, (512) 239-1118; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(5) COMPANY: City of Port Lavaca; DOCKET NUMBER: 2023-1545-PWS-E; IDENTIFIER: RN103098992; LOCATION: Port Lavaca, Calhoun County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; PENALTY: \$13,500; ENFORCEMENT COORDINATOR: Mason DeMasi, (210) 657-8425; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 492-3096.

(6) COMPANY: City of Silverton; DOCKET NUMBER: 2021-1631-MWD-E; IDENTIFIER: RN102078854; LOCATION: Silverton, Briscoe County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §30.350(d) and §305.125(1) and TCEQ Permit Number WQ0010803001, Special Provisions Number 2, by failing to employ or contract with one or more licensed wastewater treatment facility operators or wastewater system operations companies holding a valid Class D license or higher; PENALTY: \$16,875; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$13,500; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(7) COMPANY: Coldwater Dairy, LLC; DOCKET NUMBER: 2022-1015-PWS-E; IDENTIFIER: RN105447825; LOCATION: Stratford, Sherman County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(j) and Texas Health and Safety Code (THSC), §341.0351, by failing to notify the executive director (ED) prior to making any significant change or addition to the system's production, treatment, storage, pressure maintenance, or distribution facilities; 30 TAC §290.46(e)(4)(A) and THSC, §341.033(a), by failing to operate the facility under the direct supervision of a water works operator who holds a Class D or higher groundwater license; 30 TAC §290.46(f)(2) and (3)(A)(i)(III), by failing to maintain water works operation and maintenance records and make them readily available for review by the ED upon request; 30 TAC §290.42(j), by failing to use an approved chemical or media for the disinfection of potable water that conforms to the American National Standards Institute/National Sanitation Foundation Standard 60 for Drinking Water Treatment Chemicals; 30 TAC §290.46(s)(1), by failing to calibrate the facility's well meter at least once every three years; 30 TAC §290.46(s)(2)(C)(i), by failing to verify the accuracy of the manual disinfectant residual analyzer at least once every 90 days using chlorine solutions of known concentrations; and 30 TAC §290.110(c)(4)(A), by failing to monitor the disinfectant residual at representative locations throughout the distribution system at least once every seven days; PENALTY: \$2,383; ENFORCEMENT COORDINATOR: Miles Caston, (512) 239-4593; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(8) COMPANY: Ellinger Sand and Gravel, LLC; DOCKET NUMBER: 2024-0268-WQ-E; IDENTIFIER: RN109866467; LOCATION: Fayetteville, Colorado County; TYPE OF FACILITY: aggregate production operation (APO); RULE VIOLATED: 30 TAC §342.25(d), by failing to renew the APO registration annually as regulated activities continued; PENALTY: \$5,000; ENFORCEMENT COORDINATOR: Monica Larina, (361) 881-6965; REGIONAL OFFICE: 500 North Shoreline Boulevard, Suite 500, Corpus Christi, Texas 78401-0318, (361) 881-6900.

(9) COMPANY: Equistar Chemicals, LP; DOCKET NUMBER: 2024-0059-AIR-E; IDENTIFIER: RN100221662; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), New Source Review Permit Numbers 18358 and PSDTX732M1, Special Conditions Number 1, Federal Operating Permit Number O1486, General Terms and Conditions and Special Terms and Conditions Number 17, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$13,125; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$5,250; ENFORCEMENT COORDINATOR: Matthew Perez, (325) 659-6707; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(10) COMPANY: EXPERIAN INFORMATION SOLUTIONS, INCORPORATED dba Experian McKinney Data Center; DOCKET NUMBER: 2023-0124-PST-E; IDENTIFIER: RN101563534; LOCATION: McKinney, Collin County; TYPE OF FACILITY: emergency generator facility; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: \$3,375; ENFORCEMENT COORDINATOR: Tiffany Chu, (817) 588-5891; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: FLORENCE MIKESKA; DOCKET NUMBER: 2023-1158-WR-E; IDENTIFIER: RN111522520; LOCATION: Rogers, Bell County; TYPE OF FACILITY: operator; RULES VIOLATED: 30 TAC §297.11 and TWC, §11.081 and §11.121, by failing to obtain authorization prior to diverting, storing, impounding, taking, or using state water, or beginning construction of any work designed for the storage, taking, or diversion of water; PENALTY: \$875; ENFORCEMENT COORDINATOR: Mistie Gonzales, (254) 761-3056; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(12) COMPANY: H and K BEVERAGE CORPORATION dba Kwik Stop Beer and Wine C; DOCKET NUMBER: 2023-1156-PST-E; IDENTIFIER: RN101545218; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank for releases in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: \$3,375; ENFORCEMENT COORDINATOR: Ramyia Wendt, (512) 239-2513; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(13) COMPANY: HCH SANTA FE LLC; DOCKET NUMBER: 2024-0303-WQ-E; IDENTIFIER: RN111835997; LOCATION: Cleveland, Liberty County; TYPE OF FACILITY: construction site; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge stormwater associated with construction activities; PENALTY: \$2,625; ENFORCEMENT COORDINATOR: Nancy Sims, (512) 239-5053; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(14) COMPANY: Jahangir Alam dba Super Food Mart; DOCKET NUMBER: 2024-0250-PST-E; IDENTIFIER: RN101533263; LOCATION: Denton, Texas, Denton County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: \$3,375; ENFORCEMENT COORDINATOR: Ramyia

Wendt, (512) 239-2513; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(15) COMPANY: Jeffery Dale Hatch; DOCKET NUMBER: 2023-1285-PST-E; IDENTIFIER: RN101897973; LOCATION: Newton, Newton County; TYPE OF FACILITY: temporarily out-of-service underground storage tank (UST) system; RULES VIOLATED: 30 TAC §334.7(d)(1)(A) and (B), and (3), by failing to provide an amended registration for any change or additional information regarding the UST system within 30 days of the occurrence of the change or addition; 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; and 30 TAC §334.602(a), by failing to designate, train, and certify at least one named individual for each class of operator, Class A, Class B, and Class C, for the facility; PENALTY: \$7,500; ENFORCEMENT COORDINATOR: Lauren Little, (817) 588-5888; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: John A. Taylor; DOCKET NUMBER: 2023-0922-WQ-E; IDENTIFIER: RN106608433; LOCATION: Fredericksburg, Gillespie County; TYPE OF FACILITY: aggregate production operation (APO); RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to maintain authorization to discharge stormwater associated with industrial activities; and 30 TAC §342.25(d), by failing to renew the APO registration annually as regulated activities continued; PENALTY: \$36,250; ENFORCEMENT COORDINATOR: Nancy Sims, (512) 239-5053; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(17) COMPANY: Kinloch Realty LLC; DOCKET NUMBER: 2023-0390-EAQ-E; IDENTIFIER: RN109429381; LOCATION: San Marcos, Hays County; TYPE OF FACILITY: trucking company; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of an Edwards Aquifer Protection Plan prior to commencing a regulated activity over the Edwards Aquifer Transition Zone; PENALTY: \$1,625; ENFORCEMENT COORDINATOR: Megan Crinklaw, (512) 239-1129; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(18) COMPANY: Linda Wiley dba Northview Mobile Home Park; DOCKET NUMBER: 2022-1097-PWS-E; IDENTIFIER: RN105855308; LOCATION: Amarillo, Potter County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(j) and Texas Health and Safety Code (THSC), §341.0351, by failing to notify the executive director (ED) prior to making any significant change or addition to the system's production, treatment, storage, pressure maintenance, or distribution facilities; 30 TAC §290.41(c)(3)(N), by failing to provide a flow measuring device for each well to measure production yields and provide for the accumulation of water production data; 30 TAC §290.41(c)(3)(O), by failing to protect all well units with an intruder-resistant fence with a lockable gate or enclose the well in a locked and ventilated well house to exclude possible contamination or damage to the facilities by trespassers; 30 TAC §290.42(l), by failing to compile and maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.45(b)(1)(B)(i) and THSC, §341.0315(c), by failing to provide a well capacity of 0.6 gallons per minute per connection; 30 TAC §290.45(b)(1)(B)(iv) and THSC, §341.0315(c), by failing to provide a pressure tank capacity of 20 gallons per connection; 30 TAC §290.46(d)(2)(A) and §290.110(b)(4) and THSC, §341.0315(c), by failing to maintain a disinfectant residual of at least 0.2 milligrams per liter of free chlorine throughout the distribution system at all times;

30 TAC §290.46(f)(2) and (3)(A)(i)(III), by failing to maintain water works operation and maintenance records and make them readily available for review by the ED upon request; 30 TAC §290.46(n)(3), by failing to keep on file copies of well completion data as defined in 30 TAC §290.41(c)(3)(A) for as long as the well remains in service; 30 TAC §290.46(t), by failing to post a legible sign at the facility's production, treatment and storage facilities that contains the name of the facility and an emergency telephone number where a responsible official can be contacted; and 30 TAC §290.110(c)(4)(A), by failing to monitor the disinfectant residual at representative locations throughout the distribution system at least once every seven days; PENALTY: \$6,363; ENFORCEMENT COORDINATOR: Claudia Bartley, (512) 239-1116; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(19) COMPANY: Nutrien US LLC; DOCKET NUMBER: 2023-1577-AIR-E; IDENTIFIER: RN101865715; LOCATION: Borger, Hutchinson County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), New Source Review Permit Numbers 19778 and PSDTX1326, Special Conditions Number 1, Federal Operating Permit (FOP) Number O1689, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 10, and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §101.201(b)(1)(G) and (H) and §122.143(4), FOP Number O1689, GTC and STC Number 2.F, and THSC, §382.085(b), by failing to identify all required information on the final record for a reportable emissions event; PENALTY: \$30,500; ENFORCEMENT COORDINATOR: Trenton White, (903) 535-5155; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(20) COMPANY: Patton Springs Independent School District; DOCKET NUMBER: 2022-0270-PWS-E; IDENTIFIER: RN101229169; LOCATION: Afton, Dickens County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(2) and Texas Health and Safety Code (THSC), §341.031(a), by failing to comply with the acute maximum contaminant level of ten milligrams per liter (mg/L) for nitrate; and 30 TAC §290.110(b)(4) and (f)(6) and THSC, §341.0315(c), by failing to maintain a minimum disinfectant residual of 0.2 mg/L free chlorine throughout the distribution system in more than 5.0% of the samples collected each month, for any two consecutive months; PENALTY: \$8,562; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$1,712; ENFORCEMENT COORDINATOR: Christiana McCrimmon, (512) 239-2811; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(21) COMPANY: RAY ELLISON ENTERPRISE INCORPORATED dba Roadster 18; DOCKET NUMBER: 2023-1469-PST-E; IDENTIFIER: RN110464534; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(B) and (2)(A)(iii) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tank (UST) installed on or after January 1, 2009, in a manner which will detect a release at a frequency of at least once every 30 days by using interstitial monitoring, and failing to monitor the piping associated with the UST system installed on or after January 1, 2009, in a manner which will detect a release at a frequency of at least once every 30 days; and 30 TAC §334.606, by failing to maintain required operator training certification on-site and make it available for inspection upon request by agency personnel; PENALTY: \$5,000; ENFORCEMENT COORDINATOR: Eunice Adegelu, (512) 239-5082; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(22) COMPANY: RSK&S LLC; DOCKET NUMBER: 2023-1195-PST-E; IDENTIFIER: RN102781150; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §334.8(c)(5)(A)(i), by failing to possess a valid TCEQ Delivery Certificate prior to receiving fuel; PENALTY: \$875; ENFORCEMENT COORDINATOR: Danielle Fishbeck, (512) 239-5083; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(23) COMPANY: SILVERADO SIGNATURE HOMES, L.L.C.; DOCKET NUMBER: 2024-0200-WQ-E; IDENTIFIER: RN111834719; LOCATION: Bertram, Burnet County; TYPE OF FACILITY: construction site; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge stormwater associated with construction activities; PENALTY: \$7,253; ENFORCEMENT COORDINATOR: Kolby Farren, (512) 239-2098; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(24) COMPANY: Strategic Materials, Incorporated; DOCKET NUMBER: 2023-1398-AIR-E; IDENTIFIER: RN102563152; LOCATION: Midlothian, Ellis County; TYPE OF FACILITY: glass reclamation plant; RULES VIOLATED: 30 TAC §101.4 and Texas Health and Safety Code (THSC), §382.085(a) and (b), by failing to prevent nuisance dust conditions; 30 TAC §106.6(b) and §116.110(a), Special Exemption Registration Number 13863, Standard Exemption Registration Number 30741, and THSC, §382.0518(a) and §382.085(b), by failing to comply with all representations with regard to construction plans, operating procedures, and maximum registered emission rates, and failing to obtain authorization prior to constructing or modifying a source of air contaminants; and 30 TAC §106.8(c)(1) and §116.115(b)(2)(E)(i) and THSC, §382.085(b), by failing to maintain a copy of each authorization and make them available at the request of personnel from the commission; PENALTY: \$24,875; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(25) COMPANY: TEXAS TRANSEASTERN, INCORPORATED; DOCKET NUMBER: 2023-1184-PST-E; IDENTIFIER: RN106856883; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: common carrier; RULES VIOLATED: 30 TAC §334.5(b)(1)(A) and TWC, §26.3467(d), by failing to make available a valid, current TCEQ delivery certificate before depositing a regulated substance into a regulated underground storage tank system; PENALTY: \$6,036; ENFORCEMENT COORDINATOR: Danielle Fishbeck, (512) 239-5083; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(26) COMPANY: Top-Way Materials, LLC; DOCKET NUMBER: 2024-0287-AIR-E; IDENTIFIER: RN110073822; LOCATION: Sanger, Denton County; TYPE OF FACILITY: concrete crusher; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; PENALTY: \$2,500; ENFORCEMENT COORDINATOR: Amanda Diaz, (713) 422-8912; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(27) COMPANY: Undine Texas, LLC; DOCKET NUMBER: 2023-0622-PWS-E; IDENTIFIER: RN101204303; LOCATION: Crosby, Harris County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(b)(1)(C)(i) and Texas Health and Safety Code, §341.0315(c), by failing to provide a well capacity of 0.6 gallons per minute per connection; PENALTY: \$975; ENFORCEMENT COORDINATOR: Wyatt Throm, (512) 239-1120;



REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(28) COMPANY: Undine Texas, LLC; DOCKET NUMBER: 2023-0619-PWS-E; IDENTIFIER: RN102314697; LOCATION: Livingston, Polk County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(e)(2), (h), and (i)(3), by failing to conduct water quality parameter sampling at each of the facility's entry points and the required distribution sample sites, have the samples analyzed, and report the results to the executive director (ED) for the June 1, 2022 - November 30, 2022, monitoring period; 30 TAC §290.117(f)(3)(A), by failing to submit a recommendation to the ED for optimal corrosion control treatment within six months after the end of the January 1, 2022 - December 31, 2022, monitoring period during which the lead action level was exceeded; and 30 TAC §290.117(g)(2)(A), by failing to submit a recommendation to the ED for source water treatment within 180 days after the end of the January 1, 2022 - December 31, 2022, monitoring period during which the lead action level was exceeded; PENALTY: \$3,675; ENFORCEMENT COORDINATOR: Miles Wehner, (512) 239-2813; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(29) COMPANY: Windfern Forest Utility District; DOCKET NUMBER: 2023-0379-PWS-E; IDENTIFIER: RN102676384; LOCATION: Houston, Harris County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(j) and Texas Health and Safety Code, §341.0351, by failing to notify the Executive Director prior to making any significant change or addition to the system's production, treatment, storage, pressure maintenance, or distribution facilities; PENALTY: \$900; ENFORCEMENT COORDINATOR: Ashley Lemke, (512) 239-1118; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(30) COMPANY: XTO ENERGY INCORPORATED; DOCKET NUMBER: 2023-0884-AIR-E; IDENTIFIER: RN101954717; LOCATION: Andrews, Andrews County; TYPE OF FACILITY: oil and gas extraction tank battery; RULES VIOLATED: 30 TAC §116.115(c) and §116.615(2), Standard Permit Registration Number 145392, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$6,250; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

TRD-202402027

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: May 7, 2024



### Notice of Application and Public Hearing for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Proposed Air Quality Registration Number 175754

**APPLICATION.** Durocon Inc, 411 East Jones Street, Lewisville, Texas 75057-2613 has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Registration Number 175754 to authorize the operation of a concrete batch plant facility, consisting of two concrete batch plants. The facility is proposed to be located using the following driving directions: from the intersection of Wall Street Road and Farm-to-Market Road 121 (West Main Street), go north on Wall Street Road for approximately 0.96 miles, site will be on the left, Gunter, Grayson County, Texas 75058. This application is being processed in an expedited manner, as allowed by the commission's rules in 30 Texas Administrative

Code, Chapter 101, Subchapter J. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. <https://gisweb.tceq.texas.gov/LocationMapper/?marker=-96.780518,33.470075&level=13>. This application was submitted to the TCEQ on March 21, 2024. The primary function of this plant is to manufacture concrete by mixing materials including (but not limited to) sand, aggregate, cement and water. The executive director has determined the application was technically complete on April 23, 2024.

**PUBLIC COMMENT / PUBLIC HEARING.** Public written comments about this application may be submitted at any time during the public comment period. The public comment period begins on the first date notice is published and extends to the close of the public hearing. Public comments may be submitted either in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087, or electronically at [www14.tceq.texas.gov/epic/eComment/](http://www14.tceq.texas.gov/epic/eComment/). Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record.

A public hearing has been scheduled, that will consist of two parts, an informal discussion period and a formal comment period. During the informal discussion period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the application, but comments made during the informal period will not be considered by the executive director before reaching a decision on the permit, and no formal response will be made to the informal comments. During the formal comment period, members of the public may state their comments into the official record. **Written comments about this application may also be submitted at any time during the hearing.** The purpose of a public hearing is to provide the opportunity to submit written comments or an oral statement about the application. **The public hearing is not an evidentiary proceeding.**

**The Public Hearing is to be held:**

**Monday, June 24, 2024, at 6:00 p.m.**

**Gunter Elementary School Cafeteria**

**200 West Elm Street**

**Gunter, Texas 75058**

**RESPONSE TO COMMENTS.** A written response to all formal comments will be prepared by the executive director after the comment period closes. The response, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments and the response to comments will be posted in the permit file for viewing.

The executive director shall approve or deny the application not later than 35 days after the date of the public hearing, considering all comments received within the comment period, and base this decision on whether the application meets the requirements of the standard permit.

**CENTRAL/REGIONAL OFFICE.** The application will be available for viewing and copying at the TCEQ Central Office and the TCEQ Dallas/Fort Worth Regional Office, located at 2309 Gravel Drive, Fort Worth, Texas 76118-6951, during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, beginning the first day of publication of this notice.

**INFORMATION.** If you need more information about this permit application or the permitting process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Durocon Inc, 411 East Jones Street, Lewisville, Texas 75057-2613, or by calling Mr. Josh Butler, Principal Consultant, Elm Creek Environmental, LLC at (469) 946-8195.

Notice Issuance Date: May 3, 2024

TRD-202402056

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 8, 2024



### Notice of District Petition

Notice issued May 1, 2024

TCEQ Internal Control No. D-04012024-006: Bartlett Farm, LLC, a Texas limited liability company (Petitioner) filed a petition for the creation of Bartlett Farm Municipal Utility District of Williamson County (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, § 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioners hold title to a majority in value of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 188.02 acres of land located within Williamson County, Texas; and (4) none of the land to be included within the proposed District is within the corporate limits or extraterritorial jurisdiction of any city. The petition further states that the work to be done by the proposed District shall be the purchase, construction, acquisition, repair, extension and improvement of land, easements, works, improvements, facilities, plants, equipment and appliances necessary to: (1) provide a water supply for municipal uses, domestic uses and commercial purposes; (2) collect, transport, process, dispose of and control all domestic, industrial, or communal wastes whether in fluid, solid, or composite state; (3) gather, conduct, divert and control local storm water or other local harmful excesses of water in the District and the payment of organization expenses, operational expenses during construction and interest during construction; (4) purchase, construct, acquire, provide, operate, maintain, repair, improve, extend and develop park and recreational facilities for the inhabitants of the District; (5) design, acquire, construct, finance, improve, operate, and maintain macadamized, graveled, or paved roads, or improvements in aid of those roads; and (6) to provide such other facilities, systems, plants and enterprises as shall be consonant with the purposes for which the District is created and permitted under state law. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately \$56,644,000 (\$48,655,000 for water, wastewater, and drainage plus \$7,527,500 for roads and \$461,500 for recreational facilities).

#### INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at [www.tceq.texas.gov/agency/cc/pub\\_notice.html](http://www.tceq.texas.gov/agency/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must

submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at [www.tceq.texas.gov](http://www.tceq.texas.gov).

TRD-202402051

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 8, 2024



### Notice of District Petition

Notice issued May 2, 2024

TCEQ Internal Control No. D-03082024-014 HT US 287 Owner LP, a Texas limited partnership, (Petitioner) filed a petition for creation of Myrtle Creek Municipal Management District No. 1 of Ellis County (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Texas Constitution, Chapter 375, Texas Local Government Code and Chapter 49, Texas Water Code, and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) the Petitioner represents that there are eight lienholders, GFO Home, LLC, a Texas limited liability company, Perry Homes, LLC, a Texas limited liability company, Weekley Homes, LLC, a Delaware limited liability company, Highland Homes-Dallas, LLC, a Texas limited liability company, Unionmain Homes, LLC, a Texas limited liability company, DFH Coventry, LLC, a Florida limited liability company, Impression Homes, LLC, a Texas limited liability company, and Third Coast Bank, SSB, a Texas state savings bank; (3) the proposed District will contain approximately 1,262.182 acres located within Ellis County, Texas; and (4) all of the land within the proposed District is wholly within the corporate limits of Waxahachie, Texas.

The application materials indicate that the lienholders have consented to the creation of the proposed District. By Resolution No. 1359, passed and approved on February 19, 2024, the City of Waxahachie, Texas, gave its consent to the creation of the proposed District, pursuant to Texas Water Code § 54.016. The petition further states that the proposed District will: (1) purchase, design, construct, acquire, maintain, own, operate, repair, improve, and extend a waterworks and san-

itary wastewater system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain and operate of works, improvements, facilities, plant, equipment and appliances helpful or necessary to provide more adequate drainage for the proposed District; (3) control, abate and amend local storm waters or other harmful excesses of waters; and, (4) purchase, construct, acquire, maintain, own, operate, repair, improve and extend such additional facilities, including roads, systems, plants and enterprises as shall be consistent with all of the purposes for which the proposed District is created.

According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately \$152,270,000 (\$112,700,000 for water, wastewater, and drainage plus \$39,570,000 for roads).

#### INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at [www.tceq.texas.gov/agency/cc/pub\\_notice.html](http://www.tceq.texas.gov/agency/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at [www.tceq.texas.gov](http://www.tceq.texas.gov).

TRD-202402052

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 8, 2024



Notice of District Petition

Notice issued May 2, 2024

TCEQ Internal Control No. D-04012024-001 JEN Texas 37 LLC and SC Sugar Land Development, LLC, (Petitioners) filed a petition for

creation of Fort Bend Municipal Utility District No. 269 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and Chapter 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there are lienholders, Xiao Yan Liang and Shangu Yang, on the property to be included in the proposed District and the lienholders consent to the creation of the proposed District; (3) the proposed District will contain approximately 960.4 acres located within Fort Bend County, Texas; and (4) the land within the proposed District is completely within the extraterritorial jurisdiction limits of the City of Sugar Land. By Resolution No. 24-02, passed and approved on February 6, 2024, the City of Sugar Land, Texas, gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016. The petition further states that the proposed District will: (1) purchase, construct, acquire, provide, operate, maintain, repair, improve, or extend inside or outside of its boundaries, any and all works, improvements, facilities, plants, equipment, and appliances necessary or helpful to supply and distribute water for municipal, domestic, industrial, or commercial purposes or provide adequate drainage for the proposed District; (2) collect, transport, process, dispose of and control domestic, industrial, or commercial wastes; (3) gather, conduct, divert, abate, amend and control local storm water or other local harmful excesses of water in the proposed District; and (4) purchase, construct, acquire, provide, operate, maintain, repair, improve, or extend inside or outside of its boundaries such additional facilities, systems, plants, and enterprises, as shall be consonant with the purposes for which the proposed District is created. Additional work and services which may be performed by the proposed District include the purchase, construction, acquisition, provision, operation, maintenance, repair, improvement, extension and development of a roadway system for the District. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately \$301,400,000 for water, wastewater, drainage, roads, and recreation. It is noted that the engineering report indicates that the estimated cost of said project will be approximately \$262,375,000 (\$157,820,000 for water, wastewater, and drainage, \$61,155,000 for roads, and \$43,400,000 for recreation).

#### INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at [www.tceq.texas.gov/agency/cc/pub\\_notice.html](http://www.tceq.texas.gov/agency/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and

will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at [www.tceq.texas.gov](http://www.tceq.texas.gov).

TRD-202402053

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 8, 2024



### Notice of District Petition

Notice issued May 8, 2024

TCEQ Internal Control No. D-03082024-017: Schoolfield-Groundwork Venture, LLC, a Texas limited liability company, (Petitioner) filed a petition for creation of East Travis County Municipal Management District No. 1 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapter 375, Texas Local Government Code; Chapter 49 of the Texas Water Code; Title 30, Chapter 293 of the Texas Administrative Code; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there is one lienholder, Origin Bank, on the property to be included in the proposed District and information provided indicates that the lienholder consents to the creation of the proposed District; (3) the proposed District will contain approximately 489.9105 acres located within Travis County, Texas; and (4) none of the land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any city. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain, own, operate, repair, improve and extend a waterworks and wastewater system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the proposed District; (3) control, abate, and amend local storm waters or other harmful excesses of water; and (4) purchase, construct, acquire, improve, maintain, and operate such additional facilities, systems, plants, and enterprises, and roads, parks and recreation facilities, as shall be consonant with all of the purposes for which the proposed District is created. Additionally, the proposed District will provide supplemental services to preserve, maintain, and enhance the economic health and vitality of the proposed District as a community and business center; and to provide service authorized under the laws governing the proposed District to serve the land. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioner that the cost of said project will be approximately \$164,900,000 (\$111,400,000 for water, wastewater, and drainage, \$53,000,000 for roads, and \$500,000 for recreational facilities).

#### INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at [www.tceq.texas.gov/agency/cc/pub\\_notice.html](http://www.tceq.texas.gov/agency/cc/pub_notice.html) or call the Office of

the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at [www.tceq.texas.gov](http://www.tceq.texas.gov).

TRD-202402057

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 8, 2024



### Notice of District Petition

Notice issued May 8, 2024

TCEQ Internal Control No. D-04012024-002: PHHOU-Cane Island 178, LLC, Chesmar Homes, LLC, and Drees Custom Homes, L.P., (Petitioners) filed a petition for creation of Waller County Municipal Utility District No. 58 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioners hold title to a majority in value of the land to be included in the proposed District; (2) there are three lienholders, PHHOU-Cane Island 178, LLC, Chesmar Homes, LLC, and Drees Custom Homes, L.P., on the property to be included in the proposed District and the lienholders consent to the creation of the proposed District; (3) the proposed District will contain approximately 178.71 acres located within Waller County, Texas; and (4) none of the land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any city. The petition further states that the proposed District will: (1) purchase, design, construct, acquire, maintain, own, operate, repair, improve, and extend a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants,

equipment, and appliances helpful or necessary to provide more adequate drainage for the proposed District; (3) control, abate, and amend local storm waters or other harmful excesses of water; and (4) purchase, construct, acquire, maintain, own, operate, repair, improve, and extend such additional facilities, including roads, parks and recreation facilities, systems, plants, and enterprises as shall be consonant with all of the purposes for which the proposed District is created. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately \$50,735,000 (\$38,300,000 for water, wastewater, and drainage, \$6,485,000 for roads, and \$5,950,000 for recreation).

#### INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at [www.tceq.texas.gov/agency/cc/pub\\_notice.html](http://www.tceq.texas.gov/agency/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at [www.tceq.texas.gov](http://www.tceq.texas.gov).

TRD-202402058  
Laurie Gharis  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: May 8, 2024



#### Notice of District Petition

Notice issued May 8, 2024

TCEQ Internal Control No. D-03222024-045: CB/Fossil Springs, Ltd., a Texas limited partnership and DRP TX 3, LLC, a Delaware limited partnership (Petitioners) filed a petition for creation of Guadalupe County Municipal Utility District No. 11 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was

filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioners hold title to a majority in value of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District (3) the proposed District will contain approximately 205.312 acres located within Guadalupe County, Texas; and (4) all of the land within the proposed District is wholly within the extraterritorial jurisdiction of City of New Braunfels, Texas. The territory to be included in the proposed District is located wholly within the extraterritorial jurisdiction of the City of New Braunfels, Guadalupe County, Texas (the "City"). In accordance with Local Government Code §42.042 and Texas Water Code §54.016, the Petitioners submitted a petition to the City, requesting the City's consent to the creation of the District. After more than 90 days passed without receiving consent, the Petitioners submitted a petition to the City to provide water and sewer services to the proposed District. The 120-day period for reaching a mutually agreeable contract as established by the Texas Water Code §54.016(c) expired and the information provided indicates that the Petitioners and the City have not executed a mutually agreeable contract for service. Pursuant to Texas Water Code §54.016(d), failure to execute such an agreement constitutes authorization for the Petitioners to initiate proceedings to include the land within the proposed District. The petition further states that the proposed District will: (1) provide a water supply for municipal uses, domestic uses and commercial purposes; (2) collect, transport, process, dispose of and control all domestic, industrial, or communal wastes whether in fluid, solid, or composite state; (3) gather, conduct, divert and control local storm water or other local harmful excesses of water in the proposed District and the payment of organization expenses, operational expenses during construction and interest during construction; (4) design, acquire, construct, finance, improve, operate, and maintain macadamized, graveled, or paved roads, or improvements in aid of those roads; and, (5) provide such other facilities, systems, plants and enterprises as shall be consonant with the purposes for which the proposed District is created and permitted under state law. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately \$50,640,000 (\$34,640,000 for water, wastewater, and drainage plus \$16,000,000 for roads).

#### INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at [www.tceq.texas.gov/agency/cc/pub\\_notice.html](http://www.tceq.texas.gov/agency/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing re-

quest is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at [www.tceq.texas.gov](http://www.tceq.texas.gov).

TRD-202402059

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 8, 2024



### Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **June 18, 2024**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on June 18, 2024**. The designated attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: CANTON BUSINESS LLC dba Canton Food Mart; DOCKET NUMBER: 2022-0974-PST-E; TCEQ ID NUMBER: RN101443539; LOCATION: 310 East Highway 243, Canton, Van Zandt County; TYPE OF FACILITY: underground storage tank (UST) and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3467(a) and 30 TAC §334.8(c)(5)(A)(i), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at

least 30 days before the expiration date; and TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: \$34,125; STAFF ATTORNEY: Taylor Pack Ellis, Litigation, MC 175, (512) 239-6860; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(2) COMPANY: S F K R LLC; DOCKET NUMBER: 2019-1716-PST-E; TCEQ ID NUMBER: RN101446672; LOCATION: 801 South Southeast Loop 323, Tyler, Smith County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.7(d)(1)(A) and (B) and (3), by failing to provide an amended registration for any change or additional information regarding the UST system within 30 days from the date of the occurrence of the change or addition or within 30 days from the date on which the owner or operator first became aware of the change or addition; TWC, §26.3475(c)(2), 30 TAC §334.42(i), and TCEQ Agreed Order Docket Number 2018-0430-PST-E, Ordering Provision Number 2.a., by failing to inspect all sumps, manways, overspill containers, or catchment basins associated with a UST system at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid tight; TWC, §26.3475(c)(1), 30 TAC §334.50(b)(1)(A), and TCEQ Agreed Order Docket Number 2018-0430-PST-E, Ordering Provision Number 2.b., by failing to monitor the USTs in a manner which will detect a release at a frequency of at least once every 30 days; and 30 TAC §334.54(b)(2), by failing to maintain all piping, pumps, manways, tank access points, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons; PENALTY: \$30,516; STAFF ATTORNEY: Taylor Pearson, Litigation, MC 175, (512) 239-5937; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

TRD-202402028

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: May 7, 2024



### Notice of Public Meeting for TPDES Permit for Industrial Wastewater Renewal Permit No. WQ0005213000

**APPLICATION.** City of Abilene, P.O. Box 60, Abilene, Texas 79604, which owns and proposes to operate the Possum Kingdom Raw Water Roughing Facility, a reverse osmosis water treatment facility, has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0005213000, which authorizes the discharge of water treatment waste at an annual average flow not to exceed 1,510,000 gallons per day via Outfall 001. The TCEQ received this application on March 7, 2023.

The facility is located at 105 East Elliot Street, in the City of Breckenridge, Stephens County, Texas 76424. This link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice. For the exact location, refer to the application.

<https://gisweb.tceq.texas.gov/LocationMapper/?marker=-98.9017,32.7512&level=18>

The effluent is proposed to be discharged directly to Possum Kingdom Lake in Segment No. 1207 of the Brazos River Basin. The designated

uses for Segment No. 1207 are primary contact recreation, public water supply, and high aquatic life use.

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements.

**ALTERNATIVE LANGUAGE NOTICE.** Alternative language notice in Spanish is available at <https://www.tceq.texas.gov/permitting/wastewater/plain-language-summaries-and-public-notices>. El aviso de idioma alternativo en español está disponible en <https://www.tceq.texas.gov/permitting/wastewater/plain-language-summaries-and-public-notices>.

**PUBLIC COMMENT / PUBLIC MEETING.** A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all timely, relevant and material, or significant comments will be prepared by the Executive Director. All formal comments will be considered before a decision is reached on the permit application. A copy of the written response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

**The Public Meeting is to be held:**

**Tuesday, June 18, 2024 at 7:00 p.m.**

**Possum Kingdom Lake Chamber of Commerce**

**362 North FM 2353**

**Graford, Texas 76449**

**INFORMATION.** Members of the public are encouraged to submit written comments anytime during the meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at [www.tceq.texas.gov/goto/comment](http://www.tceq.texas.gov/goto/comment). If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. *Si desea información en español, puede llamar (800) 687-4040.* General information about the TCEQ can be found at our web site at <https://www.tceq.texas.gov>.

The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at the Breckenridge Public Library, 209 North Breckenridge Avenue, Breckenridge, Texas. Further information may also be obtained from the City of Abilene at the address stated above or by calling Mr. Rodney Taylor, Director of Water Utilities, at (325) 676-6452.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least five business days prior to the meeting.

Issued: May 02, 2024

TRD-202402050

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 8, 2024

◆ ◆ ◆  
**Notice of Water Quality Application**

The following notice was issued on May 02, 2024:

The following notice does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711-3087 WITHIN (30) DAYS FROM THE DATE THIS NOTICE IS ISSUED.

**INFORMATION SECTION**

Southwest Shipyard LP, which operates Southwest Shipyard, a marine vessel cleaning and repair facility, has applied to the TCEQ for a minor amendment to Texas Pollutant Discharge Elimination System Permit No. WQ0002605000 to immediately incorporate the sublethal whole effluent toxicity compliance limit for *Americamysis Bahía* (Mysid Shrimp) to the permit in lieu of the July 30, 2024 compliance date. The draft permit authorizes the discharge of treated wastewaters, which include centralized waste treatment wastewaters, barge wash water, third party biotreatable wastewater, domestic wastewater, utility wastewaters (vacuum tower cooling water and boiler blowdown), steam condensate, barge ballast water, water treatment wastes, fresh water filter backwash, and contaminated stormwater runoff at a daily average flow not to exceed 200,000 gallons per day via Outfall 001; dry dock runoff and stormwater runoff on an intermittent and flow-variable basis via Outfalls 002, 003, 004, and 005; and barge ballast water on an intermittent and flow-variable basis via Outfall 006. The facility is located at 18310 Market Street, in the City of Channelview, Harris County, Texas 77530.

TRD-202402055

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 8, 2024

◆ ◆ ◆  
**Notices Issued May 02, 2024**

**NOTICE OF AN AMENDMENT TO A CERTIFICATE OF ADJUDICATION**

**APPLICATION NO. 19-2179C**

A.D.D. Corp., Applicant, P.O. Box 2988, Port Aransas, Texas 78373, has applied to amend Certificate of Adjudication No. 19-2179 to add a diversion reach on the San Antonio River, San Antonio River Basin for mining purposes in Wilson and Karnes counties. More information on the application and how to participate in the permitting process is given below.

The application and partial fees were received on February 2, 2021. Additional information was received on April 7 and April 13, 2021, and remaining fees were received on April 13, 2021. The application was declared administratively complete and filed with the Office of the Chief Clerk on April 23, 2021.

The Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if granted,

would contain special conditions, including but not limited to stream-flow restrictions. The application, technical memoranda, and Executive Director's draft permit are available for viewing on the TCEQ web page at: [https://www.tceq.texas.gov/permitting/water\\_rights/wr-permitting/view-wr-pend-apps](https://www.tceq.texas.gov/permitting/water_rights/wr-permitting/view-wr-pend-apps) Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk by phone at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711.

Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by May 20, 2024. A public meeting is intended for the taking of public comment and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

The TCEQ may grant a contested case hearing on this application if a written hearing request is filed by May 20, 2024. The Executive Director may approve the application unless a written request for a contested case hearing is filed by May 20, 2024.

To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions for the requested permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the permit and will forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments, or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at <https://www14.tceq.texas.gov/epic/eComment/> by entering ADJ 2179 in the search field. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address.

For additional information, individual members of the general public may contact the Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our web site at [www.tceq.texas.gov](http://www.tceq.texas.gov). Si desea información en español, puede llamar al (800) 687-4040 o por el internet al <http://www.tceq.texas.gov>.

TRD-202402054

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 8, 2024



## Tax Relief for Pollution Control Property Advisory Committee Request for Nominations

The Texas Commission on Environmental Quality (TCEQ) is currently accepting nominations for one member to the Tax Relief for Pollution Control Property Advisory Committee (advisory committee) to serve

the remainder of the term expiring December 31, 2025. This position is reserved for an appraisal district representative.

In 1993, Texas voters approved Proposition 2 (Prop 2), amending the Texas Constitution to authorize the Texas Legislature to exempt from ad valorem taxation "all or part of real and personal property used, constructed, acquired, or installed wholly or partly to meet or exceed rules or regulations adopted by an environmental protection agency of the United States, this state, or a political subdivision of this state for the prevention, monitoring, control, or reduction of air, water, or land pollution." The Texas Legislature implemented Prop 2 by enacting Texas Tax Code, §11.31. TCEQ adopted 30 Texas Administrative Code (TAC) Chapter 17, implementing Texas Tax Code, §11.31 and establishing the procedures for obtaining a "positive use determination" under the Tax Relief for Pollution Control Property Program. The goal of the program is to provide tax relief to individuals, companies, and political subdivisions that make capital investments to meet or exceed federal, state, or local environmental rules or regulations.

In 2009, Texas Tax Code, §11.31 was amended to require TCEQ to form a permanent advisory committee to make recommendations to TCEQ commissioners on matters relating to property tax exemptions for pollution control property. TCEQ commissioners appoint advisory committee members to serve four-year staggered terms.

One of the advisory committee members, an appraisal district representative, whose term expires on December 31, 2025, resigned his position effective January 8, 2024. Under 30 TAC §5.7, if a member of the advisory committee resigns prior to the expiration of his or her term, the commission shall appoint a replacement who shall serve the remainder of the unexpired term.

The nomination form and instructions are provided on TCEQ's website at [https://www.tceq.texas.gov/airquality/taxrelief/advisory\\_group.html](https://www.tceq.texas.gov/airquality/taxrelief/advisory_group.html). Completed nomination forms must be submitted to TCEQ by 5:00 p.m. CDT on June 18, 2024. Nominations received after that date will only be considered if there are insufficient qualified nominees. Individuals may nominate themselves or someone else to the advisory committee, but TCEQ asks that only interested persons be nominated.

Questions regarding the advisory committee nomination process should be directed by phone to Melissa Altman of the Tax Relief Program at (512) 239-1407 or by e-mail to [txrelief@tceq.texas.gov](mailto:txrelief@tceq.texas.gov).

*Si desea información en español, puede llamar al 1-800-687-4040.*

TRD-202402026

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: May 6, 2024



## Texas Ethics Commission

List of Delinquent Filers

### LIST OF LATE FILERS

Below is a list from the Texas Ethics Commission naming the filers who failed to pay the penalty fine for failure to file the report, or filing a late report, in reference to the specified filing deadline. If you have any questions, you may contact Dave Guilianelli at (512) 463-5800.

**Deadline: Lobby Activities Report due January 10, 2023**

#00068809 - Ricardo Lopez-Guerra, P.O. Box 1765, Austin, Texas, 78767



#00086666 - Texas AFT, 912 S. Hwy 183 100A, Austin, Texas, 78741  
#00086175 - Alejandro D. Pena, 912 S. Hwy 183 Ste. 100-A, Austin, Texas, 78741  
#00056018 - Patricia Quinzi, 912 S Hwy 183, Suite 100-A, Austin, Texas, 78741  
#00084838 - Josh Leftwich, P.O. Box 459, Round Rock, Texas, 78680  
#00013775 - Jeri Stone, P.O. Box 1489, Austin, Texas, 78767  
#00070863 - Pamela McPeters, 1417 Westmoor Drive, Austin, Texas, 78723  
#00065091 - Paige Williams, P.O. Box 1489, Austin, Texas, 78767  
#00086940 - Matthew C. Posey, 4500 Steiner Ranch Blvd. #1920, Austin, Texas, 78732  
#00051002 - Anthony Haley, 1212 Guadalupe, Ste. 1003, Austin, Texas, 78701  
#00060644 - David M. Gonzalez, 3011 N. Lamar, Suite 200, Austin, Texas, 78705  
#00068871 - Angela Hale, 2918 RR 620 N. 132, Austin, Texas, 78734  
#00013773 - Lonnie F. Hollingsworth Jr., P.O. Box 1489, Austin, Texas, 78767  
#00025867 - Holly Tabel Eaton, P.O. Box 1489, Austin, Texas, 78767  
#00070615 - Nathaniel Walker, 7704 Northcrest Blvd #A, Austin, Texas, 78752  
#00050826 - Michael J. Warner, 816 Congress Avenue, Suite 1200, Austin, Texas, 78701  
#00057208 - Daniel Brookhart Mays, 1220 Colorado Street, Suite 100, Austin, Texas, 78701  
#00086765 - Casey E. Christman, P.O. Box 920843, Houston, Texas, 77292  
#00013484 - Ann Fickel, P.O. Box 1489, Austin, Texas, 78767  
#00083212 - David Feigen, 1016 La Posada Drive #240, Austin, Texas, 78752  
#00087382 - Indigo B. Pearson, 1122 Colorado Street, #2323, Austin, Texas, 78701  
#00069003 - Byron Andrew Campbell, 6508 Kenwood Ave., Dallas, Texas, 75214  
#00060971 - Nick James, 1122 Colorado Street, Ste 102, Austin, Texas, 78701  
#00037198 - Mark Seale, 10802 Scotland Well Drive, Austin, Texas, 78750  
#00087087 - Amy D. Harrison, 9111 La Fauna View, Austin, Texas, 78737  
#00081955 - Kristin O. McGuire, 5920 W. William Cannon Dr.Bldg. 7, Ste. 103, Austin, Texas, 78749  
#00083428 - Daniel Smeraldo III, 1220 Colorado, Suite 100, Austin, Texas, 78701  
#00010107 - Donald M. Ward, P.O. Box 9128, Austin, Texas, 78766  
#00086621 - Malcolm B. Coon, c/o Grid United1717 W. Loop South Ste. 1800, Houston, Texas, 77027  
#00085137 - Michael A. Evans Jr., 13500 Lyndhurst St. #3094, Austin, Texas, 78717  
#00085723 - Lauren E. Guild, 1106 Lavaca St.#202, Austin, Texas, 78701  
#00024922 - Karen Kenney Reagan, 1122 Colorado, Suite 102, Austin, Texas, 78701  
#00056550 - Nanette Forbes, 1210 San Antonio, Austin, Texas, 78701  
**Deadline: Lobby Activities Report due February 10, 2023**  
#00053923 - Steven C. Ray, P.O. Box 742, Corpus Christi, Texas, 78403  
#00080771 - J.P. Morgan Securities LLC, Attn: Curtis Flowers, 600 Travis St, 20th Floor, Houston, Texas, 77002  
#00010233 - Eric F. Craven, 1122 Colorado Street, 24th Floor, Austin, Texas, 78701  
#00013547 - Chuck Rice Jr., 4205 Wild Iris Lane, Austin, Texas, 78727  
#00087073 - Mason J. Whiteside, 706 Jetta Court, Austin, Texas, 78753  
**Deadline: Lobby Activities Report due March 10, 2023**  
#00053923 - Steven C. Ray, P.O. Box 742, Corpus Christi, Texas, 78403  
#00087068 - John M. Litzler, 200 Heritage Dr., Austin, Texas, 78737  
#00013547 - Chuck Rice Jr., 4205 Wild Iris Lane, Austin, Texas, 78727  
#00070240 - Jo Cassandra Cuevas, 1220 Colorado Street, Suite 310, Austin, Texas, 78701  
#00083603 - Michaela Bennett, 5802 Republic of Texas Blvd., Austin, Texas, 78735  
#00068604 - Melissa R. Hamilton, 919 Congress Avenue, Suite 750, Austin, Texas, 78701  
#00052906 - Leticia M. Caballero, 2805 Onslow Dr., Austin, Texas, 78748  
#00080964 - Ernest Gonzalez Jr., 15834 Secret Trails, San Antonio, Texas, 78247  
#00065032 - Randy Cubriel, 919 Congress Ave. Suite 1400, Austin, Texas, 78701  
**Deadline: Lobby Activities Report due April 10, 2023**  
#00065389 - Laurie Vanhooose, 2317 Amur Drive, Austin, Texas, 78745  
#00087239 - Prusha Azad Hasan, 200 Liberty Street, New York City, New York, 10281  
#00087343 - Kelbi R. Culwell, 3700 Bay Area Blvd. MC: HB4-22, Houston, Texas, 77058  
#00085414 - Shekira C. Dennis, 2368A Rice Blvd. #197, Houston, Texas, 77005  
#00084805 - J. T. Edwards, 601 23rd St. Rear, Suite 1047, Galveston, Texas, 77550  
#00039217 - William J. Stevens, 6704 Menchaca #16, Austin, Texas, 78745  
#00086001 - Richard J. Ybarra, 3401 Padre Blvd, Suite A, South Padre Island, Texas, 78597  
#00068604 - Melissa R. Hamilton, 919 Congress Avenue, Suite 750, Austin, Texas, 78701  
#00070514 - Dallas S. Jones, 5445 Almeda, Suite 307, Houston, Texas, 77004

#00013547 - Chuck Rice Jr., 4205 Wild Iris Lane, Austin, Texas, 78727

#00053923 - Steven C. Ray, P.O. Box 742, Corpus Christi, Texas, 78403

**Deadline: Lobby Activities Report due May 10, 2023**

#00083603 - Michaela Bennett, 5802 Republic of Texas Blvd., Austin, Texas, 78735

#00019723 - Hugo Berlanga, 28 Hewit Drive, Corpus Christi, Texas, 78404

#00053923 - Steven C. Ray, P.O. Box 742, Corpus Christi, Texas, 78403

#00085414 - Shekira C. Dennis, 2368A Rice Blvd. #197, Houston, Texas, 77005

#00087583 - Dianna L. Greenwood, 132 Kamakoa Lane, Bastrop, Texas, 78602

**Deadline: Lobby Activities Report due June 12, 2023**

#00050816 - Hans Klingler, 101 Cheerful Court, Austin, Texas, 78734

#00087239 - Prusha Azad Hasan, 200 Liberty Street, New York City, New York, 10281

#00085414 - Shekira C. Dennis, 2368A Rice Blvd. #197, Houston, Texas, 77005

#00087583 - Dianna L. Greenwood, 132 Kamakoa Lane, Bastrop, Texas, 78602

#00020036 - Frank J. Corte Jr., P.O. Box 690474, San Antonio, Texas, 78269

#00053923 - Steven C. Ray, P.O. Box 742, Corpus Christi, Texas, 78403

#00068604 - Melissa R. Hamilton, 919 Congress Avenue, Suite 750, Austin, Texas, 78701

#00085214 - Nicholas Allen Tuccio, 7917 Comfort Cove, Austin, Texas, 78731

#00087674 - Faith Elwonger, 1000 Winchester Street, Suite 301, Fredericksburg, Virginia, 22401

#00086456 - Debra G. Richmond, 6303 Ames Ct., Austin, Texas, 78739

#00070672 - Lorena I. Campos, 1005 Congress Avenue Suite 152, Austin, Texas, 78701

#00086001 - Richard J. Ybarra, 3401 Padre Blvd, Suite A, South Padre Island, Texas, 78597

#00081588 - Sebastien Laroche, 4507 Medical Drive, San Antonio, Texas, 78229

**Deadline: Lobby Activities Report due July 10, 2023**

#00070514 - Dallas S. Jones, 5445 Alameda Suite 307, Houston, Texas, 77004

#00069157 - Aidan Alvarado, 113 Michoacan Lp, Laredo, Texas, 78045

#00035757 - Darryl B. Carter, 4828 Loop Central, Suite 600, Houston, Texas, 77081

#00083691 - Beth Corbett, Central Texas Food Bank 6500 Metropolis Dr., Austin, Texas, 78744

#00087343 - Kelbi R. Culwell, 3700 Bay Area Blvd. MC: HB4-22, Houston, Texas, 77058

#00053527 - Lucien Bellsnyder, 360 Nueces, #1415, Austin, Texas, 78701

#00084012 - Laura Atlas Kravitz, 1621 E 6th St., Apt 1453, Austin, Texas, 78702

#00070672 - Lorena I. Campos, 1005 Congress Avenue, Suite 152, Austin, Texas, 78701

#00083296 - Rachel Hill, 507 W. 15th Street, Austin, Texas, 78701

#00081588 - Sebastien Laroche, 4507 Medical Drive, San Antonio, Texas, 78229

#00085414 - Shekira C. Dennis, 2368A Rice Blvd. #197, Houston, Texas, 77005

**Deadline: Lobby Activities Report due August 10, 2023**

#00070240 - Jo Cassandra Cuevas, 1220 Colorado Street, Suite 310, Austin, Texas, 78701

#00053923 - Steven C. Ray, P.O. Box 742, Corpus Christi, Texas, 78403

#00084012 - Laura Atlas Kravitz, 1621 E 6th St., Apt 1453, Austin, Texas, 78702

#00039065 - Janis L. Carter, 213 Rio Bravo Road, Georgetown, Texas, 78628

#00070213 - Amy Lauren DeWeese, 1703 W. 5th Street, Suite 500, Austin, Texas, 78703

#00053527 - Lucien Bellsnyder, 360 Nueces, #1415, Austin, Texas, 78701

#00070672 - Lorena I. Campos, 1005 Congress Avenue, Suite 152, Austin, Texas, 78701

#00083296 - Rachel Hill, 507 W. 15th Street, Austin, Texas, 78701

#00081588 - Sebastien Laroche, 4507 Medical Drive, San Antonio, Texas, 78229

#00087343 - Kelbi R. Culwell, 3700 Bay Area Blvd. MC: HB4-22, Houston, Texas, 77058

#00085414 - Shekira C. Dennis, 2368A Rice Blvd. #197, Houston, Texas, 77005

**Deadline: Lobby Activities Report due September 11, 2023**

#00020036 - Frank J. Corte Jr., P.O. Box 690474, San Antonio, Texas, 78269

#00086001 - Richard J. Ybarra, 3401 Padre Blvd, Suite A, South Padre Island, Texas, 78597

#00029938 - Nora Del Bosque, 7704 Chimney Corners, Austin, Texas, 78731

#00065427 - Jerry Philips, P.O. Box 13506, Capitol Station, Austin, Texas, 78711

#00086723 - Jeff R. Miller, 1115 San Jacinto Blvd., Ste 110, Austin, Texas, 78701

#00039065 - Janis L. Carter, 213 Rio Bravo Road, Georgetown, Texas, 78628

#00086669 - Joseph W. Miller, 300 Independence Ave. SE, Washington DC, 20003

#00083296 - Rachel Hill, 507 W. 15th Street, Austin, Texas, 78701

#00070475 - Colin Parrish, 1122 Colorado Street, Suite 320, Austin, Texas, 78701

#00086456 - Debra G. Richmond, 6303 Ames Ct., Austin, Texas, 78739

#00070672 - Lorena I. Campos, 1005 Congress Avenue, Suite 152, Austin, Texas, 78701

#00081588 - Sebastien Laroche, 4507 Medical Drive, San Antonio, Texas, 78229

#00070240 - Jo Cassandra Cuevas, 1220 Colorado Street, Suite 310, Austin, Texas, 78701

#00070514 - Dallas S. Jones, 5445 Almeda, Suite 307, Houston, Texas, 77004

#00085414 - Shekira C. Dennis, 2368A Rice Blvd. #197, Houston, Texas, 77005

**Deadline: Lobby Activities Report due October 10, 2023**

#00085211 - Pamela G. Colley, 901 Center Park Dr., Charlotte, North Carolina, 28217

#00081519 - Samuel Sheetz, 807 Brazos St. #602, Austin, Texas, 78701

#00087645 - Moises Murillo, 700 Milam Street, Suite 1900, Houston, Texas, 77002

#00083943 - Kathy MacVarish, 1200 Crown Colony Dr., Quincy, Massachusetts, 2169

#00066185 - Patrick R. Tarlton, P.O. Box 5931, Lago Vista, Texas, 78645

#00053923 - Steven C. Ray, P.O. Box 742, Corpus Christi, Texas, 78403

#00050859 - Heather Lee Harward, 3305 Silverleaf Drive, Austin, Texas, 78757

#00086723 - Jeff R. Miller, 1115 San Jacinto Blvd., Ste. 110, Austin, Texas, 78701

#00056925 - Adam Goldman, 316 W 12th St., Ste. 200, Austin, Texas, 78701

#00087343 - Kelbi R. Culwell, 3700 Bay Area Blvd. MC: HB4-22, Houston, Texas, 77058

#00087579 - Pedro J. Solis, 2407 E. Cesar Chavez Street, Austin, Texas, 78702

#00081588 - Sebastien Laroche, 4507 Medical Drive, San Antonio, Texas, 78229

#00039065 - Janis L. Carter, 213 Rio Bravo Road, Georgetown, Texas, 78628

#00085414 - Shekira C. Dennis, 2368A Rice Blvd. #197, Houston, Texas, 77005

**Deadline: Lobby Activities Report due November 13, 2023**

#00070672 - Lorena I. Campos, 1005 Congress Avenue, Suite 152, Austin, Texas, 78701

#00070514 - Dallas S. Jones, 5445 Almeda, Suite 307, Houston, Texas, 77004

#00085414 - Shekira C. Dennis, 2368A Rice Blvd. #197, Houston, Texas, 77005

#00086940 - Matthew C. Posey, 4500 Steiner Ranch Blvd #1920, Austin, Texas, 78732

#00043400 - Amy Fitzgerald Casto, 1001 Congress Ave., Ste. 200, Austin, Texas, 78701

#00084838 - Josh Leftwich, P.O. Box 459, Round Rock, Texas, 78680

#00053923 - Steven C. Ray, P.O. Box 742, Corpus Christi, Texas, 78403

#00082484 - Shannon Ghangurde, 3403 Windsor Road, Austin, Texas, 78703

#00081588 - Sebastien Laroche, 4507 Medical Drive, San Antonio, Texas, 78229

**Deadline: Lobby Activities Report due December 11, 2023**

#00085414 - Shekira C. Dennis, 2368A Rice Blvd. #197, Houston, Texas, 77005

#00087487 - Jennifer Johnson, 16185 Los Gatos Blvd., Suite 205, Los Gatos, California, 95032

#00070054 - Kevin Warren, 1108 Lavaca St., Ste. 500, Austin, Texas, 78701

#00086521 - Amanda J. Tollett, 1108 Lavaca Street, Suite 500, Austin, Texas, 78701

#00087645 - Moises Murillo, 700 Milam Street, Suite 1900, Houston, Texas, 77002

#00070672 - Lorena I. Campos, 1005 Congress Avenue, Suite 152, Austin, Texas, 78701

#00087951 - Corey Perry, 804 Stain Glass Drive, Desoto, Texas, 75115

#00087261 - Granite Dome Solutions, LLC, 112 Mountain Laurel Way, Bastrop, Texas, 78602

#00083603 - Michaela Bennett, 5802 Republic of Texas Blvd., Austin, Texas, 78735

#00053923 - Steven C. Ray, P.O. Box 742, Corpus Christi, Texas, 78403

#00084838 - Josh Leftwich, P.O. Box 459, Round Rock, Texas, 78680

#00086940 - Matthew C. Posey, 4500 Steiner Ranch Blvd. #1920, Austin, Texas, 78732

#00068809 - Ricardo Lopez-Guerra, P.O. Box 1765, Austin, Texas, 78767

#00059190 - Kelly McBeth, P.O. Box 5100, Austin, Texas, 78763

#00081588 - Sebastien Laroche, 4507 Medical Drive, San Antonio, Texas, 78229

#00070475 - Colin Parrish, 1122 Colorado Street, Suite 320, Austin, Texas, 78701

#00086456 - Debra G. Richmond, 6303 Ames Ct., Austin, Texas, 78739

TRD-202402063

Aidan Shaughnessy

Program Supervisor

Texas Ethics Commission

Filed: May 8, 2024



**Department of State Health Services**

Licensing Actions for Radioactive Materials

During the second half of March 2024, the Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX [Texas]" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Department's Radiation Section has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC), Chapter 289, for the noted action. In granting termination of licenses, the Department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In granting exemptions to the licensing requirements of Chapter 289, the Department has determined that the exemption is not prohibited by law and will not result in a significant risk to public health and safety and the environment.

A person affected by the actions published in this notice may request a hearing within 30 days of the publication date. A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. 25 TAC §289.205(b)(15); Health and Safety Code §401.003(15). Requests must be made in writing and should contain the words "hearing request," the name and address of the person affected by the agency action, the name and license number of the entity that is the subject of the hearing request, a brief statement of how the person is affected by the action what the requestor seeks as the outcome of the hearing, and the name and address of the attorney if the requestor is represented by an attorney. Send hearing requests by mail to: Hearing Request, Radioactive Material Licensing, MC 2835, PO Box 149347, Austin, Texas 78714-9347, or by fax to: (512) 206-3760, or by e-mail to: RAMlicensing@dshs.texas.gov.

NEW LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
EL PASO	CASTX CORPORATION DBA SUN CITY VETERINARY SURGERY CENTER	L07219	EL PASO	00	03/18/24
SHENANDOAH	CARDIOVASCULAR CONSULTANTS OF HOUSTON PLLC	L07220	SHENANDOAH	00	03/26/24

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
ALLEN	TEXAS HEALTH PRESBYTERIAN HOSPITAL ALLEN	L05765	ALLEN	42	03/26/24
AMARILLO	TEXAS ONCOLOGY PA	L06149	AMARILLO	13	03/18/24
AUSTIN	TEXAS ONCOLOGY	L06206	AUSTIN	26	03/22/24
AUSTIN	ARA ST DAVIDS IMAGING LP	L05862	AUSTIN	124	03/22/24
AUSTIN	ST DAVIDS HEALTHCARE PARTNERSHIP LP LLP DBA ST DAVIDS MEDICAL CENTER	L00740	AUSTIN	185	03/29/24
BEAUMONT	EXXON MOBIL CORPORATION	L02316	BEAUMONT	57	03/25/24
CARROLLTON	JUBILANT DRAXIMAGE INC	L06943	CARROLLTON	20	03/28/24
DALLAS	HEARTPLACE PLLC	L04607	DALLAS	82	03/15/24
DALLAS	THE UNIVERSITY OF TEXAS SOUTHWESTERN MEDICAL CENTER AT DALLAS	L00384	DALLAS	145	03/25/24

AMENDMENTS TO EXISTING LICENSES ISSUED:(continued)

DENTON	TEXAS WOMANS UNIVERSITY	L00304	DENTON	78	03/29/24
EL PASO	BHS PHYSICIANS NETWORK INC DBA EL PASO HEART CENTER	L06893	EL PASO	10	03/19/24
EL PASO	TENET HOSPITALS LIMITED DBA THE HOSPITALS OF PROVIDENCE MEMORIAL CAMPUS	L02353	EL PASO	156	03/25/24
FLOWER MOUND	TEXAS HEALTH PHYSICIANS GROUP DBA TEXAS HEALTH HEART AND VASCULAR SPECIALISTS	L05507	FLOWER MOUND	32	03/15/24
FORT WORTH	TEXAS HEALTH HARRIS METHODIST DBA HOSPITAL ALLIANCE	L06484	FORT WORTH	05	03/25/24
HOUSTON	METHODIST HEALTH CENTERS DBA HOUSTON METHODIST WEST HOSPITAL	L06806	HOUSTON	05	03/22/24
HOUSTON	CARDIAC INTERVENTION SPECIALISTS PA	L06466	HOUSTON	06	03/25/24
HOUSTON	UIH AMERICA INC	L07090	HOUSTON	09	03/19/24
HOUSTON	JUBILANT DRAXIMAGE INC DBA JUBILANT RADIOPHARMA	L06944	HOUSTON	12	03/15/24
HOUSTON	HOUSTON REFINING LP	L00187	HOUSTON	84	03/22/24

AMENDMENTS TO EXISTING LICENSES ISSUED:(continued)

HOUSTON	HARRIS COUNTY HOSPITAL DISTRICT DBA HARRIS HEALTH SYSTEM	L01303	HOUSTON	112	03/15/24
HOUSTON	MEMORIAL HERMANN HEALTH SYSTEM DBA MEMORIAL HERMANN KATY HOSPITAL	L03052	HOUSTON	116	03/25/24
HOUSTON	AMERICAN DIAGNOSTIC TECH LLC	L05514	HOUSTON	168	03/29/24
HOUSTON	THE UNIVERSITY OF TEXAS MD ANDERSON CANCER CENTER	L00466	HOUSTON	190	03/25/24
LANCASTER	LANCASTER REGIONAL HOSPITAL LP DBA CRESCENT MEDICAL CENTER LANCASTER	L06847	LANCASTER	08	03/19/24
LUBBOCK	COVENANT MEDICAL CENTER	L06993	LUBBOCK	10	03/19/24
NACOGDOCHES	TH HEALTHCARE LTD DBA NACOGDOCHES MEDICAL CENTER	L02083	NACOGDOCHES	62	03/15/24
PASADENA	KETJEN LIMITED LIABILITY COMPANY	L04072	PASADENA	28	03/15/24
PLANO	HEALTHTEXAS PROVIDER NETWORK DBA BAYLOR SCOTT & WHITE LEGACY HEART CENTER	L06582	PLANO	16	03/25/24

AMENDMENTS TO EXISTING LICENSES ISSUED:(continued)

PLANO	TEXAS HEALTH PHYSICIANS GROUP DBA TEXAS HEALTH HEART AND VASCULAR SPECIALISTS	L06480	PLANO	22	03/15/24
PORT NECHES	INDORAMA VENTURES OXIDES LLC	L07067	PORT NECHES	01	03/26/24
ROUND ROCK	SCOTT & WHITE HOSPITAL – ROUND ROCK DBA BAYLOR SCOTT & WHITE MEDICAL CENTER – ROUND ROCK	L06085	ROUND ROCK	38	03/26/24
STAFFORD	ALOKI ENTERPRISE INC	L06257	STAFFORD	65	03/15/24
THROUGHOUT TX	RONE ENGINEERING SERVICES LLC	L02356	DALLAS	61	03/22/24
THROUGHOUT TX	ELEMENT MATERIALS TECHNOLOGY HOUSTON LLC	L06451	HOUSTON	11	03/15/24
THROUGHOUT TX	MEMORIAL HERMANN HEALTH SYSTEM DBA MEMORIAL HERMANN MEMORIAL CITY MEDICAL CENTER	L01168	HOUSTON	204	03/25/24
THROUGHOUT TX	KLEINFELDER INC	L06960	IRVING	12	03/19/24
THROUGHOUT TX	PRIME INSPECTIONS INC	L07122	KATY	06	03/27/24
THROUGHOUT TX	PROTECT LLC	L07110	MIDLAND	9	03/22/24
THROUGHOUT TX	TRACERCO US LLC	L03096	PASADENA	109	03/22/24
THROUGHOUT TX	INSIGHT NDE INC	L06817	PORT LAVACA	10	03/20/24



AMENDMENTS TO EXISTING LICENSES ISSUED:(continued)

THROUGHOUT TX	KLX ENERGY SERVICES LLC	L06620	ROSHARON	38	03/20/24
THROUGHOUT TX	KNR PIPELINE SERVICES LLC	L07098	SPRING	01	03/27/24

RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
AMARILLO	BSA HOSPITAL LLC DBA BSA HOSPITAL	L06573	AMARILLO	21	03/19/24
AMARILLO	NORTHWEST TEXAS HEALTHCARE SYSTEM INC DBA NORTHWEST TEXAS HEALTHCARE SYSTEM	L02054	AMARILLO	93	03/18/24
BEAUMONT	BAPTIST HOSPITALS OF SOUTHEAST TEXAS	L00358	BEAUMONT	160	03/29/24
BISHOP	TICONA POLYMERS INC	L02441	BISHOP	71	03/19/24
DALLAS	HEALTHTEXAS PROVIDER NETWORK DBA BAYLOR SCOTT & WHITE CARDIOLOGY CONSULTANTS OF TEXAS	L06572	DALLAS	13	03/18/24
THE WOODLANDS	E+ PET IMAGING VIII LP DBA PET IMAGING OF THE WOODLANDS	L05747	THE WOODLANDS	16	03/22/24
THROUGHOUT TX	CARRILLO & ASSOCIATES INC	L05804	SAN ANTONIO	14	03/22/24

TERMINATIONS OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
FORT WORTH	FORT WORTH SURGICARE PARTNERS LTD DBA BAYLOR SCOTT & WHITE SURGICAL HOSPITAL – FORT WORTH	L05668	FORT WORTH	21	03/29/24
STEPHENVILLE	STEPHENVILLE MEDICAL AND SURGICAL CLINIC	L05309	STEPHENVILLE	28	03/25/24

TRD-202402046  
 Cynthia Hernandez  
 General Counsel  
 Department of State Health Services  
 Filed: May 8, 2024

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 Licensing Actions for Radioactive Materials

During the first half of April 2024, the Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX [Texas]" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Department's Radiation Section has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC), Chapter 289, for the noted action. In granting termination of licenses, the Department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In granting exemptions to the licensing requirements of Chapter 289, the Department has determined that the exemption is not prohibited by law and will not result in a significant risk to public health and safety and the environment.

A person affected by the actions published in this notice may request a hearing within 30 days of the publication date. A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. 25 TAC §289.205(b)(15); Health and Safety Code §401.003(15). Requests must be made in writing and should contain the words "hearing request," the name and address of the person affected by the agency action, the name and license number of the entity that is the subject of the hearing request, a brief statement of how the person is affected by the action what the requestor seeks as the outcome of the hearing, and the name and address of the attorney if the requestor is represented by an attorney. Send hearing requests by mail to: Hearing Request, Radioactive Material Licensing, MC 2835, PO Box 149347, Austin, Texas 78714-9347, or by fax to: (512) 206-3760, or by e-mail to: RAMlicensing@dshs.texas.gov.

NEW LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
LUBBOCK	CASL HEALTH DBA CARDIOVASCULAR ARRHYTHMIAS SERVICES OF LUBBOCK	L07221	LUBBOCK	00	04/02/24

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
AUSTIN	NXP USA INC DBA NXP SEMICONDUCTORS USA INC	L05347	AUSTIN	20	04/10/24
AUSTIN	TEXAS ONCOLOGY	L06206	AUSTIN	27	04/08/24
BEDFORD	FISHER CARDIOLOGY AND ELECTROPHYSIOLOGY, PA	L06641	BEDFORD	06	04/09/24
BEDFORD	TEXAS HEALTH HARRIS METHODIST HOSPITAL HURST EULESS BEDFORD	L02303	BEDFORD	47	04/03/24
BRENHAM	SCOTT & WHITE HOSPITAL BRENHAM DBA BAYLOR SCOTT & WHITE MEDICAL CENTER- BRENHAM	L03419	BRENHAM	38	04/11/24
COLLEGE STATION	TEXAS A&M UNIVERSITY ENVIRONMENTAL HEALTH AND SAFETY	L06561	COLLEGE STATION	10	04/12/24

AMENDMENTS TO EXISTING LICENSES ISSUED:(continued)

DALLAS	THE HEARTBEAT CLINIC	L06204	DALLAS	06	04/01/24
DALLAS	TEXAS ONCOLOGY	L05534	DALLAS	19	04/10/24
DALLAS	BAYLOR UNIVERSITY MEDICAL CENTER	L01290	DALLAS	153	04/15/24
DALLAS	COLUMBIA HOSPITAL AT MEDICAL CITY DALLAS SUBSIDIARY LP DBA MEDICAL CITY DALLAS	L01976	DALLAS	239	04/05/24
EL PASO	TEXAN CARDIOVASCULAR INSTITUTE PA	L07105	EL PASO	03	04/11/24
FORT WORTH	COOK CHILDRENS MEDICAL CENTER	L04518	FORT WORTH	38	04/08/24
HOUSTON	HOUSTON - PPH LLC DBA HCA HOUSTON HEALTHCARE MEDICAL CENTER	L06878	HOUSTON	05	04/05/24
HOUSTON	UIH AMERICA INC	L07090	HOUSTON	10	04/12/24
HOUSTON	MEMORIAL HERMANN HEALTH SYSTEM DBA MEMORIAL HERMANN TEXAS MEDICAL CENTER	L06439	HOUSTON	23	04/09/24
HOUSTON	MEDICAL CLINIC OF HOUSTON LLP	L01315	HOUSTON	41	04/05/24
HOUSTON	THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT HOUSTON	L02774	HOUSTON	85	04/04/24
HUMBLE	CARDIOVASCULAR ASSOCIATION PLLC	L05421	HUMBLE	37	04/10/24
MANSFIELD	HEALTHSCAN IMAGING LLC	L06856	MANSFIELD	27	04/02/24
ODESSA	GCC PERMIAN LLC	L06964	ODESSA	04	04/11/24

AMENDMENTS TO EXISTING LICENSES ISSUED:(continued)

PORT LAVACA	MEMORIAL MEDICAL CENTERIN CALHOUN COUNTY	L04685	PORT LAVACA	13	04/02/24
ROUND ROCK	SAGE VETERINARY IMAGING PLLC	L07061	ROUND ROCK	06	04/10/24
SAN ANTONIO	TEXAS ONCOLOGY PA	L06747	SAN ANTONIO	13	04/01/24
SHERMAN	NORTH TEXAS COMPREHENSIVE CARDIOLOGY PLLC	L06797	SHERMAN	06	04/02/24
SUGAR LAND	METHODIST HEALTH CENTERS DBA HOUSTON METHODIST SUGAR LAND HOSPITAL	L05788	SUGAR LAND	59	04/01/24
THROUGHOUT TX	GESSNER ENGINEERING LLC	L03733	BRYAN	34	04/04/24
THROUGHOUT TX	FEDERAL NORM SERVICES LLC	L07063	DALLAS	01	04/08/24
THROUGHOUT TX	THE UNIVERSITY OF TEXAS MEDICAL BRANCH	L01299	GALVESTON	124	04/08/24
THROUGHOUT TX	CARDIONAVIX LLC	L06984	HOUSTON	03	04/11/24
THROUGHOUT TX	PHOENIX MECHANICAL INTEGRITY SERVICES LLC	L06787	HOUSTON	14	04/03/24
THROUGHOUT TX	NEXTIER COMPLETION SOLUTIONS INC	L06712	HOUSTON	25	04/15/24
THROUGHOUT TX	TOLUNAY WONG ENGINEERS INC	L04848	HOUSTON	30	04/03/24
THROUGHOUT TX	INSIGNIA TTG PARENT LLC	L05775	HOUSTON	121	04/03/24
THROUGHOUT TX	PRO-SURVE TECHNICAL SERVICES LLC	L06905	LEAGUE CITY	11	04/04/24
THROUGHOUT TX	WSB LLC	L06986	MELISSA	09	04/09/24
THROUGHOUT TX	PROTECT LLC	L07110	MIDLAND	10	04/03/24

AMENDMENTS TO EXISTING LICENSES ISSUED:(continued)

THROUGHOUT TX	OLIVIER INTERNATIONAL LLC	L07031	ODESSA	03	04/05/24
THROUGHOUT TX	RCI CONSULTANTS INC DBA RCI ENERGY GROUP	L07172	PASADENA	01	04/10/24
THROUGHOUT TX	INSIGHT NDE INC	L06817	PORT LAVACA	11	04/05/24
THROUGHOUT TX	PROFESSIONAL SERVICE INDUSTRIES INC	L04946	SAN ANTONIO	25	04/04/24
THROUGHOUT TX	CARDINAL HEALTH 414 LLC DBA CARDINAL HEALTH NUCLEAR PHARMACY SERVICES	L02033	SAN ANTONIO	117	04/08/24
THROUGHOUT TX	LUDLUM MEASUREMENTS INC	L01963	SWEETWATER	119	04/10/24
TYLER	DELEK REFINING LTD	L02289	TYLER	37	04/04/24

RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
DALLAS	TEXAS ONCOLOGY	L05534	DALLAS	19	04/10/24

**TERMINATIONS OF LICENSES ISSUED:**

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
BEAUMONT	TEXAS ONCOLOGY PA DBA MAMIE MCFADDIN WARD CANCER CENTER	L06919	BEAUMONT	03	04/03/24
NEW BRAUNFELS	MISSION CARDIOVASCULAR CONSULTANTS PA	L05463	NEW BRAUNFELS	16	04/12/24

TRD-202402047  
Cynthia Hernandez  
General Counsel  
Department of State Health Services  
Filed: May 8, 2024

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**Texas Higher Education Coordinating Board**

Notice of Intent to Engage in Negotiated Rulemaking--Total Research Expenditures (Texas State University System, Texas A&M University System, The University of Texas System, University of Houston System, University of North Texas System, and Texas Tech University System)

The Texas Higher Education Coordinating Board ("THECB" or "Board") intends to engage in negotiated rulemaking to amend Title 19, Part 1, Chapter 13, Subchapter M, §§13.300 - 13.305, concerning Total Research Expenditures. These amendments would clarify the reporting of research expenditures for joint academic/health-related institutions to achieve consistency in how research expenditures are credited to joint academic and health institutions. Additionally, based on institutional feedback regarding the Subchapter M rules adopted in January 2024, the reporting of unrecovered indirect cost would be removed as a required element of research reporting under Subchapter M. The Board adopts these rules under the authority of Texas Education Code, Chapter 62, Subchapter C.

In identifying persons likely affected by the proposed rules, the Convener of Negotiated Rulemaking sent a memo to chancellors and presidents at Texas State University System, Sam Houston State University, Sam Houston State University College of Medicine, Texas A&M University System, Texas A&M University, Texas A&M Health Science Center, The University of Texas System, The University of Texas at Austin, The University of Texas at Austin Dell Medical School, The University of Texas at Tyler, The University of Texas Health Science Center at Tyler, The University of Texas Rio Grande Valley, The University of Texas Rio Grande Valley Medical School, University of Houston System, University of Houston, University of Houston College of Medicine, University of North Texas System, and Texas Tech University System soliciting their interest and willingness to participate in the negotiated rulemaking process or nominate a representative from their campus.

From this effort, twelve (12) individuals responded (out of approximately nineteen (19) affected entities) and expressed an interest to participate or nominated a representative from their institution to participate on the negotiated rulemaking committee. The positions held by the volunteers and nominees indicate a probable willingness and authority of the affected interests to negotiate in good faith and a reasonable probability that a negotiated rulemaking process can result in a unanimous or, if the committee so chooses, a suitable general consensus on the proposed rule.

The following is a list of the stakeholders who are significantly affected by this rule and will be represented on the negotiated rulemaking committee:

1. Texas State University System;
2. Texas A&M University System;
3. The University of Texas System;
4. University of Houston System;
5. University of North Texas System;
6. Texas Tech University System; and
7. Texas Higher Education Coordinating Board.

The THECB proposes to appoint the following twelve (12) individuals to the negotiated rulemaking committee for total research expenditures to represent affected parties and the agency:

- Texas State University System
- Jennifer Jones, Controller (Sam Houston State University)
- Texas A&M University System
- Kristin Nace, Vice President; Chief Financial Officer (Texas A&M Health)
- Jeffrey Burton, Associate Vice President; Deputy Chief Financial Officer (Texas A&M University)
- Teresa Edwards, Controller (Texas A&M University System)
- The University of Texas System
- Mark Featherston, Chief of Staff, Office of Vice President for Research (The University of Texas at Austin)



Carrie McMahan, Director, Accounting and Financial Reporting (The University of Texas at Tyler)

Can (John) Saygin, Senior Vice President, Research; Dean, Graduate College (The University of Texas Rio Grande Valley Medical School)

Joan Bienvenue, Associate Vice Chancellor, Research (The University of Texas System)

University of Houston System

Claudia Neuhauser, Interim Vice Chancellor, Research

University of North Texas System

Pamela Padilla, Vice President, Research and Innovation

Texas Tech University System

Penny Harkey, Executive Vice President, Finance and Operations; Chief Financial Officer (Texas Tech University Health Sciences Center)

Texas Higher Education Coordinating Board

Emily Cormier, Assistant Commissioner, Funding and Resource Planning

If there are persons who are significantly affected by these proposed rules and are not represented by the persons named above, those persons may apply to the agency for membership on the negotiated rule-making committee or nominate another person to represent their interests. Application for membership must be made in writing and include the following information:

1. Name and contact information of the person submitting the application;
2. Description of how the person is significantly affected by the rule and how their interests are different than those represented by the persons named above;
3. Name and contact information of the person being nominated for membership; and
4. Description of the qualifications of the nominee to represent the person's interests.

The THECB requests comments on the Notice of Intent to engage in negotiated rulemaking and on the membership of the negotiated rule-making committee. Comments and applications for membership on the committee must be submitted by May 26, 2024, to Laurie A. Frederick, Convener, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711, or via email at Laurie.Frederick@highered.texas.gov.

TRD-202402041

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Filed: May 7, 2024



## Texas Department of Housing and Community Affairs

### Notice of Public Hearing and Public Comment Period on the Draft 2025 Regional Allocation Formula Methodology

The Texas Department of Housing and Community Affairs (the Department) will hold a public hearing to accept public comment on the Draft 2025 Regional Allocation Formula (RAF) Methodology.

The public hearing will take place as follows:

Tuesday, June 4, 2024

2:00 p.m. Central Time

Stephen F. Austin Building Room 172

1700 Congress Ave, Austin, Texas 78701

The RAF may be accessed from TDHCA's Public Comment Center at: <https://www.tdhca.texas.gov/tdhca-public-comment-center>.

The RAF utilizes appropriate statistical data to measure the affordable housing need and available resources in the 13 State Service Regions that are used for planning purposes. The RAF also allocates funding to rural and urban subregions within each region. The Department has flexibility in determining variables to be used in the RAF, per §2306.1115(a)(3) of the Tex. Gov't Code, "the department shall develop a formula that includes other factors determined by the department to be relevant to the equitable distribution of housing funds." The RAF is revised annually to reflect current data, respond to public comment, and better assess regional housing needs and available resources.

The RAF methodology explains the use of factors, in keeping with the statutory requirements, which include the need for housing assistance, the availability of housing resources, and other factors relevant to the equitable distribution of housing funds in urban and rural areas of the state.

The Single Family HOME Investment Partnerships Program (HOME), Multifamily HOME, Housing Tax Credit (HTC), and Texas Housing Trust Fund (HTF) program RAFs each use slightly different formulas because the programs have different eligible activities, households, and geographical service areas. For example, §2306.111(c) of the Tex. Gov't Code requires that 95% of HOME funding be set aside for non-participating jurisdictions (non-PJs). Therefore, the Single Family and Multifamily HOME RAFs only use need and available resource data for non-PJs.

The public comment period for the Draft 2025 RAF methodology will be open from Monday, May 20, 2024, through Thursday, June 20, 2024, at 5:00 p.m., Central Time. Anyone may submit comments on the Draft 2025 RAF Methodology in written form or oral testimony at the June 4, 2024, public hearing.

Written comments concerning the Draft 2025 RAF Methodology may be submitted by mail to the Texas Department of Housing and Community Affairs, Housing Resource Center, P.O. Box 13941, Austin, Texas 78711-3941, by email to [info@tdhca.texas.gov](mailto:info@tdhca.texas.gov). Comments must be received no later than Thursday, June 20, 2024, at 5:00 p.m. Central Time.

Individuals who require auxiliary aids or services for the public hearing on June 4, 2024, should contact Nancy Dennis, at (512) 475-3959 or Relay Texas at (800) 735-2989, at least three days before the meeting so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters for the public hearing should contact Danielle Leath by phone at (512) 475-4606 or by email at [danielle.leath@tdhca.texas.gov](mailto:danielle.leath@tdhca.texas.gov) at least three days before the meeting so that appropriate arrangements can be made.

Personas que hablan español y requieren un interprete, favor de llamar a Danielle Leath al siguiente numero (512) 475-4606 o enviarle un correo electronico a [danielle.leath@tdhca.texas.gov](mailto:danielle.leath@tdhca.texas.gov) por lo menos tres dias antes de la junta para hacer los preparativos apropiados.

TRD-202402029

Bobby Wilkinson  
Executive Director  
Texas Department of Housing and Community Affairs  
Filed: May 7, 2024

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**Texas Department of Insurance**

**Company Licensing**

Application to do business in the state of Texas for Generali USA Insurance Company, a foreign fire and/or casualty company. The home office is in New York, New York.

Application to do business in the state of Texas for Aria Care Insurance, Inc., a foreign life, accident, and/or health company. The home office is in Springfield, Missouri.

Application for incorporation in the state of Texas for Astiva Health of Texas, LLC, a domestic Health Maintenance Organization (HMO). The home office is in Texas.

Application for Consolidated National Insurance Company, a foreign fire and/or casualty company, to change its name to Drivers Edge Insurance Company. The home office is in Traverse City, Michigan.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of John Carter, 1601 Congress Ave., Suite 6.900, Austin, Texas 78711.

TRD-202402045  
Justin Beam  
Chief Clerk  
Texas Department of Insurance  
Filed: May 8, 2024

**Texas Lottery Commission**

Scratch Ticket Game Number 2572 "\$500 FRENZY"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2572 is "\$500 FRENZY". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2572 shall be \$5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2572.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 06, 07, 08, 09, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 5X SYMBOL, 10X SYMBOL, \$5.00, \$10.00, \$20.00, \$25.00, \$50.00, \$100, \$500, \$5,000 and \$100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2572 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
06	SIX
07	SVN
08	EGT
09	NIN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI

30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
5X SYMBOL	WINX5
10X SYMBOL	WINX10
\$5.00	FIV\$
\$10.00	TEN\$
\$20.00	TWY\$
\$25.00	TWV\$
\$50.00	FFTY\$
\$100	ONHN
\$500	FVHN
\$5,000	FVTH
\$100,000	100TH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2572), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start

with 001 and end with 075 within each Pack. The format will be: 2572-0000001-001.

H. Pack - A Pack of the "\$500 FRENZY" Scratch Ticket Game contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "\$500 FRENZY" Scratch Ticket Game No. 2572.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "\$500 FRENZY" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose forty-five (45) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the PRIZE for that number. If the player reveals a "5X" Play Symbol, the player wins 5 TIMES the PRIZE for that symbol. If the player reveals a "10X" Play Symbol, the player wins 10 TIMES the PRIZE for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

#### 2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly forty-five (45) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;
10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Scratch Ticket must be complete and not miscut, and have exactly forty-five (45) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;
14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;
15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the forty-five (45) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the forty-five (45) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. GENERAL: The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

B. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. KEY NUMBER MATCH: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 20 and \$20).

D. KEY NUMBER MATCH: There will be no matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

E. KEY NUMBER MATCH: There will be no matching WINNING NUMBERS Play Symbols on a Ticket.

F. KEY NUMBER MATCH: A non-winning Prize Symbol will never match a winning Prize Symbol.

G. KEY NUMBER MATCH: A Ticket may have up to four (4) matching non-winning Prize Symbols, unless restricted by other parameters, play action or prize structure.

H. KEY NUMBER MATCH: The "5X" (WINX5) Play Symbol will only appear on winning Tickets, as dictated by the prize structure.

I. KEY NUMBER MATCH: The "10X" (WINX10) Play Symbol will only appear on winning Tickets, as dictated by the prize structure.

#### 2.3 Procedure for Claiming Prizes.

A. To claim a "\$500 FRENZY" Scratch Ticket Game prize of \$5.00, \$10.00, \$20.00, \$25.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and,

if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$25.00, \$50.00, \$100 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "\$500 FRENZY" Scratch Ticket Game prize of \$5,000 or \$100,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "\$500 FRENZY" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is \$1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
2. in default on a loan made under Chapter 52, Education Code;
3. in default on a loan guaranteed under Chapter 57, Education Code; or
4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "\$500 FRENZY" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "\$500 FRENZY" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 7,080,000 Scratch Tickets in Scratch Ticket Game No. 2572. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2572 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$5.00	944,000	7.50
\$10.00	566,400	12.50
\$20.00	94,400	75.00
\$25.00	94,400	75.00
\$50.00	47,200	150.00
\$100	22,125	320.00
\$500	8,850	800.00
\$5,000	10	708,000.00
\$100,000	4	1,770,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.98. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2572 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2572, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202402043  
 Bob Biard  
 General Counsel  
 Texas Lottery Commission  
 Filed: May 8, 2024



Scratch Ticket Game Number 2573 "200X"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2573 is "200X". The play style is "key number match."

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2573 shall be \$10.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2573.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 03, 04, 06, 07, 08, 09, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 2X SYMBOL, 5X SYMBOL, 10X SYMBOL, 200X SYMBOL, \$10.00, \$20.00, \$30.00, \$50.00, \$100, \$200, \$500, \$2,000, \$4,000, \$10,000 and \$250,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink

in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:



Figure 1: GAME NO. 2573 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
03	THR
04	FOR
06	SIX
07	SVN
08	EGT
09	NIN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY

31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
50	FFTY
51	FFON
52	FFTO
53	FFTH
54	FFFR
55	FFFV
56	FFSX
57	FFSV
58	FFET
59	FFNI

60	SXTY
2X SYMBOL	DBL
5X SYMBOL	WINX5
10X SYMBOL	WINX10
200X SYMBOL	WINX200
\$10.00	TEN\$
\$20.00	TWY\$
\$30.00	TRTY\$
\$50.00	FFTY\$
\$100	ONHN
\$200	TOHN
\$500	FVHN
\$2,000	TOTH
\$4,000	FRTH
\$10,000	10TH
\$250,000	250TH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2573), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 050 within each Pack. The format will be: 2573-0000001-001.

H. Pack - A Pack of the "200X" Scratch Ticket Game contains 050 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 001 and 050 will both be exposed.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "200X" Scratch Ticket Game No. 2573.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "200X" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose sixty-six (66) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a "2X" Play Symbol, the player wins DOUBLE the prize for that symbol. If the player reveals a "5X" Play Symbol, the player wins 5 TIMES the prize for that symbol. If the player reveals a "10X" Play Symbol, the player wins 10 TIMES the prize for that symbol. If the player reveals a "200X" Play Symbol, the player wins 200 TIMES the prize for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly sixty-six (66) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
  3. Each of the Play Symbols must be present in its entirety and be fully legible;
  4. Each of the Play Symbols must be printed in black ink except for dual image games;
  5. The Scratch Ticket shall be intact;
  6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;
  7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
  8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
  9. The Scratch Ticket must not be counterfeit in whole or in part;
  10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
  11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;
  12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;
  13. The Scratch Ticket must be complete and not miscut, and have exactly sixty-six (66) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;
  14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;
  15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
  16. Each of the sixty-six (66) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
  17. Each of the sixty-six (66) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
  18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
  19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.
- B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.
- C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a de-

fective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

## 2.2 Programmed Game Parameters.

- A. GENERAL: The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.
- B. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.
- C. KEY NUMBER MATCH: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 20 and \$20).
- D. KEY NUMBER MATCH: There will be no matching non-winning YOUR NUMBERS Play Symbols on a Ticket
- E. KEY NUMBER MATCH: There will be no matching WINNING NUMBERS Play Symbols on a Ticket.
- F. KEY NUMBER MATCH: A non-winning Prize Symbol will never match a winning Prize Symbol.
- G. KEY NUMBER MATCH: A Ticket may have up to five (5) matching non-winning Prize Symbols, unless restricted by other parameters, play action or prize structure.
- H. KEY NUMBER MATCH: The "2X" (DBL) Play Symbol will only appear on winning Tickets, as dictated by the prize structure.
- I. KEY NUMBER MATCH: The "5X" (WINX5) Play Symbol will only appear on winning Tickets, as dictated by the prize structure.
- J. KEY NUMBER MATCH: The "10X" (WINX10) Play Symbol will only appear on winning Tickets, as dictated by the prize structure.
- K. KEY NUMBER MATCH: The "200X" (WINX200) Play Symbol will only appear on winning Tickets, as dictated by the prize structure.

## 2.3 Procedure for Claiming Prizes.

- A. To claim a "200X" Scratch Ticket Game prize of \$10.00, \$20.00, \$30.00, \$50.00, \$100, \$200 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$30.00, \$50.00, \$100, \$200 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.
- B. To claim a "200X" Scratch Ticket Game prize of \$2,000, \$4,000, \$10,000 or \$250,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting

form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "200X" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is \$1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

Figure

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
2. in default on a loan made under Chapter 52, Education Code;
3. in default on a loan guaranteed under Chapter 57, Education Code; or
4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "200X" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "200X" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 8,040,000 Scratch Tickets in Scratch Ticket Game No. 2573. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2573 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$10.00	964,800	8.33
\$20.00	482,400	16.67
\$30.00	321,600	25.00
\$50.00	241,200	33.33
\$100	80,400	100.00
\$200	20,100	400.00
\$500	2,613	3,076.92
\$2,000	335	24,000.00
\$4,000	8	1,005,000.00
\$10,000	4	2,010,000.00
\$250,000	5	1,608,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.80. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2573 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2573, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202402044  
 Bob Biard  
 General Counsel  
 Texas Lottery Commission  
 Filed: May 8, 2024

◆ ◆ ◆

## Plateau Water Planning Group

Vacancy Notice

### WATER DISTRICTS (KINNEY COUNTY)

Please be advised that the Plateau Water Planning Group (PWPG), Region "J" is currently seeking nominations to fill a vacancy on the Regional Planning Group. This vacancy represents Water Districts (Kinney County). The PWPG and Texas Water Development Board (TWDB) believe it is important to maintain balanced geographic representation on the PWPG. Therefore, please note that the referenced "County" interests represents Kinney.

The Plateau Water Planning Group is a voluntary organization and no funds are available for reimbursement of expenses associated with service to or participation in the planning group. Successful nominees must represent the vacant interest ("Water Districts") for which the member is sought, be willing to actively participate in the regional water planning process and abide by the PWPG By-Laws. Written nominations must be filed with the Plateau Water Planning Group at the address listed below no later than July 12, 2024.

Submit written nominations to:  
Plateau Water Planning Group (PWPG)  
Attention: Mr. Gene Williams  
c/o: Jody Grinstead  
700 Main Street, Ste. 101  
Kerrville, Texas 78028  
Fax: (830) 792-2218  
E-Mail: jgrinstead@co.kerr.tx.us

If you have any questions regarding the nomination process or requirements for nominations, please contact Jonathan Letz at (830) 792-2216.

TRD-202402040  
Jonathan Letz  
PWPG Chair  
Plateau Water Planning Group  
Filed: May 7, 2024

◆ ◆ ◆  
**Public Utility Commission of Texas**

**Notice of Application for Recovery of Universal Service Funding**

Notice is given to the public of an application filed with the Public Utility Commission of Texas (Commission) on May 2, 2024, for recovery of universal service funding under Public Utility Regulatory Act (PURA) §56.025 and 16 Texas Administrative Code (TAC) §26.406.

Docket Style and Number: Application of Valley Telephone Cooperative, Inc. to Recover Funds from the Texas Universal Service Fund under PURA §56.025 and 16 TAC §26.406 For Calendar Year 2021, Docket Number 56575.

The Application: Valley Telephone Cooperative, Inc. seeks recovery of funds from the Texas Universal Service Fund (TUSF) due to Federal Communications Commission actions resulting in a reduction in the Federal Universal Service Fund (FUSF) revenues available to Valley Telephone Cooperative, Inc. for 2021. Valley Telephone Cooperative, Inc. requests that the Commission allow recovery of funds from the TUSF in the amount of \$3,479,658.41 for calendar year 2021 to replace the projected reduction in FUSF revenue.

Persons wishing to intervene or comment on the action sought should contact the Commission by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 56575.

TRD-202401983  
Andrea Gonzalez  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: May 3, 2024

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**Preliminary Notice and Request for Comments on Chapter 22 Rule Review**

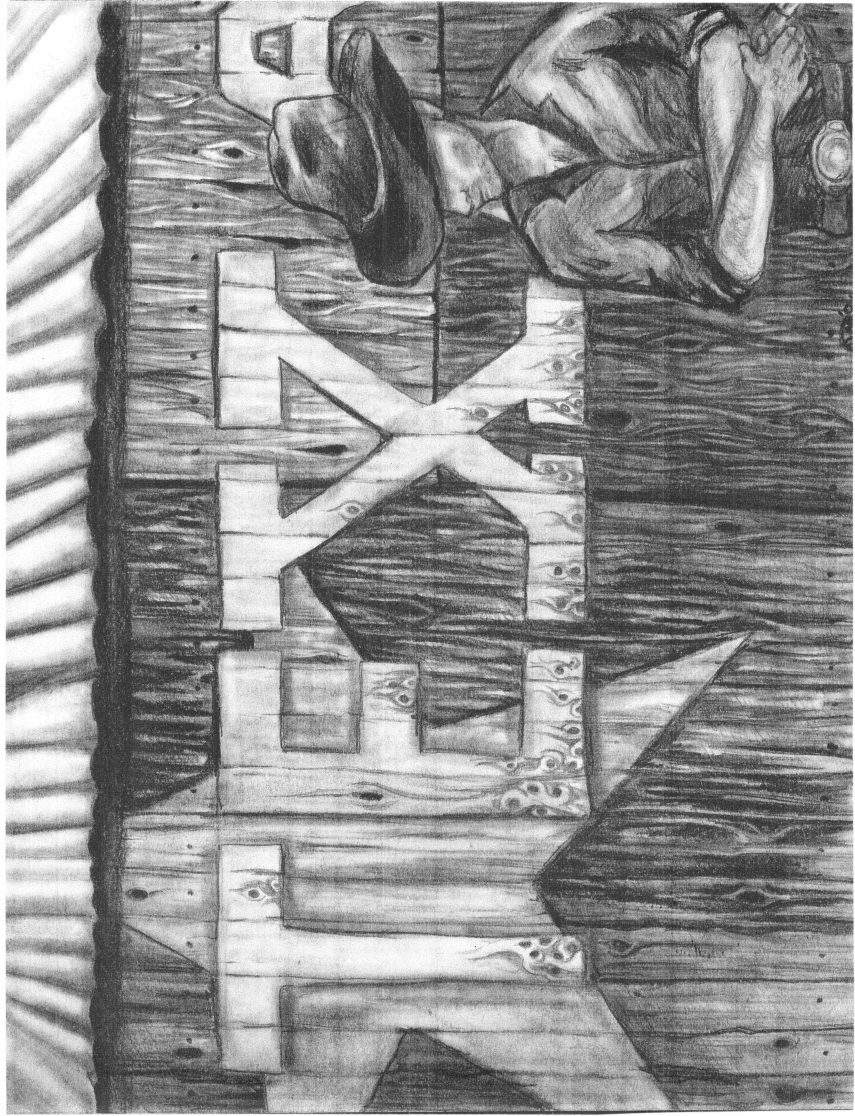
The Public Utility Commission of Texas (commission) publishes this preliminary notice of intention to review Chapter 22, Substantive Rules Applicable to Telecommunications Service Providers, in accordance with Texas Government Code §2001.039, Agency Review of Existing Rules. The text of the rules may be found in the Texas Administrative Code, Title 16, Economic Regulation, Part 2, or through the commission's website at [www.puc.texas.gov](http://www.puc.texas.gov).

The commission seeks comments on whether any rule in Chapter 22 should be repealed or amended. Interested persons may file comments electronically through the interchange on the commission's website or may submit comments to the filing clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, by Friday, May 31, 2024. When filing comments, interested persons are requested to comment on the sections in the same order they are found in the chapter and to clearly designate which section is being commented upon. All comments should refer to Project Number 56574.

If it is determined that any section of Chapter 22 needs to be repealed or amended, and that the repeal or amendment can be completed as a part of this rule review, the commission will include the proposed repeal or amendment into its formal notice of intention to review Chapter 22. Interested persons will have an opportunity to comment on these proposed rule repeals and amendments at that time.

If it is determined that any section of Chapter 22 may need to be repealed or amended, but the repeal or amendment requires further investigation or is inappropriate for consideration as a part of a rule review, the commission may consider the repeal or amendment in a future rule-making proceeding.

TRD-202401972  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: May 2, 2024





## How to Use the Texas Register

**Information Available:** The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules** - sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Review of Agency Rules** - notices of state agency rules review.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Transferred Rules** - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words “TexReg” and the beginning page number on which that document was published. For example, a document published on page 24 of Volume 49 (2024) is cited as follows: 49 TexReg 24.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written “49 TexReg 2 issue date,” while on the opposite page, page 3, in the lower right-hand corner, would be written “issue date 49 TexReg 3.”

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

## Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State’s website at <http://www.sos.state.tx.us/tac>.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite:** Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to Update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule’s *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

### TITLE 1. ADMINISTRATION Part 4. Office of the Secretary of State Chapter 91. Texas Register

1 TAC §91.1.....950 (P)

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