

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 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 1. LIBRARY DEVELOPMENT

SUBCHAPTER C. MINIMUM STANDARDS

FOR ACCREDITATION OF LIBRARIES IN THE STATE LIBRARY SYSTEM

13 TAC §1.74, §1.81

The Texas State Library and Archives Commission (commission) adopts amendments to 13 Texas Administrative Code §1.74, Local Operating Expenditures, and §1.81, Quantitative Standards for Accreditation of Library. The amendments for §1.74 are adopted without changes to the proposed text as published in the June 28, 2024, issue of the *Texas Register* (49 TexReg 4663). This rule will not be republished. The amendments for §1.81 are adopted with changes to the proposed text to make grammatical corrections as published in the June 28, 2024, issue of the *Texas Register* (49 TexReg 4663). This rule will be republished.

EXPLANATION OF AMENDMENTS. An amendment to §1.74, Local Operating Expenditures, adds Fiscal Year (FY) 2025 to subsection (b), requiring a public library applying for accreditation to have minimum total local expenditures of \$21,000 in local fiscal year 2025, the same level required for FY 2024.

Amendments to §1.81, Quantitative Standards for Accreditation of Library, add FY 2025 to each subparagraph establishing the local expenditure requirements for the library, keeping the requirements for FY 2025 the same as for FY 2024.

SUMMARY OF COMMENTS. The commission did not receive any comments on the proposed amendments.

STATUTORY AUTHORITY. The amendments are adopted under Government Code, §441.135, which authorizes the commission to adopt guidelines for the awarding of grants; §441.136, which authorizes the commission to adopt rules necessary to the administration of the program of state grants, including qualifications for major resource system membership; §441.127, which provides that to be eligible for membership in a major resource system or regional library system, a library must meet the accreditation standards established by the commission; and §441.122(1) and (2), which defines "accreditation of libraries" as the evaluation and rating of libraries according to commission accreditation standards and "accreditation standards" as the criteria established by the commission that a library must meet to be accredited and eligible for membership in a major resource system.

CROSS REFERENCE TO STATUTE. Government Code, Chapter 441.

§1.81. *Quantitative Standards for Accreditation of Library.*

(a) The definition of "local fiscal year" is the fiscal year in which January 1 of that year falls.

(b) The following are the minimum requirements for membership in the state library system:

(1) A library serving a population of at least 500,001 persons must:

(A) have local expenditures amounting to at least \$13.82 per capita in local fiscal years 2013, 2014, 2015; \$13.89 per capita in local fiscal years 2016, 2017, 2018; \$13.96 per capita in local fiscal years 2019, 2020, 2021; and \$14.03 per capita in local fiscal years 2022, 2023, 2024, and 2025;

(B) have at least one item of library materials per capita or expend at least 15% of the local expenditures on the purchase of library materials;

(C) have at least 1% of total items in collection published in the last five years;

(D) be open for service not less than 64 hours per week;

(E) employ a library director for at least 40 hours per week in library duties; and

(F) employ twelve full-time equivalent professional librarians, with one additional full-time equivalent professional librarian for every 50,000 persons above 500,000.

(2) A library serving a population of 200,001 - 500,000 persons must:

(A) have local expenditures amounting to at least \$11.95 per capita in local fiscal years 2013, 2014, 2015; \$12.01 per capita in local fiscal years 2016, 2017, 2018; \$12.07 per capita in local fiscal years 2019, 2020, 2021; and \$12.13 per capita in local fiscal years 2022, 2023, 2024, and 2025;

(B) have at least one item of library materials per capita or expend at least 15% of the local expenditures on the purchase of library materials;

(C) have at least 1% of total items in collection published in the last five years;

(D) be open for service not less than 64 hours per week;

(E) employ a library director for at least 40 hours per week in library duties; and

(F) employ six full-time equivalent professional librarians, with one additional full-time equivalent professional librarian for every 50,000 persons above 200,000.

(3) A library serving a population of 100,001 - 200,000 persons must:

(A) have local expenditures amounting to at least \$9.60 per capita in local fiscal years 2013, 2014, 2015; \$9.79 per capita in local fiscal years 2016, 2017, 2018; \$9.98 per capita in local fiscal years 2019, 2020, 2021; and \$10.18 per capita in local fiscal years 2022, 2023, 2024, and 2025;

(B) have at least one item of library materials per capita or expend at least 15% of the local expenditures on the purchase of library materials;

(C) have at least 1% of total items in collection published in the last five years;

(D) be open for service not less than 54 hours per week;

(E) employ a library director for at least 40 hours per week in library duties; and

(F) employ four full-time equivalent professional librarians, with one additional full-time equivalent professional librarian for each 50,000 persons above 100,000.

(4) A library serving a population of 50,001 - 100,000 persons must:

(A) have local expenditures amounting to at least \$8.00 per capita in local fiscal years 2013, 2014, 2015; \$8.16 per capita in local fiscal years 2016, 2017, 2018; \$8.32 per capita in local fiscal years 2019, 2020, 2021; and at least \$8.48 per capita in local fiscal years 2022, 2023, 2024, and 2025;

(B) have at least one item of library materials per capita or expend at least 15% of the local expenditures on the purchase of library materials;

(C) have at least 1% of total items in collection published in the last five years;

(D) be open for service not less than 48 hours per week;

(E) employ a library director for at least 40 hours per week in library duties; and

(F) employ at least two full-time equivalent professional librarians.

(5) A library serving a population of 25,001 - 50,000 persons must:

(A) have local expenditures of at least \$5.31 per capita in local fiscal years 2013, 2014, 2015; \$5.42 per capita in local fiscal years 2016, 2017, 2018; \$5.52 per capita in local fiscal years 2019, 2020, 2021; and \$5.63 per capita in local fiscal years 2022, 2023, 2024, and 2025;

(B) have at least one item of library materials per capita or expend at least 15% of the local expenditures on the purchase of library materials;

(C) have at least 1% of total items in collection published in the last five years;

(D) be open for service not less than 40 hours per week;

(E) employ a library director for at least 40 hours per week in library duties; and

(F) employ at least one full-time equivalent professional librarian.

(6) A library serving a population of 10,001 - 25,000 persons must:

(A) have local expenditures of at least \$4.25 per capita in local fiscal years 2013, 2014, 2015; \$4.34 per capita in local fiscal years 2016, 2017, 2018; \$4.42 per capita in local fiscal years 2019, 2020, 2021; and \$4.51 per capita in local fiscal years 2022, 2023, 2024, and 2025;

(B) have at least one item of library materials per capita or expend at least 15% of the local expenditures on the purchase of library materials, provided that in either case a minimum of 7,500 items are held;

(C) have at least 1% of total items in collection published in the last five years;

(D) be open for service not less than 30 hours per week;

(E) employ a library director for at least 30 hours per week in library duties.

(7) A library serving a population of 5,001 - 10,000 must:

(A) have local expenditures of at least \$3.97 per capita in local fiscal years 2013, 2014, 2015; \$4.05 per capita in local fiscal years 2016, 2017, 2018; \$4.13 per capita in local fiscal years 2019, 2020, 2021; and \$4.21 per capita in local fiscal years 2022, 2023, 2024, and 2025;

(B) have at least one item of library materials per capita or expend at least 15% of the local expenditures on the purchase of library materials; provided that in either case a minimum of 7,500 items are held;

(C) have at least 1% of total items in collection published in the last five years;

(D) be open for service not less than 20 hours per week;

(E) employ a library director for at least 20 hours per week in library duties.

(8) A library serving a population of 5,000 or fewer persons must:

(A) have local per capita expenditures or minimum total local expenditures, whichever is greater, of \$3.70 per capita or \$10,650 in local fiscal years 2013, 2014, 2015; \$3.77 per capita or \$15,000 total in local fiscal years 2016, 2017, 2018; \$3.85 per capita or \$18,000 total in local fiscal years 2019, 2020, 2021; and \$3.92 per capita or \$21,000 in local fiscal years 2022, 2023, 2024, and 2025;

(B) have at least one item of library materials per capita or expend at least 15% of the local expenditures on the purchase of library materials, provided that in either case a minimum of 7,500 items are held;

(C) have at least 1% of total items in collection published in the last five years;

(D) be open for service not less than 20 hours per week;

(E) employ a library director for at least 20 hours per week in library 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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CHAPTER 2. ARCHIVES AND HISTORICAL RESOURCES

SUBCHAPTER A. PRINCIPLES AND PROCEDURES OF THE COMMISSION

13 TAC §2.51, §2.52

The Texas State Library and Archives Commission (commission) adopts amendments to 13 Texas Administrative Code §2.51, Public Record Fees, and §2.52, Customer Service Policies. The amendments are adopted without changes to the proposed text as published in the May 3, 2024, issue of the *Texas Register* (49 TexReg 2873) and will not be republished.

EXPLANATION OF AMENDMENTS. Amendments to §2.51 update and clarify language for readability and consistency with other commission rules and delete language that is unnecessary, either because it is obsolete or because it is repetitive of other portions of the rule or existing law and therefore not necessary in the rule. References to the commission are changed to "agency" throughout the rule for consistency with the commission's other rules and in accordance with the definitions of "commission" and "agency" in Chapter 2. The update to the legal citation in subsection (a) ensures any changes to that chapter are automatically included in the commission's rule. The requirement to review the fee schedule annually is deleted. Amendments to subsection (b)(6) simplify the language regarding third party access charges. Subsection (c) is deleted, as there is no need to restate copyright law in administrative rule, and subsection (d) is deleted as it is redundant of subsection (a).

Amendments to §2.52 change the name of the section to Patron Registration and Customer Service and simplify and clarify the rule language. The amendments to subsection (a) clarify that any individual aged 17 or older who wishes to access materials in the State Archives or access certain library services, including borrowing items from the agency's circulating collections, interlibrary loan, and remote access to TexShare databases, must register in person each year by presenting a current government-issued photo identification, signing a registration agreement, and providing contact information. The amendments also clarify that patrons of the State Archives must also comply with the commission's rule regarding access to archival state records and other historical resources, §10.2. The amendments simplify the language noting that only individuals are eligible for patron registration and deletes subsection (a)(4) as it is unnecessary given the identification of services that require registration in subsection (a)(1).

Amendments to subsections (b) and (c) streamline language and simplify the subsections. Subsections (d) and (e) are deleted as the rule's applicability and services requiring registration are noted in subsection (a)(1). Subsection (f) is deleted as it is obsolete. Finally, amendments to subsection (g), which will become subsection (d) once amended, simplify and clarify the language regarding what might lead to suspension of a patron's borrow-

ing privileges and add language noting that any individual who has been suspended may appeal to the director and librarian in compliance with the commission's protest procedure rule.

SUMMARY OF COMMENTS. The Commission did not receive any comments on the proposed amendments.

STATUTORY AUTHORITY. The amendments are adopted under Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; §552.230, which authorizes governmental bodies to adopt reasonable rules of procedure under which public information may be inspected and copied; §603.004, which authorizes the state librarian to charge for a photographic copy a fee determined by the commission with reference to the amount of labor, supplies, and materials required; and, more specifically, §441.193, which provides that the commission shall adopt rules regarding public access to archival state records and other historical resources in the possession of the commission; and §441.196, which provides the commission may sell copies of state archival records and other historical resources in its possession at a price not exceeding 25 percent above the cost of publishing or producing the copies.

CROSS REFERENCE TO STATUTE. Government Code, Chapter 441.

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 10. ARCHIVES AND HISTORICAL RESOURCES

13 TAC §10.2

The Texas State Library and Archives Commission (commission) adopts amendments to 13 Texas Administrative Code §10.2, Public Access to Archival State Records and Other Historical Resources. The amendments are adopted without changes to the proposed text as published in the May 3, 2024, issue of the *Texas Register* (49 TexReg 2876). The rule will not be republished.

EXPLANATION OF AMENDMENTS. An amendment to subsection (a)(1) adds a reference to §2.52, Patron Registration and Customer Service. An amendment to subsection (a)(3) adds "government-issued" before "photo identification" for consistency with the recent amendments to §2.52. The other amendments clarify who is required to register as a patron and change the word "survival" to "preservation" for consistency with the agency's mission.

SUMMARY OF COMMENTS. The Commission did not receive any comments on the proposed amendments.

STATUTORY AUTHORITY. The amendments are adopted under Government Code, §441.190; which authorizes the commission to adopt rules establishing standards and procedures for the protection, maintenance, and storage of state records, paying particular attention to the maintenance, storage, and protection of archival and vital state records; and §441.193, which authorizes the commission to adopt rules regarding public access to the archival state records and other historical resources in the possession of the commission.

CROSS REFERENCE TO STATUTE. Government Code, Chapter 441, Subchapter L, Preservation and Management of State Records and Other Historical Resources.

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

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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 67. AUCTIONEERS

16 TAC §§67.21, 67.40, 67.65, 67.66, 67.70, 67.71, 67.90

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 67, §§67.21, 67.40, 67.65, 67.70, and 67.71; and adopts new rules at §67.66 and §67.90, regarding the Auctioneers program, without changes to the proposed text as published in the March 29, 2024, issue of the *Texas Register* (49 TexReg 2032). These rules will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 67, implement Texas Occupations Code, Chapter 1802, Auctioneers.

The adopted rules implement House Bill (HB) 4416, 88th Legislature, Regular Session (2023). This bill addresses concerns identified in the Department's study of the Auctioneers program mandated by HB 1560, 87th Legislature, Regular Session (2021). Notably, HB 4416 removes the requirement that an associate auctioneer be employed by a licensed auctioneer. Additionally, the bill enhances consumer safety by requiring the auctioneer and client to sign a written contract and agree in writing to an inventory of property before an auction. HB 4416 also changes provisions in Chapter 1802 regarding the Auctioneer Education and Recovery Fund to raise the cap on claims against an auctioneer arising from a single auction, and to allow an aggrieved party to receive greater compensation for claims against an auctioneer.

The adopted rules also incorporate changes and updates recommended by Department staff to accurately reflect the current operation of auctioneer regulation.

SECTION-BY-SECTION SUMMARY

The adopted rules amend §67.21, License Requirements--Associate Auctioneers. The adopted rules amend §67.21(2) to remove the requirement that an associate auctioneer be employed by a licensed auctioneer.

The adopted rules amend §67.40, Auctioneer Education and Recovery Fund. The adopted rules amend §67.40(b) to change the date on which the department will determine the amount necessary to replenish the Auctioneer Education and Recovery Fund.

The adopted rules amend §67.40(d) to state that if an auctioneer owes an aggrieved party more than \$15,000 for claims related to a single auction, the auctioneer must pay any amount over \$15,000.

The adopted rules amend §67.40(e) to increase the total maximum payment from the recovery fund for claims arising from a single auction to \$100,000.

The adopted rules add §67.40(f) to state that any damages arising from a single auction in excess of \$100,000 must be prorated among all aggrieved parties, with damages in excess of \$100,000 to be paid directly by the auctioneer.

The adopted rules reletter existing §67.40(f) to become new §67.40(g).

The adopted rules reletter existing §67.40(g) to become new §67.40(h).

The adopted rules add §67.40(i) to state that the department may revoke a person's auctioneer or associate auctioneer license if a payment from the recovery fund has been made and the licensee has not repaid the department.

The adopted rules reletter existing §67.40(h) to become new §67.40(j).

The adopted rules amend §67.65, Auctioneer Advisory Board. The adopted rules add §67.65(d) to state that the presiding officer must consider where potential advisory board members reside when making appointments to the advisory board.

The adopted rules add new §67.66, Terms; Vacancies. The adopted rules add §67.66(a) to state that advisory board members serve six-year terms that expire on September 1 of odd-numbered years.

The adopted rules add §67.66(b) to state that advisory board members may not serve more than two consecutive terms.

The adopted rules add §67.66(c) to state that, in the event of a vacancy on the advisory board, the presiding officer of the commission, after receiving the commission's approval, must appoint a replacement to serve the remainder of the vacated term.

The adopted rules amend §67.70, Auctioneer Standards of Practice. The adopted rules replace the language in existing §67.70(b)(4) with new language to state that an auctioneer must have a written contract in place, with all terms and signed by both the auctioneer and client, before an auction.

The adopted rules replace the language in existing §67.70(b)(5) with new language requiring each contract for the services of an auctioneer to include information required by commission rule.

The adopted rules replace the language in existing §67.70(b)(6) with new language to state that before an auction, the auctioneer and client must agree in writing to an itemized inventory of property on a form prescribed by the department.

The adopted rules transfer the language in existing §67.70(b)(4) to become new §67.40(b)(7).

The adopted rules transfer the language in existing §67.70(b)(5) to become new §67.40(b)(8) and add "inventories of property" to the list of documents auctioneers must retain.

The adopted rules transfer the language in existing §67.70(b)(6) to become new §67.40(b)(9).

The adopted rules transfer the language in existing §67.70(b)(7) to become new §67.40(b)(10).

The adopted rules transfer the language in existing §67.70(b)(8) to become new §67.70(b)(11).

The adopted rules transfer the language in existing §67.70(b)(9) to become new §67.70(b)(12).

The adopted rules amend §67.71, Requirements--Sponsoring Auctioneer. The adopted rules amend §67.71(a) to remove the requirement that an associate auctioneer be employed by a licensed auctioneer and replace it with the requirement that an associate auctioneer work under the direct supervision of a licensed auctioneer.

The adopted rules add new §67.90, Administrative Penalties and Sanctions, to state that a violation of the laws, rules, or an order of the Department's executive director or Commission are grounds for administrative penalties or license sanctions.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the March 29, 2024, issue of the *Texas Register* (49 TexReg 2032). The public comment period closed on April 29, 2024. The Department did not receive any comments from interested parties on the proposed rules.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The Auctioneer Advisory Board met on June 12, 2024, to discuss the proposed rules and the public comments received. The Advisory Board recommended that the Commission adopt the proposed rules as published in the *Texas Register*. At its meeting on July 23, 2024, the Commission adopted the proposed rules as recommended by the Advisory Board.

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 1802, which authorize 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 adopted rules are those set forth in Texas Occupations Code, Chapters 51 and 1802. No other statutes, articles, or codes are affected by the adopted rules.

The legislation that enacted the statutory authority under which the adopted rules are proposed to be adopted is House Bill 4416, 88th 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.

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CHAPTER 73. ELECTRICIANS

16 TAC §§73.10, 73.26, 73.80, 73.110, 73.111

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 73, §73.10 and §73.80, and new rules at 16 TAC, Chapter 73, §73.110 and §73.111, regarding the Electricians program, without changes to the proposed text as published in the May 3, 2024, issue of the *Texas Register* (49 TexReg 2878). These rules will not be republished.

The Commission also adopts amendments to existing rules at 16 TAC Chapter 73, §73.26, regarding the Electricians program, with a change to the proposed text as published in the May 3, 2024, issue of the *Texas Register* (49 TexReg 2878). This rule will be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 73, implement Texas Occupations Code, Chapter 1305, Electricians.

The adopted rules implement House Bill (HB) 1391, 88th Legislature, Regular Session (2023). HB 1391 provides a new pathway to a residential wireman license for students who complete a focused career and technology education (CTE) program offered by a Texas high school or institution of higher education. The bill requires the Department to establish standards by rule for the essential knowledge and skills used to build these programs.

Members of the Electrical Safety and Licensing Advisory Board, along with Department staff and representatives from Texas State Technical College, identified an existing series of rules approved by the State Board of Education (SBOE) setting out the essential knowledge and skills for a series of courses in electrical technology. After spending several meetings reviewing the educational requirements of these courses and obtaining valuable insight from Texas Education Agency staff regarding the time and practical requirements of each, the group identified four SBOE-approved courses that provide the essential classroom and practical training needed for a student to become competent as a residential wireman. These courses are identified in §73.110 of the adopted rules.

The adopted rules recognize that while a student must complete certain coursework in a classroom setting, hands-on instruction is of paramount importance in the learning experience. Thus, at least 80% of classroom time in two courses - Electrical Technology I and II - must be spent on hands-on or lab work. Additionally, four credits of course credit in a "practicum" setting are required. Students will earn these credits by working outside of the class-

room under the supervision of a licensed master electrician on behalf of a licensed electrical contractor. The adopted rules also require schools to provide a student with course credit for appropriate work performed outside of the program, such as through an after-school or summer job.

HB 1391 also requires the Department to verify that CTE programs offered by institutions of higher education or private high schools are similar to those offered by public high schools. Section 73.111 thus requires institutions of higher education or private high schools to request a determination from the Department that their programs meet the standards set by §73.110.

Lastly, the adopted rules implement HB 1391's requirement that the Department waive license renewal fees for instructors of CTE programs.

SECTION-BY-SECTION SUMMARY

The adopted rules amend §73.10 to add necessary definitions of "career and technology education program" and "institution of higher education." The remaining definitions are renumbered.

The adopted rules amend §73.26 to add subsection (d), which requires an applicant for a residential wireman license who has completed a CTE program to verify completion in a form acceptable to the department. In the term "career and technology education program" the word "education" was inadvertently dropped and is replaced in the adoption text in this section.

The adopted rules amend §73.80 to add two subsections. New §73.80(f) sets the cost of a determination under new §73.111 at \$90. New §73.80(g) provides that the Department will waive the renewal fee for a master electrician, journeyman electrician, or residential wireman who instructs a CTE program.

The adopted rules create new §73.110, which outlines the requirements governing CTE programs. Subsection (a) is simply explanatory and states the Department's obligations regarding CTE programs under HB 1391. Subsection (b) is the centerpiece of new §73.110. This subsection states that CTE programs must be designed to ensure that students obtain the essential skills and knowledge outlined in several cross-referenced rules of the Texas Education Agency. Paragraphs (b)(1) through (b)(4) provide the cross-references to those rules and specify the number of academic credits required to be dedicated to each set of essential skills and knowledge.

Subsection (b) also requires schools that offer CTE courses to provide a substantial amount of practical instruction. This subsection mandates that hands-on instruction, including lab work, be provided to students for at least 80% of total time spent in the classroom covering the topics in the Electrical Technology I and II courses. This requirement is vital to ensure that students have ample training on safety, tools, methods, and equipment under proper supervision before performing work outside of the classroom. Subsection (b) further ensures that students receive adequate instruction by prohibiting a CTE program from granting students course credit by examination.

Paragraph (b)(4) requires a CTE program to include four credits of "practicum" experience, in addition to the classroom portions required by paragraphs (b)(1) through (b)(3). In a practicum setting, students will work - with or without pay, depending on the arrangement - outside of the classroom under the supervision of a licensed master electrician while performing work on behalf of a licensed electrical contractor. Recognizing that some part of a student's time in a practicum will be dedicated to consultation with school administrators, §73.110(b)(4)(A) requires that at

least 80% of practicum time be spent outside of the classroom and working under the supervision of a licensed master electrician on behalf of a licensed electrical contractor.

Because a student's academic schedule may not have room for four hours in a practicum setting, §73.110(b)(4)(B) includes HB 1391's requirement that a school provide course credit for appropriate work performed by the student outside of the program. This provision states that a school must implement procedures to ensure that students who work outside of the program - after school hours, on weekends, or as a summer job, for example - are able to receive course credit toward the practicum component for that work.

Subsections (c) and (d) of adopted §73.110 simply implement HB 1391's requirements that CTE courses be instructed by a department-licensed master electrician, journeyman electrician, or residential wireman, and that CTE courses offered by an institution of higher education be no more stringent than a course offered by a public high school. Subsection (e) states that the Department will recognize a CTE course offered by an institution of higher education or private high school if it substantially complies with §73.110. Subsection (f) repeats HB 1391's requirement that hours spent completing a CTE program may not be credited toward another type of electrical license.

Lastly, adopted new §73.111 sets out the procedures for an institution of higher education or private high school to request a determination from the Department that its CTE program meets the standards of §73.110. Subsection (a) requires these schools to request a determination and specifies the items to be included in the request. Once a school has received a determination of substantial compliance, subsection (b) simply requires schools to notify the Department of major changes to its program. Rounding out the adopted rules, subsections (c) and (d) specify that the Department may rescind its determination if a program is not in compliance with §73.110, and that such a determination is not a contested case under the Administrative Procedure Act, Texas Government Code, Chapter 2001.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the May 3, 2024, issue of the *Texas Register* (49 TexReg 2878). The public comment period closed on June 3, 2024. The Department received comments from one interested organization, Associated Builders and Contractors of Texas Inc. (ABC Texas), and two comments unrelated to this rulemaking, during the public comment period. The public comments are summarized below.

Comment: ABC Texas commented that it strongly supports the rules because they will make the path more efficient for individuals to enter the industry and earn their trade licenses, helping to ease a shortage of skilled labor. Further, the commenter supports TDLR's review and approval of educational programs for consistency and compliance with the law, which will help ensure high-quality training, job site safety, and project quality.

Department Response: The Department appreciates the comment in support of the rules and did not make any changes to the proposed rules in response to these comments.

Comment: Two commenters provided comments that were actually questions relating to the licensing process.

Department Response: These comments have been forwarded to the appropriate staff to assist the commenters. The Depart-

ment did not make any changes to the proposed rules in response to these comments.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The Electrical Safety and Licensing Advisory Board met on June 10, 2024, to discuss the proposed rules and the public comment received. The Advisory Board recommended that the Commission adopt the proposed rules as published in the *Texas Register* with a change to §73.26, as explained in the Section-by-Section Summary. At its meeting on July 23, 2024, the Commission adopted the proposed rules as recommended by the Advisory Board.

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 1305, which authorize 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 adopted rules are those set forth in Texas Occupations Code, Chapters 51 and 1305. No other statutes, articles, or codes are affected by the adopted rules.

The legislation that enacted the statutory authority under which the adopted rules are proposed to be adopted is House Bill 1391, 88th Legislature, Regular Session (2023).

§73.26. Documentation of Required On-The-Job Training.

(a) An applicant for a license which requires on-the-job training under Occupations Code Chapter 1305 may verify that he or she has completed on-the-job training by submitting the department's experience verification form with the license application.

(b) When an applicant or the department requests verification of on-the-job training of an applicant from a licensee who is authorized by Occupations Code Chapter 1305 to verify on-the-job training, the licensee must provide the verification within 30 calendar days of the request. The licensee must verify only on-the-job training within the licensee's knowledge. The licensee must verify the dates of on-the-job training, describe the work performed by the applicant, specify the name of the business under which the applicant's work was performed, and provide any other information required on the department's form.

(c) An applicant for a journeyman lineman license must verify that he or she has completed the apprenticeship required by Occupations Code Chapter 1305 by submitting verification in a form acceptable to the department.

(d) An applicant for a residential wireman license who has completed a career and technology education program must verify completion by submitting verification in a form acceptable to the department.

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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Texas Department of Licensing and Regulation
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CHAPTER 75. AIR CONDITIONING AND REFRIGERATION

16 TAC §§75.10, 75.25, 75.30, 75.70, 75.80, 75.120, 75.124, 75.125

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 75, §§75.10, 75.25, 75.30, 75.70, 75.80, and 75.120, and adopts new rules at §75.125, regarding the Air Conditioning and Refrigeration Contractors program, without changes to the proposed text as published in the May 3, 2024, issue of the *Texas Register* (49 TexReg 2883). These rules will not be republished.

The Commission also adopts new rules at 16 TAC Chapter 75, §75.124, regarding the Air Conditioning and Refrigeration Contractors program, with a change to the proposed text as published in the May 3, 2024, issue of the *Texas Register* (49 TexReg 2883). These rules will be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 75, implement Texas Occupations Code, Chapter 1302, Air Conditioning and Refrigeration Contractors.

The adopted rules implement House Bill (HB) 1859, 88th Legislature, Regular Session (2023). HB 1859 provides a new pathway to an air conditioning and refrigeration technician certification for students who complete a focused career and technology education (CTE) program offered by a Texas high school or institution of higher education. The bill requires the Department to establish standards by rule for the essential knowledge and skills used to build these programs.

Members of the Air Conditioning and Refrigeration Contractors Advisory Board, along with Department staff and representatives from Texas State Technical College, identified an existing series of rules approved by the State Board of Education (SBOE) setting out the essential knowledge and skills for a series of courses in air conditioning and refrigeration technology. After spending several meetings reviewing the educational requirements of these courses and obtaining valuable insight from Texas Education Agency staff regarding the time and practical requirements of each, the group identified four SBOE-approved courses that provide the essential classroom and practical training needed for a student to become competent as a certified technician. These courses are identified in §75.124 of the adopted rules.

The adopted rules recognize that while a student must complete certain coursework in a classroom setting, hands-on instruction is of paramount importance in the learning experience. Thus, at least 80% of classroom time in two courses - Heating, Ventilation, and Air Conditioning Technology I and II - must be spent on hands-on or lab work. Additionally, three credits of course credit in a "practicum" setting are required. Students will earn these credits by working outside of the classroom under the supervi-

sion of a licensed air conditioning and refrigeration contractor. The adopted rules also require schools to provide a student with course credit for appropriate work performed outside of the program, such as through an after-school or summer job.

HB 1859 also requires the Department to verify that CTE programs offered by institutions of higher education or private high schools are similar to those offered by public high schools. Section 75.125 thus requires institutions of higher education or private high schools to request a determination from the Department that their programs meet the standards set by §75.124.

Lastly, several other changes required by HB 1859 are implemented in these adopted rules:

- Lowering the minimum age of a registered technician to 16 years of age (from 18);

- Requiring in-person supervision of a registered technician under the age of 18;

- For a person seeking to become a certified technician, removing the requirement that the certification training program has to have been completed within the preceding four years;

- Waiving license renewal fees for instructors of CTE programs; and

- Providing instructors of these programs with continuing education credits.

SECTION-BY-SECTION SUMMARY

The adopted rules amend §75.10 to add and clarify definitions. The definition for "career and technology education program" is a necessary inclusion to implement HB 1859 and distinguish it from the "certification training program" created by HB 3029, 85th Regular Session (2017). The adopted rules amend the definition of "certification training program" to make this distinction clearer. The adopted rules also add definitions of "institution of higher education" and "in-person supervision" to §75.10. Both are necessary to implement HB 1859.

The adopted rules amend §75.25 to add subsection (g), which allows an air conditioning and refrigeration contractor to receive up to two hours of continuing education credit per academic semester for instructing a CTE program.

The adopted rules amend §75.30(a)(6) to reword the exemption applicable to students enrolled in CTE programs.

The adopted rules add §75.70(a)(12), which requires an air conditioning and refrigeration contractor to provide in-person supervision, either personally or via a certified technician, to a person under the age of 18 who is acting or offering to act as an air conditioning and refrigeration technician.

The adopted rules amend §75.80 to add two subsections. New §75.80(e) sets the cost of a determination under new §75.125 at \$90. New §75.80(f) provides that the Department will waive the renewal fee for an air conditioning and refrigeration contractor or certified technician who instructs a CTE program. Existing §75.80(e) has been moved to new §75.80(g).

The adopted rules amend §75.120(a)(1) to clarify that a person who completes a CTE program is eligible to apply for an air conditioning and refrigeration technician certification. Additionally, the adopted rules amend §75.120(a)(1)(B) (formerly §75.120(a)(1)(A)) to remove unnecessary language and remove the requirement that a certification training program have been completed within the past 48 months.

The adopted rules create new §75.124, which outlines the requirements governing CTE programs. Subsection (a) is simply explanatory and states the Department's obligations regarding CTE programs under HB 1859. Subsection (b) is the centerpiece of new §75.124. This subsection states that CTE programs must be designed to ensure that students obtain the essential skills and knowledge outlined in several cross-referenced rules of the Texas Education Agency. Subsection (b)(1) through (b)(4) provide the cross-references to those rules and specify the number of academic credits required to be dedicated to each set of essential skills and knowledge.

Subsection (b) also requires schools that offer CTE courses to provide a substantial amount of practical instruction. This subsection mandates that hands-on instruction, including lab work, be provided to students for at least 80% of total time spent in the classroom covering topics in the Heating, Ventilation, and Air Conditioning I and II courses. This requirement is vital to ensure that students have ample training on safety, tools, methods, and equipment under proper supervision before performing work outside of the classroom. Subsection (b) further ensures that students receive adequate instruction by prohibiting a CTE program from granting students course credit by examination.

Subsection (b)(4) requires a CTE program to include three credits of "practicum" experience, in addition to the classroom portions required by subsection (b)(1) through (b)(3). In a practicum setting, students will work - with or without pay, depending on the arrangement - outside of the classroom under the supervision of a licensed air conditioning and refrigeration contractor. Recognizing that some part of a student's time in a practicum will be dedicated to consultation with school administrators, adopted §75.124(b)(4)(A) requires that at least 80% of practicum time be spent outside of the classroom and working under the supervision of a licensed air conditioning and refrigeration contractor.

Because a student's academic schedule may not have room for three hours in a practicum setting, §75.124(b)(4)(B) includes HB 1859's requirement that a school provide course credit for appropriate work performed by the student outside of the program. This provision states that a school must implement procedures to ensure that students who work outside of the program - after school hours, on weekends, or as a summer job, for example - are able to receive course credit toward the practicum component for that work. In this subsection, "a" was inadvertently left out of the proposed text "supervision of a department-licensed air conditioning and refrigeration contractor" and is inserted in the adoption text at the recommendation of staff.

Subsections (c) and (d) of adopted §75.124 simply implement HB 1859's requirements that CTE courses be instructed by department-licensed air conditioning and refrigeration contractors or certified technicians, and that CTE courses offered by an institution of higher education be no more stringent than a course offered by a public high school. Lastly, subsection (e) states that the Department will recognize a CTE course offered by an institution of higher education or private high school if it substantially complies with §75.124.

Finally, adopted new §75.125 sets out the procedures for an institution of higher education or private high school to request a determination from the Department that its CTE program meets the standards of §75.124. Subsection (a) requires these schools to request a determination and specifies the items to be included in the request. Once a school has received a determination of substantial compliance, subsection (b) simply requires schools to notify the Department of major changes to its

program. Rounding out the adopted rules, subsections (c) and (d) specify that the Department may rescind its determination if a program is not in compliance with §75.124, and that such a determination is not a contested case under the Administrative Procedure Act, Texas Government Code, Chapter 2001.

PUBLIC COMMENTS

The Department posted a summary of the proposed rules on the Department's website on April 23, 2024, before the publication of the proposed rules and the official start of the public comment period. The Department received written comments from four interested parties in response to the summary of the proposed rules. The complete proposed rules were drafted and distributed to persons internal and external to the agency and were published in the May 3, 2024, issue of the *Texas Register* (49 TexReg 2883). The public comment period closed on June 3, 2024. The Department received comments on the proposed rules from two additional interested parties. The public comments are summarized below.

Comment: Comments from three individuals received in response to the posting of the rule summary oppose the ability of students as young as 16 to become registered and receive training and work experience in a CTE program to become eligible for certification as early as 18 years of age. The commenters express concern that applicants will not be required to have completed 24 months of air conditioning and refrigeration work to become qualified to take the examination for a certified technician. The commenters also express concerns about immaturity and preparedness for responsibilities including pricing jobs, as well as lack of experience and lack of guidance from an experienced person.

Department Response: The Department agrees that students who participate in a CTE program may have fewer hours of work experience than those taking the traditional route to certification. However, the requirements for specific educational course components, hands-on training, and work experience supervised in-person by a licensed contractor fulfill the intent of the legislation to provide another pathway for students desiring to enter the workforce earlier but adequately prepared. A person younger than 18 years of age who is acting or offering to act as a technician must always work under the direct on-site supervision of a licensed contractor or certified technician.

The Department is obligated to implement the new pathway to certification provided in the statute. The educational program emphasizes the practicum and requires supervision by a licensed contractor during on-the-job training. Likewise, only licensed contractors or certified technicians may teach the required coursework. Any person who obtains certification after completion of the training program, and passes the Certified Technician Exam, is only authorized to perform activities within the scope of the certification and must have additional qualifications for a contractor license just as any other applicant must.

The content of the training courses an applicant must take is detailed in §75.124 of the proposed rules. Potential employers who prefer the person to have additional work experience may adjust their experience requirements and hiring criteria as desired. The Department made no changes to the proposed rules in response to these comments.

Comment: The fourth comment received in response to the posted rule summary questioned how a license holder who teaches full time, part time, or as an adjunct instructor in a career

and technology education program will be able to validate their employment in the program.

Department Response: The Department will initially collect reasonable documentation including employment records such as pay receipts, syllabus or course descriptions and course schedules, copies of employment agreements, tax documents, or employment verification letters on employer letterhead until streamlined, standardized documentation requirements can be established in consultation with educational institutions providing approved training programs. The Department made no changes to the proposed rules in response to this comment.

The Department received two supportive written comments from one individual and one interested organization, Associated Builders and Contractors of Texas Inc. (ABC Texas), during the public comment period following publication of the complete proposed rules.

Comment: ABC Texas commented that it strongly supports the rules because they will make the path more efficient for individuals to enter the industry and earn their trade licenses, helping to ease a shortage of skilled labor. Further, the commenter supports TDLR's review and approval of educational programs for consistency and compliance with the law, which will help ensure high-quality training, job site safety, and project quality. The individual commenter expressed general support for the CTE program leading to the certificate.

Department Response: The Department appreciates the comments in support of the rules and did not make any changes to the proposed rules.

Comment: One commenter expressed that the Department should prioritize enforcement against unlicensed persons rather than adopting the proposed rules.

Department Response: The Department takes its role in enforcing the law against unlicensed persons very seriously and continues to pursue such cases. The Department did not make any changes to the proposed rules in response to this comment.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The Air Conditioning and Refrigeration Contractors Advisory Board met on June 10, 2024, to discuss the proposed rules and the public comments received. Because a quorum of the Advisory Board was not present, no official action could be taken. However, the Department recommends that the Commission adopt the proposed rules as published in the *Texas Register* with a change to §75.124, as explained in the Section-by-Section Summary. At its meeting on July 23, 2024, the Commission adopted the proposed rules as recommended by the Department.

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 1302, which authorize 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 adopted rules are those set forth in Texas Occupations Code, Chapters 51 and 1302. No other statutes, articles, or codes are affected by the adopted rules.

The legislation that enacted the statutory authority under which the adopted rules are proposed to be adopted is House Bill 1859, 88th Legislature, Regular Session (2023).

§75.124. Career and technology education program requirements.

(a) Sections 1302.5036 and 1302.5037 of the Act provide a pathway to an air conditioning and refrigeration technician certification for persons who complete a career and technology education program. Pursuant to §1302.5037, the department is required to:

(1) establish standards for the essential knowledge and skills of career and technology education programs offered in Texas public high schools; and

(2) determine on a case-by-case basis whether educational programs offered by private high schools and institutions of higher education are similar to career and technology education programs offered in Texas public high schools.

(b) A career and technology education program must be designed to ensure that students obtain the essential knowledge and skills set out in the following cross-referenced rules of the Texas Education Agency. The minimum number of academic credits required for each course is also noted. Students enrolled in courses identified in paragraphs (2) and (3) below must be provided hands-on practical instruction, including interactive lab work, for at least 80 percent of total classroom time. A career and technology education program may not allow students to obtain credit by examination.

(1) Principles of Construction; Texas Administrative Code Title 19, Part 2, Chapter 130, Subchapter B, §130.43; one credit.

(2) Heating, Ventilation, and Air Conditioning and Refrigeration Technology I; Texas Administrative Code Title 19, Part 2, Chapter 130, Subchapter B, §130.59; one credit.

(3) Heating, Ventilation, and Air Conditioning and Refrigeration Technology II; Texas Administrative Code Title 19, Part 2, Chapter 130, Subchapter B, §130.60; two credits. Instruction regarding sheet metal and fiberglass ductwork, described in §130.60(c)(14) and (15), is optional.

(4) Practicum in Construction Technology and Extended Practicum in Construction Technology; Texas Administrative Code Title 19, Part 2, Chapter 130, Subchapter B, §130.64 and §130.69; three total credits.

(A) At least 80 percent of a student's time in a practicum must be spent outside of the classroom and working under the supervision of a department-licensed air conditioning and refrigeration contractor.

(B) A high school or institution of higher education offering a career and technology education program under this section must implement procedures allowing a student to earn course credit for work performed outside of the classroom under the supervision of a department-licensed air conditioning and refrigeration contractor.

(c) A career and technology education program will not be recognized by the department unless it is instructed by:

(1) a department-licensed air conditioning and refrigeration contractor; or

(2) a certified technician whose certification was issued on or after September 1, 2018.

(d) A career and technology education program offered by an institution of higher education may not be more stringent than a program offered by a public high school.

(e) The department will recognize an educational program offered by a private high school or institution of higher education as a "career and technology education program" for purposes of §75.120 if the department determines that the educational program substantially complies with the requirements 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.

Filed with the Office of the Secretary of State on August 9, 2024.

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Doug Jennings

General Counsel

Texas Department of Licensing and Regulation

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



16 TAC §75.110

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 75, §75.110, regarding the Air Conditioning and Refrigeration Contractors program, without changes to the proposed text as published in the April 26, 2024, issue of the *Texas Register* (49 TexReg 2605). These rules will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 75, implement Texas Occupations Code, Chapter 1302, Air Conditioning and Refrigeration Contractors.

The Air Conditioning and Refrigeration Contractor License Law, Texas Occupations Code, Chapter 1302, §1302.101(a), requires the Commission to adopt rules for the practice of air conditioning and refrigeration contracting that are at least as strict as the standards of the Uniform Mechanical Code and the International Mechanical Code. The codes define the standard of practice for air conditioning and refrigeration contracting and are used by Department staff to evaluate the mechanical integrity and proper installation and service of air conditioning and refrigeration systems. Texas has also adopted the International Residential Code and the International Fuel Gas Code in accordance with Occ. Code, Chapter 1301, Plumbers, §1301.255. The adopted rule amendments are necessary to align the program's regulations with these currently recognized national standards and to provide clarity and consistency for the Department's licensees.

The adopted rule updates the applicable code editions from 2018 to 2021 for the International Residential Code, International Mechanical Code, International Fuel Gas Code, and Uniform Mechanical Code.

SECTION-BY-SECTION SUMMARY

The adopted rule amends §75.110, Applicable Codes, subsection (a), to adopt the 2021 editions of the International Residential Code, International Mechanical Code, International Fuel Gas Code, and Uniform Mechanical Code.

The adopted rule amends §75.110, Applicable Codes, subsection (b), to state that the currently adopted code editions will remain in effect through August 31, 2024. Adopted subsection (b)

states that air conditioning and refrigeration work permitted or started before September 1, 2024, may be performed in accordance with the 2018 edition of the applicable codes.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the April 26, 2024, issue of the *Texas Register* (49 TexReg 2605). The public comment period closed on May 28, 2024. The Department received comments on the proposed rules from six interested parties. The public comments are summarized below.

Comment: The International Association of Plumbing and Mechanical Officials (IAPMO) commented, by both written submission and orally at the June 10 Advisory Board meeting, in support of the rules - in particular, about the adoption of the 2021 Uniform Mechanical Code (UMC). The IAPMO noted that the UMC is favored by the industry for its ability to balance prescriptive requirements and performance standards to ensure adherence to safety standards while fostering innovation and efficiency. The organization commented that the 2021 edition of the UMC could provide clear guidance for inspectors, simplify enforcement, and possibly minimize construction delays. Finally, the IAPMO commented that the UMC integrates established health and safety standards with the latest technological advancements.

Department Response: The Department appreciates the comments in support of the rules and agrees that the adoption of the 2021 UMC will benefit both the public and the air conditioning and refrigeration industry. The Department made no changes to the proposed rules as a result of the comments.

Comment: The Department received comments from the International Code Council (ICC); the Air-Conditioning, Heating, and Refrigeration Institute (AHRI) (a trade association); and three businesses in the air conditioning and refrigeration industry. The AHRI commented both by submitting written materials and speaking at the Advisory Board meeting; the remaining entities provided oral comment. These entities support adopting more recent amendments to the 2021 codes, or moving to adopt the 2024 codes, because the codes now being adopted do not yet include standards for use of A2L refrigerant - hydrofluoroolefins (HFOs) and HFO blends. Later standards and codes do include specifications for the new type of refrigerant, which is already in wide use and for which equipment is being manufactured.

Department Response: The Department agrees that TDLR should timely adopt codes to keep pace with technology, but also considers the affects that updating them causes regarding changeover and compliance. Because the 2021 codes being adopted do not encompass A2Ls, the addition of this material cannot be accomplished in this rulemaking. The law mandates an opportunity for a public notice-and-comment period to address such amendments. However, the Department is taking the adoption of amendments to the 2021 codes, or the adoption of the 2024 versions of the codes, into consideration for rulemaking upon adoption of the 2021 codes in the current rulemaking and will seek public input during that action. The Department has not made changes to the rules in response to these comments.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The Air Conditioning and Refrigeration Contractors Advisory Board met on June 10, 2024, to discuss the proposed rules and

the public comment received. Because a quorum of the Advisory Board was not present, no official action could be taken. However, the Department recommends that the Commission adopt the proposed rules at this time as published in the *Texas Register* in accordance with the previously expressed wishes of the members of the Advisory Board. All members present continued to favor adoption. At its meeting on July 23, 2024, the Commission adopted the proposed rules as recommended by the Department.

STATUTORY AUTHORITY

The adopted rule is adopted under Texas Occupations Code, Chapters 51 and 1302, which authorize 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 adopted rule is also adopted under Texas Occupations Code, Chapter 1301, Plumbers.

The statutory provisions affected by the adopted rule are those set forth in Texas Occupations Code, Chapters 51, 1301, and 1302. No other statutes, articles, or codes are affected by the adopted rule.

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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Doug Jennings

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Texas Department of Licensing and Regulation

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



CHAPTER 110. ATHLETIC TRAINERS

16 TAC §§110.12, 110.21, 110.70

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 110, §§110.12, 110.21, and 110.70, regarding the Athletic Trainers program, without changes to the proposed text as published in the March 8, 2024, issue of the *Texas Register* (49 TexReg 1383). These rules will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The adopted rules under 16 TAC, Chapter 110, implement Texas Occupations Code, Chapter 451, Athletic Trainers.

The adopted rules are necessary to implement House Bill (HB) 2495 and HB 2512, 88th Legislature, Regular Session (2023). The adopted rules update definitions to reflect the current state of the occupation and remove outdated language related to licensure qualifications and requirements to obtain or renew a license. The adopted rules ensure consistency with processes already in place at the Department. The adopted rules also allow greater access to an athletic trainer's services under supervision and increase employment opportunities.

HB 2495

Section 3 of HB 2495 amends Texas Occupations Code, Chapter 451, to remove the option of fulfilling the athletic trainer license qualifications by holding a degree in corrective therapy. Section 3 also removes the apprenticeship requirement of a minimum of 20 hours of work per week during the fall semester, as specific sport seasons now span both fall and spring semesters. The adopted rules make corresponding changes to 16 TAC, Chapter 110.

HB 2512

Section 1 of HB 2512 amends Texas Occupations Code, Chapter 451, to update the definitions of "athletic injury" and "athletic training." The adopted rules make corresponding changes to 16 TAC, Chapter 110.

SECTION-BY-SECTION SUMMARY

The adopted rules amend §110.12, Scope of Practice. The adopted rules amend §110.12(a) to update the description of what services a licensed athletic trainer performs, to reflect the changes made by HB 2512 to the statutory definition of "athletic training."

The adopted rules amend §110.21, License Requirements. The adopted rules amend §110.21(c) to remove the option of fulfilling the athletic trainer license qualifications by holding a degree in corrective therapy.

The adopted rules amend §110.21(c)(2) to remove the minimum number of hours an apprentice must work weekly. The adopted rules also remove a time period for apprenticeship hours that is no longer applicable to the modern collegiate athletic calendar.

The adopted rules amend §110.70, Standards of Conduct. The adopted rules amend §110.70(a) to update the description of what services a licensed athletic trainer performs by referring to the applicable statute section.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the March 8, 2024, issue of the *Texas Register* (49 TexReg 1383). The public comment period closed on April 8, 2024. The Department received comments from one interested party on the proposed rules. The public comment is summarized below.

Comment: The comment received was from the Texas State Athletic Trainers Association in favor of the proposed rules as published. The comment specifically opined that it was not the intent of the Legislature to expand the scope of practice of the licensees.

Department Response: The Department appreciates the comment in support of the proposed rule. The Department did not make any changes to the proposed rules as a result of the comment.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The Advisory Board of Athletic Trainers met on May 1, 2024, to discuss the proposed rules and the public comment received. The Advisory Board recommended that the Commission adopt the proposed rules as published in the *Texas Register*. At its meeting on July 23, 2024, the Commission adopted the proposed rules as recommended by the Advisory Board.

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 451, which authorize 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 adopted rules are those set forth in Texas Occupations Code, Chapters 51 and 451, and Texas Education Code, Chapter 38. No other statutes, articles, or codes are affected by the adopted rules.

The legislation that enacted the statutory authority under which the adopted rules are proposed to be adopted are House Bill 2495 and House Bill 2512, 88th 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.

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Texas Department of Licensing and Regulation

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

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) adopts amendments to §§89.1, 89.2, and 89.5 and new §89.4, concerning gifted/talented education. Sections 89.1, 89.2, and 89.4 are adopted without changes to the proposed text as published in the May 17, 2024 issue of the *Texas Register* (49 TexReg 3470) and will not be republished. Section 89.5 is adopted with changes to the proposed text as published in the May 17, 2024 issue of the *Texas Register* (49 TexReg 3470) and will be republished. The adopted revisions implement House Bill (HB) 1525, 87th Texas Legislature, Regular Session, 2021, and codify current program practices.

REASONED 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 revisions to Chapter 89, Subchapter A, implement HB 1525 and codify current program practices. Specifically, the following changes have been made.

Section 89.1 was 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 was modified

to clarify that the section addresses the identification of gifted and talented students.

Section 89.2 was amended to clarify terms regarding professional learning for staff and establish criteria for completion. The section title was also updated to reflect the contents of the rule.

New §89.4 aligns 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 was amended to establish additional criteria for program accountability in new paragraphs (2) and (3). New paragraph (2) requires 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. A new paragraph (3) includes the addition of a performance measure by the board of trustees in alignment with the State Plan. In response to public comment, a grammatical edit was made at adoption to change the word "comply" to "complies" in paragraph (2).

The SBOE approved the revisions for first reading and filing authorization at its April 12, 2024 meeting and for second reading and final adoption at its June 28, 2024 meeting.

In accordance with TEC, §7.102(f), the SBOE approved the revisions for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2025-2026 school year. The earlier effective date will allow districts of innovation and open-enrollment charter schools that begin school prior to the statutorily required start date to implement the rules when they begin their school year. 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 May 17, 2024, and ended at 5:00 p.m. on June 17, 2024. The SBOE also provided an opportunity for registered oral and written comments at its June 2024 meeting in accordance with the SBOE board operating policies and procedures. Following is a summary of the public comments received and corresponding responses.

Comment: Four individuals commented in support of the proposed revisions.

Response: The SBOE agrees.

Comment: A retired gifted and talented specialist requested a revision from "comply" to "complies" in §89.5(2).

Response: The SBOE agrees and has modified §89.5(2) at adoption to use the word "complies."

Comment: One individual requested that the rules include accountability measures to ensure gifted and talented students are being served by teachers who have completed the required 30 hours of training.

Response: The SBOE disagrees. The SBOE does not have authority to monitor teacher training and students served; such authority would require legislation. The local district is responsible for monitoring and is accountable for ensuring that students are properly served.

Comment: One individual requested that gifted/talented programs in Texas be fully funded.

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

STATUTORY AUTHORITY. The amendments and new section are adopted 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.

§89.5. Program Accountability.

A school district 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 complies 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 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 August 12, 2024.

TRD-202403682

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: September 1, 2024

Proposal publication date: May 17, 2024

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



TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 104. CONTINUING EDUCATION

22 TAC §104.1

The State Board of Dental Examiners (Board) adopts this amendment to 22 TAC §104.1, concerning Continuing Education Requirements, without changes to the proposed text as published in the June 7, 2024, issue of the *Texas Register* (49 TexReg 4001). The rule will not be republished. The adopted amendment allows course instructors who offer continuing

education through a provider listed in §104.2 of this title to receive 2 hours of continuing education credit for every 1 hour of instruction provided. This credit applies per course, per renewal period.

The Texas Academy of General Dentistry (TAGD) provided a written comment in support of adoption of the rule as proposed. As an approved CE course provider, TAGD believes it is reasonable to allow course instructors to receive 2 hours of CE credit for every hour of course instruction in recognition of the work that is put into developing and presenting continuing education classes. TAGD hopes that it will serve as an incentive for more dentists to share their expertise and serve as instructors. No changes to the proposed 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.

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 August 9, 2024.

TRD-202403673

Lauren Studdard

General Counsel

State Board of Dental Examiners

Effective date: August 29, 2024

Proposal publication date: June 7, 2024

For further information, please call: (512) 305-8910



CHAPTER 107. DENTAL BOARD PROCEDURES

SUBCHAPTER A. PROCEDURES GOVERNING GRIEVANCES, HEARINGS, AND APPEALS

22 TAC §107.3

The State Board of Dental Examiners (Board) adopts this repeal of 22 TAC §107.3, concerning the effects of student loan payment default on licensure. The repeal is adopted without changes to the proposed version in the June 7, 2024, issue of the *Texas Register* (49 TexReg 4003) and the rule will not be republished. The adopted repeal implements Senate Bill 37 of the 86th Texas Legislature, Regular Session (2019). The bill prohibits a licensing agency from taking disciplinary action against a person who has defaulted on a student loan, or denying a license to that person based on a default of a student loan.

The Texas Academy of General Dentistry (TAGD) provided a written comment in support of this rule repeal. No changes to the proposed rule were made as a result of the comment.

This repeal 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 §107.17

The State Board of Dental Examiners (Board) adopts this amendment to 22 TAC §107.17, concerning service in non-rule-making proceedings. The amendment is adopted without changes to the proposed text as published in the June 7, 2024, issue of the *Texas Register* (49 TexReg 4003) and will not be republished. The adopted amendment updates the cited SOAH rule from 1 TAC §155.103 to 1 TAC §155.105.

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



SUBCHAPTER B. COMPLAINTS AND INVESTIGATIONS

22 TAC §107.105

The State Board of Dental Examiners (Board) adopts this amendment to 22 TAC §107.105, concerning collection of information and records. The amendment is adopted without changes to the proposed text as published in the June 7, 2024, issue of the *Texas Register* (49 TexReg 4004) and will not be republished. Because the Board no longer issues citations, the adopted amendment removes the citation language from the rule. Instead, the Board issues administrative penalties pursuant to §264.001 of the Dental Practice Act, and board rule 22 TAC §107.201.

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 §107.106

The State Board of Dental Examiners (Board) adopts this amendment to 22 TAC §107.106, concerning confidentiality of investigations. The amendment is adopted without changes to the proposed text as published in the June 7, 2024, issue of the *Texas Register* (49 TexReg 4005) and will not be republished. Because the Board no longer issues citations, the adopted amendment removes the citation language from the rule. Instead, the Board issues administrative penalties pursuant to §264.001 of the Dental Practice Act, and board rule 22 TAC §107.201.

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



SUBCHAPTER D. COMPLIANCE PROGRAM

22 TAC §107.300

The State Board of Dental Examiners (Board) adopts this amendment to 22 TAC §107.300, concerning responsibilities of compliance division. The amendment is adopted without changes to the proposed text as published in the June 7, 2024, issue of the *Texas Register* (49 TexReg 4006) and will not be republished. Because the Board no longer issues citations,

the adopted amendment removes the citation language from the rule. Instead, the Board issues administrative penalties pursuant to §264.001 of the Dental Practice Act, and board rule 22 TAC §107.201.

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.

Filed with the Office of the Secretary of State on August 9, 2024.

TRD-202403677

Lauren Studdard

General Counsel

State Board of Dental Examiners

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For further information, please call: (512) 305-8910



PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 577. GENERAL ADMINISTRATIVE DUTIES

SUBCHAPTER B. STAFF

22 TAC §577.15

The Texas Commission of Licensing and Regulation (Commission), on behalf of the Texas Board of Veterinary Medical Examiners (TBVME), adopts amendments to an existing rule at 22 Texas Administrative Code (TAC), Chapter 577, Subchapter B, §577.15, regarding the General Administrative Duties, without changes to the proposed text as published in the June 21, 2024, issue of the *Texas Register* (49 TexReg 4572). This rule will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 22 TAC, Chapter 577, implement Texas Occupations, Chapter 801, Veterinarians.

The adopted rule amends §577.15, Fee Schedule. The adopted rule is required to comply with the General Appropriations Act, House Bill (HB) 1, 88th Legislature, Regular Session (2023) at Article VIII, Section 1, which requires certain agencies, including the TBVME, to bring in enough revenue to cover the appropriations given to the TBVME. Therefore, the TBVME is required to increase its revenue through assessed fees to cover the additional appropriations.

The increased appropriation amount of this biennium is expected to decrease next biennium since the amount of funding the TBVME needs will decrease once a new licensing system has been procured. At that time the TBVME will propose rules to decrease the fee amounts so revenue projections for this adopted rule are only for the first two years following adoption.

SECTION-BY-SECTION SUMMARY

The adopted rule amends §577.15, Fee Schedule. The adopted rule updates the license application fees, renewal fees, and other fees in amounts that are reasonable and necessary to cover the costs of administering Occupations Code, Chapter 801.

PUBLIC COMMENTS

The proposed rule was published in the June 21, 2024, issue of the *Texas Register* (49 TexReg 4572). The public comment period closed on July 22, 2024. The Department received comments from 112 interested parties on the proposed rule. The public comments received are summarized below.

Comment: 110 commenters, including the Texas Veterinary Medical Association, were opposed to the fee changes in the proposed rule.

Department Response: The Department disagrees with the comments because fees must be set in amounts that are reasonable and necessary to cover the costs of administering Occupations Code, Chapter 801. The Department did not make any changes to the proposed rule as a result of the comment.

Comment: Two commenters were in favor of the proposed rule.

Department Response: The Department appreciates the comments in support of the proposed rule. The Department did not make any changes to the proposed rule as a result of the comment.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The State Board of Veterinary Medical Examiners (Board) met on January 23, 2024, to discuss the proposed rule. The Board recommended the proposed rule be published in the *Texas Register*. At its meeting on July 23, 2024, the Commission adopted the proposed rule as recommended by the Advisory Board.

STATUTORY AUTHORITY

The adopted rule is adopted under Texas Occupations Code, Chapters 51 and 801, which authorize 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 adopted rule are those set forth in the Texas Occupations Code, Chapters 51 and 801. No other statutes, articles, or codes are affected by the adopted rule.

The legislation that enacted the statutory authority under which the adopted rule is proposed is the General Appropriations Act, House Bill 1, 88th Regular Session (2023) at Article VIII, Section 1.

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 August 9, 2024.

TRD-202403668

Doug Jennings

General Counsel

Texas Board of Veterinary Medical Examiners

Effective date: September 1, 2024

Proposal publication date: June 21, 2024

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

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

SUBCHAPTER X. MOUNTAIN LIONS

31 TAC §65.950

The Texas Parks and Wildlife Commission in a duly noticed meeting on May 23, 2024, adopted new 31 TAC §65.950, concerning Mountain Lions, with changes to the proposed text as published in the April 19, 2024, issue of the *Texas Register* (49 TexReg 2438). The rule will be republished.

The change replaces the proposed provision for traps to be equipped with "break-away" gear that cause the trap to cease functionality upon the exertion of more than 285 pounds of force with an exemption from the applicability of the rules to all vertically set cable snares fabricated or modified to limit loop or opening size to 10 inches in diameter or less, and harmonizes that provision with other provisions of the section to prevent conflicts.

In 2022, the department received a petition for rulemaking concerning mountain lion monitoring and management. In response, the chairman of the commission directed the formation of a Mountain Lion Stakeholder Working Group consisting of landowners, livestock producers, private land managers, trappers, and natural resource professionals. The group was charged with making recommendations on the abundance, status, distribution, and persistence of mountain lions in Texas; development of a mountain lion management plan for Texas; harvest reporting; trap/snare check standards; harvest/bag limits; and "canned" hunts.

Following a number of meetings throughout 2023, the Working Group's initial report recommended that the commission initiate rulemaking to prohibit "canned" hunting. "Canned" hunting is regulated or prohibited in many states and countries, including Texas, where it is unlawful to conduct canned hunts for certain species (African or Asiatic lion, tiger, leopard, cheetah, hyena, bear, elephant, wolf, or rhinoceros, or any subspecies or hybrid of these animals), but not mountain lions.

In general, new §65.950, concerning Mountain Lions, prohibits "canned" hunting and establishes trapping standards.

New subsection (a) defines "captivity" as "the state of being held under control, or kept caged, penned, or trapped," which is necessary to establish the conditions under which "canned" hunting may be presumed to be occurring.

New subsections (b)(1) and (2) prohibit the hunting of mountain lions in captivity as well as the release of captive mountain lions for purposes of being hunted or training dogs. The provisions

effectively prohibit "canned" hunting of mountain lions, which is necessary to protect the species.

New subsection (b)(3) creates an offense for a person to allow a live mountain lion to be captured in a trap or snare for more than 36 hours. The department has determined that allowing a trapped or snared mountain lion to remain in that state for longer than 36 hours is inhumane and if the practice is allowed to be indiscriminately employed, it could negatively affect the ability of mountain lion populations to successfully perpetuate themselves.

New subsection (b)(4) creates an offense for the act of conducting, promoting, assisting, or advertising an activity prohibited by the section. The department believes that persons who aid, assist, encourage, or otherwise act as a party to the commission of an offense should be held accountable in addition to the person who commits the offense.

New subsection (c) expressly states that the section does not apply to the humane dispatch of lawfully trapped mountain lions or apply to the use of snares set vertically and fabricated or modified to limit loop or opening size to a maximum diameter of 10 inches or less.

New subsection (d) provides that the exception created in subsection (c)(2) for certain snares does not exempt any person from provisions of subsection (b)(2) that prohibit canned hunts. The intent of the provision is to ensure that the rule does not unintentionally create an avenue for mountain lions to be subjected to canned hunting.

The department received 561 comments opposing adoption of all or part of the rule as proposed. Of those comments, 145 provided a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow. The department notes that because many of the comments identified more than one specific rationale for opposition, the number of responses is greater than the number of comments.

Seventeen commenters opposed adoption and stated that the rules will harm or destroy the livelihoods of ranchers and trappers. The department disagrees with the comments and responds that it is difficult to conceive of a scenario in which the rule as adopted will cause any ranch or trapper to cease operations or activities. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that the department's claim of no economic impact is false. The department disagrees that any statement in the preamble of the proposed rule regarding economic impacts is not compliant with the applicable provisions of Government Code, Chapters 2001 or 2006, and notes that the rules do not directly regulate any commercial activity or rural community, and apply only to persons who take wildlife resources under the privilege of recreational licenses issued by the department.

Twenty-two commenters opposed adoption and stated in some form or fashion that the rules are unnecessary because mountain lion populations are numerous, growing, large, not in need of protection, not in need of management, or not in decline. The department disagrees with the comments and responds that in the absence of systematic data regarding mountain lion populations, such as that produced by scientific research, mandatory harvest reporting requirements, and survey efforts on private lands, the unrestricted harvest of mountain lions can reasonably and sci-

entifically be expected to eventually result in the inability of the species to perpetuate itself. The rules as adopted are intended to minimize, in the absence of credible biological data, the rate at which that is occurring. No changes were made as a result of the comments.

Ten commenters opposed adoption and stated that the rule is unnecessary because canned hunting is already illegal under state and federal law. The department disagrees with the comments and responds that the commenters are misinformed. No changes were made as a result of the comments.

Seven commenters opposed adoption and stated that the 285-lb limit for breakaway devices will eliminate the effectiveness of feral-hog trapping. The department agrees with the comment and responds that the rule as adopted replaces the 285-lb limit provision with an exemption from applicability for snares set vertically with a maximum opening of 10 inches or less.

Eight commenters opposed adoption and stated that mountain lions are a threat to human health and safety, property, and livestock. The department disagrees that mountain lions are an appreciable threat to human beings, as there have been fewer than five documented attacks on humans in Texas in the last 40 years. Similarly, documented livestock losses to mountain lion predation are very low. No changes were made as a result of the comments.

Six commenters opposed adoption and stated that the rules will result in the elimination of deer and antelope populations or should not be adopted because landowners use trapping to protect wildlife populations. The department disagrees with the comments and responds that predator/prey relationships are inherent in evolutionary history, that it is impossible for the rules to result in the extirpation of any species, and that wildlife do not belong to landowners, but the people of the state. No changes were made as a result of the comments.

Twenty-one commenters opposed adoption on the basis that the 36-hour time limit for allowing live lions to remain in a trap presents an impossible burden because it isn't possible to check every trap every 36 hours. The department disagrees with the comments and responds that the department evaluated the timing of trapping standards for other species such as furbearing animals and determined the rule is reasonable. Trapping standards are commonplace throughout North America and well understood by hunters and trappers as a best management practice for the use of those devices. No changes were made as a result of the comments.

Twenty-six commenters opposed adoption and stated that more data is needed before regulations are promulgated. The department disagrees with the comments and responds that the rules as adopted are based on the best available data and the acquisition of additional data would necessitate measures such as mandatory harvest reporting and survey efforts on private property. Therefore, in the absence of conclusive, definitive data, the rules as adopted are intended to act as a buffer on indiscriminate harvest until such time as greater understanding of population dynamics becomes available. No changes were made as a result of the comments.

Fourteen commenters opposed adoption and stated that the rules are unenforceable. The department disagrees with the comments and responds that the department is confident that enforcement of the rules is within the department's ability. No changes were made as a result of the comments.

Eleven commenters opposed adoption and stated that the rules are unnecessary because canned hunting either doesn't exist or doesn't occur at a level significant enough to warrant rules to prohibit it. The department disagrees with the comments and responds that the department is aware of the occurrence of canned hunting of mountain lions in Texas and the rule is necessary to protect the species. No changes were made as a result of the comments.

Eleven commenters opposed adoption and stated that the rule will prevent landowners from protecting livestock and property. The department disagrees with the comments and responds that the rules do not prevent, prohibit, or criminalize the conduct of effective predator control to defend livestock or other property. No changes were made as a result of the comments.

Twelve commenters opposed adoption on the basis that the department's estimated cost of compliance with the rule is inaccurate and did not address livestock loss or additional costs to the Texas Wildlife Services Program. The department disagrees with the comments and responds that the rule as adopted no longer includes the breakaway mechanism in question, and in any case applies only to trapping efforts for mountain lions and the direct cost of compliance to persons who conduct such activities. The department also notes that definitive data regarding the economics of trapping activities for mountain lions is not readily available or verifiable and members of the regulated community were participants in the development of the rule. No changes were made as a result of the comments.

Five commenters opposed adoption and stated that more rules/more government are not needed. The department disagrees that the rules are onerous. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that the rules are an infringement on hunter's rights. The department disagrees with the comments and responds that the rules as adopted are necessary to protect a species and, in any case, do not prevent, impinge upon, or interfere with the right of any person to engage in lawful hunting for mountain lions. No changes were made as a result of the comments.

Eighteen commenters opposed adoption and stated in some form or fashion that the rules will make predator control impossible or difficult. The department disagrees with the comments and responds that the rules were specifically designed to apply strictly to mountain lions and are not expected to appreciably affect any other aspect of predator control. No changes were made as a result of the comments.

Six commenters opposed adoption and stated that the rules are a "money grab," "power grab," or some other form of nefarious usurpation on the part of the department. The department disagrees with the comments and responds that the rules were validly promulgated in compliance with applicable law and will not have revenue implications for the department. No changes were made as a result of the comments.

One commenter opposed adoption and stated that there is no relationship between trap monitoring requirements and population status. The department disagrees with the comment and responds that allowing a trapped or snared mountain lion to remain in a captive state for longer than 36 hours is inhumane and if the practice is allowed to be indiscriminately employed, it could negatively affect the ability of mountain lion populations to successfully perpetuate themselves. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules are a conflict of interest because a department employee is a former employee of a petitioner. The department disagrees with the comment and responds that the prior employment status of a petitioner's employee does not create a conflict of interest and the rule was validly promulgated and adopted by vote in an open public meeting of the commission appointed by the governor with the consent of the senate. The department further responds that the commission did not adopt all requests of the petitioners and instead formed a working group consisting of landowners, livestock producers, private land managers, trappers, and natural resource professionals to make recommendations to the commission. No changes were made as a result of the comment.

Three commenters opposed adoption and stated in various ways that the commission was capitulating to special interest groups such as anti-hunters. The department disagrees with the comments and responds that the chairman of the commission formed a working group consisting of landowners, livestock producers, private land managers, trappers, and natural resource professionals to make recommendations and the commission was not influenced by any special interest group or agenda. No changes were made as a result of the comments.

Twelve commenters opposed adoption and stated that rules were but a first step onto a "slippery slope" that will result in the prohibition of predator hunting, and eventually all hunting, as in other states. The department disagrees with the comments and responds that the commission is charged by statute with providing open seasons for the hunting of game species while protecting and conserving the wildlife resources of the state, including nongame species such as mountain lions, and has determined that the rules as adopted are a rational exercise of that duty. No changes were made as a result of the comments.

One commenter opposed adoption and stated the rules are violation of the North American model of wildlife management. The department disagrees with the comment and responds that the department considers the North American Model to be an important guide with respect to wildlife management and considers the rule as adopted to be consistent with the tenets of the model. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the commission should not be influenced by organizations with deep pockets who use lawyers to change wildlife laws. The department disagrees that the adoption of the rule was influenced by unprincipled or unscrupulous efforts by any special interest group. No changes were made as a result of the comment.

One commenter opposed adoption and stated the rules are an attack on the outdoor lifestyle. The department disagrees with the comment and responds that the rule is not an attack on any person or group, but a necessary action to protect a nongame species so that it may continue to perpetuate itself. No changes were made as a result of the comment.

One commenter opposed adoption and stated that contrary to the department's assertion in the required regulatory impact statement, there will be a new rule created. The department disagrees with the comment and responds that the notice of proposed rulemaking clearly stated that the proposal would create a new regulation to prohibit "canned" hunting of mountain lions and establish trapping rules. No changes were made as a result of the comment.

One commenter opposed adoption and stated, "there is no interpretation of this proposal that will insure the continued abil-

ity of nongame species of fish and wildlife to perpetuate themselves successfully which is your only statutory mandate." The commenter also stated that the department did not identify a need for the rule "beyond a vague reference to a federal statute congress had/has no authority to have adopted under Article 1 Section 8 Powers of Congress." The department disagrees with the comment and responds that the commission has the authority to adopt any regulations limiting the taking or possession of nongame species the department considers necessary to manage the species, and the rule will, in fact, allow mountain lions to continue to perpetuate themselves by imposing standards designed to mitigate the current practice of indiscriminate trapping. The department further responds that the preamble to the proposed rule clearly articulated the need for the rule and the department has not stated this rulemaking is necessary because of a federal law requirement. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules are a violation of property rights. The department disagrees with the comment and responds that the rule as adopted does not affect any person's real property rights as a landowner in Texas. No changes were made as a result of the comment.

Eleven commenters opposed adoption and stated that mountain lions should be designated as game animals subject to season and bag limit restrictions necessary to manage the population. The department neither agrees nor disagrees with the comments and responds that although game animal status is determined by the Texas Legislature, the commission has the authority under the Parks and Wildlife Code to impose seasons and bag limits for the take of any wildlife resource; however, during the stakeholder meetings prior to the proposal, the department determined that more study would be required to inform any decision to impose a season and/or bag limits for the take of mountain lions. No changes were made as a result of the comments.

Nine commenters opposed adoption and stated that the training of dogs by means of releasing trapped mountain lions should be permitted. Several of the commenters also mentioned that dogs could be trained without using captive mountain lions and that it is irrational to allow other species such as coyotes and raccoons to be used to train dogs, but not mountain lions. The department disagrees with the comments and responds that allowing a trapped or snared mountain lion to remain in a captive state for longer than 36 hours is inhumane and if the practice is allowed to be indiscriminately employed, it could negatively affect the ability of mountain lion populations to successfully perpetuate themselves. The department further responds that the comments about other species used to train dogs are not germane, as the subject of the rulemaking is the management of mountain lions. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the rule was promulgated outside the normal rulemaking process because stakeholders were not included in the development of the rule. The department disagrees with the comment and responds that the chairman of the commission created a working group consisting of landowners, livestock producers, private land managers, trappers, and natural resource professionals to make recommendations to the commission regarding possible regulation of the take of mountain lions, and those recommendations were reported to the commission in public meetings. The department further responds that it provided notice of the proposed rule and the opportunity to submit public comments in compliance with all

applicable legal requirements. No changes were made as a result of the comments.

One commenter opposed adoption and stated the rule is vague and ambiguous. The department disagrees with the comment and responds that rule as adopted clearly articulates the circumstances and actions that violate the rule. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule is irrational because the state allows canned hunts on farmed deer. The department disagrees with the comment on the basis that it is not germane to the subject of the rule, which is mountain lions. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the break-away device standard will effectively stop the use of snares for feral hogs and the rule should exempt lions caught in traps with less than a seven-inch inside jaw spread and any neck snare set under a fence in order to avoid interference with coyote trapping. The department disagrees with the comments and responds that the rules were designed to avoid interfering with trapping activities for target species other than mountain lions and the department believes that will be the case in practice; however, the rule has been adopted with changes and the breakaway device provision has been replaced with an exception for snares that are vertically set and have a maximum opening of ten inches or less.

Two commenters opposed adoption and stated, "the general public should not be allowed to dictate what methods landowners use to protect their livestock." The department disagrees with the comment and responds that wildlife resources are a public trust and the commission by law is delegated the authority to manage those resources on behalf of the public. No changes were made as a result of the comments.

The department received 211 comments opposing adoption on the basis that rule as adopted provided inadequate, insufficient, illusory, or otherwise ineffective protections to mountain lions. The comments specifically articulated opposition to the provision implementing a 36-hour time limit that mountain lions may be retained in a trap (i.e., stating a preference for a shorter time period), opposition to trapping, opposition to hunting of mountain lions, or opposition to the absence of measures such as mandatory harvest reporting and development of a data-driven management plan for mountain lions. The department disagrees with the comments and responds that the chairman of the commission created a working group composed of various elements of concerned communities to provide recommendations to the commission and the rule as adopted represents the commission's determination of what requirements are necessary at this time to allow mountain lion populations to successfully perpetuate themselves.

The department received 6,681 comments supporting adoption of the rule as proposed.

The department received comments in opposition to the rule from State Representative Andrew Murr, Texas Farm Bureau, Texas Sheep and Goat Raisers' Association, Sheep and Goat Predator Management Board, Susan Combs (Former Texas Agriculture Commissioner and Former Comptroller of Public Accounts), Texas and Southwestern Cattle Raisers Association, Texas Trappers and Fur Hunters Association; Crockett County Predator Management Board, and Texas Wildlife Association.

The Coastal Conservation Association and Texas Chapter of the Wildlife Society commented in support of adoption of the rule as proposed.

The new rule is adopted under the authority of Parks and Wildlife Code, §67.004, which states the commission by regulation shall establish any limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that the department considers necessary to manage the species.

§65.950. *Mountain Lions (Puma concolor).*

(a) In this section "captivity" means the state of being held under control, or kept caged, penned, or trapped.

(b) No person in this state may:

- (1) hunt a mountain lion that is in captivity;
- (2) release a mountain lion from captivity for purposes of:
 - (A) being hunted; or
 - (B) training dogs;
- (3) allow a live mountain lion to be captured in a trap or snare for more than 36 hours; or
- (4) conduct, promote, assist, or advertise an activity prohibited by this subsection.

(c) This section does not:

- (1) prohibit a person from humanely dispatching a lawfully trapped mountain lion; or
- (2) apply to the use of vertically set snares that are fabricated or modified to limit the loop or opening to a diameter of 10 inches or less.

(d) The provisions of subsection (c)(2) of this section do not exempt any person from the provisions of subsection (b)(2) 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.

Filed with the Office of the Secretary of State on August 9, 2024.

TRD-202403679

James Murphy

General Counsel

Texas Parks and Wildlife Department

Effective date: September 1, 2024

Proposal publication date: April 19, 2024

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



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 16. COMPTROLLER GRANT PROGRAMS

SUBCHAPTER B. TEXAS BROADBAND DEVELOPMENT OFFICE

DIVISION 2. BROADBAND DEVELOPMENT PROGRAM

34 TAC §16.30

The Comptroller of Public Accounts adopts amendments to §16.30, concerning definitions, without changes to the proposed text as published in the May 3, 2024, issue of the *Texas Register* (49 TexReg 2992). The rule will not be republished.

The amendments to §16.30 increase the threshold speeds for internet service to qualify as broadband service to match the standards adopted by the Federal Communications Commission for advanced telecommunications capability under 47 U.S.C., §1302 as contemplated under Senate Bill 1238, §1, 88th Legislature, R.S., 2023 (amending Government Code, §4901.0101(b)).

The comptroller received comments regarding adoption of the amendment from AMA TechTel ("AMA"), City of Austin ("COA"), Ms. Vanessa Burzynski, Mr. Carl DeBower, Ector County ISD, Mr. Herb Krasner, and the Texas Cable Association ("TCA").

Several individual commenters and Ector County ISD commented in favor of the proposed amendment.

AMA commented in favor of the proposed amendment but expressed concerns about how the updated broadband standards may negatively impact broadband support. In particular, AMA was concerned that raising the speed threshold would act to effectively eliminate the definition for underserved locations. In turn, this would act to conflate unserved locations and served locations and thereby result in reduced focus on areas with the greatest demonstrated need for broadband.

Therefore, AMA suggested that the comptroller consider adopting more stringent program eligibility criteria within the rules for specific programs to ensure the lowest density areas with the highest costs to serve take priority over locations previously considered underserved. The comptroller is appreciative of this comment and separately sought public comment on the definition of underserved and will consider updating the definition in a separate rulemaking. Therefore, the comptroller declines to make changes to the proposed rule based on this comment.

AMA also commented that the FCC's revised standard did not address latency and encouraged the comptroller to consider reducing the allowed maximum network round-trip latency within the definition of "broadband service." AMA asserted that the current maximum severely limits effective two-way communication critical in many broadband applications such as telehealth and distance learning. AMA also noted that high latency would act as a chokepoint for these applications regardless of any increase in the broadband speed standards. The comptroller is appreciative of this comment but notes that under existing statutory language the comptroller may only update its standards to match benchmarks adopted by the FCC. Therefore, the comptroller declines to make changes to the proposed rule based on these comments.

COA was strongly supportive of the alignment of state broadband standards with the Federal Communication Commission's ("FCC") updated benchmarks. COA additionally commented that while adoption of the FCC's updated speeds was an important next step, it encouraged the comptroller to consider setting higher standards now to future-proof Texas' broadband infrastructure, avoid the need for frequent upgrades, and ensure that broadband capabilities keep pace with technological advancements. The comptroller appreciates COA's supportive

remarks but notes that under existing statutory language it is unable to adopt standards that exceed the benchmarks adopted by the FCC. Therefore, the comptroller declines to amend the proposed rule based on this comment.

COA submitted additional comments that are outside the scope of the current rulemaking including: comments related to the Broadband Development Map created by Government Code, §4901.0105; comments encouraging the comptroller to broaden its funding approach beyond infrastructure grants; comments encouraging the comptroller to incentivize high-performance networks; and comments related to the State Broadband Plan created by Government Code, §4901.0107. Although the comments are outside the scope of the current rulemaking, the comptroller thanks the City of Austin for its thoughtful comments that raise issues and concerns that merit further discussion and consideration as the program is implemented. Because these comments were not directly related to the proposed rules, the comptroller did not make any changes based on these comments.

TCA also commented in favor of changing the speed threshold for broadband service to be consistent with the standards recently adopted by the FCC. TCA also noted its understanding that the original definitions for unserved and underserved locations will continue to be used for the Broadband Equity, Access and Deployment ("BEAD") program because those definitions are codified in the federal Infrastructure, Investments and Jobs Act ("IIJA"). However, TCA recommended that the comptroller expressly confirm that the proposed rule would not impact its administration of BEAD. The comptroller appreciates TCA's comment in support of the proposed rule. However, the comptroller does not believe the proposed rule needs to be amended as requested because §16.32 of this title already addresses the concern by recognizing that a federal law, regulation, or guidance applicable to the type of funding used to make a broadband award will take precedence over a rule adopted by the comptroller. Therefore, the comptroller declines to make changes to the proposed rule based on this comment.

The amendments are adopted under Government Code, §4901.0101(b), which permits the comptroller by rule to adopt standards for internet service that match the standards adopted by the Federal Communications Commission for advanced telecommunications capability under 47 U.S.C., §1302 and under Government Code, §4901.0109, which permits the comptroller to adopt rules as necessary to implement Chapter 4901 regarding the Texas Broadband Development Office.

The amendments implement Government Code, Chapter 4901.

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 August 6, 2024.

TRD-202403612

Victoria North

General Counsel for Fiscal and Agency Affairs

Comptroller of Public Accounts

Effective date: August 26, 2024

Proposal publication date: May 3, 2024

For further information, please call: (512) 475-2220



PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 51. GENERAL ADMINISTRATION

34 TAC §51.2

The Teacher Retirement System of Texas (TRS) adopts the repeal of §51.2 (relating to Vendor Protests, Dispute Resolutions, and Hearings) under Chapter 51 in Part 3 of Title 34 of the Texas Administrative Code (relating to General Provisions). This repeal is in conjunction with the adoption of new rule §51.2 (relating to Vendor Protests and Appeals) under Chapter 51 published elsewhere in this issue of the *Texas Register*. The rule is repealed without changes to the repealed text as proposed in the June 14, 2024, issue of the *Texas Register* (49 TexReg 4421) and will not be republished.

REASONED JUSTIFICATION

TRS adopts the repeal of its existing rule under Chapter 51 in order to replace it with updates to TRS' vendor protest and appeal procedures to align with TRS' procurement and contracting processes and to make the process more efficient and streamlined. For the same purpose, TRS is also adopting a new vendor protest rule under Chapter 51 elsewhere in this issue of the *Texas Register*. The new rule removes obsolete requirements or makes other substantive changes for purposes of efficiency and timeliness. The new rule effectively incorporates many of the substantive requirements of the repealed rule but makes formatting and stylistic changes to those provisions for readability purposes. A complete description of these changes can be found in the preamble to the new Chapter 51 rule.

COMMENTS

No comments on the proposed repeal were received.

STATUTORY AUTHORITY

The repeal of the rule is adopted under the authority of Government Code §825.102, which authorizes the board of trustees to adopt rules for the transaction of the business of the board.

CROSS-REFERENCE TO STATUTE

The repeal of the rule falls under the authority of Government Code § 825.103(d) relating to TRS' purchase of goods and services.

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 August 5, 2024.

TRD-202403602

Don Green

Chief Financial Officer

Teacher Retirement System of Texas

Effective date: August 25, 2024

Proposal publication date: June 14, 2024

For further information, please call: (512) 542-6238



34 TAC §51.2

The Teacher Retirement System of Texas (TRS) adopts new §51.2 (relating to Vendor Protests and Appeals) of Chapter 51 in

Part 3 of Title 34 of the Texas Administrative Code. This new rule is adopted without changes to the text as proposed in the June 14, 2024, issue of the *Texas Register* (49 TexReg 4422) and will not be republished. This new rule is adopted in conjunction with the repeal of the existing §51.2 (relating to Vendor Protests, Dispute Resolution, and Appeal) in Part 3 of Title 34 of the Texas Administrative Code as published elsewhere in this issue of the *Texas Register*.

REASONED JUSTIFICATION

TRS adopts this new rule relating to vendor protests and appeals of TRS' procurements. The new rule is consistent with TRS' efforts to update, streamline, and clarify its vendor protest process. For the same purpose, TRS has also adopted to repeal existing §51.2 elsewhere in this issue of the *Texas Register*. The new rule removes obsolete requirements or makes other changes for the purpose of efficiency and clarity. The new rule effectively incorporates many of the substantive requirements of the current rule but makes formatting and stylistic changes to those provisions for readability purposes.

SECTION-BY-SECTION SUMMARY

New §51.2 revises the title of current rule §51.2 from Vendor Protests, Dispute Resolution, and Hearing to Vendor Protests and Appeals.

New §51.2 adds headings to each subsection to improve readability.

New §51.2(a) adds a definition section that is not included in current §51.2.

New §51.2(b) incorporates the existing provisions of current §51.2(a), regarding the purpose of the new rule.

New §51.2(c) incorporates the existing provisions of current §51.2 regarding exceptions, separates its content into subparagraphs to improve readability, and under §51.2(c)(1)(D), confirms that transactions in which TRS buys or sells securities are excluded from the vendor protest process as well as any other transactions not subject to state purchasing rules.

New §51.2(d) largely incorporates the existing provisions of current §51.2(j) and adds guidance regarding the process of submitting a stay request to TRS.

New §51.2(e) largely incorporates the existing provisions of current §51.2(b) regarding the filing of a protest. In addition, new §51.2(e)(1) substitutes TRS Legal & Compliance for the chief officer of the TRS business unit for whom the procurement is being made, as the recipient of a vendor protest and clarifies the deadline for filing a protest. Under current §51.2(b), to be considered timely, a protesting party must file its protest "within 10 working days after the protestor knows or should have known, of the occurrence of the action which is protested." New §51.2(e)(2) provides that a protest contesting (1) the solicitation be filed by the end of posted solicitation period or (2) the evaluation or award be filed within 10 calendar days after the notice of contract award is posted either to the ESD, or the TRS website, which may be accessed at <https://www.trs.texas.gov> as applicable. In addition, new §51.2(e)(3) revises the required content of a protest to also include the specific identification of the TRS regulatory policy or the TRS Procurement and Contract Guide section, or both, that TRS is alleged to have violated. Finally, under new §51.2(e)(3)(F) the protesting party must also provide a precise statement of the remedy requested.

New §51.2(f) largely restates current §51.2(d)&(e) regarding the chief officer's disposition of a protest. New §51.2(f)(1) adds that TRS L&C will be responsible for the management of the protest, in coordination with the appropriate TRS chief officer, with support provided by the TRS Director of Procurement and Contracting.

New §51.2(g) largely incorporates the existing provisions of current §51.2(f) regarding the filing of an appeal. New Rule §51.2(g)(1) revises current §51.2(b) by requiring that an appeal be filed in accordance with the instructions stated in the solicitation document or on the TRS website, which may be accessed at <https://www.trs.texas.gov/>, as applicable, rather than by submitting the appeal to the executive director or his designee.

COMMENTS

No comments on the proposed new rules were received.

STATUTORY AUTHORITY

The new rule is adopted under the authority of Government Code §825.102, which authorizes the board of trustees to adopt rules for the transaction of the business of the board.

CROSS-REFERENCE TO STATUTE

The new rule affects the following Government Code §825.103(d) relating to TRS' purchase of goods and services.

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 August 5, 2024.

TRD-202403603

Don Green

Chief Financial Officer

Teacher Retirement System of Texas

Effective date: August 25, 2024

Proposal publication date: June 14, 2024

For further information, please call: (512) 542-6238

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 9. TEXAS COMMISSION ON JAIL STANDARDS

CHAPTER 255. RULEMAKING PROCEDURES

37 TAC §255.6

The Texas Commission on Jail Standards (TCJS) adopts an amended rule, 37 TAC §255.6, concerning the creation of the Intellectual or Developmental Disability Advisory Committee (IDDAC) as required by Government Code, Title 4, §511.022. It is adopted with changes to correct grammar as published in the July 5, 2024, issue of the *Texas Register* (49 TexReg 4893). The rule will be republished.

The adoption of this rule establishes, in administrative code, the IDDAC as established in statute by Government Code, Title 4, §511.022.

No comments were received during the public comment period.

Statutory authority to establish advisory committees can be found in Government Code, Title 4, §511.0081.

§255.6. *Advisory Committees.*

(a) General. The Texas Commission on Jail Standards (Commission) may establish advisory committees pursuant to Gov't. Code §511.0081 or if mandated by legislative action.

(1) Purpose, Role, and Responsibility. The purpose, role, and responsibility of a Commission advisory committee is to make recommendations to the Commission on programs, rules, and policies administered by the Commission.

(2) Goals. Unless mandated by legislative action, the goal of each advisory committee will be determined by the Commission at the time the advisory committee is created.

(3) Duration. Unless mandated by legislative action, the duration of each advisory committee will be determined by the Commission. The Commission will annually review and determine the continuing need for an advisory committee established by the Commission.

(4) Committee Members.

(A) Committees will consist of a minimum of five members and a maximum of nine members, unless mandated otherwise by legislative action.

(B) Unless otherwise mandated by legislative action, committee members will have various backgrounds of experience, expertise, and interest in the matters the committee will address. Committee members may include Commission commissioners, sheriffs, jail administrators, relevant governmental agency representatives, relevant professionals, and other interested members of the public. The Chair of the advisory committee, in consultation with the Executive Director, will appoint committee members that meet the criteria set forth.

(C) The Chair of the Texas Commission on Jail Standards appoints the Chair of advisory committees unless mandated otherwise by legislative action.

(D) Members of advisory committees will elect an advisory committee Vice-Chair from among its members to serve in the temporary absence of the advisory committee Chair.

(E) Terms. The Commission Executive Director will determine the members' terms of service. The terms of service will be staggered.

(F) Unless prohibited by legislative action, non-voting subject matter experts may be named to the committee at the discretion of the Chair with the consent of the committee.

(5) Rules. Each advisory committee established shall adopt policies and procedures that address the purpose of the advisory committee, membership qualifications, training requirements, terms of service, operating procedures, conflict of interest, and adherence to the requirements set forth in Texas Government Code 551.

(6) Committee Operations and Meetings.

(A) Meetings. The committee must meet at least quarterly; however, the Chair may decide that it is necessary to meet more frequently. The committee is subject to the Texas Open Meetings Act, Texas Government Code Chapter 551.

(B) Quorum. A majority of members constitutes a quorum.

(C) Compensation and Travel Reimbursement. Members will not be reimbursed for expenses related to their participation in the advisory committee.

(b) Administrative Rules Advisory Committee. The Commission establishes an Administrative Rules Advisory Committee to regularly review all administrative rules as part of the mandated rule review process, administrative rules required by new legislation, administrative rules as recommended by the Commission, and petitions for administrative rule changes. The committee makes recommendations to the Commission related to administrative rules. The Committee consists of a minimum of nine members as follows:

(1) one representative of the Commission to act as Committee Chair;

(2) one sheriff of a county with a population of 80,000 or more;

(3) one sheriff of a county with a population of fewer than 80,000;

(4) one county judge or county commissioner from a county with a population of 80,000 or more;

(5) one county judge or county commissioner from a county with a population of fewer than 80,000;

(6) one member of the public who is a representative of a statewide organization that advocates for individuals or issues related to county jails;

(7) one non-voting ex-officio jail administrator from a jail consisting of 50 beds or fewer;

(8) one non-voting ex-officio jail administrator from a jail consisting of 51-999 beds; and

(9) one non-voting ex-officio jail administrator from a jail consisting of 1000 or more beds.

(c) Intellectual or Developmental Disability Advisory Committee. As required by Government Code 511.022, the commission establishes an Intellectual or Developmental Disability Advisory Committee to advise the commission and make recommendations on matters related to the confinement in county jail of persons with intellectual or developmental disabilities. The Committee consists of a minimum of thirteen members as follows:

(1) one representative of the commission;

(2) one representative of the Department of State Health Services;

(3) one representative of the Health and Human Services Commission with expertise in intellectual and developmental disabilities;

(4) one representative of the Texas Commission on Law Enforcement;

(5) one representative of the Texas Correctional Office on Offenders with Medical or Mental Impairments;

(6) one sheriff of a county with a population of 80,000 or more;

(7) one sheriff of a county with a population of fewer than 80,000;

(8) two representatives of statewide organizations that advocate for individuals with intellectual and developmental disabilities;

(9) one representative who is a mental health professional with a focus on trauma and intellectual and developmental disabilities;

(10) one representative from a state supported living center;

(11) one member who has an intellectual or developmental disability or whose family member has an intellectual or developmental disability; and

(12) one member who represents the public.

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 August 9, 2024.

TRD-202403662

Brandon Wood

Executive Director

Texas Commission on Jail Standards

Effective date: August 29, 2024

Proposal publication date: July 5, 2024

For further information, please call: (512) 850-8668



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 5. TEXAS VETERANS LAND BOARD

CHAPTER 175. GENERAL RULES OF THE VETERANS LAND BOARD

SUBCHAPTER A. GENERAL RULES AND CONTRACTING FINANCING

40 TAC §175.2

The Texas Veterans Land Board (Board) adopts amendments to 40 Texas Administrative Code §175.2, concerning Loan Eligibility Requirements. The amendments are adopted without changes to the proposed text as published in the May 31, 2024, issue of the *Texas Register* (49 TexReg 3919) and will not be republished.

The amendments add a subsection that allows veterans eligible to participate in the Veterans' Land Program (Program) who are spouses to apply for a Program loan jointly for a single tract of land.

The Department received no comments regarding the proposed amendments.

The amendments are adopted pursuant to Section 161.001 of the Texas Natural Resources Code, which allows the Board by rule to change the definition of "veteran" as necessary or appropriate to protect the best interests of the Veterans' Land Program.

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 August 5, 2024.

TRD-202403599

Jennifer Jones

Chief Clerk, Deputy Land Commissioner

Texas Veterans Land Board

Effective date: August 25, 2024

Proposal publication date: May 31, 2024

For further information, please call: (512) 475-1859



TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 223. COMPLIANCE AND INVESTIGATIONS

INTRODUCTION. The Texas Department of Motor Vehicles (department) adopts amendments to 43 Texas Administrative Code (TAC) Chapter 223, Subchapter A, Fraud, Waste, or Abuse, §§223.1, 223.2, and 223.3. In conjunction with these amendments, the department adopts the repeal of Subchapter B, Risk-Based Monitoring and Preventing Fraudulent Activity, §223.101. In addition, the department adopts new §223.5, External Risk-Based Monitoring System.

The department adopts amendments to the title of Chapter 223, §223.1, §223.2, and repeal of §223.101 without changes to the proposed text as published in the April 26, 2024, issue of the *Texas Register* (49 TexReg 2690) and will not be republished. The department adopts the following with changes to the proposed text as published in the April 26, 2024, issue of the *Texas Register* (49 TexReg 2690) and will be republished: amendments to §223.3, and new §223.5. The department did not receive any public comments on the amendments, new section and repeal.

REASONED JUSTIFICATION.

An adopted amendment changes the title to Chapter 223 to "Compliance and Investigations" by deleting the word "Division." In August of 2021, the department's Compliance and Investigations Division disbanded and became a part of the department's Enforcement Division.

Subchapter A. Fraud, Waste, or Abuse

The adopted amendments to §223.1 clarify the purpose and scope of Chapter 223 and expand the scope of Subchapter A to include new §223.5 to replace §223.101, which is adopted for repeal. Section 223.3 authorizes county tax assessor-collectors and deputies to report to the department any suspected fraud, waste or abuse relating to vehicle registration or titling; however, the deputies report suspected fraud, waste or abuse to the county tax assessor-collector, who then reports it to the department. An adopted amendment to §223.1 also deletes subsection (b) because amended subsection (a) includes the necessary language regarding the purpose and scope of Subchapter A.

The department adopts amendments to §223.2(b) to remove the definitions of "CID" and "Director" because both refer to the Compliance and Investigations Division, which has been disbanded and reorganized within the department's Enforcement Division. An adopted amendment to the definition of "county tax assessor-collector" in §223.2(b) clarifies the definition by referring to the person who serves as the assessor-collector of taxes for a

Texas county under Article VIII, §14, of the Texas Constitution. An adopted amendment to the definition of "deputy" in §223.2(b) clarifies that Chapter 217 is in Title 43. The adopted amendment to the definition of "RTS" in §223.2(b) replaces the words "Texas Department of Motor Vehicle's" with the word "department's" because the word "department" is defined in Transportation Code, Chapter 501. Section 223.2(a) says the words and terms defined in Transportation Code, Chapter 501 have the same meaning when used in Chapter 223, with certain exceptions. Adopted amendments to §223.2(b) also renumber the paragraphs due to deletions.

Adopted amendments to §223.3(a) and (c) delete the words "motor vehicle" from the term "motor vehicle dealer" because the word "dealer" is defined in Transportation Code, Chapter 501, but the term "motor vehicle dealer" is not defined in Chapter 501. The department adopts amendments to §223.3 to replace the acronym "CID" with the word "department" to reflect the reorganization within the department. The department adopts amendments to §223.3(a) - (c) to remove the words "and possible investigation" as being unnecessary. In addition to improving readability, adopted amendments to §223.3(b) clarify and specify the information that must be included in the detailed narrative that a county tax assessor-collector must submit as part of a request to the department to review suspected fraud, waste, or abuse. The department adopts §223.3(b)(2)(B)(iv) with a change at adoption to add the word "and" to clarify that a detailed narrative must include the information in clauses (i) through (v) at a minimum. The department adopts an amendment to §223.3(c) to add the word "possible" to be consistent with subsection (a), which includes the word "possible" when referring to suspected fraud, waste, or abuse. An adopted amendment to §223.3(c) also deletes an unnecessary comma. Adopted amendments to §223.3(d) improve readability by using consistent terminology and removing unnecessary language.

Simultaneously with the adopted repeal of Subchapter B, §223.101, the department adopts new §223.5, which rewrites, reorganizes, clarifies and specifies the department's external risk-based monitoring system required by Transportation Code, §520.004(4). Adopted new §223.5 subjects all Texas county tax assessor-collectors, their contractors' staff, and their deputies, which are external RTS users, to periodic examination to determine whether to assign the RTS user a classification of priority or non-priority. Based on the examination, the department will classify each county tax assessor-collector, each of their contractors' staff, and each deputy as priority or non-priority for the purposes of prioritizing reviews to determine whether there is evidence of fraud by a county tax assessor-collector, their contractors' staff, or a deputy. This classification system will allow the department to determine how to use its limited resources most efficiently to investigate and prevent fraud. The department adopts new §223.5 with changes at adoption to change the word "contractor's" to "contractors'" because a county tax assessor-collector may have more than one contractor.

Adopted new §223.5(a) sets out the factors the department considers in classifying a county tax assessor-collector, their contractors' staff, or deputy as a priority or non-priority. These adopted factors reflect the department's current practices in assessing whether to investigate a particular county tax assessor-collector, their contractors' staff, or deputy.

Adopted new §223.5(b) documents the department's goal that each county tax assessor-collector, each of their contractors'

staff, or each deputy who is classified as a priority will be reviewed at least once per year; and if classified as a non-priority, a county tax assessor-collector, their contractors' staff person, or deputy will be reviewed at least once every two years. This goal creates predictability for the department, county tax assessor-collectors, their contractors' staff, and deputies; ensures that all county tax assessor-collectors, their contractors' staff, and deputies are reviewed regularly; and allows the department to prioritize its limited resources toward higher-priority reviews.

The department adopts new §223.5(c) with changes at adoption to substitute semicolons for some of the commas for clarity, and to modify language in the last clause to indicate that examinations could be a combination of the options, which could be more than two options. Adopted new §223.5(c) specifies that the examinations under this section may be virtual, on premises at the county tax assessor-collector's, their contractors' staff person's, or deputy's location, or a combination of these options. Allowing virtual examinations will save the department resources and will be more convenient for county tax assessor-collectors.

Adopted new §223.5(d) provides that the department may notify the county tax assessor-collector of possible fraudulent activity in the county tax assessor-collector's office when the department is authorized by law enforcement. This language clarifies the limitations on the department's ability to update a county tax assessor-collector about a department investigation of their office.

Subchapter B. Risk-Based Monitoring and Preventing Fraudulent Activity

The department adopts the repeal of Subchapter B, including §223.101 because the risk-based system of monitoring and preventing fraudulent activity relating to vehicle registration and titling falls within the scope of Subchapter A, which is titled "Fraud, Waste, or Abuse." Also, the definitions in §223.2 apply to the entire Chapter 223, even though Section 223.2 is contained in Subchapter A. Simultaneously with the repeal of Subchapter B and §223.101, the department adopts new §223.5, which rewrites, reorganizes, clarifies and specifies the department's external risk-based system of monitoring and preventing fraudulent activity relating to vehicle registration and titling.

SUMMARY OF COMMENTS.

The department received no comments.

SUBCHAPTER A. FRAUD, WASTE, OR ABUSE

43 TAC §§223.1 - 223.3, 223.5

STATUTORY AUTHORITY. The amendments and new section are adopted under Transportation Code, §520.004, which requires the department by rule to establish a risk-based system of monitoring and preventing fraudulent activity related to vehicle registration and titling in order to efficiently allocate resources and personnel; Transportation Code, §520.010, which authorizes the department to perform an audit and investigation related to registration and titling services; and Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. The adopted amendments and new section would implement Transportation Code, §§520.004, 520.010 and 1002.001.

§223.3. *Submission of Request.*

(a) A county tax assessor-collector who suspects possible fraud, waste, or abuse by an employee, dealer, deputy, or any person transacting motor vehicle-related business for or with the county may submit a request to the department for review. The department may forward a submission to an appropriate law enforcement entity.

(b) To submit a request to the department for review, the county tax assessor-collector must:

- (1) request a rejection of the suspected transaction through a department regional service center; and
- (2) mail or e-mail the following documents and information, as applicable, to the department in an envelope or e-mail message marked "Red Flag":
 - (A) the original transaction;
 - (B) a detailed narrative, including:
 - (i) the name of a contact person with the county tax assessor-collector, including email address and phone number;
 - (ii) the name of the employee submitting the request;
 - (iii) a statement as to why the transaction is suspect;
 - (iv) information about the employee or deputy suspected of committing fraud, waste, or abuse; and
 - (v) any statements made by the customer submitting the suspect transaction;
 - (C) any available video surveillance footage; and
 - (D) any other relevant evidence or information pertaining to the transaction.

(c) If a deputy suspects possible fraud, waste, or abuse by an employee, dealer, or any person transacting motor vehicle-related business for or with the deputy, the deputy must report the suspected fraud, waste, or abuse to the county tax assessor-collector. The county tax assessor-collector may then submit a request to the department for review in accordance with subsection (b) of this section.

(d) If the department determines it will not open an investigation after reviewing a submitted request, the department will notify the submitting county tax assessor-collector.

§223.5. *External Risk-Based Monitoring System.*

(a) All county tax assessor-collectors, their contractors' staff, and the deputies who use RTS are subject to periodic examination by the department. As a result of the examination, the department will classify each county tax assessor-collector, each of their contractors' staff, and each deputy as priority or non-priority for the purposes of prioritizing reviews to determine whether there is evidence of fraud by the county tax assessor-collector, their contractors' staff, or a deputy. In classifying a county tax assessor-collector, their contractors' staff, or a deputy, the department may consider factors, including, but not limited to:

- (1) referrals or complaints received from partner state agencies;
- (2) referrals or complaints received from public safety agencies;
- (3) the retirement, resignation, or impeachment of the county tax assessor-collector;

(4) a contingency that disrupted county motor vehicle title and registration operations, such as a natural disaster or the theft or the burglary of a county tax assessor-collector's premises;

(5) previous compliance review designations;

(6) previous instances of non-compliance; and

(7) a complaint filed through an internal reporting mechanism, such as a Red Flag referral, telephone call, or an email received by the department's Consumer Relations Division (CRD), or any other means of communication with the department.

(b) It is the department's goal to review each county tax assessor-collector, each of their contractors' staff, and each deputy as follows:

(1) if the county tax assessor-collector, their contractors' staff person, or deputy is classified as a priority, they will be reviewed at least once per year; or

(2) if the county tax assessor-collector, their contractors' staff person, or deputy is classified as a non-priority, they will be reviewed at least once every two years.

(c) Examinations under this section may be virtual; on premises at the county tax assessor-collector's, their contractors' staff person's, or deputy's location; or some combination of these options.

(d) The department may notify the county tax assessor-collector of possible fraudulent activity in the county tax assessor-collector's office when the department is authorized by law enforcement.

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 B. RISK-BASED
MONITORING AND PREVENTING
FRAUDULENT ACTIVITY**

43 TAC §223.101

STATUTORY AUTHORITY. The repeal is adopted under Transportation Code, §520.004, which requires the department by rule to establish a risk-based system of monitoring and preventing fraudulent activity related to vehicle registration and titling in order to efficiently allocate resources and personnel; Transportation Code, §520.010, which authorizes the department to perform an audit and investigation related to registration and titling services; and Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. The adopted repeal would implement Transportation Code, §§520.004, 520.010 and 1002.001.

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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