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 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER S. WHOLESALE MARKETS

16 TAC §25.508

The Public Utility Commission of Texas (commission) adopts new §25.508, relating to Reliability Standard for the ERCOT Region, with changes to the proposed text as published in the June 28, 2024, issue of the *Texas Register* (49 TexReg 4678) and will be republished. The rule implements Public Utility Regulatory Act (PURA) §39.159(b)(1) as revised by Section 18 of Senate Bill (S.B.) 3 during the Texas 87th Regular Legislative Session. This rule creates a reliability standard for the Electric Reliability Council of Texas (ERCOT) power region and identifies a process for the commission to review whether the ERCOT system is meeting that standard. This new section is adopted under Project Number 54584.

The commission received comments on the proposed new section from the Advanced Power Alliance and American Clean Power Association (APA and ACP), the Alliance for Retail Markets (ARM), Conservative Texans for Energy Innovations (CTEI), CPS Energy, Inc. (CPS), the Electric Reliability Council of Texas (ERCOT), Hunt Energy Network, L.L.C. (HEN), the Institute for Policy Integrity at New York University School of Law (Policy Integrity), the Lower Colorado River Authority (LCRA), NRG Energy, Inc. (NRG), Octopus Energy (Octopus), the Office of Public Utility Counsel (OPUC), the Oncor Electric Delivery Company, L.L.C. (Oncor), Potomac Economics (Potomac), Shell Energy North America LP (Shell), the Sierra Club, the Steering Committee of Cities served by Oncor and the Texas Coalition for Affordable Power (Cities), the Texas Advanced Energy Business Alliance (TAEBA), Texas Competitive Power Advocates (TCPA), Texas Electric Cooperatives, Inc. (TEC), the Texas Energy Association for Marketers (TEAM), the Texas Energy Buyers Alliance (TEBA), the Texas Energy Poverty Research Institute (TEPRI), Texas Industrial Energy Consumers (TIEC), the Texas-New Mexico Power Company (TNMP), the Texas Oil and Gas Association (TXOGA), the Texas Public Policy Foundation (TPPF), the Texas Public Power Association (TPPA), and the Texas Solar Power Association (TSPA).

Briefing Questions

The commission invited interested parties to address two questions related to including exceedance tolerances in the reliability standard's metrics.

1. What are the advantages and disadvantages of enshrining an exceedance tolerance for magnitude and duration in the commission's rule?

In response to this question, several parties included an opinion on whether the exceedance tolerances should be included in the rule. The following parties expressed support for including the exceedance tolerances: ARM, CPS, ERCOT, HEN, LCRA, NRG, Octopus, OPUC, TCPA, and TEC. The following parties expressed opposition to including the exceedance tolerances: APA and ACP, Potomac, Shell, Cities, TAEBA, TEAM, TXOGA, TIEC, and TEPRI.

The major advantages of enshrining exceedance tolerances in the reliability standard that were identified by commenters were flexibility, clarity, regulatory certainty, transparency, and guidance to ERCOT. For example, ERCOT stated that, without an exceedance tolerance, even one extreme outlier event above a criterion's threshold would cause the reliability standard to be violated, making the standard too rigid. OPUC agreed with ERCOT that including a reasonable exceedance tolerance would balance the goal of avoiding events where outages cannot be rotated with the cost of eliminating all such outages from the model entirely. ARM stated that a codified exceedance tolerance would provide transparency and clarity, leading to regulatory certainty. HEN stated that the key purpose of the reliability standard is to be sufficiently specific to provide clarity and guidance to ERCOT in determining the resource adequacy needs of the ERCOT grid. Similarly, Octopus stated that codifying an exceedance tolerance in the rule would ensure that the commission sets the level of flexibility in the standard, rather than ERCOT. TCPA stated that one advantage to enshrining exceedance tolerances in the rule is to reduce the risk of frequent changes to the reliability standard metrics to achieve a particular outcome. TCPA explained that frequently changing the metrics could create uncertainty and therefore undermine confidence in the ERCOT markets.

The major disadvantages of enshrining an exceedance tolerance identified by commenters were rigidity, complexity, overreliance on the misplaced belief that 1-in-400-year events will happen only once every 400 years, and lack of specific direction provided to ERCOT. APA and ACP recommended that the rule direct ERCOT to model the outcomes at several different exceedance tolerances, which would allow the commission to decide which exceedance tolerances to use. APA and ACP explained that the exceedance tolerances are subject to the shortcomings of assumptions and modeling practices in ERCOT's study. TEC noted that setting the exceedance tolerances too high or too low would lead to undesirable outcomes. TEPRI stated that there are other ways to achieve the goal of determining whether the ERCOT

system is reliable, and that "it would be more useful for the commission to request ERCOT to show the probabilistic distribution of outages and what the major causes of the outages are so that proper policy measures can be put in place outside of a resource adequacy construct." Potomac and Cities commented that if they are included, the tolerances should reflect a reasonable estimate of the value of lost load (VOLL). Cities further commented that the exceedance tolerances should be flexible, rather than codified as a single value. Cities noted that the commission could adjust the exceedance tolerances outside a formal rulemaking, such as within the ERCOT stakeholder process.

TPPA stated that "if values for exceedance tolerances are to be included in the rule, then greater detail is necessary in the rule on other modeling inputs, including the number of simulations to be run and the precision and range of correlation to be used."

Commission Response

The commission agrees that exceedance tolerances provide the benefits identified by commenters and that codifying exceedance tolerances in the rule strikes the right balance between reliability and likely future costs to achieve that level of reliability. The commission disagrees that codifying exceedance tolerances in the rule introduces rigidity because the exceedance tolerances allow the system to exceed the reliability standard by a defined amount. Moreover, the commission retains discretion to reevaluate the exceedance tolerances after reviewing assessments from ERCOT on how the system is performing. For the same reasons, the commission declines to modify the rule to require ERCOT to model outcomes at several different exceedance tolerances, as suggested by APA and ACP.

In response to TEPRI on probabilistic outcomes, having ERCOT provide a probabilistic distribution and cause of the outages identified in the model would provide a valuable data point in reviewing future assessments. However, the commission disagrees with TEPRI that this should be done in lieu of establishing exceedance tolerances in the rule because the exceedance tolerances establish the acceptable thresholds on the duration and magnitude metrics through which that information can be interpreted. The commission disagrees with Potomac and Cities that the exceedance tolerances need to be directly linked to an estimated VOLL because the thresholds are not solely based on economics, but on the level of reliability for the ERCOT region that the commission aims to achieve. The commission disagrees with Cities that the commission should not adopt static exceedance tolerance values to gain additional flexibility because an undefined tolerance amount does not promote regulatory certainty.

In response to TPPA, the commission modifies subsection (c) of the rule to include a period for stakeholder comment after ERCOT submits its modeling assumptions. Stakeholders can submit feedback at that time on particulars of ERCOT's modeling inputs.

For these reasons, the adopted rule retains exceedance tolerances. However, the commission modifies the exceedance tolerance related to the magnitude criterion for other reasons, as discussed below.

2. Should the exceedance tolerance be evaluated more frequently than the reliability standard? If so, what is the appropriate frequency?

ERCOT, HEN, OPUC, TCPA, and TEAM answered that no, the exceedance tolerances should not be evaluated more frequently than the reliability standard and instead should be evaluated at the same time as the standard metrics themselves.

Several commenters answered that yes, the exceedance tolerances should be evaluated more frequently than the reliability standard. There were two main responses on the appropriate frequency: generally, that the exceedance tolerances should be evaluated more frequently than the standard (APA and ACP and Cities), and that the exceedance tolerances should be evaluated when the ERCOT system is assessed (TEC, Potomac, CPS, and TAEBA). Shell commented that the exceedance tolerances should be evaluated whenever the underlying analysis or data collection methodology changes. TIEC agreed with this notion, stating that the commission should not codify any frequency, duration, magnitude, or exceedance tolerance metrics in the rule at all because modeling assumptions could skew the results one way or the other.

Commission Response

The commission agrees that the exceedance tolerances should be updated at the same time as the reliability standard metrics because the exceedance tolerances are part of the metrics. However, the commission declines to modify the rule to add scheduled reviews of the reliability standard metrics and exceedance tolerances. Updating the exceedance tolerances frequently, such as on the same cadence as ERCOT's system assessment or whenever the underlying analysis or data collection methodology change, would cause the reliability standard to change too frequently, creating regulatory uncertainty. The commission will review ERCOT's system assessments regularly and use its discretion to open a rulemaking to change the reliability standard metrics, including the exceedance tolerances.

Time frame for updating reliability standard criteria thresholds

A few parties commented on the length of time between updates to the reliability standard metrics. LCRA, TCPA, and TXOGA stated that the reliability standard metrics themselves should be stable and not frequently revisited. For example, LCRA suggested at least a five-year gap between reviews of the standard, TCPA suggested at least a 10-year gap between reviews of the standard, and TXOGA suggested only that the standard be reviewed less often than the system.

Other parties took a different view. Octopus recommended that ERCOT submit an annual report to the commission, and after the review, the commission should determine whether a rulemaking is necessary to update the reliability standard or exceedance tolerances. TIEC, which recommended that the commission not codify metric thresholds in the rule, suggested that the commission adjust metric thresholds every five years after a 60-day comment period. TEBA, which was also against codifying metric thresholds, suggested adjusting metrics no more frequently than every six years, or at least on a similar cadence as the system assessments. TEC suggested that the commission evaluate the reliability criteria and the exceedance tolerances every three years.

Commission Response

As discussed above, the commission disagrees with TIEC and TEBA's suggestion not to codify the reliability standard metrics. The commission agrees with commenters that observed that the reliability standard metrics should remain stable over time to provide regulatory certainty and a stable measurement tool to gauge

the long-term reliability of the system. The commission therefore declines to modify the rule to add an explicit timeline that would require the commission to reopen the reliability standard rule to review and update the reliability standard metrics. The commission retains discretion to reopen the rule and conduct that review at any time.

Proposed §25.508(a)(2) - Definition of "loss of load event"

Proposed subsection (a)(2) defines "loss of load event" as "an occurrence when the system load is greater than the available resource capacity to serve that load, resulting in involuntary load shed."

TPPA sought clarification on whether a loss of load event caused by transmission overload, frequency event, or lack of voltage support would meet the criteria of the definition of "loss of load event" in the rule because, in TPPA's view, the definition is supposed to be limited to load shed resulting from a shortage of market-wide generation capacity. TPPA suggested language modifying proposed (a)(2) to account for this distinction. ERCOT suggested modifying the definition of loss of load event to include "system firm load plus required minimum operating reserves" to avoid the potential misunderstanding that the system must reach zero megawatts (MW) of available excess capacity in a simulation for a loss of load event to occur.

Commission Response

The commission agrees with TPPA that, for purposes of this standard, a loss of load event would only include situations involving a system-wide shortage of resources to meet demand and would not include localized load shed resulting from transmission constraints on the system. Accordingly, the commission modifies the provision to reflect a system-wide event. The commission also agrees with ERCOT's recommended addition and modifies the rule accordingly. In addition, the commission modifies the rule to clarify that a loss of load event also needs to account for the minimum operating reserves required to avoid an energy emergency alert level three event, because even in a load shed scenario, ERCOT is required to maintain a minimum level of operating reserves.

Proposed §25.508(a)(3) - Definition of "transmission operator"

Proposed subsection (a)(3) defines "transmission operator" with a reference to the ERCOT protocols.

Some commenters suggested defining this term using the definition of "transmission operator" that is in the ERCOT protocols, rather than using placeholder text that refers to the definition in the ERCOT protocols.

Commission Response

The commission declines to modify the rule to use ERCOT's current definition of its term. The term "transmission operator" is primarily used by ERCOT and appears in the commission's rules infrequently, making a cross reference appropriate.

Proposed §25.508(a)(4) - Definition of "weatherization effectiveness"

Proposed subsection (a)(4) defines the term "weatherization effectiveness" as "the assumed percentage reduction in the amount of weather-related unplanned outages for thermal generation resources included in the model, due to compliance with the weatherization standards in §25.55 of this title (relating to Weather Emergency Preparedness)."

TPPA, TEC, and CPS suggested that the definition of "weatherization effectiveness" include all generation resources, not just thermal generation resources. TPPA stated that the definition does not consider energy storage resources, DC ties, renewable generation resources, and load resources. TPPA sought clarification on the definition, suggesting that the definition is intended only to include a percentage reduction for unplanned outages of thermal generation resources. TEC expressed concern that the defined focus on thermal generation resources because the current weatherization rules include all types of generation and the transmission system.

Commission Response

The data used by ERCOT in its study on which the reliability standard is based included weatherization effectiveness only for thermal generation resources. In the future, it is possible that ERCOT could include weatherization effectiveness for non-thermal generation resources as the relevant data becomes available. Accordingly, the commission modifies the rule to remove "thermal" from the definition of "weatherization effectiveness." The commission declines to modify the definition to remove the word "generation" because the reliability standard is based on resource adequacy. The commission also modifies the provision to add energy storage resources because these resources are also part of resource adequacy.

CPS suggested removing the proposed definition of weatherization effectiveness, because it is ambiguous, and replacing it with the generator outage rates and other applicable input assumptions in the ERCOT filing required by subsection (c)(1)(A). CPS asserted that the longer the weatherization rules are in effect, the more normal they become, and comparing the effectiveness of current standards to historical standards becomes less meaningful to the development of the reliability standard.

Commission Response

The commission declines to remove the defined term from the rule, as suggested by CPS. The commission's latest weatherization requirements under became effective in 2023, and therefore, modeling outcomes will tend to underestimate the impact of those requirements until there are enough historical years included in ERCOT's modeled assessment to forecast more accurately generation resource output under the new regulatory requirements. The commission may consider the relevance of weatherization effectiveness at a later date.

Proposed §25.508(b) - Reliability standard

Proposed subsection (b) defines the reliability standard with three threshold values for frequency, magnitude, and duration of loss of load events.

Potomac recommended that the commission set a reliability standard that reflects a reasonable implied VOLL.

Commission Response

The commission disagrees with Potomac's suggestion that the most principled reliability standard is one that reflects an implied economic measure. Potomac's focus on a "reasonable implied VOLL" is consistent with the independent market monitor's mission to search continuously for wholesale market economic efficiency. However, the commission is not exclusively focused on either economic or reliability outcomes: it must reasonably balance both and declines to consider only economic outcomes to establish the reliability standard for the ERCOT region. Moreover, considerations related to the cost of achieving that relia-

bility standard will be addressed when evaluating potential market reforms when the reliability standard is not met. Because the reliability standard does not automatically trigger any market changes, the evaluation of potential market reforms to achieve the standard is the appropriate time to consider cost.

Proposed §25.508(b)(1) - Reliability standard frequency threshold

Proposed subsection (b)(1) defines the frequency threshold of the reliability standard as the following: "The expected loss of load events for the ERCOT region must be less than 0.1 day per year on average, i.e., 0.1 loss of load expectation (LOLE)."

TPPA sought clarification on the meaning of "on average" in the context of the measurement of frequency of a loss of load event.

TCPA suggested changing the frequency criterion to better align it with what is being measured--the probability of a loss of load event occurring within a modeled year--and gave a suggested redline edit. TCPA stated that this would also avoid misinterpretation of the frequency criterion as a duration metric of 2.4 hours.

Commission Response

The reliability assessment will involve conducting many independent, probability-based simulations, each of which may result in some number of days with a loss of load event. In this context, in response to TPPA's request for clarification, "on average" means averaging the number of loss of load events from all of these independent modeling runs to determine the expected number of loss of load events for the system.

In response to TCPA's suggested redline to subsection (b)(1), the commission modifies subsection (b) of the rule to state that the system will be simulated using a probabilistic model. This modification clarifies that the criteria listed in (1)-(3) of subsection (b) will all be measured by this probability-based model simulation. Because of this change, it is unnecessary to modify subsection (b)(1) as suggested by TCPA. However, the commission modifies (b)(1) to clarify that the frequency metric is based on the number of expected load shed events, not the expected loss of load hours. In addition, the commission modifies the definition to state that the expected loss of load events must be "equal to or less than one event per ten years on average" to align with the industry standard.

Proposed §25.508(b)(2) and (3) - Reliability standard duration and magnitude thresholds

Proposed subsection (b)(2) defines the duration threshold of the reliability standard as the following: "the maximum expected length of a loss of load event for the ERCOT region, measured in hours, must be less than 12 hours, with a 1.00 percent exceedance tolerance." Proposed subsection (b)(3) defines the magnitude threshold of the reliability standard as the following: "the expected highest instantaneous level of load shed during a loss of load event for the ERCOT region, measured in megawatts, must be less than the maximum number of megawatts of load shed that can be safely rotated during a loss of load event, as determined by ERCOT, in consultation with commission staff and the transmission operators, with a 0.25 percent exceedance tolerance."

As an alternative to its primary recommendation of replacing the magnitude and duration criteria with expected unserved energy (EUE) or normalized EUE (NEUE) - discussed below - Potomac argued if the magnitude criterion is retained, the exceedance tolerance should be relaxed to 1.00 percent; and if the duration criterion is retained, the threshold should be lengthened to 24 hours, rather than 12. Potomac explained that it found the reliability basis for the duration standard unclear. Sierra Club recommended exceedance tolerances for both duration and magnitude of two to three percent, and Shell recommended an exceedance tolerance for magnitude of no lower than three percent if the commission retains the current ERCOT data analysis methodology.

Commission Response

As discussed below, the commission declines to modify the rule to eliminate either the magnitude or the duration criterion because these are essential components of the commission's chosen reliability standard. The commission agrees that the magnitude criterion's exceedance tolerance should be relaxed to 1.00 percent and modifies the rule accordingly. This exceedance tolerance sets the expectation of a load shed event occurring during which ERCOT cannot safely and effectively rotate outages once every 100 years, on average. This level more appropriately balances the importance to the commission of avoiding these high-impact events with avoiding expensive outcomes driven solely by modeling assumptions. However, the commission disagrees that the duration threshold should be extended to 24 hours because the emergency pricing program (16 TAC §25.509) is in place to mitigate the cost impacts of load shed events that last longer than 12 hours. The reliability standard's duration threshold in the adopted rule remains at 12 hours to signify that load shed events that trigger the emergency pricing program are significant, and the market should be designed in a way to avoid such events.

The commission declines to relax exceedance tolerances for magnitude and duration any further, as suggested by Sierra Club and Shell, because doing so would signal the commission's acceptance of a less reliably designed system.

Policy Integrity commented that the thresholds for magnitude and duration are flawed because they are based on a constant VOLL, rather than a dynamic VOLL that varies by outage duration and severity. Policy Integrity suggested basing the analysis for these thresholds on a dynamic VOLL.

Commission Response

The commission declines to modify the rule to require a variable VOLL, as suggested by Policy Integrity, because the commission already has work underway through a survey to establish an updated VOLL for the ERCOT region. This value will be used as a basis for cost estimates associated with market design changes. Because the reliability assessment is a new process, the commission considers it valuable to allow ERCOT to conduct at least one assessment with the updated VOLL before considering further model changes related to VOLL.

Many commenters suggested improvements to the magnitude criterion in the proposed rule. Oncor, TNMP, Cities, and TAEBA stated that the variables used to calculate the magnitude threshold lacked clarity and recommended addressing this ambiguity. Some commenters suggested that the rule should clarify the requirements and process that ERCOT will use to determine the amount of load shed that can be safely rotated, including information regarding the frequency and process by which the criterion will be updated. For example, TSPA recommended that the initial maximum magnitude value be identified in this preamble. Octopus suggested that ERCOT provide an annual report on the maximum number of MW of load shed that can be safely rotated. TAEBA recommended the rule justify and provide explanation for the reasonableness of the 19 gigawatt (GW) amount

used in ERCOT's study that formed the basis for the reliability standard's metrics. TEC suggested that the amount of load that could be rotated be analyzed as a dynamic number based on changes to the system. Other comments suggested factors to include in calculating magnitude to improve the accuracy of the criterion, such as: cold-load pickup, underfrequency load shedding obligations, presence of mobile generation assets, clarification of the term "critical circuit," transmission and distribution service provider demand response, load management programs, large load additions, circuit segmentations, transmission-level customers, and ongoing resiliency improvements.

Commission Response

The commission agrees with commenters that additional clarity and consideration surrounding the variables used to calculate magnitude is desirable. However, the commission declines to amend the proposed rule because the result would be overly prescriptive for a calculation that must consider an evolving transmission and generation landscape. Instead, the commission expects ERCOT to achieve a similar result by considering stakeholder input, either through the adoption of protocols or other appropriate processes. This expectation bolsters the existing language of the adopted rule, which requires ERCOT to estimate the number of MWs that can be safely and effectively rotated during a loss of load event in consultation with commission staff and transmission operators. Allowing stakeholder input on the development of the assumptions and variables used in the calculation will ensure that transmission operators and other market participants can participate meaningfully in the establishment of the metric while providing additional flexibility to ERCOT and market participants to adjust the calculation as new technologies and information become available.

The commission does modify the proposed rule, however, to require ERCOT to file with the commission, on or before December 1 of each year, the amount of MW that can be safely rotated and a summary of the methodology used to derive that number.

Other parties expressed concern regarding the feasibility of the standard from a cost and implementation perspective. Cities stated that the magnitude criterion is overly strict as it effectively sets the frequency standard at 0.037 LOLE, rather than the 0.1 LOLE stated in the proposed rule. Cities questioned whether a 0.037 LOLE is attainable given the current market transition and load growth in Texas. HEN stated that magnitude is the controlling metric for calculating the reliability standard because frequency and duration should be easily achieved if magnitude is met. TIEC stated that selecting a maximum magnitude of 19 GW drives a frequency metric of one event in twenty-five years, a result TIEC considered unlikely to be justified by the cost to reach it. Potomac stated that, from its analysis, it is unlikely that an energy-only market can satisfy the one-in-ten reliability standard because it found that other regional transmission organizations with a one-in-ten reliability standard rely on capacity markets to supplement their energy and ancillary services markets.

Commission Response

The commission finds the magnitude criterion with the proposed exceedance tolerance to be reasonable and will address concerns about hypothetical market design change costs at the time it considers ERCOT's system reliability assessment. Further, the adopted rule requires this figure to be updated annually, which will provide opportunities to revisit the issues noted by commenters.

Several commenters expressed concern with ERCOT's study methodology and calculation of 19 GW as the initial amount of load shed that can be safely rotated. HEN suggested modifying the rule to provide a clear, maximum outage magnitude. HEN also recommended that the amount of load shed that can be rotated be reduced to 25 percent of the total load that can be controllably shed, instead of ERCOT's suggestion of 60 percent; which translates to a magnitude threshold of eight GW rather than 19 GW. HEN explained that PURA §39.159(d)(1) requires ERCOT to determine the quantity of dispatchable reliability reserve service (DRRS) necessary considering "historical variations in generation availability for each season based on a targeted reliability standard or goal," and that the magnitude threshold in the proposed rule does not provide meaningful guidance to ERCOT for determining the quantity of DRRS needed to meet the standard.

NRG supported the frequency, magnitude, duration, and exceedance probabilities provided in the proposed rule. However, NRG noted that the magnitude threshold should be set to an amount that can be rotated in a manner that minimizes disruption to customers, not the maximum amount of load shed theoretically possible on the system. NRG suggested that if TSPs determine 40 GW can be shed in total to rotate load shed safely, the magnitude threshold should be set to less than 20 GW.

Shell stated that the magnitude threshold should be calculated as the sum of the estimated amount of load that can be rotated by each distribution service provider (DSP) because this method would produce a reasonable and cost-effective metric to cover for an extreme event that has minimal chance of occurring.

Oncor suggested that ERCOT base its magnitude threshold amount on a load shed rotation cadence of 1:1, a ratio of consumers' time with power to their time without power, which translates to a maximum percentage of the total load available for load shed of 50 percent, rather than 60 percent. However, Oncor stated that it would support further reducing the amount of load shed that can be rotated to less than 50 percent. Oncor asserted that the 19 GW amount provided by ERCOT's study for safe rotation of load shed is incorrect. Oncor concluded that ERCOT overstated the amount of load shed that a TSP can effectively rotate during a LOLE which in turn understates the system's need for new generation. Oncor stated that 19 GW fails to account for the practical and operational considerations that would diminish load-shed capabilities to well below 19 GW in a real loss of load event, and that the magnitude criterion requires further refinement for accuracy.

TNMP had similar concerns to Oncor's and recommended that ERCOT's determination of 19 GW as the magnitude threshold be revised for accuracy. TNMP stated that increasing the number of consumers curtailed from 50 percent to 60 percent during a reliability event leads to at least a 50 percent increase in consumers' time without power.

TEC and TSPA recommended that the commission allow for stakeholder comment when it sets the magnitude criterion's threshold. TSPA further recommended that the magnitude threshold be set by commission order.

Commission Response

As a reliability metric, basing the standard for the magnitude of tolerable loss of load events on the amount of MW that ERCOT can safely and effectively rotate is a reasonable policy outcome. However, the commission finds commenters' concerns

about the calculation of that MW amount credible. Because that MW amount may change frequently due to changes in system configuration, installation of new technologies, or adoption of different emergency response strategies, to name just a few reasons, the commission declines to codify the process to calculate a numerical MW amount in rule. Instead, and as noted above, the commission expects ERCOT to use a stakeholder-informed process to calculate the amount of MW that can be safely and effectively rotated and modifies the rule to require ERCOT to file with the commission the result of that calculation and a summary of the methodology used at least annually.

Oncor suggested one redline to the magnitude criterion--that the magnitude threshold be set as the following: "the highest instantaneous level of load shed . . . must be less than the maximum load shed that can be effectively rotated during a loss of load event."

Commission Response

The commission disagrees with Oncor's suggested edit to the magnitude criterion because the term "effective" as applied to the magnitude criterion in this rulemaking is unclear.

TPPA requested clarification whether "expected highest instantaneous level of load shed" is meant to refer to load lost for mere fractions of a second or a measured ERCOT interval.

Commission Response

In response to TPPA's request for clarification on the interval over which magnitude is calculated, the commission modifies the rule to state that the measurement for magnitude is "the expected highest level of load shed during a loss of load event for the ERCOT region, measured as the average lost load for a given hour."

Proposed §25.508(b) and (c)(1)(C) - Reliability standard criteria, EUE, and NEUE

Proposed subsection (b) lists the reliability standard criteria: frequency, magnitude, and duration. Proposed subsection (c)(1)(C) requires ERCOT to report EUE and NEUE in its assessment.

Several parties commented specifically on the use of EUE and NEUE. Potomac, TXOGA, TIEC, and Shell recommended not using the three metrics of frequency, magnitude, and duration and replacing them with a single metric of EUE or NEUE. Potomac and TIEC explained that an EUE-based standard, considering the VOLL and cost of new entry (CONE), would be the most economically optimal choice. Potomac, TXOGA, and TIEC stated that EUE captures magnitude and duration. TIEC and Shell both suggested that the commission only monitor frequency, magnitude, and duration, and instead adopt the EUE or NEUE as the reliability standard. TEPRI also suggested that magnitude and duration be eliminated and replaced by EUE along with VOLL because EUE already considers risk, magnitude, and duration. TEPRI specifically acknowledged that EUE does not account for tail events and suggested that these events be accounted for through a separate study performed by ERCOT for the reliability standard, rather than through the magnitude and duration criteria with their exceedance tolerances.

HEN preferred EUE to LOLE as a better measure of reliability but was not opposed to using LOLE as one of the reliability measures. TSPA expressed support for keeping EUE and NEUE in the rule as proposed, within subsection (c)(1)(C).

TIEC and TEBA commented that the commission should not codify threshold metrics in the reliability standard rule. TIEC stated that "the commission should maintain its discretion in evaluating the modeling data to set a reasonable reliability standard, taking into account ERCOT's assessment of key metrics, along with the cost impacts to consumers."

Commission Response

The commission declines to modify the rule to replace the magnitude and duration criteria with either EUE or NEUE as recommended by Potomac, TXOGA, TIEC, and Shell. The commission agrees with TSPA that EUE and NEUE should remain informational only. Although EUE is a useful metric, and the commission requires ERCOT to include it in its assessment results, it is an average measure of events and does not distinguish the characteristics of extreme events. Because EUE is an average measure, the commission disagrees that EUE effectively captures the nuance provided by a reliability standard comprising individual frequency, magnitude, and duration criteria.

The commission disagrees with TIEC and TEBA that reliability standard metrics should not be codified in the commission rule. The commission must have a stable set of metrics by which to gauge the reliability of the ERCOT system, and to remain stable, these metrics must be codified in rule and updated only through deliberative and transparent processes. For these reasons, the commission declines to modify the rule.

TEPRI suggested modifying subsection (b) to specifically mention resource adequacy because that is what the rule is meant to address. TEPRI stated that in the future the commission should work towards changing the definition of a reliability standard from resource adequacy to the likelihood of residents losing access to electricity.

Commission Response

The commission agrees with TEPRI that the proposed rule is limited to resource adequacy and not a broader understanding of the causes and implications of interruptions to consumers' electricity access. However, the commission declines to modify the provision to explicitly mention resource adequacy. The proposed rule is clear in its limitations. Whether the broad concept of a reliability standard should be redefined to capture all interruptions to consumers' electricity access is beyond the scope of this rulemaking.

Policy Integrity suggested adding stress testing as a fourth criterion to the reliability standard in the proposed rule. Policy Integrity stated that including and measuring this criterion would minimize risk from tail events.

Commission Response

The commission declines to modify the rule to require stress testing, as suggested by Policy Integrity, because it is unnecessary. The adopted rule's thresholds are based on analysis that includes historical tail events, such as Winter Storm Uri. In addition, stress testing, which requires projection of tail events and an estimate of their severity, would introduce unnecessary subjectivity to the standard.

Proposed §25.508(b) and (c)(1)(D) - Roles of the commission and ERCOT

Proposed subsection (b) states that the ERCOT system meets the reliability standard if an ERCOT model analysis finds that the system meets each of the criteria provided in this subsection. Proposed subsection (c)(1)(D) states that if any reviewed

system falls below the reliability standard, ERCOT must include recommended market design changes in its filed assessment.

TPPA commented that it is the commission's role, not ERCOT's, to determine whether the ERCOT system has met the reliability standard. Similarly, LCRA recommended modifying subsection (b) to state that the commission's role is to ensure that the bulk power system for the ERCOT region meets or exceeds the metrics established in the rule. In support of its suggestion, LCRA cited PURA §39.159(b), which requires the commission to ensure that ERCOT establishes requirements to meet the reliability needs of the ERCOT region.

Potomac commented that it is an economic and policy function to develop market design alternatives. Specifically, Potomac stated that it should be the commission's role to determine market design changes, not ERCOT's, and that it is inappropriate to require ERCOT to recommend market design changes to the commission. Potomac accordingly recommended eliminating subsection (c)(1)(D) from the rule, or, in the alternative, the rule should require an independent review by the Independent Market Monitor (IMM) of any market design changes recommended by ERCOT.

Commission Response

Although the commission agrees with TPPA that it is the commission's role to establish a reliability standard, the evaluation of whether the system has met the reliability standard is an objective assessment based on a model that uses publicly available assumptions that are subject to commission review. Therefore, it is unnecessary to modify the proposed rule to explicitly recognize the commission's role in determining whether the ERCOT system has met the standard.

The commission also disagrees with LCRA's suggested modification because PURA §39.159(b) obligates the commission to ensure that ERCOT establishes requirements to meet the reliability needs of the ERCOT region. This rulemaking is limited to establishing a reliability standard for the ERCOT region, as discussed in the commission's response to comments on subsection (c)(2) below. It does not address the particular means by which that reliability standard will be met.

The commission declines to remove subsection (c)(1)(D) as suggested by Potomac. ERCOT may provide recommendations on market design options for the commission to consider, and the commission considers ERCOT to be a credible source for such recommendations. The commission retains discretion to decide whether to implement any market design changes as a result of the assessment and in consideration of ERCOT's recommendations. However, the commission agrees that the IMM should provide its assessment of ERCOT's recommended market design changes. The commission therefore modifies the rule to require the IMM to review recommended market design changes and expected system costs associated with those changes.

ERCOT suggested modifying subsection (b) to describe the simulation it will run to determine whether the system is meeting the reliability standard. Specifically, ERCOT suggested language to clarify that ERCOT is not conducting an analysis to determine whether the system is meeting the standard. Instead, ERCOT is running a probability-based model simulation that will demonstrate whether the system meets the standard.

Commission Response

The commission agrees with ERCOT's suggested clarifying language and modifies the rule accordingly.

Proposed §25.508(c)(1) - Timing of ERCOT's assessment

Proposed subsection (c)(1) requires an assessment to be performed every five years, starting January 1, 2026, and the assessment must review the ERCOT system that exists today and the system that will exist three years into the future.

Many parties expressed concern with both the length of time between full system assessments and the two-year gap between the three-year look-ahead and the five-year assessment. TEC suggested that the assessment occur every three years, and Octopus suggested that it occur every other year; TXOGA and Sierra Club both expressed concern with the five-year assessment schedule but provided no suggestion for a preferred review cycle. However, most parties that commented on this provision indicated a preference for an annual review of the system. TCPA and NRG cited PURA §39.159(b)(2) as support for their contention that the commission is statutorily bound to an annual reliability assessment. NRG also stated that ERCOT's resource mix and load growth change frequently. Similarly, TXOGA and TEPRI suggested the assessment be performed annually; TXOGA's reasoning was timely identification and mitigation of risks. TEPRI also recommended requiring a more comprehensive assessment every five years.

Commission Response

The commission modifies the rule to require ERCOT to perform its assessment every three years, as recommended by TEC. A three-year review cadence appropriately balances the need to provide the commission with timely and accurate information to evaluate the system's reliability with the administrative burden and regulatory uncertainty that more frequent evaluation would impose. This will also allow enough time for the commission to complete any required rulemakings and ERCOT to implement any changes in the protocols before the beginning of the next assessment.

The commission disagrees with TCPA and NRG that PURA §39.159(b)(2) is relevant to ERCOT's assessment of whether its system meets the reliability standard under this rule. This rule requires an assessment of the general reliability of ERCOT's system. It does not require a targeted evaluation of the quality and characteristics of ancillary services required to ensure reliability is certain pre-defined circumstances. The requirements of PURA §39.159(b)(2) will be met by the annual ancillary services methodology study, which is subject to approval by the commission.

TCPA recommended that the rule specify a time frame for ERCOT to deliver the system assessment, rather than specifying the time at which ERCOT will begin the assessment. TCPA stated that this would ensure a transparent and thorough process.

Commission Response

The commission declines to modify the rule to impose a deadline for ERCOT to file its assessment, as recommended by TCPA. Rather, the adopted rule imposes a start date on ERCOT's assessment to ensure ERCOT has sufficient time to complete its modeling and provide thoughtful market design recommendations, if necessary. The adopted rule involves a novel process and opportunity for stakeholder feedback. Furthermore, while not required by the rule, ERCOT might determine that additional analysis is required to support its recommendations. Commission staff and ERCOT communicate frequently on a wide array of topics, including developing coordinated workplans, and up-

dates on the status of ERCOT's analysis can be provided, if appropriate or necessary.

Proposed §25.508(c)(1) - ERCOT's assessment filing format

Proposed §25.508(c)(1) requires ERCOT to file a system assessment.

TEPRI recommended that the commission require the assessment to be provided in a searchable Excel spreadsheet. TPPF recommended that the commission add language to the rule guaranteeing that enough information will be published so that outside entities will be able to replicate the models used for the assessment and to evaluate the model outputs.

Commission Response

The probabilistic simulations ERCOT uses are extremely complex models that use an enormous amount of data - some of which is sensitive or otherwise confidential - and requires the use of SERVM modeling, which is inaccessible to the majority of market participants. Requiring ERCOT to provide sufficient information for outside entities to be able to replicate its results is infeasible. However, the commission expects ERCOT to provide sufficient information or explanation for outside parties to understand ERCOT's methodologies.

Proposed §25.508(c)(1)(A) - ERCOT's list of proposed assumptions

Proposed subsection (c)(1)(A)(i)-(v) is a list of assumptions that ERCOT must file with the commission before it conducts its assessment.

Several parties expressed a preference for adding other items to the list of assumptions that ERCOT must file. For example, Shell and Sierra Club both suggested adding "load forecast error, renewable forecast error, resource outage scenarios, resource outage scenarios by which the scenarios will be weighted in the study, and expected probability of weather pattern occurrence." Sierra Club also suggested adding expected levels of load reduction capability through the use of energy efficiency, demand response, and local distribution-level generation that has the impact of lowering load on the transmission system. TEC suggested adding load forecasts. TPPA and TEAM suggested requiring an update to VOLL, and TSPA suggested requiring an update to CONE and the reference technology. APA and ACP suggested using a dynamically modeled VOLL to better capture actual costs of loss-of-load events and to provide the commission with maximum information. TEPRI listed numerous requirements for inclusion in subsection (c)(1)(A) of the proposed rule, including gas constraints and transmission outages. TSPA recommended that the rule include a review of distributed energy resources (DERs) and microgrids as part of the assessment. APA and ACP suggested including transmission-related data in ERCOT's modeling, such as upgrades and outages.

TPPA recommended that proposed subsection (c)(1)(A)(ii) be edited to clarify that ERCOT's filing only includes expectations of the number of new resources and retirements that ERCOT is forecasting. TPPA also opposed ERCOT updating CONE on a routine basis unless there are structural changes to the generation market that would markedly change the costs of the technology because updating CONE is an extensive process. TPPA recommended removing the requirement to update CONE in proposed subsection (c)(1)(A)(iv) and updating CONE separately from the reliability standard assessment. TCPA also suggested removing reference to CONE from the list of ERCOT's proposed assumptions because an updated CONE value and reference technology choices are relevant only after ERCOT finds that a modeled system fails to meet the reliability standard.

ERCOT suggested a modification to proposed subsection (c)(1)(A)(iv) to add "a recommendation regarding whether more than one reference technology should be incorporated in the assessment."

Commission Response

The commission agrees with commenters that the proposed rule does not list every relevant assumption that ERCOT will likely need to include in its system assessments. The purpose of requiring certain assumptions is transparency and certainty for stakeholders, ERCOT, and the commission. The commission disagrees, however, that transparency and certainty can be achieved only by adding numerous required assumptions to the commission rule. Instead, authorizing a comment period for stakeholder input on assumptions submitted by ERCOT should address these concerns. This way, stakeholders can provide input on the assumptions ERCOT has filed with the commission and identify any other assumptions that ERCOT should include before it performs its assessment. For these reasons, the commission declines to modify the rule to add any additional required assumptions but modifies the rule to allow for a comment period with the commission after ERCOT files its assumptions.

The commission declines to modify the rule to require a dynamically modeled VOLL, as suggested by APA and ACP, because the commission has already initiated a survey to establish an updated VOLL for the ERCOT region.

The commission declines to modify the rule to specify the methodology that ERCOT will use to identify resource additions and retirements, as suggested by TPPA. ERCOT will provide its information on the resource additions and retirements as part of its assumptions, and the commission will have an opportunity to modify these values if necessary.

The commission modifies the rule to remove the requirement that ERCOT update the CONE as part of its assessment because CONE updates will occur through a separate commission process. The commission agrees with ERCOT's suggested modification and modifies the rule accordingly.

APA and ACP, TEPRI, and TPPF suggested that the commission require ERCOT to appropriately weight high-impact, low-probability events, such as Winter Storm Uri, in its modeling. TIEC and TPPF alternatively recommended that the commission require ERCOT to eliminate these events entirely from its modeling. HEN expressed support for including these events.

Commission Response

The commission declines to modify the rule as suggested by commenters because it is unnecessary. The adopted rule allows for public comment on ERCOT's modeling assumptions, including the historic weather years ERCOT plans to use in the assessment. The commission will weigh feedback on ERCOT's modeling assumptions when they are filed.

Proposed §25.508(c)(1)(A) and (c)(2) - Allowance for comments on ERCOT's proposed assumptions and system assessment

Proposed subsection (c)(1)(A) requires ERCOT to file its proposed assumptions with the commission. Proposed subsection (c)(2) requires ERCOT to file its completed assessment with the commission.

Several commenters argued that a comment period after ERCOT submits its system assessment should be explicitly included in the rule to ensure that there is ample opportunity for stakeholder input. Some additionally requested that the commission establish an earlier comment period--after ERCOT submits its modeling assumptions. For example, Potomac suggested "an opportunity for comments on ERCOT's proposed modeling assumptions by market participants and the IMM since these assumptions can substantially alter the results of the assessment." Shell commented that, because ERCOT's assessment is heavily dependent on underlying assumptions, there should be an abundance of transparency and opportunities for stakeholder input on the assumptions and parameters in the assessment.

TNMP, TPPA, and Potomac suggested that commission approval of ERCOT's modeling assumptions be added to the rule because it would strengthen the opportunity for stakeholder feedback. TPPA recommended further that the commission require ERCOT to approve modeling assumptions through the ERCOT stakeholder process.

Commission Response

The commission agrees that stakeholder input after ERCOT files both its proposed modeling assumptions and system assessment would be valuable. In particular, the commission agrees that allowing comments on ERCOT's proposed assumptions is important because the assumptions will form the basis of ERCOT's assessment. Accordingly, the commission modifies the rule to add two comment periods: one after ERCOT files its proposed modeling assumptions and one after ERCOT files its system assessment. The commission further modifies the rule to provide commission staff with discretion over the timing and requirements of these comments. Because the commission modifies the rule to provide a comment period at the commission, the commission declines to modify the rule to require ERCOT to approve modeling assumptions through the ERCOT stakeholder process, as recommended by TPPA.

With regard to commission approval of the modeling assumptions, proposed modeling assumptions are an interim step in the system assessment and do not necessarily require a commission order or approval in every instance. However, the adopted rule does provide for commission review of ERCOT's modeling assumptions, if necessary. Further, ERCOT is required to consult with commission staff before filing its final recommended assumptions, and the commission may approve or direct revisions to the assumptions at its discretion. In addition, the commission modifies the rule to allow commission staff to provide its own recommendation on ERCOT's final modeling assumptions for the commission's review.

Proposed §25.508(c)(1)(B)(iii) - Market equilibrium reserve margin (MERM)

Proposed §25.508(c)(1)(B)(iii) requires ERCOT to report on the system configuration three years from the date of the current year's system analysis that would be required to achieve the MERM.

TEC recommended removing the requirement to calculate the MERM because it is inappropriate to include, and TCPA noted that the MERM takes a long time to calculate.

Commission Response

The commission modifies the proposed rule to remove the requirement for ERCOT to report on a system configuration at the MERM because the current year assessment and three-year forward-looking assessment provide a sufficient snapshot of the resource adequacy outlook.

Proposed §25.508(c)(1)(C) and (D) - Adding system cost to recommendations

Proposed subsection (c)(1)(C) requires ERCOT to include certain results in its system assessment filing. Proposed subsection (c)(1)(D) requires ERCOT to include recommendations for market design changes in its filing with the commission if any modeled systems fall below the reliability standard.

Many commenters suggested that if the system is not meeting the reliability standard, bringing the system up to the level of the reliability standard will incur consumer costs, and these costs should be made publicly available as part of ERCOT's required recommendations in proposed subsection (c)(1)(C) or (D). OPUC, Cities, Sierra Club, CTEI, TEPRI, TXOGA, TEAM, TIEC, and Shell cited the need to balance reliability benefits with consumer costs. In contrast, TSPA, Octopus, and TEC simply recommended adding system cost as a required reporting component in proposed subsection (c)(1)(C) or (D). TPPF recommended that the rule require ERCOT to submit a cost-benefit analysis of any generation additions or transmission changes along with recommended market design changes.

Commission Response

The commission agrees with commenters that reliability benefits must be balanced with costs to achieve the desired reliability. The commission therefore modifies the rule to require ERCOT to include cost estimates along with its recommended market design changes and to require the IMM to conduct an independent review of both recommendations and costs. The cost estimates and independent review, along with a stakeholder comment period, will allow the commission to consider costs before determining whether any market design changes may be necessary.

Cities commented that ERCOT's analysis, on which commission staff relied to create the reliability standard, used an outdated CONE that underestimates system costs and is subject to uncertainties and change given that the Brattle Group study on CONE is ongoing. In addition, Cities recommended modifying the proposed rule to require ERCOT to include consumer costs related to the performance credit mechanism (PCM). Cities supported its suggestion by stating that "the reliability standard will set the PCM's target, driving the cost of the performance credits. (B)ecause performance credit costs are a direct outcome of the reliability standard, ERCOT should include performance credit costs in the system cost analysis."

Commission Response

The commission disagrees with Cities' suggestion to include the cost of performance credits as a required submission by ERCOT. The PCM is not the only potential solution available to the commission to bring the ERCOT system into compliance with the reliability standard; therefore, requiring costs for this single solution would be inappropriate. In addition, this rulemaking is to establish the reliability standard, not to prescribe consequences if the modeled system does not meet the standard.

TEPRI recommended using EUE and the VOLL to gauge consumer willingness to pay for increased reliability, stating further that the commission should support policies that are cost effective. TIEC stated that the commission should "disregard the costs ERCOT included in its modeling because they are not representative of the consumers' actual costs." In support of this

notion, TIEC stated that using CONE as a cost basis ignores that the market cannot pay only new resources but must instead pay all existing resources as well. To address this issue, TIEC recommended modeling NEUE with an updated VOLL.

Similarly, Shell contended that what consumers would pay for increased reliability is closer to CONE times the total dispatchable generation MW. Shell stated further that "investment for improving reliability is cost beneficial to consumers only if cost of generation investment is lower than cost savings to consumers from avoiding load shed or out of market actions due to the added generation."

Commission Response

For reasons discussed above, the commission declines to replace the three reliability standard metrics in the rule with one based on NEUE, as TIEC proposes. However, the adopted rule retains the proposed rule's requirement for ERCOT to include the EUE and NEUE in its assessment filing in order to gauge consumer costs of the modeled reliability outcomes, as suggested by TEPRI and TIEC. Additionally, the commission modifies the rule elsewhere to include a comment period after ERCOT files its assessment, so stakeholders will have an opportunity to comment on ERCOT's cost estimation methodology.

Sierra Club and TEPRI suggested that the commission update a study on an Economically Optimal Reserve Margin (EORM) because it is outdated. Sierra Club stated EORM could provide an important data point in assessing the reasonableness of the reliability standard.

Commission Response

The commission declines to modify the rule to require calculation of the EORM because ERCOT's assessment will report data more relevant to cost implications of the modeled systems. The EORM is an assessment of the level of reserves that minimizes societal costs. Assessing a system configuration at the market equilibrium reserve margin will provide insights into the willingness of hypothetical investors to take certain actions that may improve resource adequacy under the existing market design than would data related to the EORM.

Proposed §25.508(c)(2) - Consequences of a failure of a modeled system to meet the reliability standard

Subsection (c)(2) of the proposed rule states that the commission will review ERCOT's assessment of the ERCOT system and determine whether any market design changes are necessary.

Opinions from commenters varied on whether subsection (c)(2) should require action by the commission to change market design in response to a failure of the system to meet the reliability standard. CPS, LCRA, NRG, TCPA, TEC, and TPPA opined that the reliability standard is mandatory and action to come into compliance is therefore required. Cities, Octopus, OPUC, and TAEBA asked the commission to clarify in the rule whether the standard is mandatory. CTEI, Potomac, TEAM, and TEBA supported the rule as proposed. CPS expressed support for the reliability standard as a standard with automatically triggered consequences that account for VOLL and CONE. In support of its opinion, CPS stated that without performance incentive mechanisms tied to the reliability standard, reliance for grid reliability will disproportionately fall to public entities, such as CPS, and that the reliability standard would therefore be incomplete as a standard.

Of those that recommended that the reliability standard be mandatory and that the rule include consequences for failure to meet the standard, both LCRA and NRG referred to legislative direction in PURA §39.159 as support for their position. LCRA stated that the statute places a clear duty on the commission to ensure that ERCOT establish requirements to meet the reliability needs of the power region, and that it is the commission's responsibility to effectuate this legislative mandate, ensuring that action will be taken if the reliability standard is not met. NRG stated that, for this policy to be effective, "failure to meet the reliability standard should trigger a pre-defined process to evaluate and then adopt any necessary changes to the ERCOT market structure to . . . meet the standard." NRG stated that this principle is embedded in PURA §39.159 and is consistent with how every other type of reliability measure is met in the ERCOT region, such as ERCOT's forward assessments of the transmission system and ancillary services and the reliability unit commitment process.

TCPA also stated that a pre-defined process in response to a failure of the system to meet the reliability standard would be appropriate and that a firm timeline associated with this process should be included in the rule.

TPPA commented that the long-term trajectory of the ERCOT market is uncertain because the commission's previously adopted blueprint documents are out of date, so there is uncertainty among stakeholders as to how the reliability standard will be applied. TPPA accordingly requested an updated version of the blueprint documents be published as part of the reliability standard rulemaking. In addition, TPPA stated that ERCOT should not provide recommended changes as part of its reliability assessment because the commission is the appropriate body to consider legislatively sanctioned market design changes and broader policy decisions, not ERCOT. TPPA therefore recommended that the commission seek stakeholders' input rather than accept recommended changes from ERCOT.

Of those expressing support for the proposed rule's treatment of the reliability standard as a measurement tool, rather than a mandatory trigger, TEBA, TIEC, and CTEI appreciated that such treatment will not require implementation of any particular market design, including the PCM or some other form of a capacity market. TIEC stated that it would oppose any language that would make market design changes mandatory to achieve certain generator revenues, remove the commission's discretion to decide whether market changes are needed, or result in any kind of CONE-based revenue stream for all generators that are available at a particular time. Potomac noted that treating the reliability standard as informational will greatly reduce any associated costs. TEAM stated that the reliability standard should not establish a reserve margin mandate because this would implicitly create a capacity market and shift risk to consumers.

LCRA, Shell, and TCPA suggested that the commission add language to the proposed rule specifying that the commission will adopt any market design changes through a rulemaking process. In support of its position, LCRA cited House Bill 1500 (88th R.S.), the commission's ERCOT directives interim process memo filed in Project No. 52301, and PURA §39.1514. LCRA stated that the bill, process memo, and statute demonstrate that the commission can direct ERCOT to take an official action through a contested case, rulemaking, or memorandum or written order adopted by a majority vote. LCRA and TCPA further suggested that the proposed rule should include an explicit timeframe in which the commission will open this rulemaking after ERCOT

files an assessment indicating the reliability standard has not been met.

Commission Response

The commission agrees with commenters that expressed support for the reliability standard as a measurement tool. The adopted rule establishes a process by which the ERCOT system will be regularly assessed for reliability, provides opportunities for input by stakeholders, the IMM, and commission staff, and allows the commission to determine whether market changes are required to address any identified reliability deficiencies and what those changes should be. The commission is presently considering many different mechanisms to ensure reliability and resource adequacy in the ERCOT region, and the selection of which solution is most appropriate given a particular set of circumstances - both now and in the future - should be deliberative and fully informed at the time that selection is made. Accordingly, the commission declines to modify the rule in response to comments requiring a particular outcome or action within a predetermined timeframe if ERCOT's projections do not meet the reliability standard.

With regard to PURA §39.159, the commission disagrees with stakeholder suggestions that the commission is required to adopt a reliability standard that mandates changes to market design should the standard not be met. Instead, the reliability standard included in the adopted rule defines the reliability needs for the ERCOT region and provides the basis for the commission and ERCOT to create the requirements, through other rules and the protocols, to meet those needs. It was not designed to accomplish any of the more targeted objectives of PURA §39.159(b). Those objectives are addressed through other means, such as the annual ancillary service methodology study.

The commission declines to modify the rule to require the commission to address identified reliability deficiencies through a rulemaking process, as recommended by LCRA, Shell, and TCPA, because it is unnecessary. Any solution that is identified by the commission will be implemented using the appropriate process for that particular solution, be it a rulemaking, directive to ERCOT, or some other action. In some instances, the appropriate action may be more information gathering in the form of workshops or studies or even requests for legislative action.

The commission declines to provide an updated blueprint as recommended by TPPA, because this request is beyond the scope of this rulemaking project.

With regard to ERCOT's role in providing recommended market design changes, the commission agrees with TPPA that the commission is the appropriate body to consider and ultimately determine whether market design changes are necessary. However, ERCOT has the technical expertise to evaluate both market design changes and the costs of those changes, making it an invaluable contributor to the commission's policy deliberations. The commission will consider ERCOT's recommendations, the analysis conducted by the IMM, and stakeholder comments to arrive at its own decision whether any market design changes are necessary.

The adopted rule includes other clarifying changes to describe the contents of ERCOT's filed assessment and recommended market design changes.

A majority of commenters suggested that the proposed rule should be modified to account for the specific tools the commission should employ in response to a modeled system's failure to meet the reliability standard. Most suggested that the commission limit itself to established, competitive market mechanisms or the energy-only market as a corrective for such a failure. Examples of out-of-market mechanisms, which commenters agreed should not be allowed, were capacity procurements, noted by Sierra Club, Shell, and TCPA and the PCM, noted by TEBA and TIEC. Sierra Club stated that the standard should not be interpreted as a specific capacity requirement on load-serving entities. TCPA opposed any state-sponsored or utility-owned capacity additions. TAEBA, Octopus, and NRG requested that the commission clarify its intentions for responding to a failure of a modeled ERCOT system to meet the reliability standard.

ARM "caution(ed) against too frequent development of new market products to address reliability standard shortfalls and prefer(red) the use of existing market design features (including those currently in development) to address any such shortfalls." In addition, ARM proposed that if the commission directs ERCOT to make changes to ancillary services to meet a shortfall in the reliability standard, the commission make an express designation in its orders whether such changes impose costs beyond a REP's control for a customer's existing contract. ARM also recommended a modification to the rule to ensure that if market changes will be made in the future to meet the reliability standard, changes will allow for sufficient lead time, such as one year, following the date the commission determines which changes are appropriate.

A few commented that the commission should specifically add non-generation alternative solutions to the rule that the commission could employ in response to a failure of a modeled ERCOT system to meet the reliability standard. For example, TSPA recommended including DERs and microgrids. TSPA supported its recommendation by stating that DERs and microgrids directly offset the need to rotate outages during an EEA event. TEPRI listed weatherization, segmentation, microgrids, and support of distribution resilience. Octopus specifically recommended that the commission direct ERCOT and stakeholders to identify and implement solutions to increase reliability at a lower cost, such as through greater integration of DERs, and report annually to the commission on these market activities.

Shell and TIEC urged the commission to require ERCOT to identify any non-generation, cost-effective alternatives that would reduce the frequency, duration, or magnitude of load shed events.

CPS suggested that the commission include existing and future programs in the rule, such as the current procurement of ancillary services quantities, future components of a co-optimized real-time market, including the ancillary service demand curves, or the performance credit mechanism. CPS stated that if these programs are available as automatic solutions in the rule, the commission could more quickly adjust the magnitude of the mechanism and deliberate on the need for larger market design changes as described in the proposed rule.

Cities suggested that the commission not adjust the policy levers of the market too frequently to bring the system into compliance with the reliability standard because frequent adjustments create regulatory uncertainty and undermine investment signals.

Commission Response

The commission declines to modify the proposed rule to add any market design, system change, or other action that may be useful to address a scenario in which the modeled system fails to meet the reliability standard. Such actions will be considered at

the time ERCOT's assessment reveals a failure of the modeled system to meet the standard and predetermining those actions in the rule would only serve to limit possible policy or market design responses to the assessment.

Finally, the commission disagrees with ARM's request related to a retail electric provider's ability to pass through costs associated with market design changes. Such a designation, if appropriate, will come at the time the commission approves a change to the market design.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting this section, the commission makes other minor modifications for the purpose of clarifying its intent.

This new section is adopted under the Public Utility Regulatory Act (PURA), Texas Utilities Code Annotated §14.002, which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, §39.159(b)(1), which requires that the commission adopt a reliability standard for the ERCOT power region.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002 and 39.159(b)(1).

§25.508. Reliability Standard for the Electric Reliability Council of Texas (ERCOT) Region.

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

(1) Exceedance tolerance--the maximum acceptable percentage of simulations in which the modeled ERCOT system experiences a loss of load event that exceeds the threshold for a given criterion of the reliability standard.

(2) Loss of load event--an occurrence when the system-wide firm load plus minimum operating reserves required to avoid an energy emergency alert level three event is greater than the available resource capacity to serve that load, resulting in involuntary load shed.

(3) Transmission operator--has the same meaning as defined in the ERCOT protocols.

(4) Weatherization effectiveness--the assumed percentage reduction in the amount of weather-related unplanned outages for generation resources and energy storage resources included in the model, due to compliance with the weatherization standards in §25.55 of this title (relating to Weather Emergency Preparedness).

(b) Reliability standard for the ERCOT region. The bulk power system for the ERCOT region meets the reliability standard if an ERCOT probability-based model simulation demonstrates that the system meets each of the criteria provided in this subsection.

(1) Frequency. The expected loss of load events for the ERCOT region must be equal to or less than one event per ten years on average, i.e., 0.1 loss of load expectation (LOLE).

(2) Duration. The maximum expected length of a loss of load event for the ERCOT region, measured in hours, must be less than 12 hours, with a 1.00 percent exceedance tolerance.

(3) Magnitude. The expected highest level of load shed during a loss of load event for the ERCOT region, measured as the average lost load for a given hour, must be less than the maximum number of megawatts of load shed that can be safely rotated during a loss of load event, as determined by ERCOT, in consultation with commission staff and the transmission operators, with a 1.00 percent exceedance tolerance. Beginning in 2024, on or before December 1 of each year, ERCOT must file the maximum number of megawatts of load shed that can be safely rotated during a loss of load event and a summary of the methodology used to calculate this value.

(c) Reliability assessment. Beginning January 1, 2026, ERCOT must initiate an assessment to determine whether the bulk power system for the ERCOT region is meeting the reliability standard and is likely to continue to meet the reliability standard for the three years following the date of assessment. The assessment must be conducted at least once every three years.

(1) Modeling assumptions.

(A) Before conducting the assessment, ERCOT must file a comprehensive list of proposed modeling assumptions to be used in the reliability assessment. The proposed assumptions must include:

(i) the number of historic weather years that will be included in the modeling;

(ii) the amount of new resources and retirements, in megawatts, listed by resource type;

(iii) the weatherization effectiveness; and

(iv) any other assumptions that would impact the modeling results, along with an explanation of the possible impact of the additional assumptions.

(B) Commission staff will provide interested persons with at least 30 days from the date ERCOT files its proposed modeling assumptions to file comments recommending modifications to ERCOT's proposed modeling assumptions. Commission staff may include filing requirements or additional questions for comment.

(C) After reviewing filed comments, ERCOT, in consultation with commission staff, must file its final recommended modeling assumptions for commission review. Commission staff may provide a separate recommendation on ERCOT's final recommended modeling assumptions for the commission's consideration.

(2) Assessment components.

(A) ERCOT's assessment must include review and analysis of the resource fleet, loads, and other system characteristics for the ERCOT region for the following points in time:

(i) the current year's system configuration; and

(ii) the expected system configuration three years from the date of the current year's system analysis.

(B) The assessment results must include, at a minimum, the following metrics for each point in time:

(i) the LOLE;

(ii) the probability of a loss of load event exceeding the duration threshold established in subsection (b)(2) of this section;

(iii) the probability of a loss of load event exceeding the magnitude threshold established in subsection (b)(3) of this section;

(iv) the expected unserved energy; and

(v) the normalized expected unserved energy.

(3) Commission review and determination.

(A) ERCOT must file its assessment with the commission, including any information required under subparagraph (C)(i) of this paragraph.

(B) Commission staff will provide interested persons with at least 30 days from the date ERCOT files its assessment to file comments on ERCOT's assessment. Commission staff may include filing requirements or additional questions for comment.

(C) If the assessment shows that any reviewed system fails to meet the reliability standard described in subsection (b) of this section:

(i) ERCOT must provide the commission with a summary explanation of any identified deficiencies and its supporting analysis. ERCOT must also provide the commission with a menu of proposed recommended market design changes, including a primary recommendation, that are intended to address the identified deficiencies. ERCOT must provide the commission with the expected system costs associated with each of its proposed recommended changes;

(ii) the independent market monitor must conduct an independent review of ERCOT's proposed recommended market design changes, including associated expected system costs for each proposed recommended change, and file its review no later than the deadline established in subparagraph (B) of this paragraph; and

(iii) commission staff must provide a recommendation to the commission, considering expected system costs and reliability benefits, on whether any market design changes or other changes may be necessary to address the deficiency.

(D) The commission will review ERCOT's assessment and any recommendations, the independent market monitor's review, commission staff's recommendations, and stakeholder comments to determine whether any market design changes may be necessary.

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

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

TRD-202404367
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: September 29, 2024
Proposal publication date: June 28, 2024
For further information, please call: (512) 936-7322

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16 TAC §25.510

The Public Utility Commission of Texas (commission) adopts an amendment to §25.510, relating to the Texas Energy Fund In-ERCOT Generation Loan Program with no changes to the proposed text as published in the July 26, 2024 issue of the *Texas Register* (49 TexReg 5456). The amendment to the rule is to correct an inadvertent omission by the *Texas Register* in the definitions for the formulas in subsection (b)(4) and (5). No other amendments have been made to the rule. This amendment is adopted under Project Number 55826. The adopted rule will not be republished.

The commission received no comments on the proposed amendment.

This amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, §34.0104, which authorizes the commission to use money in the Texas Energy Fund to provide loans to finance upgrades to or new construction of electric generating facilities in the ERCOT region; §34.0106(c), which requires the commission to adopt performance standards that electric generating facilities must meet to obtain a loan; and §34.0110, which authorizes the commission to establish procedures for the application and award of a grant or loan under PURA chapter 34, subchapter A.

Cross Reference to Statute: Public Utility Regulatory Act §§14.002, 34.0104; 34.0106(c), and 34.0110.

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

Filed with the Office of the Secretary of State on September 12, 2024.

TRD-202404428
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: October 2, 2024
Proposal publication date: July 26, 2024
For further information, please call: (512) 936-7322

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 100. CHARTERS

SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING OPEN-ENROLLMENT CHARTER SCHOOLS

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 19 TAC §100.1013 is not included in the print version of the Texas Register. The figure is available in the on-line version of the September 27, 2024, issue of the Texas Register.)

The Texas Education Agency (TEA) adopts the repeal of §§100.1001-100.1007, 100.1010, 100.1013, 100.1015, 100.1017, 100.1019, 100.1021-100.1023, 100.1025-100.1027, 100.1029, 100.1031-100.1033, 100.1035, 100.1041, 100.1043, 100.1045, 100.1047, 100.1049-100.1052, 100.1063, 100.1065, 100.1067, 100.1069, 100.1071, 100.1073, 100.1101-100.1108, 100.1111-100.1116, 100.1131-100.1135, 100.1151, 100.1153, 100.1155, 100.1157, 100.1159, and 100.1217; new §§100.1001, 100.1003, 100.1011, 100.1013, 100.1015, 100.1017, 100.1021, 100.1023, 100.1025, 100.1031, 100.1035, 100.1037, 100.1039, 100.1041, 100.1043, 100.1045, 100.1047, 100.1049, 100.1051, 100.1053, 100.1055, 100.1061, 100.1063, 100.1065, 100.1067, 100.1069, 100.1071, 100.1073, 100.1075, 100.1077, 100.1079, 100.1091, 100.1093, 100.1095, 100.1097, 100.1099, 100.1101, 100.1111, 100.1113, 100.1115, 100.1117, 100.1119, 100.1121, 100.1123, 100.1125, 100.1127, 100.1131, 100.1133, 100.1135, 100.1137, 100.1139, 100.1141, 100.1143, 100.1145, 100.1147, 100.1149, 100.1151, 100.1153, 100.1155, 100.1157, 100.1159,

100.1161, and 100.1163; and amendments to §§100.1203, 100.1205, 100.1207, 100.1209, and 100.1211-100.1213, concerning open-enrollment charter schools. New §§100.1001, 100.1011, 100.1017, 100.1021, 100.1023, 100.1025, 100.1031, 100.1035, 100.1039, 100.1061, 100.1069, 100.1113, 100.1115, 100.1121, and 100.1127 and amended §§100.1207, 100.1209, 100.1212, and 100.1213 are adopted with changes to the proposed text as published in the March 15, 2024 issue of the *Texas Register* (49 TexReg 1569) and will be republished. The repeal of §§100.1001-100.1007, 100.1010, 100.1013, 100.1015, 100.1017, 100.1019, 100.1021-100.1023, 100.1025-100.1027, 100.1029, 100.1031-100.1033, 100.1035, 100.1041, 100.1043, 100.1045, 100.1047, 100.1049-100.1052, 100.1063, 100.1065, 100.1067, 100.1069, 100.1071, 100.1073, 100.1101-100.1108, 100.1111-100.1116, 100.1131-100.1135, 100.1151, 100.1153, 100.1155, 100.1157, 100.1159, and 100.1217; new §§100.1003, 100.1013, 100.1015, 100.1037, 100.1041, 100.1043, 100.1045, 100.1047, 100.1049, 100.1051, 100.1053, 100.1055, 100.1063, 100.1065, 100.1067, 100.1071, 100.1073, 100.1075, 100.1077, 100.1079, 100.1091, 100.1093, 100.1095, 100.1097, 100.1099, 100.1101, 100.1111, 100.1117, 100.1119, 100.1123, 100.1125, 100.1131, 100.1133, 100.1135, 100.1137, 100.1139, 100.1141, 100.1143, 100.1145, 100.1147, 100.1149, 100.1151, 100.1153, 100.1155, 100.1157, 100.1159, 100.1161, and 100.1163; and amended §§100.1203, 100.1205, and 100.1211 are adopted without changes to the proposed text as published in the March 15, 2024 issue of the *Texas Register* (49 TexReg 1569) and will not be republished. The adopted revisions reorganize the subchapter as well as reflect changes to the Texas Education Code (TEC) resulting from House Bill (HB) 1707, 88th Texas Legislature, Regular Session, 2023; Senate Bill (SB) 2032, 88th Texas Legislature, Regular Session, 2023; SB 879, 87th Texas Legislature, Regular Session, 2021; HB 189, 87th Texas Legislature, Regular Session, 2021; SB 1615, 87th Texas Legislature, Regular Session, 2021; and SB 2293, 86th Texas Legislature, 2019.

REASONED JUSTIFICATION: Chapter 100, Subchapter AA, outlines the commissioner's rules concerning open-enrollment charter schools. The adopted revisions reorganize the chapter, amend existing rules, and add new rules. Following is a summary of the significant changes adopted regarding Chapter 100, Subchapter AA.

Section 100.1001, Definitions, includes new definitions for various types of charter schools referenced throughout Chapter 100, as defined in TEC, Chapter 12. They provide clarity throughout Chapter 100 as to which types of charter schools are being addressed in each section. The section includes a definition for "related party transactions" as required by TEC, §12.1166. The definition of "former charter holder" is updated to include provisions for high quality operators. A provision for allowing scaled scores to be used in lieu of academic accountability ratings when such ratings are not issued for any reason is also included.

Based on public comment, the following revisions to §100.1001 were made at adoption. Section 100.1001(5)(B) was modified to revise the definition of a Subchapter E charter school to align with current statute. A technical edit was made to the definition of a former charter holder to align with the new section number. A revision to the definition of a related party transaction was made to include a former officer of a charter school to align with statute. The definition of shared services cooperative or shared services agreement was revised to indicate that other Texas governmental entities means school districts or education service centers.

Section 100.1002, Application and Selection Procedures and Criteria, is adopted as new §100.1011, Application Requirements and Selection Process, and contains changes, including grammatical edits, organization of information into smaller paragraphs and subparagraphs, and a reformatted reference structure that assumes all paragraphs and subparagraphs are applicable to all charter applications unless expressly provided elsewhere. The reformatted reference structure provides a clearer applicability of rule to each of TEA's authorization pathways.

Based on public comment and due to a drafting error, §100.1011(i) and (j) have been added at adoption to re-introduce no-contact provisions, which were accidentally omitted from the revised language as proposed. These modifications also resulted in the re-lettering of the remaining subsections.

Section 100.1003, Application to Dropout Recovery Charters, is adopted as new §100.1015 and modifies eligibility criteria to align with updated statute.

Section 100.1004, Application to Public Senior College or University Charters and Public Junior College Charters, and §100.1015, Applicants for an Open-Enrollment Charter, Public Senior College or University Charter, or Public Junior College Charter, are combined and adopted as new §100.1017, Applicant Eligibility and Form Contents. The new section contains the following changes: a new section title to more accurately reflect the section's contents, grammatical edits, organization of information into smaller paragraphs and subparagraphs, and a reformatted reference structure that assumes all paragraphs and subparagraphs are applicable to all charter applications unless expressly provided elsewhere. The reformatted reference structure provides a clearer applicability of rule to each of TEA's authorization pathways. Additionally, new applicability of the TEC, Subchapter G application pathway and educational, financial, governance, and operational standards by which applicants are assessed is updated to better align with statute and current organizational priorities. The new section also includes a change to reflect TEC, §12.265(c), regarding the enrollment cap for adult high school charter programs.

Based on public comment, §100.1017(b) has been modified at adoption to include that existing entities must attest that any failure to maintain good standing with state agencies in Texas or in their home state will be considered a material violation of the charter contract and may be grounds for revocation.

Section 100.1005, Notification of Charter Application, is adopted as new §100.1013 and contains the following changes: updates to who is responsible for notification of charter and a clarification of who is required to be notified. These changes were made to decrease the administrative burden on applicants and provide a streamlined method of communication with potentially impacted stakeholders.

Section 100.1006, Optional Open-Enrollment Charter Provisions for Contracting and Purchasing, is adopted as new §100.1079 and includes non-substantive technical edits; no content changes were made.

Section 100.1007, Annual Report on Open-Enrollment Charter Governance, is adopted as new §100.1111 and contains the following changes: modifications to the filing of governance information on an annual basis from no later than December 1 to a timeline approved by the commissioner; removal of the requirement for the charter holder to file amendments, articles of incorporation, and bylaws because TEA already possesses these

documents; and removal of the requirement for a screenshot of the names of governing body members and a screenshot of the superintendent's salary, since the posting of this information is already required in statute. This new section also removes outdated language.

Section 100.1010, Performance Frameworks, is adopted as new §100.1031, Performance Frameworks for Subchapters D and E Charter Schools, and contains the following changes: clarification that Subchapter D and E charters will be evaluated against criteria set forth in the Charter School Performance Frameworks (CSPF) Manual and clarification that the manual will be updated annually to reflect the requirements and data sources for each indicator. Additional changes include clarification that tier ratings will be assigned based on academic, financial, operational, and governance criteria set forth in the CSPF Manual to allow further delineation as to the indicators that measure operational standards and those that measure governance standards. These changes are based on feedback from stakeholders to make the CSPF a more useful instrument that communicates charter performance in a clear and concise manner.

Based on public comment, §100.1031(a) was modified at adoption to adopt the CSPF Manual in rule as Figure: 19 TAC §100.1031(a).

Section 100.1013, Filing of Documents, is adopted as new §100.1003 and includes a change to define and outline the requirements for electronic transmission of documents.

Section 100.1017, Application of Law and Rules to Public Senior College or University Charters and Public Junior College Charters, is adopted as new §100.1021, Applicability of Law and Rules to Public Senior College or University Charters and Public Junior College Charters, and more accurately reflects statutory language.

Based on changes made to §100.1011 as the result of public comment, conforming changes were made to §100.1021 at adoption to detail which subsections of §100.1011 apply to these applications.

Section 100.1019, Application to Adult High School Charters, is adopted as new §100.1023, Applicability of Law and Rules to Adult High School Charters, and more accurately reflects statutory language. This new section includes provisions to govern applicability of TEC, Chapter 12, Subchapter D, to adult high school charter schools. These changes are made to account for programmatic requirements that were not otherwise explicitly addressed in existing law. The requirements are aligned to other provisions that govern charters and public schools as appropriate.

Based on changes made to §100.1011 as the result of public comment, conforming changes were made to §100.1023 at adoption to detail which subsections of §100.1011 apply to these applications.

Section 100.1021, Revocation and Modification of Governance of an Open-Enrollment Charter, is adopted as new §100.1049 and includes a change to remove outdated references to academic performance ratings and financial accountability performance ratings for specific years.

Section 100.1022, Standards to Revoke and Modify the Governance of an Open-Enrollment Charter, is adopted as new §100.1051 and includes the removal of language defining "imminently insolvent" as this is included in another rule.

Section 100.1023, Intervention Based on Charter Violations, is adopted as new §100.1045 with no substantive changes to rule text.

Section 100.1025, Intervention Based on Health, Safety, or Welfare of Students, is adopted as new §100.1047 with no changes in rule text.

New §100.1025, Authorization for High-Performing Entities, is added to implement TEC, §12.1011, which requires the commissioner to adopt rules regarding charter authorization for high-performing entities.

Based on public comment, §100.1025(b) was modified at adoption to indicate that only one of the criteria must be met to qualify as a high-performing entity, and §100.1025(g) was added to provide clarity regarding the commissioner's adoption of a separate application for high-performing entities.

Section 100.1026, Management of Charter Campus(es) Following Revocation, Surrender, or Expiration, is adopted as new §100.1053 with no substantive changes in rule text.

Section 100.1027, Accountability Ratings and Sanctions, is adopted as new §100.1041 and includes clarification that the commissioner may take any action relating to the charter holder or its campus as authorized by TEC, Chapter 39A. This change removes outdated language.

Section 100.1029, Agency Audits, Monitoring, and Investigations, is adopted as new §100.1043 and includes non-substantive technical edits; no content changes were made.

Section 100.1031, Renewal of an Open-Enrollment Charter, is adopted as new §100.1037, which includes a clarification that written notice from the commissioner regarding renewal decisions will be provided electronically and removes references to academic performance ratings and financial accountability performance ratings for specific school years. These changes remove outdated language.

Section 100.1032, Standards for Discretionary Renewal, is adopted as new §100.1039 and includes a change to remove failure to operate a campus with at least 50% of students in tested grades as a standard for non-renewal of a charter. This change reflects the current practice of some campuses serving only early childhood grades that are not considered tested grades.

A technical edit was made to §100.1039(2)(P) at adoption to change the word "mismanagement" to "management."

Section 100.1033, Charter Amendment, is adopted as new §100.1035 and includes reorganization of the text to eliminate duplicative and contradictory language. The following changes were also made. The timeline for amendment submission is updated from 18 to 36 months to reflect changes to statutory language. Language clarifies that expansion requests can be expedited expansion requests if charters meet the requirements in TEC, §12.101(b-4), or discretionary expansion requests if charters do not meet the expedited requirements. Geographic boundary is eliminated as a type of expansion amendment request. Language classifies types of non-expansion requests as material non-expansion amendments with the charter holder receiving a commissioner decision with 60 calendar days of a completed amendment request or non-material non-expansion requests that allow the charter to proceed with the request 30 calendar days after the submission of a completed amendment request unless otherwise notified by the commissioner. These

changes are made to reflect current best practices for authorizing as well as feedback from stakeholders to improve the overall process for amending a charter.

Based on public comment, the following changes to §100.1035 were made at adoption. The timeline for requesting a high-quality campus designation has been modified so that it is submitted prior to a school opening but not necessarily at the same time as the expansion amendment. The language for a high-quality campus designation has been modified to indicate that each campus that receives a rating, rather than all of the campuses that receive a rating, must be rated A or B. New §100.1035(c)(6)(E) was added to require that a decision related to a high-quality campus designation be made within 60 calendar days of the date the charter holder submits a completed request. Shared services cooperatives and shared services agreements were added to the list of material non-expansion amendments.

Section 100.1035, Compliance Records on Nepotism, Conflicts of Interest, and Restrictions on Serving, is adopted as new §100.1163 and includes non-substantive technical edits; no content changes were made.

Section 100.1041, State Funding, is adopted as new §100.1061 and includes clarification on statutory references on allowable and unallowable fees.

Based on public comment, revisions to §100.1061 were made at adoption to correct outdated statutory references.

Section 100.1043, Status and Use of State Funds; Depository Contract, is adopted as new §100.1063 with no changes to rule text.

Section 100.1045, Investment of State Funds, is adopted as new §100.1065 and includes non-substantive technical edits; no content changes were made.

Section 100.1047, Accounting for State and Federal Funds, is adopted as new §100.1067 and includes non-substantive technical edits; no content changes were made.

Section 100.1049, Disclosure of Campaign Contributions, is adopted as new §100.1071 and includes non-substantive technical edits; no content changes were made.

Section 100.1050, Disclosure of Financial Information, is adopted as new §100.1073 with no changes to rule text.

Section 100.1051, Audit by Commissioner; Records in the Possession of a Management Company, is adopted as new §100.1075 with no changes to rule text.

Section 100.1052, Final Audit Upon Revocation, Surrender, or Closure of an Open-Enrollment Charter, is adopted as new §100.1077 with no changes to rule text.

Section 100.1063, Use of Public Property by a Charter Holder, is adopted as new §100.1091 with no changes to rule text.

Section 100.1065, Property Acquired with State Funds Received Before September 1, 2001--Special Rules, is adopted as new §100.1093 and includes non-substantive technical edits; no content changes were made.

Section 100.1067, Possession and Control of the Public Property of a Former Charter Holder, is adopted as new §100.1095 with no changes to rule text.

Section 100.1069, Rights and Duties Not Affected, is adopted as new §100.1097 and includes non-substantive technical edits; no content changes were made.

New §100.1069, Disclosure of Related Party Transactions, includes requirements from TEC, §12.1166, which requires the commissioner to adopt a rule defining "related party."

Based on public comment, a revision to §100.1069(c) was made at adoption to remove the term "other" in order to eliminate any confusion regarding which types of related party transactions must be detailed in charter school audits.

Section 100.1071, Real Property Held in Trust, is adopted as new §100.1099 and includes non-substantive technical edits; no content changes were made.

Section 100.1073, Improvements to Real Property, is adopted as new §100.1101 and includes non-substantive technical edits; no content changes were made.

Section 100.1101, Delegation of Powers and Duties, is adopted as new §100.1113 and moves the non-delegable duties of board members and superintendents from another rule. This change aligns the provisions with other information on governance powers and duties.

In response to public comment, §100.1113(e) was modified at adoption to add the phrase "upon review" to provide clarification regarding the rescinding of delegation amendments.

Section 100.1102, Training for Members of Governing Bodies of Charter Holder and School, is adopted as new §100.1115, Training Requirements for Governing Board Members and Officers, and adds the opportunity for training to be provided online. This change removes outdated language.

Based on public comment, §100.1115(d) has been modified at adoption to include training provided asynchronously as long as it incorporates interactive activities that assess learning and provide feedback.

Section 100.1103, Training for Chief Executive and Central Administrative Officers, is adopted as new §100.1117, Core Training for New Governing Board Members and Officers, and clarifies core training content for governance board members and officers under each training topic. This change updates curriculum training requirements to reflect current statute, rule, and best practice.

Section 100.1104, Training for Campus Administrative Officers, is adopted as new §100.1119, Additional Training for New Governing Board Members and Officers, and clarifies additional training content for campus administrative officers under each training topic. This change updates curriculum training requirements to reflect current statute, rule, and best practice.

Section 100.1105, Training for Business Managers, is adopted as new §100.1121, Continuing Training for Governing Board Members and Officers, and outlines continuing training content for governance board members and officers under each training topic. This change updates curriculum training requirements to reflect current statute, rule, and best practice.

At adoption, §100.1121(b)(3) was modified to correct a typographical error.

Section 100.1106, Exemption for Participation in a Shared Services Cooperative, is adopted as new §100.1123 with no changes to rule text.

Section 100.1107, Course Providers, is adopted as new §100.1125, Training Providers, and clarifies that training for governance board members and officers must be provided by an authorized training provider; specify that training providers may be required to complete a charter training program prior to initial authorization as a trainer; and make initial authorization as a training provider effective for 24 months with re-registration available for a period of up to three years. These changes help ensure that the individuals who train charter governing boards and charter officers have a deep understanding of the statutes, rules, and best practices associated with Texas charter schools.

Section 100.1108, Record of Compliance and Disclosure of Noncompliance, is adopted as new §100.1127 and includes non-substantive technical edits; no content changes were made.

At adoption, §100.1127(1) was modified to correct a typographical error.

Section 100.1111, Applicability of Nepotism Provisions; Exception for Acceptable Performance, is adopted as new §100.1131 and includes non-substantive technical edits; no content changes were made.

Section 100.1112, General Nepotism Provisions, is adopted as new §100.1133 and includes non-substantive technical edits; no content changes were made.

Section 100.1113, Relationships By Consanguinity or By Affinity, is adopted as new §100.1135 with no changes to rule text.

Section 100.1114, Nepotism Prohibitions, is adopted as new §100.1137 and includes non-substantive technical edits; no content changes were made.

Section 100.1115, Nepotism Exceptions, is adopted as new §100.1139 and includes non-substantive technical edits; no content changes were made.

Section 100.1116, Enforcement of Nepotism Prohibitions, is adopted as new §100.1141 and includes non-substantive technical edits; no content changes were made.

Section 100.1131, Conflicts of Interest and Board Member Compensation; Exception, is adopted as new §100.1143 and includes non-substantive technical edits; no content changes were made.

Section 100.1132, General Conflict of Interest Provisions, is adopted as new §100.1145 and includes non-substantive technical edits; no content changes were made.

Section 100.1133, Conflicts Requiring Affidavit and Abstention From Voting, is adopted as new §100.1147 with no changes to rule text.

Section 100.1134, Conflicts Requiring Separate Vote on Budget, is adopted as new §100.1149 with no changes to rule text.

Section 100.1135, Acting as Surety and other Conflicts; Criminal Penalties, is adopted as new §100.1151 and includes non-substantive technical edits; no content changes were made.

Section 100.1151, Criminal History; Restrictions on Serving, is adopted as new §100.1153 and includes non-substantive technical edits; no content changes were made.

Section 100.1153, Substantial Interest in Management Company; Restrictions on Serving, is adopted as new §100.1155 and includes non-substantive technical edits; no content changes were made.

Section 100.1155, Procedures for Prohibiting a Management Contract, is adopted as new §100.1157 and aligns the process for review of proposed management contracts with the charter amendment process.

Section 100.1157, Loan from Management Company Prohibited, is adopted as new §100.1159 and includes non-substantive technical edits; no content changes were made.

Section 100.1159, Public Records Maintained by Management Company; Contract Provision, is adopted as new §100.1161 with no changes to rule text.

The amendment to §100.1203, Records Management, includes non-substantive technical edits.

The amendment to §100.1205, Procurement of Professional Services, includes non-substantive technical edits.

The amendment to §100.1207, Student Admission, includes changes regarding the updated requirements of TEC, §12.1173, which requires the commissioner to adopt rules to implement charter school waiting lists for admission, including a common application form published by TEA.

Based on public comment, §100.1207(e) regarding the charter school waitlist has been updated to align with statute and include all components that are required submissions.

The amendment to §100.1209, Municipal Ordinances, incorporates changes resulting from HB 1707, 88th Texas Legislature, Regular Session, 2023, by including notification to political subdivisions as required by TEC, §12.1058.

Based on public comment, proposed §100.1209(b) was removed at adoption to align with statutory changes made by HB 1707, 88th Texas Legislature, Regular Session, 2023, and adopted new subsection (b) was modified to align with statutory language regarding who must certify that they received no financial benefit from a real estate transaction with the charter school.

The amendment to §100.1211, Students, includes an updated cross reference.

The amendment to §100.1212, Personnel, requires charter schools to consult the do not hire registry prior to hiring and at least every three years thereafter.

Based on public comment, §100.1212(c) was revised at adoption to include prekindergarten teachers in the list of teachers who must meet state and federal certification requirements.

The amendment to §100.1213, Failure to Operate, updates provisions related to charter school dormancy and moves information related to written notice of suspended operation to §100.1035.

In response to public comment, §100.1213(c) was modified at adoption to reference §100.1035 in language relating to abandonment of an open-enrollment charter.

Section 100.1217, Eligible Entity; Change in Status or Revocation, is adopted as new §100.1055 with no changes to rule text.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began March 15, 2024, and ended April 15, 2024. Following is a summary of the public comments received and agency responses.

Comment: Compass Rose Public Schools, Inspire Academies, Odyssey Academy, YES Prep Public Schools, City Education

Partners, Texas Public Charter Schools Association (TPCSA), eight teachers and staff, seven board members, and two parents expressed support for the revisions to board member and charter school officer training requirements.

Response: The agency agrees. The revisions to the training requirements aim to streamline the training section and eliminate existing confusion from the field regarding training expectations. The revisions ensure that both charter school board members and officers receive appropriate training in a timely fashion.

Comment: Great Hearts Texas, Odyssey Academy, Uplift Education, YES Prep Public Schools, City Education Partners, Fort Worth Education Partners, Texas Public Charter Schools Association, 22 teachers and staff, 8 charter school board members, 7 parents, 5 community members, and 5 charter school alumni expressed support for the revisions to §100.1035 regarding charter school expansion amendments, noting that the revisions streamline the notification process, set clear expectations, and align with statutory changes that occurred during the 88th Texas Legislature, Regular Session, 2023.

Response: The agency agrees. The revisions made to §100.1035 ensure that the commissioner's rules align with all components of TEC, Chapter 12, Subchapter D, and provide clarification for the field after years of implementation and significant feedback and engagement with stakeholders.

Comment: Richard Milburn Academy, Choose to Succeed, Fort Worth Education Partners, TPCSA, 17 teachers and staff, 10 parents, 7 community members, and 5 charter school alumni expressed support for the revision and establishment of an application process for high-performing entities.

Response: The agency agrees. To establish the high-performing entities application pathway that has been permitted by statute since September 1, 2013, but never implemented, the agency revised §100.1025 to detail the criteria necessary for high-performing entities to be considered. This revision was included to ensure that administrative rule aligned with all components of TEC, Chapter 12, Subchapter D.

Comment: Compass Rose Public Schools, Great Hearts Texas, Inspire Academies, Odyssey Academy, Rise Academy, Uplift Education, YES Prep Public Schools, Choose to Succeed, City Education Partners, Fort Worth Education Partners, TPCSA, Yes. Every Kid., nine charter school board members, nine charter school teachers and staff, two community members, and one parent expressed support for the revision to remove geographic boundaries as a limitation on charter school enrollment.

Response: The agency agrees. The revisions to Chapter 100 aim to realign charter school administrative policy with TEC, Chapter 12, Subchapters D, E, and G. While charter schools are required to indicate in their application where they are likely to draw students, there is no requirement to identify a set geographic boundary as defined by independent school district (ISD) boundaries. At times, students were unable to continue attending a charter school if a family moved inadvertently to the boundaries of a new ISD that was not in the set geographic boundaries of a student. This revision will keep this from occurring in the future.

Comment: Great Hearts Texas, Inspire Academies, Rise Academy, Vanguard Academy, TPCSA, 20 charter school teachers and staff, 2 charter school board members, 1 charter school parent, and 1 community member expressed support for the removal of the requirement that 50% of students in a charter school must be enrolled in tested grades under TEC, Chapter 39, Subchapter B, in order to qualify for a discretionary expansion amendment or discretionary renewal.

Response: The agency agrees. In TEC, §12.101(b-4), the requirement for a charter school to have at least 50% of its student population in grades assessed under Chapter 39, Subchapter B, only applies to expedited expansion. In order to align rule with statute and encourage the best practice of the slow growth of new charter schools, this requirement has been removed for discretionary expansion amendments and discretionary renewal.

Comment: ExcelinEd, 18 charter school parents, and 6 charter school teachers and staff expressed general support for the proposed revisions to Chapter 100, noting that the revisions would allow charter schools to continue to operate and meet the needs of Texas students.

Response: The agency agrees. The revisions to Chapter 100 include several changes based on statutory changes and will allow charter schools to continue to operate to meet the needs of their students while aligning the rules with current statute.

Comment: Ten charter school parents and five charter school teachers and staff expressed general support for the concept of charter schools in Texas.

Response: These comments are outside the scope of the current rule proposal.

Comment: TPCSA questioned whether the agency would employ the definition that allows the agency to utilize scaled scores to determine academically or academically unacceptable performance provided in §100.1001(8)(D) to make decisions regarding mandatory expiration or revocation of a charter. TPCSA requested additional language be added to the rule to prevent this possibility.

Response: The agency disagrees. The language included in the definition does not require the commissioner to utilize scaled scores when ratings are not issued. The determination of how and when to use these ratings is at the discretion of the commissioner.

Comment: TPCSA requested clarification as the rule references the incorrect section regarding the prohibitions detailed in the definition of a former charter holder that was previously designated high quality and had surrendered its charter provided that there was no settlement agreement requiring closure or a required closure under TEC, Chapter 39.

Response: The agency agrees and has modified §100.1001(12)(C) at adoption to reference §100.1011(c)(1) rather than §100.1017 in the definition.

Comment: TPCSA requested clarification regarding the definition of "shared services cooperative or shared services arrangement." TPCSA stated that the use of the term governmental entities could be interpreted to mean other entities besides education service centers (ESCs), while previous documentation has only referenced ESCs as the type of governmental entity with which a charter school may establish a shared services cooperative or agreement. TPCSA also shared that the broader term governmental entity could require charter schools to submit a greater number of documents for review as charter schools partner with a number of entities that may meet this definition but not through a shared services agreement.

Response: The agency agrees that clarification is needed and has modified §100.1001(26) at adoption to return to the original language using ESCs in place of governmental entities.

Comment: TPCSA and the law firm Schulman, Lopez, Hoffer, & Adelstein, LLP (SLHA, LLP) requested clarification regarding the agency's authority to review and approve shared services cooperatives or agreements and, dependent on that determination, requested clarification that the approval of these agreements be added to the list of material non-expansion amendments to ensure there is an established process and timeline for their review.

Response: The agency agrees in part and provides the following clarification. The agency believes the establishment of a shared services cooperative or agreement is a revision to the terms of the charter school's contract as it is a modification to the charter school's original application. The agency agrees with the need for clarification for the process of notification and approval of these agreements and has modified §100.1035(d)(2)(A) at adoption to include shared services cooperatives and agreements in the list of changes that are material non-expansion amendments.

Comment: TPCSA and SLHA, LLP requested clarification to the criteria detailed in §100.1025(b) as the language currently reads that an applicant must meet both criteria in order to be eligible for consideration as a high-performing entity.

Response: The agency agrees with this need for additional clarification. Section 100.1025 has been modified at adoption to include language that an eligible applicant must demonstrate one of the criteria and not both.

Comment: TPCSA and SLHA, LLP questioned whether a request for a high-quality designation must be paired with an expansion amendment due to the change in statute that allows a charter school to request an expansion amendment up to 36 months prior to opening.

Response: The agency agrees that the change in statute no longer requires the submission of these two requests at the same time. Section 100.1035(c)(6) has been modified at adoption to require that a charter school submit a high-quality designation prior to the opening of a new campus associated with an approved expansion amendment.

Comment: TPCSA and SLHA, LLP questioned whether a modification could be made to §100.1035(c)(6) to include a timeline for the agency to provide a determination regarding a high-quality designation determination.

Response: The agency agrees with the need for this additional clarification. Section 100.1035(c)(6) has been modified at adoption to include new subparagraph (E), which establishes a 60-calendar day timeline for charter schools to receive a determination regarding a high-quality designation.

Comment: TPCSA and SLHA, LLP questioned whether a modification could be made to §100.1115(d) to align charter school board member and officer training with other TEA-provided trainings to allow asynchronous online instruction as long as the training includes interactive activities to assess learning.

Response: The agency agrees with this proposed modification and alignment to other TEA training mechanisms. Section 100.1115(d) has been modified at adoption to include the ability to participate in training asynchronously as long as the training incorporates activities that assess learning and provide feedback to the learner.

Comment: TPCSA and SLHA, LLP requested clarification regarding the inclusion of prekindergarten teachers into §100.1212(c) as certification is required for prekindergarten teachers to align with the state's high-quality prekindergarten requirements.

Response: The agency agrees that clarification is needed. Section 100.1212(c) has been modified at adoption to include prekindergarten teachers in the list of teachers who are required to be certified in the fields in which they are assigned to teach as required by state and/or federal law.

Comment: TPCSA and SLHA, LLP requested clarifications regarding related party transactions. The commenters recommended that the definition of related party transaction be modified to explain a related party rather than a related party transaction. The commenters also requested clarification of the threshold for donor, donor advisor, or major donor and whether 100.1069(b) should be limited to related party real property transactions.

Response: The agency disagrees. The definition includes a related party transaction, a related party, and a related party property transaction and aligns with statutory requirements. As each charter school's finances are different, the agency has not established specific thresholds for donor, donor advisor, or major donor.

Comment: SLHA, LLP requested clarification for §100.1113 that, upon review, the commissioner may rescind any delegation amendment for any reason.

Response: The agency agrees. Section 100.1113(e) has been modified at adoption to add the phrase "upon review" to provide this clarification regarding the rescinding of delegation amendments.

Comment: SLHA, LLP requested clarification of the language in §100.1113 related to contracts for management services. The commenter raised concern that the current rules appear to conflict in various parts related to non-delegable duties.

Response: The agency disagrees. Section 100.1113 (a)(1) and (2) are clear that absent an approved commissioner delegation, the final authority of the board or superintendent in these areas cannot be delegated, including through a management contract. Additionally, §100.1113(e) is intended to apply to any delegated duties and is not limited to cases where the commissioner has approved delegation of specific duties detailed in §100.1113(a)(1) and (2).

Comment: SLHA, LLP expressed concern that the definition of campus administration officer in §100.1001(2) was vague and too broad for charter school settings.

Response: The agency disagrees and believes the definition captures the duties and functions of charter school administrators.

Comment: SLHA, LLP requested clarification regarding training requirements for charter school board members and officers, including who tracks the 25% of instructional training hours that may be rolled over to meet the following year's requirements, the carry-over of hours topic specific, the definition of instructional hours, the purpose of training providers issuing surveys to participants, and the process for holding poor training providers accountable.

Response: The agency provides the following clarification. The tracking of hours toward the requirements for charter school

board members and officers is the responsibility of charter school board members and officers. Charter school board members and officers may carry forward hours toward continuing training detailed in §100.1121. The definition of instructional hours is provided in §100.1115 and means time spent engaging in training excluding time spent for breaks, administrative tasks, and other non-instructional tasks. The agency believes that training providers should routinely assess whether their services are meeting the needs of charter school board members and officers. The agency may require training providers to submit information regarding their performance and records and may remove them from the list of providers.

Comment: SLHA, LLP requested clarification regarding the implementation and timeline of training requirements.

Response: The comment is outside of the scope of the current rule proposal. However, the agency will share information with charter school operators related to the implementation timeline of the rule once the rules are final.

Comment: SLHA, LLP requested clarification regarding §100.1023, specifically whether adult charter schools could be exempt from TEC, §12.104(a-1)(1), to align with public junior colleges and community colleges.

Response: The agency disagrees. TEC, §12.104(a-1)(1), allows the governing body of a charter, if it chooses, to employ security personnel and commission peace officers in the same manner as a board of trustees of a school district. The language in the statute ultimately gives adult charter schools the flexibility to make the best decision for their school.

Comment: SLHA, LLP questioned whether members of the legislature should receive notice of expansion amendments for charter schools due to concerns that a member of the legislature may not have the full context of the request and that they may potentially influence consideration of amendments.

Response: The agency disagrees. The agency believes that the appropriate stakeholders, including legislators, should be informed about potential expansion amendments.

Comment: SLHA, LLP questioned if the period of dormancy described in §100.1213 should be indefinite rather than for a one-year period that must be reapplied for at the end of the one-year period.

Response: The agency disagrees. The one-year period allows schools to request a period of dormancy and then annually reevaluate if they are ready to open the school for the upcoming year. This time period also allows the agency to hold necessary conversations with schools about their plans with their campuses and for the agency to have an in-depth understanding of the charter school portfolio.

Comment: SLHA, LLP questioned if the definition of property acquired, improved, or maintained using state funds is too expansive as it includes property acquired, improved, or maintained through a management company under a contract for management services and includes the proceeds of loans, credit, or other financing that is extended, in whole or in part, based on the charter holder's control over state funds. The commenter recommended that the definition should instead be based only on the charter holder's control over state funds, except for loans, credit, or other financing that are secured solely by real or personal property that is donated to the charter holder.

Response: The agency disagrees. The current language has not been modified by the revisions to Chapter 100 and is not an expansion of the current definition.

Comment: Senator Royce West, Association of Professional Educators (ATPE), Coalition for Education Funding, Every Texan, Fast Growth School Coalition (FGSC), Go Public, Intercultural Development Research Association (IDRA), Pastors for Texas Children, Texas American Federation of Teachers (Texas AFT), Texas Association of Community Schools (TACS), Texas Association of Latino Administrators and Superintendents (TALAS), Texas Association of Midsize Schools (TAMS), Texas Association of Rural Schools (TARS), Texas Association of School Administrators (TASA), Texas Association of School Boards (TASB), Texas Classroom Teachers Association (TCTA), Texas Council of Administrators of Special Education (TCASE), Texas Elementary Principals and Supervisors Association (TEPSA), Texas Rural Education Association (TREA), Texas School Alliance (TSA), and Texas State Teachers Association (TSTA) requested clarification regarding the use of scaled scores to determine "academically acceptable" and "unacceptable" classifications when academic ratings are not issued for any reason to ensure that the expansion of academically unacceptable charter schools are not allowed to expand.

Response: The agency agrees. The intent of this revision is not to weaken the standards for charter school expansions or renewals but to allow the agency to continue to use the most recent and accurate performance for charter school expansion and renewal decisions. There will be no separate rating system created for charter schools. Scaled scores refer to the overall number that is the result of the accountability rating calculation described in the accountability manual.

Comment: Senator Royce West, ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TALAS, TAMS, TARS, TASA, TASB, TCTA, TCASE, TEPSA, TREA, TSA, and TSTA requested clarification regarding the revision to the rule language that previously allowed a charter school to count students enrolled in prekindergarten through Grade 2 toward the 50% of students in tested grades requirement for expansion amendments if the school used a commissioner-approved prekindergarten assessment or monitoring tool to assess student performance. The commenters expressed concern that this could potentially create a charter-by-charter accountability system.

Response: The agency agrees and provides the following clarification. Previously, §100.1033(b)(10)(D)(ii) established a requirement for a charter school to add an additional campus only if the charter school currently has at least 50% of the student population in grades assessed under TEC, Chapter 39, Subchapter B, regarding state-level academic assessments. The current rule language establishes that a charter school may include students in prekindergarten to count toward the 50% requirement if the charter school can demonstrate acceptable performance on a commissioner-approved prekindergarten assessment or monitoring tool as determined by §102.1003. Through the rule revisions, TEA is removing the 50% of students in tested grades requirement for discretionary expansion and renewal, as this requirement is not currently detailed in statute. The agency is, however, keeping this requirement in place for expedited expansion, as it is a requirement set forth by TEC, §12.101(b-4). The language in proposed §100.1051(b)(2)(F) is identical to the language that exists in current §100.1022(b)(2)(F), as the agency did not propose any revisions to this section except for one tech-

nical edit. For schools that offer only prekindergarten through Grade 2, TEA plans to include requirements through its application process and charter school contracts for these schools to utilize an assessment or tool from the commissioner's approved list of assessments or monitoring tools for prekindergarten through Grade 2. The agency will use the results of these assessments to make expansion and renewal decisions for these schools. The agency has no interest or desire to create a charter-by-charter accountability system.

Comment: Senator Royce West, ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TALAS, TAMS, TARS, TASA, TASB, TCTA, TCASE, TEPSA, TREA, TSA, and TSTA requested clarification related to the revisions of the requirements for expedited expansion with concern that the revisions weaken the requirements for expedited expansion.

Response: The agency provides the following clarification. The proposed revision to the expedited expansion standards aligns the standards and processes for expedited expansion with the language of TEC, §12.101(b-4). The previous rule included requirements that go beyond the scope of the statute, and the agency is attempting to better align rule with the statutory framework established by the legislature.

Comment: Senator Royce West, ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TALAS, TAMS, TARS, TASA, TASB, TCTA, TCASE, TEPSA, TREA, TSA, and TSTA requested clarification regarding the revisions to the notification requirements relating to new charter schools and charter school expansions along with the revisions to the definition of geographic area.

Response: The agency provides the following clarification. The agency shifted the notification requirement from charter school applicants to TEA based on conversations with multiple stakeholders. Charter school applicants are currently required to provide notice via certified mail to a significant number of stakeholders, which was an additional non-reimbursable expense for applicants. The agency wishes to remove this burden and cost from charter school applicants. TEC, §12.1101, requires that notice is provided on receipt by the commissioner of an application for a charter for an open-enrollment charter school under TEC, §12.110. To meet the statutory requirement of "on receipt," TEA plans to send notification letters within one week of the application deadline and will include this window in the timeline published in its charter school application materials. The new definition of geographic area better matches the notices with those impacted, as in years past, multiple notices created administrative burdens on ISDs that remained unimpacted by a school change.

Comment: Senator Royce West, ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TALAS, TAMS, TARS, TASA, TASB, TCTA, TCASE, TEPSA, TREA, TSA, and TSTA requested clarification regarding the timeline and process for the adoption of the Charter School Performance Framework (CSPF) with concern that the proposed language creates confusion on whether the CSPF will continue to be adopted via rulemaking.

Response: The agency agrees. Section 100.1031(a) has been modified at adoption to include the adopted CSPF Manual. Annual updates to the manual will be limited to updated indicator requirements or data sources. Language is also included in §100.1031(a) to specify that substantial modifications to the outlined framework will require a new version to be adopted via rulemaking.

Comment: Senator Royce West, ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TALAS, TAMS, TARS, TASA, TASB, TCTA, TCASE, TEPSA, TREA, TSA, and TSTA requested clarification about the elimination of certain ethics provisions from proposed §100.1011 relating to charter contact with TEA during the period of the application process, specifically the exclusion of language previously found in §100.1015(b)(4).

Response: The agency agrees and provides the following clarification. The removal of this section was due to a drafting error. Section 100.1011 has been modified at adoption to add provisions regarding contact with TEA as well as providing any item of value to TEA staff.

Comment: ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TALAS, TAMS, TARS, TASA, TASB, TCTA, TCASE, TEPSA, TREA, TSA, and TSTA commented that the academic indicator for the CSPF detailed in §100.1031(c)(1) is proposed to be a lower standard than it was previously because it will now only include the charter's overall rating instead of individual campus ratings.

Response: The agency disagrees. Due to updates to the accountability system that roll up campus ratings directly into the overall district ratings, this type of campus-level analysis is no longer needed.

Comment: ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TALAS, TAMS, TARS, TASA, TASB, TCTA, TCASE, TEPSA, TREA, TSA, and TSTA questioned whether that the high-quality designation detailed in §100.1035(c)(6) should state each "each campus" rather than "all of the campuses" in order to ensure that an averaging methodology isn't utilized to determine high-quality designations.

Response: The agency disagrees that the language implies an averaging methodology but has modified the language at adoption to replace "all of the campuses" with "each campus."

Comment: ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TALAS, TAMS, TARS, TASA, TASB, TCTA, TCASE, TEPSA, TREA, TSA, and TSTA questioned whether the removal of language previously located in §100.1015(b)(2)(B), related to affiliated entities, would mean that entities might be designated as high-performing entities even if their performance was below acceptable in another state.

Response: The agency disagrees. The language from §100.1025 regarding high-performing entities aligns directly with statute. In order to be eligible as a high-performing entity, the charter school must have performance that is comparable to Texas's highest and second-highest rating, which will prevent any entities with below-acceptable performance from being identified as high-performing.

Comment: ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TALAS, TAMS, TARS, TASA, TASB, TCTA, TCASE, TEPSA, TREA, TSA, and TSTA requested clarification whether the language in §100.1025(b)(1) that requires an entity to "propose to operate the charter school program that is currently implemented in the affiliated charter operator's existing charter

school" would require an entity to implement potential Common Core curricula.

Response: The agency disagrees and provides the following clarification. Requiring a high-performing entity to operate the same "charter school program" they implement in other states means the same mission and model but not the same standards or instructional materials. All charter schools, including high-performing entities, must follow all state laws and ensure Texas Essential Knowledge and Skills-aligned instruction. The SBOE will have the ability to consider the commissioner's recommendations for high-performing entities just as they do for all other Subchapter D charter schools.

Comment: ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TALAS, TAMS, TARS, TASA, TASB, TCTA, TCASE, TEPSA, TREA, TSA, and TSTA requested clarification regarding the standards for discretionary expansion amendments related to the 90% calculation, excluding Not Rated campuses from the calculation, and if Not Rated includes Not Rated: SB 1365 campuses.

Response: The agency provides the following clarification. Not Rated campuses would only be excluded in the proposed calculation when campuses are truly not rated, as is sometimes the case for campuses with small student counts, those at residential treatment facilities, or campuses that have yet to offer tested grades. While the rule language now includes a provision for charter schools that may have 75% to 89% of campuses rated A, B, or C, this provision will only be utilized with the submission of additional performance data. D ratings no longer count toward the acceptable rating calculation. The performance of Not Rated: SB 1365 campuses count toward the calculation of the 90% threshold and has since those scores were released.

Comment: ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TALAS, TAMS, TARS, TASA, TASB, TCTA, TCASE, TEPSA, TREA, TSA, and TSTA requested clarification if prekindergarten charter school campuses would be matched with charter school State of Texas Assessments of Academic Readiness (STAAR®)-assessed campuses for rating purposes.

Response: The agency provides the following clarification. The agency will follow TEA's accountability manual regarding the pairing of any campuses. For schools that offer only prekindergarten through Grade 2, TEA plans to include requirements through its application process and charter school contracts for these schools to utilize an assessment or tool from the commissioner's approved list of assessments or monitoring tools for prekindergarten through Grade 2. The agency will use the results of these assessments to make expansion and renewal decisions for these schools.

Comment: ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TALAS, TAMS, TARS, TASA, TASB, TCTA, TCASE, TEPSA, TREA, TSA, and TSTA commented that excluding a charter that was designated high quality before relinquishing their charter from the 10-year ban appears to circumvent statute.

Response: The agency disagrees. The agency may define by rule relinquishment and in doing so is distinguishing between charters that are required to close, through agreement or statute, and charters that simply cease to operate. The agency believes that the latter charter schools do not meet the threshold for the 10-year ban.

Comment: ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TALAS, TAMS, TARS, TASA, TASB, TCTA, TCASE, TEPSA, TREA, TSA, and TSTA requested clarification as to the reason for the removal application criteria language in §100.1011 and §100.1017.

Response: The agency provides the following clarification. The agency streamlined the rule language and will continue to issue the charter school application aligned to charter school best practices. The agency does not anticipate any significant change in TEA practice or procedure related to the application process.

Comment: ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TALAS, TAMS, TARS, TASA, TASB, TCTA, TCASE, TEPSA, TREA, TSA, and TSTA requested that the original language regarding no contact stating the commissioner "shall reject" an applicant if they violate the no-contact rule rather than the proposed language of "may reject" be returned to the rules.

Response: The agency disagrees. The decision to remove an applicant due to a violation of the no-contact provision is at the discretion of the commissioner.

Comment: ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TALAS, TAMS, TARS, TASA, TASB, TCTA, TCASE, TEPSA, TREA, TSA, and TSTA requested clarification regarding whether the opening period of a charter school detailed in §100.1011(o) should be limited to a defined time period to open.

Response: The agency disagrees and provides the following clarification. The commissioner has the discretion to consider and then approve or deny any extensions of the pre-opening year. Extenuating circumstances, like those experienced during the pandemic, require revisions to the existing rule.

Comment: ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TALAS, TAMS, TARS, TASA, TASB, TCTA, TCASE, TEPSA, TREA, TSA, and TSTA requested that the original language regarding written notice for failure to operate be returned to the rules.

Response: The agency disagrees. Closure of a campus or charter has been added to the list of non-expansion amendments, and in order to receive approval for this type of amendment, charter schools must detail their plans for closure, including notification to parents.

Comment: ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TALAS, TAMS, TARS, TASA, TASB, TCTA, TCASE, TEPSA, TREA, TSA, and TSTA requested clarification on whether the provisions related to suspension of operations would still be a material violation of the charter contract.

Response: The agency provides the following clarification. The suspension of operations without notification is still a material violation of the charter contract. Section 100.1213(c) has been modified at adoption to also include reference to §100.1035 charter amendments.

Comment: ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TALAS, TAMS, TARS, TASA, TASB, TCTA, TCASE, TEPSA, TREA, TSA, and TSTA requested that the addition of

geographic boundaries to the types of expansion amendments detailed in §100.1035 and that the penalty language for serving students outside of a charter school's approved geographic boundaries be returned to the rule proposal.

Response: The agency disagrees. Geographic boundaries are not detailed in statute and were removed in order to eliminate the administrative burden for schools and for students who at times were no longer able to attend their charter school if their family moved to a new location that was no longer inside the geographic boundary of the ISD that was associated with a charter school's geographic boundaries.

Comment: ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TALAS, TAMS, TARS, TASA, TASB, TCTA, TCASE, TEPSA, TREA, TSA, and TSTA requested clarification as to why the language regarding administrative costs for charter schools was removed from the rules.

Response: The agency provides the following clarification. The language was removed because it was a duplication. This financial standard is captured and monitored through Charter FIRST, which has its own rules.

Comment: ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TALAS, TAMS, TARS, TASA, TASB, TCTA, TCASE, TEPSA, TREA, TSA, and TSTA requested clarification if failure to maintain good standing with the Internal Revenue Service (IRS), Texas Secretary of State, Comptroller, and all regulatory agencies in its home state would still result in a material violation of the charter school.

Response: The agency provides the following clarification. The standard related to a material violation for existing entities would apply to maintaining good standing with the IRS, Texas Secretary of State, Comptroller, and all regulatory agencies in their home state. Section 100.1017(b) has been modified at adoption to include reference to failure to meet this standard as a material violation of the charter school.

Comment: ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TALAS, TAMS, TARS, TASA, TASB, TCTA, TCASE, TEPSA, TREA, TSA, and TSTA requested clarification on whether the definition of related party should include a former officer in the definition.

Response: The agency agrees and provides the following clarification. Section 100.1001(25)(A)(iii) has been modified at adoption to include former officers.

Comment: ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TALAS, TAMS, TARS, TASA, TASB, TCTA, TCASE, TEPSA, TREA, TSA, and TSTA requested clarification as to what the term "other" refers to in the rules related to related party transactions in audits detailed in §100.1069(c).

Response: The agency agrees and provides the following clarification. Section 100.1069(c) has been modified at adoption to remove the word "other."

Comment: ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TALAS, TAMS, TARS, TASA, TASB, TCTA, TCASE, TEPSA, TREA, TSA, and TSTA commented that §100.1209(b) should be updated to align with the statutory changes made by HB 1707, 88th Texas Legislature, Regular Session, 2023.

Response: The agency agrees, and the section has been modified at adoption to remove the exemption for charter schools located in a municipality with a population of 20,000 or less.

Comment: ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TALAS, TAMS, TARS, TASA, TASB, TCTA, TCASE, TEPSA, TREA, TSA, and TSTA commented that the terms utilized in §100.1209 do not align with statute and should be modified to include administrator and officer and requested that the language match the statute.

Response: The agency agrees. Section 100.1209 has been modified at adoption to align with statute and include these terms.

Comment: ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TALAS, TAMS, TARS, TASA, TASB, TCTA, TCASE, TEPSA, TREA, TSA, and TSTA commented that notification to ISDs and legislators should be the responsibility of charter schools and not TEA.

Response: The agency disagrees. The process for notification is at the discretion of the commissioner, and the agency seeks to streamline the process and limit the burden for charter schools.

Comment: ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TALAS, TAMS, TARS, TASA, TASB, TCTA, TCASE, TEPSA, TREA, TSA, and TSTA requested clarification regarding whether the common application form could be modified under the current rules and recommended the language be modified to prevent this action.

Response: The agency agrees. Section 100.1207(a)(1)(C) has been modified at adoption to read "and may not add" any additional criteria.

Comment: ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TALAS, TAMS, TARS, TASA, TASB, TCTA, TCASE, TEPSA, TREA, TSA, and TSTA commented that the rule language should be modified to ensure that the common application aligned with federal and state law.

Response: The agency disagrees. The rule language regarding the common application already aligns with state law. Federal law applies regardless.

Comment: ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TALAS, TAMS, TARS, TASA, TASB, TCTA, TCASE, TEPSA, TREA, TSA, and TSTA commented that the rule language regarding the waitlist information submitted to the agency should include all components detailed in statute.

Response: The agency agrees. Section 100.1207(e) has been modified at adoption to include all submission requirements reference in statute.

Comment: ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TALAS, TAMS, TARS, TASA, TASB, TCTA, TCASE, TEPSA, TREA, TSA, and TSTA commented that a charter school's primary and secondary geographic boundaries should be publicly available on a charter school's website.

Response: This comment is outside the scope of the current rule proposal.

Comment: The ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TALAS, TAMS, TARS, TASA, TASB, TCTA, TCASE, TEPSA, TREA, TSA, and TSTA commented that §100.1061 refers to outdated language related to school finance.

Response: The agency agrees. Section 100.1061 has been modified at adoption to align with current statute.

Comment: ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TALAS, TAMS, TARS, TASA, TASB, TCTA, TCASE, TEPSA, TREA, TSA, and TSTA commented that the definition in §100.1001(5)(B) refers to outdated language related to public junior and senior colleges and universities.

Response: The agency agrees. Section 100.1001(5)(B) has been modified at adoption to align with current statute.

Comment: ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TAMS, TARS, TASA, TASB, TCTA, TEPSA, TREA, TSA, and TSTA requested clarification if out-of-state charter applicants or their affiliated organizations would be allowed to serve as a charter management organization (CMO) and if TEA would include the current CMO addendum as part of the high-performing entities application.

Response: The comment is outside of the scope of the current rule proposal. However, the agency will include information about charter management organizations in the high-performing entities application.

Comment: ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TAMS, TARS, TASA, TASB, TCTA, TEPSA, TREA, TSA, and TSTA requested clarification if in-district charter schools approved by public school districts that receive SB 1882 benefits would be eligible to apply for the high-performing entities application.

Response: The agency provides the following clarification. Section 100.1025(b)(2) allows for an entity that currently operates Subchapter C or E charter schools and performs at an overall level in the highest or second highest performance rating category under TEC, Chapter 39, Subchapter C, to be considered for authorization as a high-performing entity.

Comment: ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TAMS, TARS, TASA, TASB, TCTA, TEPSA, TREA, TSA, and TSTA requested that the agency further define a member entity that may be vested with the management of corporate affairs.

Response: The agency disagrees that further definition is required.

Comment: ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TAMS, TARS, TASA, TASB, TCTA, TEPSA, TREA, TSA, and TSTA requested clarification on how high-performing entities will be assessed during the application process and if other authorizer processes will be used in place of an application review process.

Response: The agency provides the following clarification. Section 100.1025(g) has been modified at adoption to include information that the commissioner will adopt a separate application for high-performing entities that includes the timeline for selection, applicant conferences and training prerequisites, and the earliest date an open-enrollment charter school selected may open. Section 100.1025(f) details the criteria that the commissioner will consider in determining a charter award.

Comment: ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TAMS, TARS, TASA, TASB, TCTA, TEPSA, TREA, TSA, and TSTA requested clarification regarding components of the application process, the application questions for high-performing entities, and if data would be used to replace detailed information in the high-performing entities charter application.

Response: The comment is outside of the scope of the current rule proposal. However, the agency will include information about the application process and components in the high-performing entities application.

Comment: ATPE, Coalition for Education Funding, Every Texan, FGSC, Go Public, IDRA, Pastors for Texas Children, Texas AFT, TACS, TAMS, TARS, TASA, TASB, TCTA, TEPSA, TREA, TSA, and TSTA requested clarification regarding how TEA will create a Texas equivalent to out-of-state accountability ratings.

Response: The comment is outside the scope of the current rule proposal. However, the agency will include information about how it will make this determination in the application materials.

Comment: Four individuals repeated the title of the Chapter 100 rule revision proposal rather than provide comment.

Response: The agency can neither agree nor disagree with the comment since it provided no context. TEA staff contacted the commenter for clarification but did not receive a response.

Comment: One individual commented N/A.

Response: The agency can neither agree nor disagree with the comment since it provided no context. TEA staff contacted the commenter for clarification but did not receive a response.

DIVISION 1. GENERAL PROVISIONS

19 TAC §§100.1001 - 100.1007, 100.1010, 100.1013, 100.1015, 100.1017, 100.1019

STATUTORY AUTHORITY. The repeals are adopted under Texas Education Code (TEC), §12.101, which requires the commissioner to adopt rules regarding the criteria for granting a charter and providing notification for the establishment of new charters or campuses; TEC, §12.1011, which requires the commissioner to adopt rules regarding charter authorization for high-performing entities; TEC, §12.103, which allows the commissioner to adopt rules regarding applicable provisions to open-enrollment charter schools; TEC, §12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021, which allows the commissioner to adopt rules permitting an open-enrollment charter school to voluntarily participate in any state program available to school districts if the school complies with all terms of the program; TEC, §12.1055, which allows the commissioner to adopt rules regarding nepotism under Texas Government Code, Chapter 573; TEC, §12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023, which requires a political subdivision to consider an open-enrollment charter school as a school district for the

purposes of municipal ordinances if the open-enrollment charter school meets notification requirements; TEC, §12.110, which requires the commissioner to adopt an application form and procedure that must be used to apply for an open-enrollment charter school; TEC, §12.1101, which requires the commissioner to adopt a procedure for providing notice to the outlined persons on receipt by the commissioner of an application for a charter for an open-enrollment charter school or of notice of the establishment of a campus; TEC, §12.114, which allows the commissioner to define expansion amendment requests; TEC, §12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt a procedure for renewal, denial of renewal, or expiration of a charter for an open-enrollment charter school at the end of the term of the charter; TEC, §12.1166, which requires the commissioner to adopt a rule defining "related party;" TEC, §12.1173, as amended by SB 2293, 86th Texas Legislature, 2019, which requires the commissioner to adopt rules to implement charter school waiting lists for admission; TEC, §12.1181, requires the commissioner to adopt performance frameworks that establish standards by which to measure the performance of an open-enrollment charter school; TEC, §12.123, which requires the commissioner to adopt rules prescribing the training for members of the governing body of a charter school and its officers; TEC, §12.153, which allows the commissioner to adopt rules to implement college or university or junior college charter schools; TEC, §12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt rules necessary to administer adult high school charter school programs; and TEC, §39.0548, which requires the commissioner to authorize and determine designation as a dropout recovery school.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code, §§12.101; 12.1011; 12.103; 12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021; 12.1055; 12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023; 12.110; 12.1101; 12.114; 12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021; 12.1166; 12.1173, as amended by SB 2293, 86th Texas Legislature, 2019; 12.1181; 12.123; 12.153; 12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021; and 39.0548.

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

Filed with the Office of the Secretary of State on September 12, 2024.

TRD-202404415
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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Proposal publication date: March 15, 2024
For further information, please call: (512) 475-1497

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19 TAC §100.1001, §100.1003

STATUTORY AUTHORITY. The new sections are adopted under Texas Education Code (TEC), §12.101, which requires the commissioner to adopt rules regarding the criteria for granting a charter and providing notification for the establishment of new charters or campuses; TEC, §12.1011, which requires the commissioner to adopt rules regarding charter authorization for high-performing entities; TEC, §12.103, which allows the commissioner to adopt rules regarding applicable provisions to open-enrollment charter schools; TEC, §12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021, which allows the commissioner to adopt rules permitting an open-enrollment charter school to voluntarily participate in any state program available to school districts if the school complies with all terms of the program; TEC, §12.1055, which allows the commissioner to adopt rules regarding nepotism under Texas Government Code, Chapter 573; TEC, §12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023, which requires a political subdivision to consider an open-enrollment charter school as a school district for the purposes of municipal ordinances if the open-enrollment charter school meets notification requirements; TEC, §12.110, which requires the commissioner to adopt an application form and procedure that must be used to apply for an open-enrollment charter school; TEC, §12.1101, which requires the commissioner to adopt a procedure for providing notice to the outlined persons on receipt by the commissioner of an application for a charter for an open-enrollment charter school or of notice of the establishment of a campus; TEC, §12.114, which allows the commissioner to define expansion amendment requests; TEC, §12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt a procedure for renewal, denial of renewal, or expiration of a charter for an open-enrollment charter school at the end of the term of the charter; TEC, §12.1166, which requires the commissioner to adopt a rule defining "related party;" TEC, §12.1173, as amended by SB 2293, 86th Texas Legislature, 2019, which requires the commissioner to adopt rules to implement charter school waiting lists for admission; TEC, §12.1181, requires the commissioner to adopt performance frameworks that establish standards by which to measure the performance of an open-enrollment charter school; TEC, §12.123, which requires the commissioner to adopt rules prescribing the training for members of the governing body of a charter school and its officers; TEC, §12.153, which allows the commissioner to adopt rules to implement college or university or junior college charter schools; TEC, §12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt rules necessary to administer adult high school charter school programs; and TEC, §39.0548, which requires the commissioner to authorize and determine designation as a dropout recovery school.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §§12.101; 12.1011; 12.103; 12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021; 12.1055; 12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023; 12.110; 12.1101; 12.114; 12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021; 12.1166; 12.1173, as amended by SB 2293, 86th Texas Legislature, 2019; 12.1181; 12.123; 12.153; 12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021; and 39.0548.

§100.1001. Definitions.

The following words and terms, when used in this subchapter, have the following meaning, unless the context clearly indicates otherwise.

(1) Business manager--A person charged with managing the finances of a charter holder or charter school.

(2) Campus administration officer--A person charged with the duties of, or acting as, a principal or assistant principal of a charter school campus, including one or more of the following functions:

(A) approving teacher or staff appointments for a charter school campus, unless this function is performed by a central administration officer under the terms of the open-enrollment charter;

(B) setting specific education objectives for a charter school campus, unless this function is performed by a central administration officer under the terms of the open-enrollment charter;

(C) developing budgets for a charter school campus, unless this function is performed by a central administration officer under the terms of the open-enrollment charter;

(D) assuming the administrative responsibility or instructional leadership, under the supervision of a central administration officer, for discipline at a charter school campus;

(E) assigning, evaluating, or promoting personnel assigned to a charter school campus, unless this function is performed by a central administration officer under the terms of the open-enrollment charter; or

(F) recommending to a central administration officer the termination or suspension of an employee assigned to a charter school campus, or recommending the non-renewal of a term contract of such an employee.

(3) Capitalized personal property, fixed assets, ownership interest, cost basis, accumulated depreciation, loan, debt, credit, and fair market valuation--The definitions of these terms are as assigned either by §109.41 of this title (relating to Financial Accountability System Resource Guide) and/or by generally accepted accounting principles.

(4) Central administration officer--A person charged with the duties of, or acting as, a chief operating officer, director, or assistant director of a charter holder or charter school, including one or more of the following functions:

(A) assuming administrative responsibility and leadership for the planning, operation, supervision, or evaluation of the education programs, services, or facilities of a charter holder or charter school, or for appraising the performance of the charter holder's or charter school's staff;

(B) assuming administrative authority or responsibility for the assignment or evaluation of any of the personnel of the charter holder or charter school, including those employed by a management company;

(C) making recommendations to the governing body of the charter holder or the charter school regarding the selection of personnel of the charter holder or charter school, including those employed by a management company;

(D) recommending the termination, non-renewal, or suspension of an employee or officer of the charter holder or charter school, including those employed by a management company; or recommending the termination, non-renewal, suspension, or other action affecting a management contract;

(E) managing the day-to-day operations of the charter holder or charter school as its administrative manager;

(F) preparing or submitting a proposed budget to the governing body of the charter holder or charter school (except for developing budgets for a charter school campus, if this is a function performed by a campus administration officer under the terms of the open-enrollment charter);

(G) preparing recommendations for policies to be adopted by the governing body of the charter holder or charter school, or overseeing the implementation of adopted policies, except for legal services provided by an attorney licensed to practice law in this state or public accountancy services provided by a certified public accountant licensed to practice public accountancy services in this state;

(H) developing or causing to be developed appropriate administrative regulations to implement policies established by the governing body of the charter holder or charter school, except for legal services provided by an attorney licensed to practice law in this state or public accountancy services provided by a certified public accountant licensed to practice public accountancy services in this state;

(I) providing leadership for the attainment of student performance in a charter school operated by the charter holder, based on the indicators adopted under Texas Education Code (TEC), §39.053 and §39.054, or other indicators adopted by the charter holder in its open-enrollment charter; or

(J) organizing the central administration of the charter holder or charter school.

(5) Charter holder, governing body of a charter holder, and governing body of a charter school--The definitions of these terms are assigned in TEC, §12.1012. The charter holder shall reference an entity authorized by one or more of the following:

(A) TEC, Chapter 12, Subchapter D--An eligible entity as defined in TEC, §12.101, that is authorized to operate an open-enrollment charter school;

(B) TEC, Chapter 12, Subchapter E--A public junior college, public senior college, or university as defined in TEC, §61.003, that is authorized to operate an open-enrollment charter school; or

(C) TEC, Chapter 12, Subchapter G--An eligible entity as defined in TEC, §12.256, that is authorized to operate an open-enrollment charter school for adults ages 18-50.

(6) Charter school--A Texas public school operated by a charter holder under an open-enrollment charter contract granted either by the State Board of Education (SBOE) or commissioner of education, whichever is applicable, pursuant to TEC, §12.101, identified with its own county district number.

(A) An "employee of a charter school," as used in this subchapter, means a person paid to work at a charter school under the direction and control of an officer of a charter school, regardless of whether the person is on the payroll of the charter holder, a charter school operated by the charter holder, a management company providing management services to the charter holder, or any other person.

(B) A charter school "campus," as used in this subchapter, means an organizational unit of a charter school determined by the Texas Education Agency (TEA) to be an instructional campus for purposes of data collection and reporting. A campus may be a single site or may include multiple sites as described in subparagraph (C) of this paragraph.

(C) A charter school "site," as used in this subchapter, means an organizational unit of a charter school with administrative personnel identified by a separate street address within 25 miles of the campus with which it is associated and fully described in the open-enrollment charter. A "site" must be approved for instructional use either in the original open-enrollment charter as granted by the SBOE

or commissioner or in an amendment granted under §100.1035 of this title (relating to Charter Amendment).

(D) A charter school "facility," as used in this subchapter, means a building located on the same contiguous land as the campus with which it is associated or within one mile of the campus. The facility and its associated address must be approved for instructional use through the submission of a certificate of occupancy to the commissioner prior to serving students in said facility.

(7) Chief executive officer--A person (or persons) directly responsible to the governing body of the charter holder for supervising one or more central administration officers, campus administration officers, and/or business managers.

(8) Determination of academic accountability--The process used to determine the applicable year's accountability ratings to measure the academic performance of a charter.

(A) For the purposes of this chapter, the term "academically acceptable" for the following rating years shall mean:

(i) 2004-2011: the category of acceptable performance shall include a rating of Exemplary, Recognized, Academically Acceptable, and alternative education accountability (AEA): Academically Acceptable;

(ii) 2013-2016: the category of acceptable performance shall include a rating of Met Standard and Met Alternative Standard; and

(iii) 2017 and beyond: the category of acceptable performance shall include a grade of A, B, or C, or as otherwise indicated in the applicable year's academic accountability manual.

(B) For purposes of determination, an academic performance rating during the 2011-2012 school year will not be considered.

(C) For the purposes of this chapter, the term "academically unacceptable" performance means a rating of Academically Unacceptable, AEA: Academically Unacceptable, Improvement Required, or Unacceptable Performance or as otherwise indicated in the applicable year's academic accountability manual.

(D) If academic ratings are not issued for any reason, scaled scores may be used to determine "academically acceptable" and "academically unacceptable" performance.

(9) Determination of financial accountability--The process used to determine the applicable year's Financial Integrity Rating System of Texas (FIRST) rating to measure the financial performance of a charter.

(A) For purposes of this chapter, a satisfactory rating shall mean: Superior Achievement, Above Standard Achievement, or Standard Achievement.

(B) For the purposes of this chapter, a lower than satisfactory financial performance rating shall mean a FIRST rating of Substandard Achievement, Suspended: Data Integrity, or as otherwise indicated in the applicable year's financial accountability manual.

(10) Donate--Services are donated if:

(A) given free of any charge, cost, fee, compensation, reimbursement, remuneration, or any other thing of value or consideration, whether direct or indirect, from the donee to the donor, or from any other person or entity to the donor on behalf of the donee;

(B) given free of any condition, stipulation, promise, requirement, or any other obligation, whether direct or indirect, enforceable by the donor or by any other person or entity; and

(C) separately and clearly recorded in the accounting, auditing, budgeting, reporting, and recordkeeping systems for the management and operation of the charter school.

(11) Employee of a charter holder--A charter holder employee who engages in no charter school activity, is not compensated with public funds, and is not an officer of any charter school.

(12) Former charter holder--An entity that is or was a charter holder, but that has ceased to operate a charter school because its open-enrollment charter has been revoked, surrendered, abandoned, or denied renewal, or because all programs have been ordered closed under TEC, Chapter 39.

(A) A charter holder whose authority to operate has been suspended under TEC, §12.1162, is not a former charter holder.

(B) A charter holder with more than one open-enrollment charter is a former charter holder only with respect to the open-enrollment charter that authorizes a charter school that has ceased to operate. The charter holder is not a former charter holder with respect to an open-enrollment charter that authorizes a charter school that continues to operate.

(C) A charter holder who was eligible for high quality designation under §100.1035 of this title immediately prior to ceasing to operate that has surrendered its charter, provided that there was no settlement agreement requiring closure or a required closure under TEC, Chapter 39. A former charter holder that has relinquished its charter is not subject to the prohibitions in TEC, §12.101(b), or §100.1011(c)(1) of this title (relating to Application Requirements and Selection Process).

(13) High-performing entity--An entity that satisfies the criteria under TEC, §12.1011(a)(1), for out-of-state operations or an entity that satisfies the criteria for TEC, §12.1011(a)(2), for in-state operations that meets the performance criteria for the most recent rating years available.

(14) Lease interest--The legal rights obtained under a capital or operating lease. These include the right to occupy, use, and enjoy the real estate given by the property owner in exchange for rental payments or other consideration specified in the lease, together with any associated rights that the lease confers on the tenant under the lease or other law.

(15) Management company--A natural person or a corporation, partnership, sole proprietor, association, agency, or other legal entity that provides any management services to a charter holder or charter school, except that:

(A) a charter holder and its employees may provide management services to a charter school that is under the charter holder's supervision and control pursuant to the open-enrollment charter, and such charter holder is not thereby a management company;

(B) a nonprofit corporation that is exempt from taxation under 26 United States Code (U.S.C.), §501(c)(3), may donate management services to a charter holder, and the donor corporation is not thereby a management company if the donee charter holder is a subsidiary corporation controlled by the donor corporation under the articles of incorporation and bylaws of the donee charter holder;

(C) a regional education service center providing services to a charter school under TEC, Chapter 8, is not a management company;

(D) the fiscal agent of a shared services cooperative providing services to a member of the shared services cooperative is not a management company; and

(E) a nonprofit corporation that is exempt from taxation under 26 U.S.C., §115, is not a management company if it performs management services exclusively for a charter holder that is an eligible entity under TEC, §12.101(a)(1) or (4) or §12.152, and if:

(i) its articles of incorporation and bylaws, and any changes thereto, must be approved by such charter holder;

(ii) its board of directors must be appointed by such charter holder; and

(iii) its assets become the property of such charter holder upon dissolution.

(16) Management company breach--An action or failure to act by a management company that is contrary to a duty owed under a management contract, a rule adopted under TEC, Chapter 12, Subchapter D, or any other legal obligation, and constitutes sufficient grounds for action against the management company under TEC, §12.127 (Liability of Management Company), and/or §100.1157 of this title (relating to Procedures for Prohibiting a Management Contract). Where a provision in this subchapter uses this term, such use is for clarity and emphasis only and does not:

(A) establish that any breach of a duty occurred in a given case or what sanction is appropriate under the facts of that case; or

(B) imply that any other provision where the term is not used is not material or less important, or that the breach of a duty imposed by the provision is not grounds for action against the management company.

(17) Management services--Services related to the management or operation of a charter school. Management services include any of the following:

(A) planning, operating, supervising, or evaluating a charter school's educational programs, services, or facilities;

(B) making recommendations to the governing body of a charter holder or charter school relating to the selection of school personnel;

(C) managing a charter school's day-to-day operations as an administrative manager;

(D) preparing a proposed budget or budget amendments or submitting it to the governing body of a charter holder or charter school;

(E) recommending policies to be adopted by the governing body of a charter holder or charter school, except that legal services provided by an attorney licensed to practice law in this state, and public accountancy services provided by a certified public accountant licensed to practice public accountancy services in this state, are not management services, notwithstanding that such services may include recommending policies to be adopted by the governing body of a charter holder or charter school;

(F) developing procedures or practices to implement policies adopted by the governing body of a charter holder or charter school, except that legal services by an attorney licensed to practice law in this state and public accountancy services provided by a certified public accountant licensed to practice public accountancy services in this state are not management services, notwithstanding that such services may include developing procedures or practices to implement policies adopted by the governing body of a charter holder or charter school;

(G) overseeing the implementation of policies adopted by the governing body of a charter holder or charter school; or

(H) providing leadership for the attainment of student performance at a charter school based on the indicators adopted under TEC, §39.053 and §39.054, or adopted by the governing body of a charter holder or charter school.

(18) Material charter violation--An action or failure to act by a charter holder that is contrary to the terms of its open-enrollment charter and constitutes sufficient grounds for action against the charter holder under §§100.1049, 100.1045, 100.1047, and/or 100.1037 of this title (relating to Revocation and Modification of Governance of an Open-Enrollment Charter; Intervention Based on Charter Violations; Intervention Based on Health, Safety, or Welfare of Students; and Renewal of an Open-Enrollment Charter).

(19) Misuse or misapplication of funds or property--A use of state funds or public property that is contrary to:

(A) the open-enrollment charter under which a charter holder holds the funds or property;

(B) an agreement under which an employee or contractor holds the funds or property;

(C) a law, regulation, or rule that prescribes the manner of acquisition, sale, lease, custody, or disposition of the funds or property, including, but not limited to, violations of Local Government Code, §§171.002-171.007 and Chapter 271, Subchapter B, and TEC, §12.1053 and §12.1054, unless otherwise stated in the charter contract;

(D) a limited purpose for which the funds or property is delivered or received; or

(E) the use authorized by the governing body of the charter holder.

(20) Officer of a charter school--A person charged with the duties of, or acting as, a chief executive officer, a central administration officer, a campus administration officer, or a business manager, regardless whether the person is an employee or contractor of a charter holder, charter school, management company, or any other person; or a volunteer working under the direction of a charter holder, charter school, or management company. A charter holder employee or independent contractor engaged solely in non-charter activities for the charter holder is not an "officer of a charter school."

(21) Open-enrollment charter--A charter holder's authorization to operate a publicly funded charter school consistent with TEC, §12.102 (Authority Under Charter). The terms of an open-enrollment charter include:

(A) the applicable contract for charter ("charter contract") between the charter holder and the SBOE or commissioner of education;

(B) all applicable state and federal laws, rules, and regulations;

(C) the request for application issued by TEA to which the charter holder's application for open-enrollment charter responds;

(D) any condition, amendment, modification, revision, or other change to the open-enrollment charter adopted or ratified by the SBOE or the commissioner; and

(E) to the extent they are consistent with subparagraphs (A)-(D) of this paragraph, all statements, assurances, written submissions, commitments, and/or representations made by the charter holder in writing in its application for charter, attachments, or related documents or orally during its interview with the commissioner or commis-

sioner's designee or orally at a public meeting of the SBOE or any of its committees.

(22) Personal property--An interest in personal property recognized by Texas law, including:

(A) furniture, equipment, supplies, and other goods;

(B) computer hardware and software;

(C) contract rights, intellectual property such as patents, and other intangible property;

(D) cash, currency, funds, bank accounts, securities, and other investment instruments;

(E) the right to repayment of a loan, advance, or prepayment or to the payment of other receivables; and

(F) any other form of personal property recognized by Texas law.

(23) Property acquired, improved, or maintained using state funds--Property for which the title, control over the property, use of the property, or benefit from the property is obtained directly or indirectly through expenditure of or control over state funds. This includes property acquired, improved, or maintained through a management company under a contract for management services, and includes the proceeds of loans, credit, or other financing that:

(A) is secured with state funds, or with property acquired, improved, or maintained using state funds; or

(B) is extended, in whole or part, based on the charter holder's control over state funds.

(24) Real estate--An interest, including a lease interest, in real property recognized by Texas law or in improvements such as buildings, fixtures, utilities, landscaping, construction in progress, or other improvements.

(25) Related party transaction--Includes a transaction between the charter holder or charter school and:

(A) a person who is:

(i) a current or former (within the last five years) board member for the charter holder or the charter school;

(ii) a current or former (within the last five years) administrator for the charter holder or the charter school;

(iii) a current or former officer of a charter school;

(iv) a person who is related to a person described in clauses (i)-(iii) of this subparagraph within the third degree of consanguinity or second degree of affinity, as determined under Texas Government Code, Chapter 573;

(v) a person who within the last five years ending on the date of the transaction was in a position to exercise substantial influence over the organization including any "disqualified person" as defined under Internal Revenue Code (IRC), §4958, or Treasury Regulation 26 CFR §53.4958-3;

(vi) a family member of a person described in clause (v) of this subparagraph, which includes:

(I) the person's spouse or ancestor; or

(II) the person's children, grandchildren, great grandchildren, siblings, half-siblings, and their spouses;

(vii) any person described in clause (v) or (vi) of this subparagraph with respect to an organization described in IRC, §509(a)(3), that was organized and operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of the charter holder; or

(viii) any person who is a donor or donor advisor;

(B) an entity that:

(i) is related to the charter holder;

(ii) is participating in a joint venture with the charter holder;

(iii) is jointly governed with the charter holder;

(iv) has a current or former (within last five years) board member, administrator, or officer who is either:

(I) a current board member, administrator or officer of the charter holder or charter school; or

(II) related to within the third degree of consanguinity or second degree of affinity of a person described in clause (i) of this subparagraph as determined under Texas Government Code, Chapter 573;

(v) is more than 35% controlled by individuals described in subparagraph (A)(v) and (vi) of this paragraph, including:

(I) a corporation in which such persons own more than 35% of the total combined voting power;

(II) a partnership in which such persons own more than 35% of the profits interest;

(III) a trust or estate in which such persons own more than 35% of the beneficial interest; or

(IV) for purposes of this subsection, an entity for which the constructive ownership rules of IRC, §4946(a)(3) and (a)(4), apply; or

(vi) any entity that is described in IRC, §509(a)(3), that:

(I) is organized and operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of the charter holder; and

(II) meets the control test in clause (v) of this subparagraph;

(C) a donor-advised fund if a donor (or any person appointed or designated by such donor) has, or reasonably expects to have, advisory privileges with respect to the distribution or investment of amounts held in such fund or account by reason of the donor's status as a donor;

(D) any person or entity associated with the section regarding sponsoring entity;

(E) a lender providing secured or unsecured debt to the charter holder or charter school other than bonds or tax-exempt facility financing, for any transaction other than the loan or note agreement; or

(F) a major donor to the charter holder or charter school under a written grant agreement or other contract, for any transaction with the donor other than the written grant agreement.

(26) Shared services cooperative or shared services arrangement--A contractual arrangement among charter holders or between a charter holder(s), school districts, and/or education service centers, through which one member of the cooperative, acting as the fiscal and administrative agent for the other members, provides educational services, operational services and/or management services

to member charter holders under a written contract executed by each member. A contract establishing a shared services cooperative must at a minimum:

(A) establish clear procedures for administering services under the direction and control of the cooperative and for assigning responsibility for all costs and liabilities associated with services provided under the contract;

(B) establish the duties, responsibilities, and accountability of the fiscal agent and of each member for services provided under the contract;

(C) establish clear procedures for withdrawal of a member from the agreement and for the dissolution and winding up of the affairs of the cooperative; and

(D) be approved in writing by the commissioner before any services are provided.

(27) State funds--Funds received by the charter holder under TEC, §12.106, and any grant or discretionary funds received through or administered by TEA, including all federal funds. The rules in this division apply to property acquired, improved, or maintained with federal funds to the extent that such application is consistent with applicable federal law or regulations.

(28) State funds received before September 1, 2001--State funds are received before September 1, 2001, if the Texas Comptroller of Public Accounts issued a warrant for such funds before that date, or if an electronic transfer of such funds was made before that date.

(29) State funds received on or after September 1, 2001--State funds are received on or after September 1, 2001, if the Texas Comptroller of Public Accounts issues a warrant for such funds on or after that date, or if an electronic transfer of such funds is made on or after that date.

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

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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Proposal publication date: March 15, 2024
For further information, please call: (512) 475-1497

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DIVISION 2. COMMISSIONER ACTION AND INTERVENTION

19 TAC §§100.1011, 100.1013, 100.1015, 100.1017, 100.1021, 100.1023, 100.1025

STATUTORY AUTHORITY. The new sections are adopted under Texas Education Code (TEC), §12.101, which requires the commissioner to adopt rules regarding the criteria for granting a charter and providing notification for the establishment of new charters or campuses; TEC, §12.1011, which requires the commissioner to adopt rules regarding charter authorization for high-performing entities; TEC, §12.103, which allows the commissioner to adopt rules regarding applicable provisions to open-enrollment charter schools; TEC, §12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021, which allows the commissioner to adopt rules permitting an open-enrollment charter school to voluntarily participate in any state program available to school districts if the school complies with all terms of the program; TEC, §12.1055, which allows the commissioner to adopt rules regarding nepotism under Texas Government Code, Chapter 573; TEC, §12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023, which requires a political subdivision to consider an open-enrollment charter school as a school district for the purposes of municipal ordinances if the open-enrollment charter school meets notification requirements; TEC, §12.110, which requires the commissioner to adopt an application form and procedure that must be used to apply for an open-enrollment charter school; TEC, §12.1101, which requires the commissioner to adopt a procedure for providing notice to the outlined persons on receipt by the commissioner of an application for a charter for an open-enrollment charter school or of notice of the establishment of a campus; TEC, §12.114, which allows the commissioner to define expansion amendment requests; TEC, §12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt a procedure for renewal, denial of renewal, or expiration of a charter for an open-enrollment charter school at the end of the term of the charter; TEC, §12.1166, which requires the commissioner to adopt a rule defining "related party;" TEC, §12.1173, as amended by SB 2293, 86th Texas Legislature, 2019, which requires the commissioner to adopt rules to implement charter school waiting lists for admission; TEC, §12.1181, requires the commissioner to adopt performance frameworks that establish standards by which to measure the performance of an open-enrollment charter school; TEC, §12.123, which requires the commissioner to adopt rules prescribing the training for members of the governing body of a charter school and its officers; TEC, §12.153, which allows the commissioner to adopt rules to implement college or university or junior college charter schools; TEC, §12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt rules necessary to administer adult high school charter school programs; and TEC, §39.0548, which requires the commissioner to authorize and determine designation as a dropout recovery school.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §§12.101; 12.1011; 12.103; 12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021; 12.1055; 12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023; 12.110; 12.1101; 12.114; 12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021; 12.1166; 12.1173, as amended by SB 2293, 86th Texas Legislature, 2019; 12.1181; 12.123; 12.153; 12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021; and 39.0548.

§100.1011. Application Requirements and Selection Process.

(a) Except as expressly provided in the rules in this subchapter, provisions in this section apply to applications affiliated and published under the following Texas Education Code (TEC) subchapters:

(1) TEC, Chapter 12, Subchapter D;

(2) TEC, Chapter 12, Subchapter E; and

(3) TEC, Chapter 12, Subchapter G.

(b) Prior to each application cycle, the commissioner of education shall approve an application form for submission by new and returning applicants seeking to operate a high quality open-enrollment charter school. The application form shall address the content requirements specified in TEC, §12.111, for the Subchapter D form; TEC, §12.154, for the Subchapter E form; and TEC, §12.257, for the Subchapter G form, and contain the following:

(1) the timeline for selection;

(2) applicant conferences and training prerequisites;

(3) scoring criteria and procedures for use by the review panel selected under subsection (d) of this section;

(4) the minimum score necessary for an application to be eligible for capacity interview; and

(5) the earliest date an open-enrollment charter school selected in the cycle may open.

(c) The Texas Education Agency (TEA) shall review applications submitted under this section.

(1) No applicant will be considered if it meets either of the conditions in the following subparagraphs. This paragraph does not apply to an applicant that has previously relinquished a charter, under the circumstances described in §100.1001(12)(C) of this title (relating to Definitions).

(A) Within the preceding 10 years, the applicant had a charter under Texas law or similar charter under the laws of another state surrendered under a settlement agreement, revoked, denied renewal, or returned.

(B) The applicant is considered to be a corporate affiliate of, or substantially related to, an entity that within the preceding 10 years, had a charter under Texas law or similar charter under the laws of another state surrendered under a settlement agreement, revoked, denied renewal, or returned.

(2) The commissioner of education may not grant more than one charter for an open-enrollment charter school to any charter holder.

(3) Upon receipt, TEA shall review applications for completeness and provide each applicant with a notice that documents the status of each requirement as complete or incomplete.

(A) TEA shall remove applications without further processing if documents are:

(i) received after the submission deadline as provided in the request for application;

(ii) substantially incomplete; or

(iii) determined not to meet the standards in TEC, §§12.101, 12.152, 12.257, or 12.255, or §100.1011 or §100.1017 of this title (relating to Application Requirements and Selection Process and Applicant Eligibility and Form Contents).

(B) If TEA determines that an application is not complete, TEA shall notify the applicant of all documents that are eligible for remedy and allow five business days for the applicant to submit the requested documentation.

(C) Once additional review is complete, the decision of the commissioner or commissioner's designee is final and may not be appealed.

(D) Failure of TEA to identify any deficiency, or notify an applicant thereof, does not constitute a waiver of the requirement and does not bind the commissioner.

(E) Upon written notice to TEA and without penalty for future application cycles, an applicant may withdraw an application.

(F) Applications that are determined complete shall be reviewed and scored by an external application review panel.

(i) The external application review panel shall be selected from a pool of qualified candidates. To the greatest extent practicable, an external review panelist will not be assigned applications for schools planning to locate within the geographic area in which they have a primary physical address or employment address and served by the same regional education service center.

(ii) Members of the review panel shall disclose to TEA immediately the discovery of any past or present relationship with an open-enrollment charter applicant, including any current or prospective employee, agent, officer, or director of the sponsoring entity, an affiliated entity, or other party with an interest in the selection of the application.

(iii) Reviewers must be individuals with the knowledge and skills associated with one or more of the following: curriculum and instruction, education service and delivery, charter authorization, charter school organization and management, facilities use and management, pedagogy, innovative education programs or technologies, assessments, diverse learning populations, school leadership, human resources, school finance, and/or charter school governance and policy.

(iv) The panel shall review and score applications in accordance with the procedures and criteria established in the application form.

(v) Review panel members shall not discuss applications with anyone except TEA staff. Review panel members shall not accept meals, entertainment, gifts, or gratuities in any form from any person or organization with an interest in the results of the selection process for open-enrollment charters.

(vi) Applications that are not scored at or above the minimum score established in the application form are not eligible for commissioner selection during that cycle.

(vii) Upon completion of external review, TEA will provide all applicants with the results of their reviews by the panel, notice of their status as meeting or not meeting the minimum score, whether the applicant will advance to capacity interviews, the average scores, and individual scoring rubrics, including comments from independent external review panelists.

(G) The commissioner may, at the commissioner's sole discretion, decline to grant an open-enrollment charter to an applicant whose application was scored at or above the minimum score.

(i) No recommendation, ranking, or other type of endorsement by a member or members of the review panel is binding on the commissioner.

(ii) The commissioner or commissioner's designee shall provide written notice to any applicant that is removed under this paragraph.

(iii) The decision of the commissioner or commissioner's designee is final and may not be appealed.

(H) All parts of the application are releasable to the public under the Texas Public Information Act and will be posted to the TEA website; therefore, the following must be excluded or redacted:

(i) personal email addresses;

(ii) proprietary material;

(iii) copyrighted material;

(iv) documents that could violate the Family Educational Rights and Privacy Act by identifying potential students of the charter school, including, but not limited to, sign-in lists at public meetings about the school, photographs of existing students if the school is currently operating or photographs of prospective students, and/or letters of support from potential charter school parents and/or students; and

(v) any other information or documentation that cannot be released in accordance with Texas Government Code, Chapter 552.

(I) The commissioner or the commissioner's designee(s) in coordination with TEA staff shall conduct a capacity interview with applicants whose applications received the minimum score established in the application form. The commissioner may specify individuals required to attend the interview and may require the submission of additional information and documentation prior or subsequent to an interview.

(d) The commissioner shall approve or deny a Subchapter D charter school application based on:

(1) documented evidence gathered through the application review process;

(2) merit;

(3) criteria for applicants that apply as new operators that include, at a minimum:

(A) indications that the charter school will possess the capability to carry out responsibilities as provided in the charter;

(B) indications that the charter school will improve student performance and encourage innovative programs;

(C) indications that the charter school will be high-quality, including:

(i) evidence that the school will receive the highest or second highest performance rating category under TEC, Chapter 39, Subchapter C, beginning in the first year of eligibility; and

(ii) evidence that the charter school will earn seventy or more points without failing a critical indicator on the Charter Financial Integrity Rating System of Texas beginning in Year 1; and

(D) a statement from any school district whose enrollment is likely to be affected by the charter school, including information relating to any financial difficulty that a loss in enrollment may have on the district;

(4) criteria for applicants that apply as experienced operators that include, at a minimum:

(A) the criteria described in paragraphs (1)-(3) of this subsection;

(B) the strength of the applicant's existing portfolio, or their affiliate; and

(C) the likelihood of operating a high-quality charter; and

(5) all other criteria published in the application.

(e) The commissioner shall approve or deny a Subchapter E charter school application based on:

(1) the criteria described in subsection (d)(1)-(3) of this section;

(2) indications that the applicant's educational program will be implemented under the direct supervision of a member of the teaching or research faculty of the public junior college, senior college, or university;

(3) indications that the faculty member supervising the applicant's educational program has substantial experience and expertise in education research, teacher education, classroom instruction, or educational administration;

(4) indications that the applicant's educational program has been designed to meet specific goals described in the charter application and each aspect of the program is directed toward the attainment of the goals;

(5) indications that the financial operations of the applicant will be supervised by the business office of the public junior college, senior college, or university; and

(6) all other criteria published in the application.

(f) The commissioner shall approve or deny a Subchapter G charter school application based on:

(1) documented evidence gathered through the application review process;

(2) merit; and

(3) criteria that include:

(A) indications that the education program will enable program participants to successfully earn a diploma and take career and technology education courses that can lead to an industry certification;

(B) indications that the applicant, or a member of the applicant's executive leadership has a successful history of providing education services, including industry certifications and job placement services, to adults 18 years of age and older whose educational and training opportunities have been limited by educational disadvantages, disabilities, homelessness, criminal history, or similar marginalizing circumstances;

(C) indications that a significant portion of instruction will be delivered in a teacher-led, interactive classroom environment;

(D) indications that the educational program will provide access to:

(i) career readiness training;

(ii) postsecondary counseling; and

(iii) job-placement services;

(E) indications that the educational program will provide support services that include:

(i) child care at no cost to students;

(ii) life coaching services as outlined in TEC, §12.259;

(iii) mental health counseling;

(iv) instructional support services for students with identified disabilities; and

(v) transportation assistance;

(F) indications that the charter school will possess the capability to carry out responsibilities as provided in the charter;

(G) indications that the proposed governance structure will maintain sound fiscal management and administrative practices; and

(H) indications that the financial plan is viable.

(g) Priority shall be given to applicants that propose a school in an attendance zone of a school district campus assigned an unacceptable performance rating under TEC, §39.054, for two preceding years. This paragraph does not apply to an application form released under TEC, Chapter 12, Subchapter G.

(h) An applicant or any person or entity acting on behalf of an applicant for an open-enrollment charter shall not knowingly communicate with any member of an external application review panel concerning a charter school application beginning on the date the application is submitted and ending 90 days after the commissioner's proposal of a Subchapter D charter, or ending with the commissioner's notice of decision regarding a Subchapter E or G charter, whichever applies. On finding a material violation of the no-contact period, the commissioner may reject the application and deem it ineligible for award.

(i) An applicant or their representative must not initiate contact with any employee of TEA, other than the commissioner or commissioner's designee, regarding the content of its application from the time the application is submitted until the application cycle is final, following the 90-day State Board of Education (SBOE) veto period.

(j) An applicant or person or entity acting on behalf of the applicant may not provide any item of value, directly or indirectly, to the commissioner, any employee of TEA, or a member of the SBOE during the no-contact period.

(k) An applicant or any person or entity acting on behalf of an applicant for an open-enrollment charter shall not knowingly communicate with any member of the SBOE beginning on the date the application is submitted and ending on the date the applicant passes through an external review with a qualifying score. On finding a material violation of the no-contact period, the commissioner may reject the application and deem it ineligible for award. This paragraph does not apply to a charter the commissioner authorizes under TEC, Chapter 12, Subchapter E and Subchapter G.

(l) The commissioner shall notify the SBOE of each charter the commissioner proposes to authorize. A charter proposed by the commissioner will be granted on the 90th day after the date on which the SBOE receives the notice from the commissioner unless either of the conditions in the following paragraphs are met. This paragraph does not apply to a charter the commissioner authorizes under TEC, Chapter 12, Subchapters E and G.

(1) The SBOE votes against the charter in accordance with TEC, §12.101(b-0).

(2) The commissioner withdraws the proposal.

(m) The commissioner may defer granting an open-enrollment charter subject to contingencies and shall require fulfillment of such contingencies before the charter school is issued a contract. Such conditions must be fulfilled by the awardee, as determined by the commissioner, no later than 60 days after the date of the notification of contingencies by the commissioner or the proposal of the charter is withdrawn. The commissioner may establish timelines for submission by the awardee of any documentation to be considered by the commissioner in determining whether contingencies have been met.

(n) The commissioner may decline to finally grant or award a charter based on misrepresentations during the application process or failure to comply with commissioner rules, application requirements, or SBOE rules.

(o) An open-enrollment charter shall be in the form and substance of a written contract signed by the commissioner, the board chair of the charter holder or charter school, and the chief operating officer of the school but is not a contract for goods or services within the meaning of Texas Government Code, Chapter 2260. The chief operating officer of the school shall mean the chief executive officer of the open-enrollment charter holder under TEC, §12.1012.

(p) The charter contract shall be for an initial term of five years beginning on July 1 following the execution of the initial contract or July 1 following an approved extension under subsection (q) of this section.

(q) The charter must open and serve students within one school year of the awarding of the charter contract, unless an extension is approved by the commissioner. Failure to operate by the approved extension date shall constitute an automatic abandonment of the charter contract and the charter is automatically considered void and returned to the commissioner.

§100.1017. Applicant Eligibility and Form Contents.

(a) Except as expressly provided in the rules in this subchapter, provisions in this section apply to all applications affiliated and published under the following Texas Education Code (TEC) subchapters:

(1) TEC, Chapter 12, Subchapter D;

(2) TEC, Chapter 12, Subchapter E; and

(3) TEC, Chapter 12, Subchapter G.

(b) Any existing entity applying for the charter must be in good standing with the Internal Revenue Service (IRS), the Texas Secretary of State, and the Texas Comptroller of Public Accounts. An existing entity must also be in good standing with all regulatory agencies in its home state. An existing entity must attest that any failure to maintain ongoing compliance with these requirements, if awarded a charter, will be considered a material violation of the charter contract and may be grounds for revocation.

(c) Notwithstanding any other provisions in this chapter, the following provisions apply to charter applicants and successful charter awardees authorized by the commissioner under requests for applications adopted after November 1, 2012.

(1) Financial standards. An applicant for a TEC, Chapter 12, Subchapter D, E, or G charter school, as applicable, shall meet each of the following financial standards to demonstrate the financial viability of the charter, as determined by the commissioner of education or the commissioner's designee, prior to being considered for award of a charter and must attest that any failure to maintain ongoing compliance with these requirements, if awarded a charter, will be considered a material violation of the charter contract and may be grounds for revocation.

(A) Each entity must provide evidence of financial competency and sustainability by providing evidence of an appropriate financial plan that includes each of the following:

(i) a brief analysis of the educational opportunities in the area(s) for the same students and the methods that the proposed school will use to recruit and retain students;

(ii) a brief narrative of the growth plan for the first five years of operation of the proposed school that matches all projections included in the budget;

(iii) an unqualified opinion as provided in the most recent audited financial statements of the applicant if the entity has been in existence at least a year;

(iv) a five-year budget projection of revenue and expenditures for the proposed charter using the template that will be provided in the application;

(v) a response, based on the revenue and expenditures provided in the template that will be provided in the application, detailing the ways in which the budget projections were derived, including any assumptions used; and

(vi) support documentation for budget projections as detailed in the budget template that will be provided with the application.

(B) Loans and lines of credit are liabilities that must be repaid and will be considered as available funding. Loans or lines of credit may be characterized as assets and as cash on hand.

(C) The applicant must identify in the template provided in the application available funding for start-up costs, as documented by current assets listed in the balance sheet and/or pledges for donation that do not require repayment.

(D) The applicant must identify revenue and expenses on a per-student amount and may not reflect a net operating loss for any projection year.

(E) To ensure financial viability, the entity must commit to serving a minimum of 100 students at all times.

(F) The entity applying for the charter must have liabilities that are less than 80% of its assets.

(G) The aggregate of projected budgeted expenses must be less than the aggregate of projected total revenues by the end of the first year of operation provided that:

(i) projected revenues are documented and use the amount per student designated in the application when calculating Foundation School Program funding that will begin during the first year of operation; and

(ii) all reasonable start-up and first-year expenditures are included in the budgets or an explanation for not needing to include them is included in the budget narratives.

(2) Governing standards. An applicant for a TEC, Chapter 12, Subchapter D, E, or G charter school, as applicable, shall meet each of the following governing standards to demonstrate sound establishment and oversight of the charter's educational mission, as determined by the commissioner or the commissioner's designee, prior to being considered for award of a charter and must attest that any failure to maintain ongoing compliance with these requirements, if awarded a charter, will be considered a material violation of the charter contract and may be grounds for revocation, except as provided by TEC, §12.1054(a)(2).

(A) To qualify as an eligible entity in accordance with TEC, §12.101(a)(3), as an organization that is exempt under 26 United States Code (U.S.C.), §501(c)(3), the applicant must have its own 501(c)(3) exemption in its own name, as evidenced by a 501(c)(3) letter of determination issued by the IRS.

(i) An applicant cannot attain status as an eligible entity that is exempt under 26 U.S.C., §501(c)(3), as a disregarded entity, a supporting organization, or a member of a group exemption of a currently recognized 501(c)(3) tax-exempt organization.

(ii) Entities that have applied for 501(c)(3) status but have yet to receive the exemption from the IRS must provide the letter of determination of the 501(c)(3) status issued by the IRS prior to a recommendation by the commissioner. Failure to secure 501(c)(3) status deems an entity ineligible.

(iii) A religious organization, sectarian school, or religious institution that applies must have an established separate nonsectarian entity that is exempt under 26 U.S.C., §501(c)(3), to be considered an eligible entity.

(B) The articles of incorporation or certificate of formation as applicable, and the bylaws of the applicant must vest the management of the corporate affairs in the board of directors.

(i) The charter holder may not vest the management of corporate affairs in any member or members.

(ii) Articles of incorporation, certificate of formation, bylaws, or any policy or other agreement may not confer on or reserve to any other entity or person the ability to overrule, remove, replace, or name the members of the governing body or board of the charter holder or charter school at any time.

(C) Any other change in the aforementioned governance documents pursuant to the management of the corporate affairs of the nonprofit entity may only occur with the approval of the commissioner in accordance with §100.1035(b) of this title (relating to Charter Amendment) or in accordance with any other power granted to the commissioner in state law or rule.

(D) If the sponsoring entity is a 501(c)(3) nonprofit corporation, its bylaws must clearly state that the charter holder and charter school will comply with the Texas Open Meetings Act and will appropriately respond to Texas Public Information Act requests.

(E) No family members within the third degree of consanguinity or second degree of affinity shall simultaneously serve on the charter holder or charter school board.

(F) No family member within the third degree of consanguinity or second degree of affinity of any charter holder board member, charter school board member, or superintendent shall receive compensation in any form from the charter school, the charter holder, or any management company that operates or provides services to the charter school.

(G) The applicant shall specify that the governing body accepts and will not delegate ultimate responsibility for the school, including academic performance and financial and operational viability, and is responsible for overseeing any management company providing management services for the school.

(3) Educational and operational standards for applications published under TEC, Chapter 12, Subchapters D and E. An applicant shall successfully meet each of the following educational and operational standards to ensure alignment of curricula to the Texas Essential Knowledge and Skills, as determined by the commissioner or the commissioner's designee, prior to being considered for award of a charter and must attest that any failure to maintain ongoing compliance with these requirements, if awarded a charter, will be considered a material violation of the charter contract and may be grounds for revocation.

(A) The charter applicant must provide a succinct long-term vision for the proposed school and clearly explain the overall educational philosophy to be promoted at the school, if authorized.

(B) The charter applicant must provide a succinct explanation of the reasons for choosing the target location.

(C) The charter applicant must clearly explain in succinct terms the specific curricular programs that the school, if authorized, will provide to students and the ways in which the charter staff, board members, and others will use these programs to maintain high expectations for and the continuous improvement of student performance.

(D) The charter applicant must clearly explain in succinct terms the ways in which the school, if authorized, will improve student learning, increase the choice of high-quality educational opportunities in the proposed area, create professional environments that will attract new teachers to the public school system, set a high standard for school accountability and student achievement, and encourage different and innovative learning methods.

(E) The charter applicant must clearly explain how classroom practices will reflect the connections among curriculum, instruction, and assessment.

(F) The charter applicant must describe in succinct terms the specific ways in which the school, if authorized, will:

(i) address the instructional needs of students performing both below and above grade levels in major content areas;

(ii) differentiate instruction to meet the needs of diverse learners;

(iii) provide a continuum of services in the least restrictive environment for students with special needs as required by state and federal law;

(iv) provide bilingual and/or English as a second language instruction to English language learners as required by state law; and

(v) implement an educational program that supports compliance with all course requirements pursuant to state law.

(G) As evidenced in required documentation, the charter applicant must commit to hiring personnel with appropriate qualifications as follows.

(i) Except as provided in clause (iv) of this subparagraph, all teachers, regardless of subject matter taught, must have a baccalaureate degree.

(ii) Special education teachers, bilingual teachers, and teachers of English as a second language must be certified in the fields in which they are assigned to teach as required in state and/or federal law.

(iii) Paraprofessionals must be certified as required to meet state and/or federal law.

(iv) In an open-enrollment charter school that serves youth referred to or placed in a residential trade center by a local or state agency, a person may be employed as a teacher for a noncore vocational course without holding a baccalaureate degree, subject to the requirements described in §100.1212 of this title (relating to Personnel).

(H) With the exception of an early education (prekindergarten for age three through Grade 2) or prekindergarten-only model, the charter applicant must commit to serving, by its fourth year of operation, students in grades assessed for state accountability purposes.

(I) The charter applicant must provide a final copy of any management contract, if applicable, that will be entered into by the charter holder that will provide any management services, including the monetary amount that will be paid to the management company for providing school services.

(J) This paragraph does not apply to an application published under TEC, Chapter 12, Subchapter G.

(4) Educational and operational standards for applications published under TEC, Chapter 12, Subchapter G. An applicant for an adult high school charter shall successfully meet each of the following educational and operational standards to ensure careful alignment of curricula to the industry-based certifications, and workforce preparation and training as determined by the commissioner or the commissioner's designee, prior to being considered for award of a charter and must attest that any failure to maintain ongoing compliance with these requirements, if awarded a charter, will be considered a material violation of the charter contract and may be grounds for revocation.

(A) The charter applicant must provide a succinct long-term vision for the proposed school and clearly explain the overall educational philosophy to be promoted at the school, if authorized.

(B) The charter applicant must clearly explain in succinct terms the specific curricular programs that the school, if authorized, will provide to program participants in order to earn a high school diploma and the ways in which the charter staff, board members, and others will use these programs to maintain high expectations for and the continuous improvement of student performance.

(C) The charter applicant must clearly explain in succinct terms the ways in which the school, if authorized, will offer interactive, teacher-led instruction to program participants.

(D) The charter applicant must clearly explain how career and technology programs for industry-based certifications will be implemented at the school.

(E) The charter applicant must submit a letter of intent if contracting with a public junior college, provider, organization approved by the Texas Workforce Commission to provide career and technology courses that lead to an industry certification.

(F) The charter applicant must provide evidence that the entity or a member of its executive leadership has a successful history of providing education services, including industry certifications and job placement services, to adults 18 years of age and older whose educational and training opportunities have been limited by educational disadvantages, disabilities, homelessness, criminal history, or similar marginalizing circumstances.

(G) The charter applicant must describe in succinct terms the specific ways in which the school, if authorized, will:

(i) address how participants can receive a diploma through successful completion of the Foundation High School program curriculum requirements or other appropriate curriculum requirements applicable to the program participant;

(ii) provide career readiness training, post-secondary counseling, and job placement services;

(iii) offer support services, including childcare at no cost, life coaching services, mental health counseling, and transportation assistance;

(iv) provide a continuum of services in the least restrictive environment for program participants with special needs as required by state and federal law;

(v) provide bilingual and/or English as a second language instruction to emergent bilingual students as required by state law; and

(vi) implement an educational program that supports compliance with all course requirements pursuant to state law.

(H) As evidenced in required documentation, the charter applicant must commit to hiring personnel with appropriate qualifications as follows.

(i) Except as provided in §100.1212(b) of this title, all teachers, regardless of subject matter taught, must have a baccalaureate degree.

(ii) Special education teachers, bilingual teachers, and teachers of English as a second language must be certified in the fields in which they are assigned to teach as required in state and/or federal law.

(iii) Paraprofessionals must be certified as required to meet state and/or federal law.

(I) The charter applicant may not propose to serve more than 2,000 students.

(J) The charter applicant must provide a final copy of any management contract, if applicable, that will be entered into by the charter holder that will provide any management services, including the monetary amount that will be paid to the management company for providing school services.

(K) The charter applicant must provide a final memorandum of understanding if partnering with a public junior college, provider, organization approved by the Texas Workforce Commission to provide career and technology courses that lead to an industry certification.

§100.1021. Applicability of Law and Rules to Public Senior College or University Charters and Public Junior College Charters.

(a) Except as expressly provided in the rules in this subchapter, or where required by Texas Education Code (TEC), Chapter 12, Subchapter E (College or University or Junior College Charter School), a provision of the rules in this subchapter applies to a public senior college or university charter school or junior college charter school as though the public senior college or university charter school or junior college charter school were granted a charter under TEC, Chapter 12, Subchapter D (Open-Enrollment Charter School).

(b) Section 100.1011(b) of this title (relating to Application Requirements and Selection Process) applies, except that the commissioner of education may adopt a separate application form for applicants seeking a charter to operate a public senior college or university charter school or a public junior college charter school, which need not be similar to the application form adopted under that subsection for other charter applicants. The commissioner may approve or amend this separate application form without regard to the selection cycle referenced in that subsection.

(c) Section 100.1011(b), (c), (e), (g), (h), (j) and (m)-(q) of this title apply unless provided otherwise in the charter contract.

(d) The following provisions of this subchapter do not apply to a public senior college or university charter school or a public junior college charter school:

(1) §100.1035(d) and §100.1113 of this title (relating to Charter Amendment and Delegation of Powers and Duties), except as authorized in the charter contract upon written request of the governing body of the university, college, or junior college;

(2) §100.1127 of this title (relating to Record of Compliance and Disclosure of Non-compliance);

(3) §100.1101 of this title (relating to Improvements to Real Property);

(4) §§100.1131-100.1141 of this title (relating to Applicability of Nepotism Provisions; Exception for Acceptable Performance; General Nepotism Provisions; Relationships By Consanguinity or By Affinity; Nepotism Prohibitions; Nepotism Exceptions; and Enforcement of Nepotism Prohibitions);

(5) §100.1145 and §100.1147 of this title (relating to General Conflict of Interest Provisions and Conflicts Requiring Affidavit and Abstention from Voting);

(6) §100.1203(a) of this title (relating to Records Management); and

(7) §100.1205 of this title (relating to Procurement of Professional Services).

§100.1023. Applicability of Law and Rules to Adult High School Charters.

The following provisions apply as indicated in this section to an adult education charter school as though the adult education charter school was granted a charter under Texas Education Code (TEC), Chapter 12, Subchapter D.

(1) Section 100.1011(b) of this title (relating to Application Requirements and Selection Process) applies, except that the commissioner of education may adopt a separate application form for applicants seeking a charter to operate an adult education charter school, which need not be similar to the application form adopted under that subsection for other charter applicants. The commissioner may approve or amend this separate application form without regard to the selection cycle referenced in that subsection.

(2) Section 100.1011(b); (c)(3)(A)(i), (B)-(E), (F)(i)-(v) and (vii), and (G)-(I); (f); (h); (j); and (m)-(q) apply unless provided otherwise in the charter contract.

(3) The following sections of TEC, Chapter 12.

(A) TEC, §12.1012, related to definitions.

(B) TEC, §12.10125, related to open-enrollment charter schools not in operation.

(C) TEC, §12.105, related to status.

(D) TEC, §12.1051, related to open meetings and public information laws.

(E) TEC, §12.1052, related to local government records applicability.

(F) TEC, §12.1053, related to public purchasing and contracting laws.

(G) TEC, §12.1054, related to conflict of interest law applicability.

(H) TEC, §12.1055, related to nepotism law applicability.

(I) TEC, §12.1056, related to immunity from liability and suit.

(J) TEC, §12.1057, related to membership in Teacher Retirement System of Texas.

(K) TEC, §12.1059, related to employment requirements.

(L) TEC, §12.107, related to status and use of funds.

(M) TEC, §12.108, related to tuition and fees.

(N) TEC, §12.109, related to transportation.

(O) TEC, §12.1141, related to renewal and expiration.

(P) TEC, §12.1162, related to sanctions.

(Q) TEC, §12.1163, related to audit by commissioner.

(R) TEC, §12.1164, related to notice to Teacher Retirement System of Texas.

(S) TEC, §12.1166, related to related party transactions.

(T) TEC, §12.1168, related to financial report of certain schools.

(U) TEC, §12.117, related to admission.

(V) TEC, §12.119, related to bylaws and annual report.

(W) TEC, §12.101(b)(2), related to prohibition of charter holder having had a charter removed or surrendered in the 10 years prior.

(X) TEC, §12.101(b-5), related to the initial term of a charter.

(Y) TEC, §12.120, related to board member restrictions.

(Z) TEC, §12.1202, related to qualified voter requirement.

(AA) TEC, §12.1211, related to board website posting requirement.

(BB) TEC, §12.122, related to liability of board members.

(CC) TEC, §12.123, related to training for board members and officers.

(DD) TEC, §12.124, related to management company loans.

(EE) TEC, §12.125, related to management services contracts.

(FF) TEC, §12.126, related to prohibitions of certain management services contracts.

(GG) TEC, §12.127, related to management company liability.

(HH) TEC, §12.128, related to property purchased or leased with state funds.

(II) TEC, §12.129, related to minimum qualifications for principals and teachers.

(JJ) TEC, §12.130, related to notice of teacher qualifications.

(KK) TEC, §12.131, related to removal of students to disciplinary alternative education program and expulsion of students.

(LL) TEC, §12.135, related to designation as charter district for purposes of bond guarantee.

(MM) TEC, §12.136, related to posting of chief executive officer salary.

(NN) TEC, §12.137, related to certain charter holders authorized to provide combined services for certain adult and high school dropout recovery programs.

(OO) TEC, §12.141, related to reclaimed funds.

(PP) TEC, §12.104(a-1)(1), related to security officer employment.

(QQ) TEC, §12.104(a-1)(2), related to memorandums of understanding with law enforcement.

(RR) TEC, §12.104(a-2), related to peace officer applicability.

(SS) TEC, §12.104(b)(1), related to criminal offense.

(TT) TEC, §12.104(b)(2), related to protections for reporting violations.

(UU) TEC, §12.104(b)(3)(A), related to PEIMS.

(VV) TEC, §12.104(b)(3)(B), related to criminal history records.

(WW) TEC, §12.104(b)(3)(F), related to special education programs.

(XX) TEC, §12.104(b)(3)(G), related to bilingual education.

(YY) TEC, §12.104(b)(3)(J), related to discipline management techniques.

(ZZ) TEC, §12.104(b)(3)(K), related to health and safety.

(AAA) TEC, §12.104(b)(3)(L), related to accountability.

(BBB) TEC, §12.104(b)(3)(M), related to accountability and investigations.

(CCC) TEC, §12.104(b)(3)(N), related to reporting educator misconduct.

(DDD) TEC, §12.104(b)(3)(O), related to intensive programs of instruction.

(EEE) TEC, §12.104(b)(3)(P), related to right of employees to report crimes.

(FFF) TEC, §12.104(b)(3)(R), related to the right to place a student in a disciplinary alternative education program or to expel the student for certain behaviors.

(GGG) TEC, §12.104(b)(3)(S), related to right to report assault or harassment.

(HHH) TEC, §12.104(b)(3)(T), related to parent rights to information regarding interventions.

(III) TEC, §12.104(b)(3)(V), related to school safety requirements.

(JJJ) TEC, §12.104(b)(3)(X), related to college, career, and military readiness plans.

(KKK) TEC, §12.104(b)(3)(Y), related to parent option to retain a student.

(LLL) TEC, §12.1058, related to applicability of municipal and government codes.

§100.1025. Authorization for High-Performing Entities.

(a) In accordance with Texas Education Code (TEC), §12.1011, notwithstanding TEC, §12.101(b), the commissioner of education may grant a charter to high-performing entities.

(b) For an applicant to be eligible for consideration as a high-performing entity, the applicant must demonstrate one of the following criteria.

(1) The entity is affiliated with a charter operator that operates one or more charter schools in another state. The affiliated charter operator must have performed at an overall level that is comparable to the highest or second highest performance rating category under TEC, Chapter 39, Subchapter C.

(A) The entity must propose to operate the charter school program that is currently implemented in the affiliated charter operator's existing charter schools.

(B) A charter operator may be considered affiliated with an entity if it utilizes shared structures, practices, or materials, including, but not limited to, a shared management structure, shared financial management or staff development practices, or shared proprietary materials, including those related to instruction.

(2) The entity is currently operating charter programs under TEC, Chapter 12, Subchapter C or E. The entity must have performed at an overall level in the highest or second highest performance rating category under TEC, Chapter 39, Subchapter C.

(c) Failure to disclose past or present accountability data is a material violation of the charter.

(d) If the applicant or its affiliate is a high-performing entity, then it may vest management of corporate affairs in a member provided that the entity may change the members of the governing body of the charter holder prior to the expiration of a member's term only with commissioner's written approval.

(e) Entities granted a charter under this provision have an initial contract term of five years.

(f) In determining a charter award for a high-performing entity, the commissioner will consider the criteria identified in §100.1011(d)(4) of this title (relating to Application Requirements and Selection Process) as established for experienced operators.

(g) Section 100.1011(b)(1), (2), and (5) of this title apply, except that the commissioner may adopt a separate application form for high-performing entities seeking a charter to operate a Subchapter D charter school, which need not be similar to the application form adopted under that subsection for other charter applicants. The commissioner may approve or amend this separate application form without regard to the selection cycle referenced in that subsection.

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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DIVISION 2. COMMISSIONER ACTION AND INTERVENTION

19 TAC §§100.1021 - 100.1023, 100.1025 - 100.1027, 100.1029, 100.1031 - 100.1033, 100.1035

STATUTORY AUTHORITY. The repeals are adopted under Texas Education Code (TEC), §12.101, which requires the commissioner to adopt rules regarding the criteria for granting a charter and providing notification for the establishment of new charters or campuses; TEC, §12.1011, which requires the commissioner to adopt rules regarding charter authorization for high-performing entities; TEC, §12.103, which allows the commissioner to adopt rules regarding applicable provisions to open-enrollment charter schools; TEC, §12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021, which allows the commissioner to adopt rules permitting an open-enrollment charter school to voluntarily participate in any state program available to school districts if the school complies with all terms of the program; TEC, §12.1055, which allows the commissioner to adopt rules regarding nepotism under Texas Government Code, Chapter 573; TEC, §12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023, which requires a political subdivision to consider an open-enrollment charter school as a school district for the purposes of municipal ordinances if the open-enrollment charter school meets notification requirements; TEC, §12.110, which requires the commissioner to adopt an application form and procedure that must be used to apply for an open-enrollment charter school; TEC, §12.1101, which requires the commissioner to adopt a procedure for providing notice to the outlined persons on receipt by the commissioner of an application for a charter for an open-enrollment charter school or of notice of the establishment of a campus; TEC, §12.114, which allows the commissioner to define expansion amendment requests; TEC, §12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt a procedure for renewal, denial of renewal, or expiration of a charter for an open-enrollment charter school at the end of the term of the charter; TEC, §12.1166, which requires the commissioner to adopt a rule defining "related party;" TEC, §12.1173, as amended by SB 2293, 86th Texas Legislature, 2019, which requires the commissioner to adopt rules to implement charter school waiting lists for admission; TEC, §12.1181, requires the commissioner to adopt performance frameworks that establish standards by which to measure the performance of an open-enrollment charter school; TEC, §12.123, which requires the commissioner to adopt rules prescribing the training for members of the governing body of a charter school and its officers; TEC, §12.153, which allows the commissioner to adopt rules to implement college or university or junior college charter schools; TEC, §12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt rules necessary to administer adult high school charter school programs; and TEC, §39.0548, which requires the commissioner to authorize and determine designation as a dropout recovery school.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code, §§12.101; 12.1011; 12.103; 12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021; 12.1055; 12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023; 12.110; 12.1101; 12.114; 12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021; 12.1166;

12.1173, as amended by SB 2293, 86th Texas Legislature, 2019; 12.1181; 12.123; 12.153; 12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021; and 39.0548.

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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DIVISION 3. COMMISSIONER ACTION, PERFORMANCE MONITORING, AND INTERVENTION

19 TAC §§100.1031, 100.1035, 100.1037, 100.1039, 100.1041, 100.1043, 100.1045, 100.1047, 100.1049, 100.1051, 100.1053, 100.1055

STATUTORY AUTHORITY. The new sections are adopted under Texas Education Code (TEC), §12.101, which requires the commissioner to adopt rules regarding the criteria for granting a charter and providing notification for the establishment of new charters or campuses; TEC, §12.1011, which requires the commissioner to adopt rules regarding charter authorization for high-performing entities; TEC, §12.103, which allows the commissioner to adopt rules regarding applicable provisions to open-enrollment charter schools; TEC, §12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021, which allows the commissioner to adopt rules permitting an open-enrollment charter school to voluntarily participate in any state program available to school districts if the school complies with all terms of the program; TEC, §12.1055, which allows the commissioner to adopt rules regarding nepotism under Texas Government Code, Chapter 573; TEC, §12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023, which requires a political subdivision to consider an open-enrollment charter school as a school district for the purposes of municipal ordinances if the open-enrollment charter school meets notification requirements; TEC, §12.110, which requires the commissioner to adopt an application form and procedure that must be used to apply for an open-enrollment charter school; TEC, §12.1101, which requires the commissioner to adopt a procedure for providing notice to the outlined persons on receipt by the commissioner of an application for a charter for an open-enrollment charter school or of notice of the establishment of a campus; TEC, §12.114, which allows the commissioner to define expansion amendment requests; TEC, §12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt a procedure for renewal, denial of renewal, or expiration of a charter for an open-enrollment charter school at the end of the term of the charter; TEC, §12.1166, which requires the commissioner to adopt a rule defining "related party;" TEC, §12.1173, as amended by SB 2293, 86th Texas Legislature, 2019, which requires the commissioner to adopt rules to implement charter school waiting lists for admission; TEC, §12.1181, requires the commissioner to adopt performance frameworks that establish standards by which to measure the performance of an open-enrollment charter school; TEC, §12.123, which requires the commissioner to adopt rules prescribing the training for members of the governing body of a charter school and its officers; TEC, §12.153, which allows the commissioner to adopt rules to implement college or university or junior college charter schools; TEC, §12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt rules necessary to administer adult high school charter school programs; and TEC, §39.0548, which requires the commissioner to authorize and determine designation as a dropout recovery school.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §§12.101; 12.1011; 12.103; 12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021; 12.1055; 12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023; 12.110; 12.1101; 12.114; 12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021; 12.1166; 12.1173, as amended by SB 2293, 86th Texas Legislature, 2019; 12.1181; 12.123; 12.153; 12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021; and 39.0548.

§100.1031. Performance Frameworks for Subchapters D and E Charter Schools.

(a) The performance of an open-enrollment charter school will be measured annually against a set of criteria set forth in the Charter School Performance Framework (CSPF) Manual established under Texas Education Code (TEC), §12.1181, and provided in this subsection. Notwithstanding substantial modifications to the framework, the manual will be updated annually to reflect the requirements and data sources for each indicator.
Figure: 19 TAC §100.1031(a)

(b) The CSPF Manual will include measures for Subchapters D and E charter schools registered under the standard accountability system and measures for charters registered under the alternative education accountability system as adopted under §97.1001 of this title (relating to Accountability Rating System).

(c) The assignment of performance levels, Tier 1, Tier 2, or Tier 3 for charter schools on the CSPF report is based on specific criteria described in the CSPF Manual provided in subsection (a) of this section, which include:

(1) Academic Indicator: the charter school's overall academic rating as assigned under TEC, §39.053. For charter schools not issued a rating under TEC, §39.053, the CSPF Manual will identify substitute academic indicators;

(2) Financial Indicator: the charter school's overall financial rating as assigned under TEC, Chapter 39, Subchapter D;

(3) Operational Indicators, which evaluate each charter school's compliance with educational, operational, safety, and reporting requirements as required by federal law, state law, state rules or regulations, and/or the charter contract, including those outlined in TEC, Chapter 12, and this chapter; and

(4) Governance Indicators, which evaluate each charter school's compliance with state law, state rules or regulations with

governance requirements, including those outlined in TEC, Chapter 12, and this chapter.

§100.1035. Charter Amendment.

(a) Subject to the requirements of this section, the terms of an open-enrollment charter may be revised with the consent of the charter holder by expansion or non-expansion amendment as approved by the commissioner of education.

(b) Information relevant to all amendment requests.

(1) Filing of amendment request. Prior to implementation, the charter holder shall file a request, in the form prescribed, with the Texas Education Agency (TEA) division responsible for charter schools.

(2) Board resolution. The request must be attached to a written resolution adopted by the governing body of the charter holder and signed by a majority of the members indicating approval of the requested amendment.

(3) Relevant information considered. As directed by the commissioner, a charter holder requesting an amendment shall submit current information required by the prescribed amendment form, as well as any other information requested by the commissioner. In considering the amendment request, the commissioner may consider any relevant information concerning the charter holder, including its performance on the Charter School Performance Frameworks (CSPF) adopted by rule in §100.1031 of this title (relating to Performance Frameworks for Subchapters D and E Charter Schools); student and other performance; compliance, staff, financial, and organizational data; and other information.

(4) Best interest of students. The commissioner may approve an amendment only if the charter holder meets all applicable requirements, and only if the commissioner determines that the amendment is in the best interest of students. The commissioner may consider the performance of all charters operated by the same charter holder in the decision to finally grant or deny an amendment.

(5) Conditional approval. The commissioner may grant the amendment without condition or may require compliance with such conditions and/or requirements as may be in the best interest of students.

(6) Required forms and formats. The TEA division responsible for charter schools may develop and promulgate, from time to time, forms or formats for requesting charter amendments under this section. If a form or format is promulgated for a particular type of amendment, it must be used to request an amendment of that type.

(7) Ineligibility. The commissioner will not consider any amendment that is submitted by a charter holder that has been notified by the commissioner of the commissioner's intent to allow the expiration of the charter or intent to revoke the charter. This subsection does not limit the commissioner's authority to accept the surrender of a charter.

(c) Expansion amendments.

(1) Timeline for submission. A charter holder may submit a request for approval for an expansion amendment:

(A) up to 36 months before the date on which the expansion will be effective; and

(B) no later than the first day of March before the school year for which the expansion will be effective.

(2) Notification.

(A) Upon receipt of an expansion amendment request by a charter holder, the TEA division responsible for charter schools will notify the following:

(i) the superintendent and the board of trustees of each school district from which the proposed open-enrollment charter school or campus is likely to draw students, as defined in §100.1013 of this title (relating to Notification of Charter Application); and

(ii) each member of the legislature that represents the geographic area to be served by the proposed school or campus, as defined in §100.1013 of this title.

(B) To be considered a school district for purposes related to land development standards, licensing, zoning, and various purposes and services, a charter school must meet the notification requirements as outlined in §100.1209 of this title (relating to Municipal Ordinances).

(C) Should a change in the location of a campus be approved after notification but prior to opening, the commissioner of education or the commissioner's designee is required to notify as required by subparagraph (A) of this paragraph based on the zip code of the new location.

(3) Expansion types. A charter holder of an open-enrollment charter may submit, as described by this section, a request for approval for either:

(A) expedited expansion; or

(B) discretionary expansion.

(4) Expedited expansion amendments. An expedited expansion amendment allows for the establishment of a new charter campus under Texas Education Code (TEC), §12.101(b-4).

(A) In order to submit an expedited expansion amendment, the charter school must meet the following requirements:

(i) an accreditation status of Accredited;

(ii) currently has at least 50% of its student population in grades assessed under TEC, Chapter 39, Subchapter B, or has had at least 50% of the students in the grades assessed enrolled in the school for at least three years;

(iii) is currently evaluated under the standard accountability procedures for evaluation under TEC, Chapter 39, and received a district rating in the highest or second highest performance rating category under TEC, Chapter 39, Subchapter C, for three of the last five ratings;

(iv) at least 75% of the campuses rated under the charter school also received a rating in the highest or second highest performance rating category in the most recent ratings; and

(v) no campus received a rating in the lowest performance rating category in the most recent ratings.

(B) Unless the commissioner provides written notice that the charter holder does not meet the requirements outlined in TEC, §12.101(b-4), within 60 days of the date the charter holder submits a completed expedited expansion amendment, the amendment is considered enacted. If the commissioner denies the amendment, the commissioner must identify the legal and factual basis for denial, including the specific criteria under TEC, §12.101(b-4), that was not met.

(5) Discretionary expansion amendments. A discretionary expansion amendment permits commissioner-approved changes to the terms of an open-enrollment charter school related to expansion.

(A) Discretionary expansion amendment types. There are three types of discretionary amendments.

(i) Maximum enrollment. The commissioner may approve an expansion amendment request seeking to increase maximum allowable enrollment.

(ii) Grade span. The commissioner may approve an expansion amendment request seeking to extend the grade levels it serves only if it is accompanied by appropriate educational plans for the additional grade levels in accordance with Chapter 74, Subchapter A, of this title (relating to Required Curriculum), and such plan has been reviewed and approved by the charter governing board.

(iii) Adding a campus or site. The commissioner may approve an expansion amendment request seeking to add a new campus or site under a campus only if it meets the following criteria:

(I) the charter holder has operated at least one charter school campus in Texas for a minimum of three consecutive years; and

(II) a new site under an existing campus will be located within 25 miles of the campus with which it is associated.

(B) Board certification. Before voting to request a discretionary expansion amendment, the charter holder governing board must certify that they have considered a business plan and has determined by majority vote of the board that the growth proposed is financially prudent relative to the financial and operational strength of the charter school and includes such a statement in the board resolution. The commissioner may request submission of the business plan, which must be comprised of the following components:

(i) a statement discussing the need for the expansion;

(ii) a statement discussing the current and projected financial condition of the charter holder and charter school;

(iii) an unaudited statement of financial position for the current fiscal year;

(iv) an unaudited statement of financial activities for the current fiscal year;

(v) an unaudited statement of cash flows for the current fiscal year;

(vi) a pro forma budget that includes the costs of operating the charter school, including the implementation of the expansion amendment;

(vii) a statement or schedule that identifies the assumptions used to calculate the charter school's estimated Foundation School Program revenues;

(viii) a statement discussing the use of debt instruments to finance part or all of the charter school's incremental costs;

(ix) a statement discussing the incremental cost of acquiring additional facilities, furniture, and equipment to accommodate the anticipated increase in student enrollment;

(x) a statement discussing the incremental cost of additional on-site personnel and identifying the additional number of full-time equivalents that will be employed;

(xi) the required statement that the growth proposed is financially prudent relative to the financial and operational strength of the charter school;

(xii) there are no instances of nepotism, conflicts of interest, or revelations in criminal history checks that deemed any board member or employee ineligible to serve as reported in the Governance Reporting Forms submitted to TEA for the previous three years; and

(xiii) the charter holder meets all other requirements applicable to expansion amendment requests and other amendments.

(C) Requirements. The commissioner may approve a discretionary expansion amendment only if:

(i) the expansion will be effective no earlier than the start of the fourth full school year at the affected charter school. This restriction does not apply if the affected charter school has a district rating of an A, B, or C and is operated by a charter holder that operates multiple charter campuses and all of that charter holder's most recent campus ratings of an A, B, or C;

(ii) the charter school has an accreditation status of Accredited;

(iii) the most recent district rating for the charter school is an A, B, or C;

(iv) the most recent district financial accountability rating for the charter school in the Financial Integrity Rating System of Texas for charter schools is "satisfactory" as defined by §100.1001(9) of this title (relating to Definitions);

(v) a charter holder that operates multiple charter campuses meets the criteria in subclause (I) or (II) of this clause. When calculating the percentages described, campuses that receive a 'Not Rated' rating shall not be included in the calculation.

(I) At least 90% of the campuses that receive an accountability rating are rated as an A, B, or C.

(II) If 75-89% of campuses that receive an accountability rating under the charter school are rated as an A, B, or C, the charter holder must provide additional information with the expansion request; and

(vi) the most recent designation for the charter school under the CSPF is "Tier 1" or "Tier 2" as defined by §100.1031 of this title.

(D) Discretionary expansion amendment determination timeline. Notice of the commissioner's decision regarding a discretionary expansion amendment will be made within 60 calendar days of the date the charter holder submits a completed amendment request. The notice of the commissioner's determination may be sent electronically.

(6) High-quality campus designation. A high-quality campus designation is a separate designation and must be requested prior to the opening of a new campus associated with an approved expansion amendment. Charter holders of charter schools that receive high-quality campus designation from the commissioner will be eligible to participate in the charter school program competitive grant process when federal funding for the Texas charter school program is available.

(A) The commissioner may approve a high-quality campus designation for a charter only if:

(i) the charter holder meets all requirements applicable to an expansion amendment set forth in this section and has operated at least one charter school campus in Texas for a minimum of five consecutive years;

(ii) the charter school has been evaluated under the accountability rating system established in §97.1001 of this title (relat-

ing to Accountability Rating System), has an accreditation status of Accredited, is currently evaluated under the standard accountability procedures, currently has an "A" or "B" rating at the local education agency level, and has an "A" or "B" rating in the previous two years in which ratings were issued with each campus that received a rating and operated under the charter also receiving an "A" or "B" rating as defined by §100.1001(8) of this title in the most recent state accountability ratings;

(iii) no charter campus has been identified for federal interventions in the most current report;

(iv) the charter school is not under any sanction imposed by TEA authorized under TEC, Chapter 39; Chapter 97, Subchapter EE, of this title (relating to Accreditation Status, Standards, and Sanctions); or federal requirements;

(v) is rated "Tier 1" in the most recent CSPF and meets the requirements of federal law and TEC, §12.111(a)(3) and (4);

(vi) the charter holder completes an application approved by the commissioner;

(vii) the amendment complies with all requirements of this paragraph; and

(viii) the commissioner determines that the designation is in the best interest of students.

(B) In addition to the requirements of subparagraph (A) of this paragraph, the commissioner may approve a high-quality campus designation only if the campus with the proposed designation:

(i) satisfies each element of the definition of a public charter school as set forth in federal law, including:

(I) admits students on the basis of a lottery, consistent with Elementary and Secondary Education Act, §4303(c)(3)(A), if more students apply for admission than can be accommodated; or

(II) in the case of a school that has an affiliated charter school (such as a school that is part of the same network of schools), automatically enrolls students who are enrolled in the immediate prior grade level of the affiliated charter school and, for any additional student openings or student openings created through regular attrition in student enrollment in the affiliated charter school and the enrolling school, admits students on the basis of a lottery as described in subclause (I) of this clause;

(ii) is separate and distinct from the existing charter school campus(es) established under the open-enrollment charter school with a separate facility and county-district-campus number; and

(iii) holds a valid charter contract issued by TEA.

(C) In making the findings required by subparagraph (B)(i) and (iii) of this paragraph, the commissioner shall consider:

(i) the terms of the open-enrollment charter school as a whole, as modified by the high-quality campus designation; and

(ii) whether the campus with the proposed designation shall be established and recognized as a separate school under Texas law.

(D) Failure to meet any standard or requirement for high-quality campus designation or agreed to in a performance agreement shall mean the immediate termination of any federal charter school program grant and/or any waiver exempting a charter from some of the expansion amendment requirements that may have been granted to a charter holder as a result of the high-quality campus designation.

(E) Notice of the commissioner's decision regarding a high-quality campus designation will be made within 60 calendar days of the date the charter holder submits a completed request. The notice of the commissioner's determination may be sent electronically.

(d) Non-expansion amendment. A non-expansion amendment permits changes to the terms of an open-enrollment charter school not related to expansion.

(1) Timeline for submission. All non-expansion amendments may be filed with the commissioner at any time throughout the year.

(2) Non-expansion amendment types. A non-expansion amendment is either material or non-material.

(A) Material non-expansion amendments include changes to the terms of an open-enrollment charter, including the following: relocation of a campus, campus or charter dormancy, closing or returning an active campus or site, charter holder governance, articles of incorporation, corporate bylaws, management company, admission and enrollment policy, shared services cooperatives or shared services agreements, and curriculum programs not already approved by TEA.

(i) Relocation amendment. A material non-expansion amendment to relocate solely permits a charter holder to relocate an existing campus or site to an alternate address while serving the same students and grade levels without a significant disruption to the delivery of the educational services. The alternate address of the relocation shall not be in excess of 25 miles from the existing campus address.

(ii) Material charter language change. Any material non-expansion amendment that requires changes to charter language shall set forth the text and page references in electronic format of the current open-enrollment charter language to be changed, and the text proposed as the new open-enrollment charter language.

(B) Non-material non-expansion amendments include changes to the terms of an open-enrollment charter, including the following: charter holder name, charter school (district) name, charter campus name, grade levels served on a campus, campus start date change, closing or returning a dormant campus or site, and fiscal year change.

(C) Any non-expansion amendment not identified in subparagraph (A) or (B) of this paragraph is subject to commissioner determination as material or non-material.

(D) The following timelines apply to non-expansion amendment requests.

(i) Charter holders that submit material non-expansion requests will receive notice of the commissioner's decision within 60 calendar days of a completed amendment request.

(ii) Charter holders that submit non-material non-expansion requests may proceed with the request 30 calendar days after the date the charter holder submits a completed amendment request unless otherwise notified by the commissioner.

§100.1039. Standards for Discretionary Renewal.

Criteria for discretionary renewal. The following criteria shall be considered by the commissioner of education during the discretionary renewal process. The commissioner may non-renew a charter contract based on any of the following.

(1) Academic:

(A) assignment of an "academically unacceptable" rating as defined in §100.1001(8) of this title (relating to Definitions);

(B) failure to meet academic performance standards for students not measured in the accountability system;

(C) unsatisfactory academic performance of subpopulations; and

(D) failure to meet program requirements for special populations, including, but not limited to, special education, bilingual/English as a second language, and career and technical education.

(2) Financial:

(A) failure to use state funds for purposes for which a school district may use local funds under Texas Education Code (TEC), §45.105(e);

(B) failure to hold state funds in trust for the benefit of the students of the charter school;

(C) failure to satisfy generally acceptable accounting standards of fiscal management;

(D) failure to resolve a lien, levy, or other garnishment within 30 days;

(E) existence of a Foundation School Program (FSP) allotment subject to a warrant hold and that warrant has not been removed within 30 days;

(F) failure to timely file annual financial report required under TEC, §44.008;

(G) existence of an annual financial report containing adverse, qualified, or disclaimed opinion(s);

(H) assignment of a lower than satisfactory financial performance rating as defined in §100.1001(9) of this title;

(I) submission of attendance accounting data resulting in an overallocation from the FSP;

(J) existence of the following interested transactions:

(i) failure to comply with Local Government Code, Chapter 171;

(ii) failure to record and report on the governance reporting forms all financial transactions between charter school and non-charter activities of charter holder; and

(iii) failure to timely and accurately record and report on the governance reporting forms all financial transactions required in the governance reporting form;

(K) failure to post all financial information, including the salary of the chief executive officer (CEO), annual financial statement, most current annual financial report, and approved budget, on the charter school's website;

(L) payment of salaries of the CEO and/or other administrative position(s) that exceed reasonable fair market value for the services provided. Fair market value shall be based on size of school, individual's education, prior salary history, job duties actually performed, and what a typical person with similar skills, experience, and job duties would earn;

(M) renting or purchasing property for amounts in excess of fair market value;

(N) loss of eligibility to participate in the child nutrition program for more than 30 days;

(O) charter holder being imminently insolvent as defined by this chapter;

(P) failure to conduct fiscal management, including, but not limited to, the loss of financial records or a material non-compliance with State Board of Education or commissioner accounting requirements and failure to comply with the Financial Accountability System Resource Guide adopted under §109.41 of this title (relating to Financial Accountability System Resource Guide); and

(Q) failure to comply with applicable purchasing requirements, including Local Government Code, Chapter 271, if applicable.

(3) Operational:

(A) Governance:

(i) failure to timely file accurate and complete governance reporting forms;

(ii) non-compliance with required charter board training;

(iii) failure to timely and accurately report board training in the annual financial report;

(iv) failure to maintain verification of criminal history check/fingerprinting;

(v) failure to maintain verification of compliance with reporting requirements of the Secretary of State, the Texas Family Code, the Texas Open Meetings Act, the Texas Public Information Act, government and local records, applicability of public purchasing and contracting, and conflicts of interest and nepotism;

(vi) allowing a person with a criminal record to be employed or serve as a volunteer, officer, or board member in violation of TEC, Chapters 12 and 22;

(vii) failure of an employee or officer of the charter school to report child abuse or neglect as required by the Texas Family Code, Chapter 261;

(viii) failure to disclose and report all conflict of interest and nepotistic relationships to the Texas Education Agency (TEA) in the applicable minutes of the charter holder's corporate records;

(ix) failure to submit to the Secretary of State a listing of all current members of the charter holder, the articles of incorporation, the by-laws, assumed name, and any other matter of the corporate business required to be reported to the Secretary of State; and

(x) failure to maintain the 501(c)(3) status of the charter holder at all times;

(B) Complaints: failure to timely respond to and correct any complaints as directed by TEA;

(C) Property and campus operations (campuses of charter holders that provide instructional services within residential detention, treatment, or adjudication facilities are not subject to clauses (ii) and (iii) of this subparagraph):

(i) operation of any campus that does not meet the definition of a campus according to §100.1001(6)(B) of this title and that does not serve a minimum of 100 students as reflected in the Public Education Information Management System (PEIMS) fall snapshot;

(ii) failure of the charter holder to serve a minimum of 100 students, as reflected in the PEIMS fall snapshot, unless a lower number is declared and approved in the charter contract or approved by the commissioner;

(iii) failure to document and fully disclose any step transactions in the purchase or sale of property; and

(iv) failure to ensure that all charter holder buildings used for educational purposes have a valid certificate of occupancy for educating children;

(D) Activity fees and volunteer requirements:

(i) requiring any activity fees or any compulsory fees that are not authorized by TEC, §11.158, or other law; and

(ii) requiring any parental involvement, donation, or volunteerism as a condition of enrollment or continued enrollment;

(E) Management contracts:

(i) charter holder board allowing any entity to exercise control or ultimate responsibility for the school, including the academic performance, financial accountability, or operational viability;

(ii) charter holder board not retaining or exercising ultimate responsibility for the management of the charter school without regard to execution of a management contract with a charter management organization (CMO);

(iii) failure to timely file a current copy of the executed management contract, including any and all amendments, with TEA;

(iv) failure of the board of directors of the charter holder to ensure that both the charter holder and CMO are compliant with all the rules applicable to charter schools, including, but not limited to:

(I) financial accounting;

(II) record retention;

(III) health, safety, and welfare of students;

(IV) educational program accountability;

(V) Texas Open Meetings Act;

(VI) Texas Public Information Act; and

(VII) policies, procedures, and legal requirements found in state and federal laws/guidelines and the charter contract; and

(v) failure to comply with requirements in §100.1155 of this title (relating to Substantial Interest in Management Company; Restrictions on Serving) prohibiting a board member from having a substantial interest in the CMO; and

(F) Charter school performance framework: failure to satisfy applicable performance framework measures as prescribed in the Charter School Performance Framework Manual established under TEC, §12.1181.

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 Education Agency
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DIVISION 3. CHARTER SCHOOL FUNDING AND FINANCIAL OPERATIONS

19 TAC §§100.1041, 100.1043, 100.1045, 100.1047, 100.1049 - 100.1052

STATUTORY AUTHORITY. The repeals are adopted under Texas Education Code (TEC), §12.101, which requires the commissioner to adopt rules regarding the criteria for granting a charter and providing notification for the establishment of new charters or campuses; TEC, §12.1011, which requires the commissioner to adopt rules regarding charter authorization for high-performing entities; TEC, §12.103, which allows the commissioner to adopt rules regarding applicable provisions to open-enrollment charter schools; TEC, §12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021, which allows the commissioner to adopt rules permitting an open-enrollment charter school to voluntarily participate in any state program available to school districts if the school complies with all terms of the program; TEC, §12.1055, which allows the commissioner to adopt rules regarding nepotism under Texas Government Code, Chapter 573; TEC, §12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023, which requires a political subdivision to consider an open-enrollment charter school as a school district for the purposes of municipal ordinances if the open-enrollment charter school meets notification requirements; TEC, §12.110, which requires the commissioner to adopt an application form and procedure that must be used to apply for an open-enrollment charter school; TEC, §12.1101, which requires the commissioner to adopt a procedure for providing notice to the outlined persons on receipt by the commissioner of an application for a charter for an open-enrollment charter school or of notice of the establishment of a campus; TEC, §12.114, which allows the commissioner to define expansion amendment requests; TEC, §12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt a procedure for renewal, denial of renewal, or expiration of a charter for an open-enrollment charter school at the end of the term of the charter; TEC, §12.1166, which requires the commissioner to adopt a rule defining "related party;" TEC, §12.1173, as amended by SB 2293, 86th Texas Legislature, 2019, which requires the commissioner to adopt rules to implement charter school waiting lists for admission; TEC, §12.1181, requires the commissioner to adopt performance frameworks that establish standards by which to measure the performance of an open-enrollment charter school; TEC, §12.123, which requires the commissioner to adopt rules prescribing the training for members of the governing body of a charter school and its officers; TEC, §12.153, which allows the commissioner to adopt rules to implement college or university or junior college charter schools; TEC, §12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt rules necessary to administer adult high school charter school programs; and TEC,

§39.0548, which requires the commissioner to authorize and determine designation as a dropout recovery school.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code, §§12.101; 12.1011; 12.103; 12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021; 12.1055; 12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023; 12.110; 12.1101; 12.114; 12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021; 12.1166; 12.1173, as amended by SB 2293, 86th Texas Legislature, 2019; 12.1181; 12.123; 12.153; 12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021; and 39.0548.

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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DIVISION 4. PROPERTY OF OPEN-ENROLLMENT CHARTER SCHOOLS

19 TAC §§100.1061, 100.1063, 100.1065, 100.1067, 100.1069, 100.1071, 100.1073, 100.1075, 100.1077, 100.1079

STATUTORY AUTHORITY. The new sections are adopted under Texas Education Code (TEC), §12.101, which requires the commissioner to adopt rules regarding the criteria for granting a charter and providing notification for the establishment of new charters or campuses; TEC, §12.1011, which requires the commissioner to adopt rules regarding charter authorization for high-performing entities; TEC, §12.103, which allows the commissioner to adopt rules regarding applicable provisions to open-enrollment charter schools; TEC, §12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021, which allows the commissioner to adopt rules permitting an open-enrollment charter school to voluntarily participate in any state program available to school districts if the school complies with all terms of the program; TEC, §12.1055, which allows the commissioner to adopt rules regarding nepotism under Texas Government Code, Chapter 573; TEC, §12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023, which requires a political subdivision to consider an open-enrollment charter school as a school district for the purposes of municipal ordinances if the open-enrollment charter school meets notification requirements; TEC, §12.110, which requires the commissioner to adopt an application form and procedure that must be used to apply for an open-enrollment charter school; TEC, §12.1101, which requires the commissioner to adopt a procedure for providing notice to the outlined persons on receipt by the commissioner of an application for a charter for an open-enrollment charter school or of notice of the establishment of a campus; TEC, §12.114, which allows the commissioner to define expansion amendment requests; TEC, §12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt a procedure for renewal, denial of renewal, or expiration of a charter for an open-enrollment charter school at the end of the term of the charter; TEC, §12.1166, which requires the commissioner to adopt a rule defining "related party;" TEC, §12.1173, as amended by SB 2293, 86th Texas Legislature, 2019, which requires the commissioner to adopt rules to implement charter school waiting lists for admission; TEC, §12.1181, requires the commissioner to adopt performance frameworks that establish standards by which to measure the performance of an open-enrollment charter school; TEC, §12.123, which requires the commissioner to adopt rules prescribing the training for members of the governing body of a charter school and its officers; TEC, §12.153, which allows the commissioner to adopt rules to implement college or university or junior college charter schools; TEC, §12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt rules necessary to administer adult high school charter school programs; and TEC, §39.0548, which requires the commissioner to authorize and determine designation as a dropout recovery school.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §§12.101; 12.1011; 12.103; 12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021; 12.1055; 12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023; 12.110; 12.1101; 12.114; 12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021; 12.1166; 12.1173, as amended by SB 2293, 86th Texas Legislature, 2019; 12.1181; 12.123; 12.153; 12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021; and 39.0548.

§100.1061. State Funding.

(a) Funding formula elements. Pursuant to Texas Education Code (TEC), §12.106, a charter school is entitled to funding from both tiers of the Foundation School Program (FSP) in accordance with the funding formulas for school districts pursuant to TEC, Chapter 48.

(b) Tuition and fees. The governing board of the charter school shall adopt policies that clearly outline allowable and unallowable fees subject to requirements of TEC, §11.158 (a) and (b). A charter school shall not charge tuition and shall not charge a fee except:

(1) a charter school may charge a fee listed in TEC, §11.158(a), and shall not charge any fee prohibited under TEC, §11.158(b);

(2) if authorized under §100.1201(6) of this title (relating to Voluntary Participation in State Programs), a charter holder may charge tuition for certain prekindergarten classes in compliance with TEC, §29.1531 and §29.1532; and

(3) a charter school shall accept tuition for students holding certain student visas as described in TEC, §25.0031(a).

(c) Eligibility for state funding. A charter holder is not eligible to receive state funds, including grant funds, prior to execution of its contract by the charter holder or charter school board chair and the commissioner of education.

(1) If a charter holder, before or without approval of an amendment under §100.1035 of this title (relating to Charter Amendment), extends the grade levels it serves, adds or changes the address of a campus, facility, or site, or exceeds its maximum allowable enroll-

ment, then the charter holder is not eligible to receive state funds for the activities of the unapproved amendment of its charter school operations.

(2) A former charter holder is not eligible to receive state funds.

(d) Return of overallocated funds.

(1) Within 30 days of receiving notice of an overallocation and a request for refund under TEC, §42.258, a charter holder shall transmit to the Texas Education Agency (TEA) an amount equal to the requested refund. Failure to comply with a request for refund under this subsection is a material charter violation and a management company breach. Funds allocated for student attendance in a program affected by an unapproved expansion under subsection (d)(1) of this section are overallocated within the meaning of this subsection.

(2) If the charter holder fails to make the requested refund, TEA may recover the overallocation by any means permitted by law, including, but not limited to, the process set forth in TEC, §42.258.

(3) Notwithstanding paragraph (2) of this subsection, TEA may not garnish or otherwise recover funds actually paid to and received by a charter holder under TEC, §12.106, if:

(A) the basis of the garnishment or recovery is that:

(i) the number of students enrolled in the school during a school year exceeded the student enrollment described by the school's charter during that period; and

(ii) the school received the funds under TEC, §12.106, based on an accurate report of the school's actual student enrollment; and

(B) the school used all funds received under TEC, §12.106, to provide education services to students and:

(i) submits to the commissioner a timely request to revise the maximum student enrollment described by the school's charter and the commissioner does not notify the school in writing of an objection to the proposed revision before the 90th day after the date on which the commissioner received the request, provided that the number of students enrolled at the school does not exceed the enrollment described by the school's request; or

(ii) exceeds the maximum student enrollment described by the school's charter only because a court mandated that a specific child enroll in that school.

(4) Nothing in paragraph (3) of this subsection requires the agency to fund activities that are ineligible for state funding under subsection (d)(1) of this section.

§100.1069. Disclosure of Related Party Transactions.

(a) Related parties defined. A related party is such a party as defined in §100.1001 of this title (relating to Definitions) or identified as at least one of the following:

(1) a founder or current or former board member, administrator, or officer who meets the criteria in the following subparagraphs. For purposes of this paragraph, a person is a former board member, administrator, or officer if the person served in that capacity within one year of the date on which a financial transaction between the charter holder and a related party occurred:

(A) a board member, administrator, or officer of an open-enrollment charter school; or

(B) related within the third degree of consanguinity or affinity, as determined under Texas Government Code, Chapter 573, to a board member, administrator, or officer of an open-enrollment charter school;

(2) a charter holder's related organizations, joint ventures, and jointly governed organizations, including a management company or any other charter schools or network in another state operated by the same charter management company or under the same charter school network brand-identity by license, other written agreement or otherwise;

(3) an open-enrollment charter school's board members, administrators, or officers or a person related to a board member, administrator, or officer within the third degree of consanguinity or affinity, as determined under Texas Government Code, Chapter 573; or

(4) any other disqualified person, as that term is defined by 26 United States Code, §4958(f), including:

(A) any person who was, at any time during the 5-year period ending on the date of such transaction, in a position to exercise substantial influence over the affairs of the organization, such as a voting member of the governing body, a person who has ultimate responsibility for implementing the decisions of the governing body or for supervising the management, administration, or operation of the organization, or a person who has ultimate responsibility for managing the finances of the organization;

(B) a member of the family of an individual described in subparagraph (A) of this paragraph; or

(C) a 35% controlled entity.

(b) Related party property transactions. A charter holder shall notify the commissioner of education that it intends to enter into a property transaction with a related party as defined by subsection (a) of this section and §100.1001 of this title.

(1) The charter holder shall provide such notice to the commissioner through the Texas Education Agency division responsible for charter schools no later than 10 days prior to the transaction.

(2) If the amount of the transaction exceeds $5,000, upon request and by a date specified by the commissioner, the charter holder shall provide an appraisal from a certified appraiser to TEA.

(c) Related party transactions in audit. All related party transactions shall be reported in the annual audit as required by §100.1067(f) of this title (related to Accounting for State and Federal Funds).

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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DIVISION 4. PROPERTY OF OPEN-ENROLLMENT CHARTER SCHOOLS

19 TAC §§100.1063, 100.1065, 100.1067, 100.1069, 100.1071, 100.1073

STATUTORY AUTHORITY. The repeals are adopted under Texas Education Code (TEC), §12.101, which requires the commissioner to adopt rules regarding the criteria for granting a charter and providing notification for the establishment of new charters or campuses; TEC, §12.1011, which requires the commissioner to adopt rules regarding charter authorization for high-performing entities; TEC, §12.103, which allows the commissioner to adopt rules regarding applicable provisions to open-enrollment charter schools; TEC, §12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021, which allows the commissioner to adopt rules permitting an open-enrollment charter school to voluntarily participate in any state program available to school districts if the school complies with all terms of the program; TEC, §12.1055, which allows the commissioner to adopt rules regarding nepotism under Texas Government Code, Chapter 573; TEC, §12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023, which requires a political subdivision to consider an open-enrollment charter school as a school district for the purposes of municipal ordinances if the open-enrollment charter school meets notification requirements; TEC, §12.110, which requires the commissioner to adopt an application form and procedure that must be used to apply for an open-enrollment charter school; TEC, §12.1101, which requires the commissioner to adopt a procedure for providing notice to the outlined persons on receipt by the commissioner of an application for a charter for an open-enrollment charter school or of notice of the establishment of a campus; TEC, §12.114, which allows the commissioner to define expansion amendment requests; TEC, §12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt a procedure for renewal, denial of renewal, or expiration of a charter for an open-enrollment charter school at the end of the term of the charter; TEC, §12.1166, which requires the commissioner to adopt a rule defining "related party;" TEC, §12.1173, as amended by SB 2293, 86th Texas Legislature, 2019, which requires the commissioner to adopt rules to implement charter school waiting lists for admission; TEC, §12.1181, requires the commissioner to adopt performance frameworks that establish standards by which to measure the performance of an open-enrollment charter school; TEC, §12.123, which requires the commissioner to adopt rules prescribing the training for members of the governing body of a charter school and its officers; TEC, §12.153, which allows the commissioner to adopt rules to implement college or university or junior college charter schools; TEC, §12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt rules necessary to administer adult high school charter school programs; and TEC, §39.0548, which requires the commissioner to authorize and determine designation as a dropout recovery school.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code, §§12.101; 12.1011; 12.103; 12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021; 12.1055; 12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023; 12.110; 12.1101; 12.114; 12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021; 12.1166; 12.1173, as amended by SB 2293, 86th Texas Legislature, 2019; 12.1181; 12.123; 12.153; 12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021; and 39.0548.

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

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

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DIVISION 5. PROPERTY OF OPEN-ENROLLMENT CHARTER SCHOOLS

19 TAC §§100.1091, 100.1093, 100.1095, 100.1097, 100.1099, 100.1101

STATUTORY AUTHORITY. The new sections are adopted under Texas Education Code (TEC), §12.101, which requires the commissioner to adopt rules regarding the criteria for granting a charter and providing notification for the establishment of new charters or campuses; TEC, §12.1011, which requires the commissioner to adopt rules regarding charter authorization for high-performing entities; TEC, §12.103, which allows the commissioner to adopt rules regarding applicable provisions to open-enrollment charter schools; TEC, §12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021, which allows the commissioner to adopt rules permitting an open-enrollment charter school to voluntarily participate in any state program available to school districts if the school complies with all terms of the program; TEC, §12.1055, which allows the commissioner to adopt rules regarding nepotism under Texas Government Code, Chapter 573; TEC, §12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023, which requires a political subdivision to consider an open-enrollment charter school as a school district for the purposes of municipal ordinances if the open-enrollment charter school meets notification requirements; TEC, §12.110, which requires the commissioner to adopt an application form and procedure that must be used to apply for an open-enrollment charter school; TEC, §12.1101, which requires the commissioner to adopt a procedure for providing notice to the outlined persons on receipt by the commissioner of an application for a charter for an open-enrollment charter school or of notice of the establishment of a campus; TEC, §12.114, which allows the commissioner to define expansion amendment requests; TEC, §12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt a procedure for renewal, denial of renewal, or expiration of a charter for an open-enrollment charter school at the end of the term of the charter; TEC, §12.1166, which requires the commissioner to adopt a rule defining "related party;" TEC, §12.1173, as amended by SB 2293, 86th Texas Legislature, 2019, which requires the commissioner to adopt rules to implement charter school waiting lists for admission; TEC, §12.1181, requires the commissioner to adopt performance frameworks that establish standards by which to

measure the performance of an open-enrollment charter school; TEC, §12.123, which requires the commissioner to adopt rules prescribing the training for members of the governing body of a charter school and its officers; TEC, §12.153, which allows the commissioner to adopt rules to implement college or university or junior college charter schools; TEC, §12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt rules necessary to administer adult high school charter school programs; and TEC, §39.0548, which requires the commissioner to authorize and determine designation as a dropout recovery school.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §§12.101; 12.1011; 12.103; 12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021; 12.1055; 12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023; 12.110; 12.1101; 12.114; 12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021; 12.1166; 12.1173, as amended by SB 2293, 86th Texas Legislature, 2019; 12.1181; 12.123; 12.153; 12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021; and 39.0548.

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DIVISION 5. CHARTER SCHOOL GOVERNANCE

19 TAC §§100.1101 - 100.1108, 100.1111 - 100.1116, 100.1131 - 100.1135, 100.1151, 100.1153, 100.1155, 100.1157, 100.1159

STATUTORY AUTHORITY. The repeals are adopted under Texas Education Code (TEC), §12.101, which requires the commissioner to adopt rules regarding the criteria for granting a charter and providing notification for the establishment of new charters or campuses; TEC, §12.1011, which requires the commissioner to adopt rules regarding charter authorization for high-performing entities; TEC, §12.103, which allows the commissioner to adopt rules regarding applicable provisions to open-enrollment charter schools; TEC, §12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021, which allows the commissioner to adopt rules permitting an open-enrollment charter school to voluntarily participate in any state program available to school districts if the school complies with all terms of the program; TEC, §12.1055, which allows the commissioner to adopt rules regarding nepotism under Texas Government Code, Chapter 573; TEC, §12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023, which requires a political subdivision to consider an open-enrollment charter school as a school district for the purposes of municipal ordinances if the open-enrollment charter school meets notification requirements; TEC, §12.110, which requires the commissioner to adopt an application form and procedure that must be used to apply for an open-enrollment charter school; TEC, §12.1101, which requires the commissioner to adopt a procedure for providing notice to the outlined persons on receipt by the commissioner of an application for a charter for an open-enrollment charter school or of notice of the establishment of a campus; TEC, §12.114, which allows the commissioner to define expansion amendment requests; TEC, §12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt a procedure for renewal, denial of renewal, or expiration of a charter for an open-enrollment charter school at the end of the term of the charter; TEC, §12.1166, which requires the commissioner to adopt a rule defining "related party;" TEC, §12.1173, as amended by SB 2293, 86th Texas Legislature, 2019, which requires the commissioner to adopt rules to implement charter school waiting lists for admission; TEC, §12.1181, requires the commissioner to adopt performance frameworks that establish standards by which to measure the performance of an open-enrollment charter school; TEC, §12.123, which requires the commissioner to adopt rules prescribing the training for members of the governing body of a charter school and its officers; TEC, §12.153, which allows the commissioner to adopt rules to implement college or university or junior college charter schools; TEC, §12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt rules necessary to administer adult high school charter school programs; and TEC, §39.0548, which requires the commissioner to authorize and determine designation as a dropout recovery school.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code, §§12.101; 12.1011; 12.103; 12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021; 12.1055; 12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023; 12.110; 12.1101; 12.114; 12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021; 12.1166; 12.1173, as amended by SB 2293, 86th Texas Legislature, 2019; 12.1181; 12.123; 12.153; 12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021; and 39.0548.

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DIVISION 6. CHARTER SCHOOL GOVERNANCE

19 TAC §§100.1111, 100.1113, 100.1115, 100.1117, 100.1119, 100.1121, 100.1123, 100.1125, 100.1127, 100.1131, 100.1133, 100.1135, 100.1137, 100.1139, 100.1141, 100.1143, 100.1145, 100.1147, 100.1149, 100.1151, 100.1153, 100.1155, 100.1157, 100.1159, 100.1161, 100.1163

STATUTORY AUTHORITY. The new sections are adopted under Texas Education Code (TEC), §12.101, which requires the commissioner to adopt rules regarding the criteria for granting a charter and providing notification for the establishment of new charters or campuses; TEC, §12.1011, which requires the commissioner to adopt rules regarding charter authorization for high-performing entities; TEC, §12.103, which allows the commissioner to adopt rules regarding applicable provisions to open-enrollment charter schools; TEC, §12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021, which allows the commissioner to adopt rules permitting an open-enrollment charter school to voluntarily participate in any state program available to school districts if the school complies with all terms of the program; TEC, §12.1055, which allows the commissioner to adopt rules regarding nepotism under Texas Government Code, Chapter 573; TEC, §12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023, which requires a political subdivision to consider an open-enrollment charter school as a school district for the purposes of municipal ordinances if the open-enrollment charter school meets notification requirements; TEC, §12.110, which requires the commissioner to adopt an application form and procedure that must be used to apply for an open-enrollment charter school; TEC, §12.1101, which requires the commissioner to adopt a procedure for providing notice to the outlined persons on receipt by the commissioner of an application for a charter for an open-enrollment charter school or of notice of the establishment of a campus; TEC, §12.114, which allows the commissioner to define expansion amendment requests; TEC, §12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt a procedure for renewal, denial of renewal, or expiration of a charter for an open-enrollment charter school at the end of the term of the charter; TEC, §12.1166, which requires the commissioner to adopt a rule defining "related party;" TEC, §12.1173, as amended by SB 2293, 86th Texas Legislature, 2019, which requires the commissioner to adopt rules to implement charter school waiting lists for admission; TEC, §12.1181, requires the commissioner to adopt performance frameworks that establish standards by which to measure the performance of an open-enrollment charter school; TEC, §12.123, which requires the commissioner to adopt rules prescribing the training for members of the governing body of a charter school and its officers; TEC, §12.153, which allows the commissioner to adopt rules to implement college or university or junior college charter schools; TEC, §12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt rules necessary to administer adult high school charter school programs; and TEC, §39.0548, which requires the commissioner to authorize and determine designation as a dropout recovery school.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §§12.101; 12.1011; 12.103; 12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021; 12.1055; 12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023; 12.110; 12.1101; 12.114; 12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021; 12.1166; 12.1173, as amended by SB 2293, 86th Texas Legislature, 2019; 12.1181; 12.123; 12.153; 12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021; and 39.0548.

§100.1113. Delegation of Powers and Duties.

(a) Primary responsibility. The governing body of a charter holder has the primary responsibility for implementing the public school program authorized by the open-enrollment charter and ensuring the performance of the students enrolled in its charter schools in accordance with the Texas Education Code (TEC).

(1) Governing board non-delegable duties. The following powers and duties must generally be exercised by the governing body of the charter holder itself, acting as a body corporate in meetings posted in compliance with Texas Government Code, Chapter 551. Absent a specific written exception of this paragraph, setting forth good cause why a specific function listed in subparagraphs (A)-(F) of this paragraph cannot reasonably be carried out by the charter holder governing body, the commissioner of education may not grant an amendment delegating such functions to any person or entity through a contract for management services or otherwise. An amendment that is not authorized by such a specific written exception is not effective for any purpose. Absent such exception, the governing body of the charter holder shall not delegate:

(A) final authority to hear or decide employee grievances, citizen complaints, or parental concerns;

(B) final authority to adopt or amend the budget of the charter holder or the charter school or to authorize the expenditure or obligation of state funds or the use of public property;

(C) final authority to direct the disposition or safekeeping of public records, except that the governing body may delegate this function to any person, subject to the governing body's superior right of immediate access to, control over, and possession of such records;

(D) final authority to adopt policies governing charter school operations;

(E) final authority to approve audit reports under TEC, §44.008(d); or

(F) final authority to select, employ, direct, evaluate, renew, non-renew, terminate, or set compensation for the superintendent or, as applicable, the administrator serving as the educational leader and chief executive officer.

(2) Superintendent non-delegable duties. The following powers and duties must be exercised by the superintendent or, as applicable, the administrator serving as the educational leader and chief executive officer of the charter school. Absent a specific written exception of this paragraph, setting forth good cause why a specific function listed in subparagraphs (A)-(C) of this paragraph cannot reasonably be carried out by the superintendent or, as applicable, the administrator serving as the educational leader and chief executive officer of the charter school, the commissioner may not grant an amendment permitting the superintendent/chief executive officer to delegate such function through a contract for management services or otherwise. An amendment that is not authorized by such a specific written exception is not effective for any purpose. Absent such exception, the superintendent/chief executive officer of the charter school shall not delegate final authority:

(A) to organize the charter school's central administration;

(B) to approve reports or data submissions required by law; or

(C) to select and terminate charter school employees or officers.

(b) Alienation of open-enrollment charter. An open-enrollment charter grants to the governing body of a charter holder the authority to operate a charter school.

(1) The governing body of the charter holder shall, acting as a body corporate in meetings posted in compliance with Texas Government Code, Chapter 551, oversee the management of the charter school.

(2) Except as provided by this section, the governing body's powers and duties to operate the charter school shall not be delegated, transferred, assigned, encumbered, pledged, subcontracted, or in any way alienated by the governing body of the charter holder. Any attempt to do so shall be null and void and of no force or effect and shall constitute abandonment of the contract for charter.

(3) A charter holder shall notify the Texas Education Agency (TEA) in writing prior to initiating any type of bankruptcy proceeding respecting the charter holder. Filing for any form of bankruptcy relief prior to such notice shall constitute abandonment of the contract for charter.

(c) Exclusive method for delegating charter powers and duties. An open-enrollment charter must specify the powers or duties of the governing body of the charter holder that the governing body may delegate to an officer, employee, contractor, management company, creditor, or any other person. The exclusive method for making such a delegation shall be to file a request for a delegation amendment with the TEA division responsible for charter schools under §100.1035 of this title (relating to Charter Amendment), specifying the power or duty delegated and the particular person or entity to which it is delegated. The commissioner may approve a delegation amendment only if the conditions in the following paragraphs are met. The commissioner may grant the amendment without condition or may require compliance with such conditions and/or requirements as may be in the best interest of students:

(1) the charter holder meets all requirements applicable to delegation amendments and amendments generally;

(2) the amendment complies with all requirements of this division; and

(3) the commissioner determines that the amendment is in the best interest of students.

(d) Accountability for delegated powers and duties retained. The governing body of a charter holder remains responsible for the management, operation, and accountability of the charter school operated by the charter holder, regardless of whether the governing body delegates any of its powers or duties.

(e) Standards for delegated persons or entities. The person or entity to which any power or duty is delegated shall be held to the same standards as the governing body with respect to use of property, funds or resources, and including as fiduciaries to the students enrolled in the charter school and must act in the best interest of the students, and may be held liable under TEC, §12.122, for breach of fiduciary duty, including misapplication of public funds. Upon review, the commissioner may rescind any delegation amendment for any reason in the commissioner's sole discretion.

§100.1115. Training Requirements for Governing Board Members and Officers.

(a) Training required. All governing board members or officers of a charter school must complete all applicable training requirements under §§100.1117, 100.1119, and 100.1121 of this title (relating to Core Training for New Governing Board Members and Officers; Additional Training for New Governing Board Members and Officers; and Continuing Training for Governing Board Members and Officers), unless otherwise exempted by subsection (e) of this section.

(b) Instructional hours. All training requirements in this division are expressed as instructional hours, meaning they exclude time spent for breaks, administrative tasks, and other non-instructional tasks.

(c) Training providers. All training must be delivered by a training provider registered under §100.1125 of this title (relating to Training Providers).

(d) Training delivery. Unless otherwise specified by curriculum outlines disseminated by the commissioner of education under §100.1117 or §100.1119 of this title, training may be provided through online instruction by an authorized training provider, provided that the training offers an opportunity for interaction with the instructor in real time or incorporates interactive activities that assess learning and provide feedback to the learner.

(e) Exemptions.

(1) A member of the governing body of a charter holder who serves on the governing body of a governmental entity or an institution of higher education as defined under Texas Education Code, §61.003, is exempt from the training required by this section if, by virtue of such service, the member is subject to other mandatory training and the members of the governing body of the charter school operated by the charter holder comply with this section.

(2) A central administrative officer is exempt from the training required by this section if the person is the holder in good standing of a standard superintendent certificate, or its lifetime equivalent, issued by the State Board for Educator Certification and all other officers of the charter school comply with this division.

(3) A campus administrative officer is exempt from the training required by this section if the person is the holder in good standing of a standard principal certificate, or its lifetime equivalent, issued by the State Board for Educator Certification, and all other officers of the charter school comply with this division.

(4) A business manager is exempt from:

(A) the training required by this section if the person is the holder in good standing of one or more of the following credentials issued by the Texas Association of School Business Officials, and if all other officers of the charter school comply with this division:

(i) Registered Texas School Business Administrator;

(ii) Certified Texas School Business Official;

(iii) Certified Texas School Business Specialist;

(iv) Certified Texas School Business Administrator; or

(v) Charter School Business Officer Certification; and

(B) any single part of required training, if:

(i) the business manager is a certified public accountant (CPA) registered in good standing with the Texas State Board of Public Accountancy; and

(ii) the subject matter of the module of required training is covered by the Uniform CPA Examination administered by the Texas State Board of Public Accountancy.

§100.1121. Continuing Training for Governing Board Members and Officers.

(a) Training required. Any governing board member or officer who has completed the training requirements under §100.1117 and §100.1119 of this title (relating to Core Training for New Governing Board Members and Officers Additional Training for New Governing Board Members and Officers) must annually thereafter complete additional training as outlined in this section.

(b) Training content. Continuing training under this subsection shall:

(1) fulfill training needs determined by the charter based on charter needs;

(2) address updated items identified in the core training topics outlined in §100.1117(d) of this title or cover in greater depth than the curriculum outline indicates for initial training on those topics; or

(3) address applicable topics if a charter holder has lower than a C in the Texas A-F Accountability System, lower than a C in the Financial Integrity Rating System of Texas for charter schools, or is rated in TIER 3 on the Charter School Performance Framework, or is being sanctioned, investigated, or is required by the Texas Education Agency to take corrective action training.

(c) Governing board member requirements. Governing board members must annually receive six instructional hours of training.

(d) Officer requirements. An officer must complete additional training hours specific to their role as follows.

(1) Campus administrative officers must annually receive five instructional hours of training.

(2) Business managers must annually receive 15 instructional hours of training.

(3) Chief executive and central administrative officers must annually receive 15 instructional hours of training.

(e) Excess hours earned. Twenty-five percent of instructional hours earned in excess of the requirements set forth in this section by a governing board member or officer may be carried over to meet the following year's requirement under this section.

§100.1127. Record of Compliance and Disclosure of Non-compliance.

Record of compliance; non-compliance.

(1) Record of compliance. It is the obligation of the charter holder to comply with this section, including compliance with §§100.1115-100.1121 of this title (relating to Training Requirements for Governing Board Members and Officers; Core Training for New Governing Board Members and Officers; Additional Training for New Governing Board Members and Officers; and Continuing Training for Governing Board Members and Officers) by each member of the governing body of the charter holder, each member of any governing body of a charter school operated by the charter holder, and each chief executive officer, central administrative officer, campus administrative officer, and business manager of any charter school operated by the charter holder. The charter holder shall document its compliance with §§100.1115-100.1121 of this title and this section.

(2) Continued service. A person may not continue to serve as a member of the governing body of a charter holder, as a member of the governing body of a charter school, or as an officer of a charter school, unless the person is in compliance with §§100.1115-100.1121 of this title and this section.

(3) Audit disclosure. A charter holder shall separately disclose, in its annual audit report required by §100.1067(c) of this title (relating to Accounting for State and Federal Funds), any member of the governing body of the charter holder or a charter school, and any officer of a charter school, who fails to comply with §§100.1115-100.1121 of this title and this section and who continues to serve in such capacity as of the date of the audit report.

(4) Material charter violation. Failure to comply with §§100.1115-100.1121 of this title and this section is a material charter violation that may be considered by the commissioner of education in any action or intervention under Division 3 of this subchapter (relating to Commissioner Action, Performance Monitoring, and Intervention).

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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DIVISION 7. CHARTER SCHOOL OPERATIONS

19 TAC §§100.1203, 100.1205, 100.1207, 100.1209, 100.1211 - 100.1213

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §12.101, which requires the commissioner to adopt rules regarding the criteria for granting a charter and providing notification for the establishment of new charters or campuses; TEC, §12.1011, which requires the commissioner to adopt rules regarding charter authorization for high-performing entities; TEC, §12.103, which allows the commissioner to adopt rules regarding applicable provisions to open-enrollment charter schools; TEC, §12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021, which allows the commissioner to adopt rules permitting an open-enrollment charter school to voluntarily participate in any state program available to school districts if the school complies with all terms of the program; TEC, §12.1055, which allows the commissioner to adopt rules regarding nepotism under Texas Government Code, Chapter 573; TEC, §12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023, which requires a political subdivision to consider an open-enrollment charter school as a school district for the purposes of municipal ordinances if the open-enrollment charter school meets notification requirements; TEC, §12.110, which requires the commissioner to adopt an application form and procedure that must be used to apply for an open-enrollment charter school; TEC, §12.1101, which requires the commissioner to adopt a procedure for providing notice to the outlined persons on receipt by the commissioner of an application for a charter for an open-enrollment charter school or of notice of the establishment of a campus; TEC, §12.114, which allows

the commissioner to define expansion amendment requests; TEC, §12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt a procedure for renewal, denial of renewal, or expiration of a charter for an open-enrollment charter school at the end of the term of the charter; TEC, §12.1166, which requires the commissioner to adopt a rule defining "related party;" TEC, §12.1173, as amended by SB 2293, 86th Texas Legislature, 2019, which requires the commissioner to adopt rules to implement charter school waiting lists for admission; TEC, §12.1181, requires the commissioner to adopt performance frameworks that establish standards by which to measure the performance of an open-enrollment charter school; TEC, §12.123, which requires the commissioner to adopt rules prescribing the training for members of the governing body of a charter school and its officers; TEC, §12.153, which allows the commissioner to adopt rules to implement college or university or junior college charter schools; TEC, §12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt rules necessary to administer adult high school charter school programs; and TEC, §39.0548, which requires the commissioner to authorize and determine designation as a dropout recovery school.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §§12.101; 12.1011; 12.103; 12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021; 12.1055; 12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023; 12.110; 12.1101; 12.114; 12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021; 12.1166; 12.1173, as amended by SB 2293, 86th Texas Legislature, 2019; 12.1181; 12.123; 12.153; 12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021; and 39.0548.

§100.1207. Student Admission.

(a) Application deadline. For admission to a charter school, a charter holder shall:

(1) require the applicant to complete and submit a common application form prescribed by the commissioner of education, referred to as the Texas Charter School Admission Application, beginning in the 2020-2021 school year. The application must be submitted not later than a reasonable deadline the charter holder establishes.

(A) The common application form shall be posted on the Texas Education Agency (TEA) website, and the form and all associated fields shall be posted on each open-enrollment charter school's website to be used by an applicant for admission to an open-enrollment charter school campus.

(B) The common application form and the student admission and enrollment policy under subsection (d) or (e) of this section, including the policies and procedures for admission, lotteries, enrollment, student waitlists, withdrawals, reenrollment, and transfers, shall be publicly accessible and easily available on the charter school's website. A charter school must make available the common application form and may not require the use of an account, email, password, or other condition as the sole means to access the information or the common application form. A charter school may also print copies of the common application form and make them available for use during the admission process.

(C) An open-enrollment charter school may not alter the form, unless to signify specific criteria that may not apply to their campus as permitted by TEA, and may not add any additional criteria, questions, statements, advertisements, or solicitations or require any conditions for a person to access the form. An open-enrollment charter school may not sell, provide, or ask an applicant to agree to share or have the charter school share any student information provided in the application to any person or entity other than TEA;

(2) on receipt of more acceptable applications for admission under this section than available positions in the school:

(A) except as permitted by subsection (b) of this section, fill the available positions by lottery; or

(B) subject to subsection (d) of this section, fill the available positions in accordance with the open-enrollment charter school's approved student admission and enrollment policy; and

(3) create and manage a waitlist, as described in subsection (e) of this section, for applicants who are not admitted after all available positions in the charter school have been filled.

(b) Lottery exemption. The charter holder may exempt students from the lottery required by subsection (d) of this section to the extent this is consistent with the definition of a "public charter school" under the Elementary and Secondary Education Act (ESEA) as reauthorized under the Every Student Succeeds Act (ESSA), as interpreted by the United States Department of Education (USDE), including but not limited to, siblings of students already admitted to or attending the same charter school; children of a charter school's founders, teachers and staff, and children of employees in a work-site charter school (so long as the total number of students allowed under this exemption does not exceed 10% of the school's total enrollment).

(c) Newspaper publication. To the extent this is consistent with the definition of a "public charter school" under ESEA as reauthorized under ESSA, as interpreted by the USDE, a charter holder may fill applications for admission under subsection (a)(1) of this section only if it published a notice of the opportunity to apply for admission to the charter school. At a minimum, a notice published under this subsection must:

(1) state the application deadline; and

(2) be published in a newspaper of general circulation in the community in which the school is located not later than the seventh day before the application deadline. For purposes of this chapter, a newspaper of general circulation is defined as one that has more than a minimum number of subscribers among a particular geographic region, which has a diverse subscribership, and that publishes some news items of general interest to the community.

(d) Student admission and enrollment. Except as provided by this section, the governing body of the charter holder must adopt a student admission and enrollment policy that:

(1) unless as provided in subsection (f) of this section, prohibits discrimination on the basis of sex; national origin; ethnicity; religion; disability; academic, artistic, or athletic ability; or the district the child would otherwise attend under state law;

(2) specifies any type of non-discriminatory enrollment criteria to be used at each charter school operated by the charter holder. Such non-discriminatory enrollment criteria may make the student ineligible for enrollment based on a history of a criminal offense, a juvenile court adjudication, or discipline problems under Texas Education Code (TEC), Chapter 37, Subchapter A, documented as provided by local policy; and

(3) specifies whether students will be admitted to the charter school campus by lottery or on a first come, first served basis if the application is published in a newspaper of general circulation in the

community in which the school is located not later than the seventh day before the application deadline, as described in TEC, §12.117.

(e) Waitlist. Charter holders required to create and maintain a waitlist as a result of receiving more acceptable applications for admission than available positions at the school shall manage and update the student waitlist.

(1) Each school year, the following information must be maintained at the campus level for reporting to TEA no later than the last Friday in October of each school year:

(A) the total number of students on the waitlist;

(B) the number of students on the waitlist disaggregated by grade level;

(C) the number of students enrolled;

(D) the enrollment capacity; and

(E) information necessary to identify each student, as specified in TEC, §12.1174 (Enrollment and Waiting List Report).

(2) The waitlist of each charter school campus shall be managed according to that charter holder's policy, which must include the following criteria.

(A) The names of eligible students with completed applications who apply and are not admitted shall be added to the end of the waitlist in the order in which the applications are received.

(B) As spaces become available at the charter school campus during the school year, the school must consult its campus waitlist and select a new student for enrollment in the order that students appear on the list.

(C) The charter school shall review each campus waitlist no less than every 60 days and eliminate duplicate entries and the names of students who have been admitted to the charter school.

(3) An open-enrollment charter school may not sell, provide, or ask a student to agree to share any student information on the waitlist with any person or entity other than TEA.

(f) Student admission and enrollment at charter schools specializing in performing arts. In accordance with TEC, §12.111 and §12.1171, a charter school specializing in performing arts, as defined in this subsection, may adopt a student admission and enrollment policy that complies with this subsection in lieu of compliance with subsections (a)-(d) of this section.

(1) A charter school specializing in performing arts as used in this subsection means a school whose open-enrollment charter includes an educational program that, in addition to the required academic curriculum, has an emphasis in one or more of the performing arts, which include music, theatre, and dance. A program with an emphasis in the performing arts may include the following components:

(A) a core academic curriculum that is integrated with performing arts instruction;

(B) a wider array of performing arts courses than are typically offered at public schools;

(C) frequent opportunities for students to demonstrate their artistic talents;

(D) cooperative programs with other organizations or individuals in the performing arts community; or

(E) other innovative methods for offering performing arts learning opportunities.

(2) To the extent this is consistent with the definition of a "public charter school" as defined in ESEA as reauthorized under ESSA, as interpreted by the USDE, the governing body of a charter holder that operates a charter school specializing in performing arts must require the applicant to complete and submit a common admission application form as described in subsection (a)(1) of this section and may adopt an admission policy that requires a student to demonstrate an interest or ability in the performing arts or to audition for admission to the school.

(3) The governing body of a charter holder that operates a charter school specializing in performing arts must adopt a student admission and enrollment policy that prohibits discrimination on the basis of sex, national origin, ethnicity, religion, disability, academic or athletic ability, or the district the child would otherwise attend under state law.

(4) The governing body of a charter holder that operates a charter school specializing in performing arts must adopt a student admission and enrollment policy that specifies any type of non-discriminatory enrollment criteria to be used at the charter school. Such non-discriminatory enrollment criteria may make the student ineligible for enrollment based on a history of a criminal offense, a juvenile court adjudication, or discipline problems under TEC, Chapter 37, Subchapter A, documented as provided by local policy.

(g) Maximum enrollment. Total enrollment shall not exceed the maximum number of students approved in the open-enrollment charter. A charter school may establish a primary and secondary boundary. Students who reside outside the primary geographic boundary stated in the open-enrollment charter shall not be admitted to the charter school until all eligible applicants that reside within the primary boundary and have submitted a timely application have been enrolled. Then, if the open-enrollment charter so provides for a secondary boundary, the charter holder may admit students who reside within the secondary boundary to the charter school in accordance with the terms of the open-enrollment charter.

§100.1209. Municipal Ordinances.

(a) Municipal ordinances apply. A charter holder is subject to federal and state laws and rules governing public schools and to zoning and all other municipal ordinances governing public schools.

(b) Notification to political subdivisions. A political subdivision shall consider an open-enrollment charter school a school district for purposes related to land development standards, licensing, zoning, and various purposes and services pursuant to the following.

(1) The governing body of an open-enrollment charter school must certify in writing to the political subdivision that no administrator, officer, employee, member of the governing body of the charter school, or charter holder received any personal financial benefits from a real estate transaction with the charter school.

(2) The open-enrollment charter school files notice of the new property location within 10 business days of the completing the purchase or lease of real property for that location to the Texas Education Agency division responsible for charter schools and the division will notify the following within 10 business days:

(A) the superintendent and the board of trustees of each school district from which the proposed location is likely to draw students, as defined in §100.1013 of this title (relating to Notification of Charter Application); and

(B) each member of the legislature that represents the geographic area to be served by the location, as defined in §100.1013 of this title.

(c) Charter school related purposes. An agreement between a municipality and an open-enrollment charter school may require that any revised land development standards can only apply while the property is used for charter school related purposes and that any property in use subject to open-enrollment charter school land development standards must become compliant with all applicable non-school commercial development regulations after the closure or relocation of the charter school.

§100.1212. Personnel.

(a) Minimum qualifications. Except as provided by subsection (b) of this section, all persons employed as a principal or teacher by an open-enrollment charter school must hold a baccalaureate degree.

(b) Exception. In an open-enrollment charter school that serves youth referred to or placed in a residential trade center by a local or state agency, a person may be employed as a teacher for a noncore vocational course without holding a baccalaureate degree if the person has:

(1) demonstrated subject matter expertise related to the subject taught, such as professional work experience; formal training and education; holding a relevant active professional industry license, certification, or registration; or any combination of work experience, training and education, and industry license, certification, or registration; and

(2) received at least 20 hours of classroom management training, as determined by the governing body of the open-enrollment charter school. Documentation of the training is to be maintained locally and provided to the Texas Education Agency within 10 business days upon request.

(c) Certification. Special education teachers, prekindergarten teachers, bilingual teachers, and teachers of English as a second language must be certified in the fields in which they are assigned to teach as required by state and/or federal law.

(d) Paraprofessionals. All persons employed as paraprofessionals must be certified as required to meet state and/or federal law.

(e) Criminal history. A charter school shall obtain from the Department of Public Safety (DPS), prior to the hiring of personnel and at least every third year thereafter, all criminal history record information maintained by DPS that the charter school is authorized to obtain.

(f) Do not hire registry. A charter school is prohibited from hiring personnel who are not eligible for hire in a Texas public school if they are listed on the Registry of Persons Not Eligible for Employment in Public Schools.

§100.1213. Failure to Operate.

(a) Continuous operation. Except as provided in this section, a charter holder shall operate the program as described in the open-enrollment charter for the full school term described in the open-enrollment charter during each year that the open-enrollment charter is in effect.

(b) Delayed opening. A charter holder may not delay opening the charter school (district) or any charter campus for longer than 21 days without an amendment to its open-enrollment charter, approved by the commissioner of education, stating that the charter school district or campus is dormant and setting forth the date on which operations shall resume and any applicable conditions for resuming operation that may be imposed by the commissioner. The period of dormancy shall last no longer than 12 months and will expire no later than June 30 in the school year in which the dormancy occurs. At the end of a period of dormancy the charter holder may request an additional period of dormancy of no more than 12 months through an amendment to its open-enrollment charter.

(c) Abandonment. Delay of opening or suspension of operations in violation of this section and §100.1035 of this title (relating to Charter Amendment) constitutes abandonment of the open-enrollment charter and constitutes a material violation of the charter contract.

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

Filed with the Office of the Secretary of State on September 12, 2024.

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Cristina De La Fuente-Valadez
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Texas Education Agency
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For further information, please call: (512) 475-1497

DIVISION 6. CHARTER SCHOOL OPERATIONS

19 TAC §100.1217

STATUTORY AUTHORITY. The repeal is adopted under Texas Education Code (TEC), §12.101, which requires the commissioner to adopt rules regarding the criteria for granting a charter and providing notification for the establishment of new charters or campuses; TEC, §12.1011, which requires the commissioner to adopt rules regarding charter authorization for high-performing entities; TEC, §12.103, which allows the commissioner to adopt rules regarding applicable provisions to open-enrollment charter schools; TEC, §12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021, which allows the commissioner to adopt rules permitting an open-enrollment charter school to voluntarily participate in any state program available to school districts if the school complies with all terms of the program; TEC, §12.1055, which allows the commissioner to adopt rules regarding nepotism under Texas Government Code, Chapter 573; TEC, §12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023, which requires a political subdivision to consider an open-enrollment charter school as a school district for the purposes of municipal ordinances if the open-enrollment charter school meets notification requirements; TEC, §12.110, which requires the commissioner to adopt an application form and procedure that must be used to apply for an open-enrollment charter school; TEC, §12.1101, which requires the commissioner to adopt a procedure for providing notice to the outlined persons on receipt by the commissioner of an application for a charter for an open-enrollment charter school or of notice of the establishment of a campus; TEC, §12.114, which allows the commissioner to define expansion amendment requests; TEC, §12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt a procedure for renewal, denial of renewal, or expiration of a charter for an open-enrollment charter school at the end of the term of the charter; TEC, §12.1166, which requires the commissioner to adopt a

rule defining "related party;" TEC, §12.1173, as amended by SB 2293, 86th Texas Legislature, 2019, which requires the commissioner to adopt rules to implement charter school waiting lists for admission; TEC, §12.1181, requires the commissioner to adopt performance frameworks that establish standards by which to measure the performance of an open-enrollment charter school; TEC, §12.123, which requires the commissioner to adopt rules prescribing the training for members of the governing body of a charter school and its officers; TEC, §12.153, which allows the commissioner to adopt rules to implement college or university or junior college charter schools; TEC, §12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to adopt rules necessary to administer adult high school charter school programs; and TEC, §39.0548, which requires the commissioner to authorize and determine designation as a dropout recovery school.

CROSS REFERENCE TO STATUTE. The repeal implements Texas Education Code, §§12.101; 12.1011; 12.103; 12.104, as amended by House Bill (HB) 189, 87th Texas Legislature, Regular Session, 2021; 12.1055; 12.1058, as amended by HB 1707, 88th Texas Legislature, Regular Session, 2023; 12.110; 12.1101; 12.114; 12.1141, as amended by Senate Bill (SB) 879, 87th Texas Legislature, Regular Session, 2021; 12.1166; 12.1173, as amended by SB 2293, 86th Texas Legislature, 2019; 12.1181; 12.123; 12.153; 12.265, as amended by SB 1615, 87th Texas Legislature, Regular Session, 2021; and 39.0548.

§100.1217. Eligible Entity; Change in Status or Revocation.

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 129. STUDENT ATTENDANCE
SUBCHAPTER AA. COMMISSIONER'S RULES

19 TAC §129.1025

The Texas Education Agency (TEA) adopts an amendment to §129.1025, concerning the student attendance accounting handbook. The amendment is adopted without changes to the proposed text as published in the June 21, 2024 issue of the *Texas Register* (49 TexReg 4564) and will not be republished, however, the handbook adopted by reference in the rule includes changes at adoption. The adopted amendment adopts by reference the *2024-2025 Student Attendance Accounting Handbook*. The handbook provides student attendance accounting rules for school districts and charter schools.

REASONED JUSTIFICATION: TEA has adopted its student attendance accounting handbook in rule since 2000. Attendance accounting evolves from year to year, so the intention is to annually update §129.1025 to refer to the most recently published student attendance accounting handbook.

Each annual student attendance accounting handbook provides school districts and charter schools with the Foundation School Program (FSP) eligibility requirements of all students, prescribes the minimum requirements of all student attendance accounting systems, lists the documentation requirements for attendance audit purposes, and details the responsibilities of all district personnel involved in student attendance accounting. TEA distributes FSP resources under the procedures specified in each current student attendance accounting handbook. The final version of the student attendance accounting handbook is published on the TEA website. A supplement, if necessary, is also published on the TEA website.

The adopted amendment to §129.1025 adopts by reference the student attendance accounting handbook for the 2024-2025 school year. The currently adopted handbook is available on the TEA website at https://tea.texas.gov/finance-and-grants/financial-compliance/student-attendance-accounting-handbook.

Significant changes to the *2024-2025 Student Attendance Accounting Handbook* include the following.

Section 1, Overview

Texas Education Code (TEC), Chapter 48, specifically §48.008, establishes the requirements for adopting an attendance accounting system and reporting attendance accounting data through Texas Student Data System Public Education Information Management (TSDS PEIMS). The following changes implement reporting requirements for attendance and funding.

Language referring to the footnote has been revised to show TEC, §48.008.

Section 2, Audit requirements

TEC, Chapter 42, specifically §42.255, establishes the requirements for violation of presenting reports that contain false information. TEC, §42.008, authorizes the commissioner of education to require audit reports to be submitted for review and analysis. TEC, §44.010, allows for the review of budget, fiscal, and audit reports to determine whether all legal requirements have been met. The following changes implement reporting for audit requirements to account for attendance and funding.

Language has been revised to show the current website for the Texas State Library and Archives Commission.

Language has been revised to state that districts must use the coding structure defined in the Texas Education Data Standards (TEDS) as they relate to attendance.

Language has been revised to state that Student Detail Reports must contain instructional track (Calendar Code) attended by the student.

The language in the Student Detail, Campus Summary, and District Summary Reports has been revised to reflect the expiration of virtual instruction.

Language has been revised to state that charter schools (including those authorized under TEC, Chapter 12, Subchapter G) are required to submit six-week District Summary Reports via the FSP payment system.

Language has been revised to state that additional required documentation must include board-approved local policy that defines the instruction methods.

Language has been revised to state that additional required documents must include any and all bell schedules used during the school year.

Section 3, General Attendance Requirements

TEC, §25.081, and Chapter 48, specifically §48.005, establish the general parameters for attendance and school operation. The following changes implement reporting requirements for attendance and funding.

Language has been revised to state that Average Daily Attendance (ADA) Code 0 will be used for a student receiving special education services who has graduated but returned or continues enrollment with less than two hours of daily instruction, as well as for students who receive special education and related services through an approved contract with a nonpublic day or nonpublic residential school.

Language has been revised to exclude children served in an Early Childhood Special Education (ECSE) program from ADA Code 0 who have visual impairments, who are deaf or hard of hearing (DHH), or both.

Language has been revised to say students who are 26 years old on September 1 of the current year and are not enrolled may be included in a TEC, Chapter 12, Subchapter G, Adult High School Charter School Program.

Language has been revised to state that ADA Code 9 applies to a student who is enrolled in a virtual learning program but not in membership.

Language referencing the funding table has been revised to show changes.

Language has been revised to state that, for funding purposes, the number of days of participation for any student in any special program cannot exceed the number of days present for the same reporting period for the same instructional track.

Language has been expanded to include students who are continuing enrollment to receive special education services or students who have returned to school to receive special education services after receiving a diploma as students who are eligible to continue to generate ADA for funding purposes.

Language has been revised to state that a student may also be entitled to receive special education services through age 21 if the student has a disability and the district determines the student would have met the Texas criteria to continue the receipt of special education services after having been awarded a diploma.

Language in the Age Eligibility table has been revised to align with terminology changes made in the adopted handbook.

Language has been revised to state that students aged 22 to 25 who previously received special education services and are enrolled to complete high school requirements are not eligible for special education weighted state funding but qualify for other weighted state funding.

The footnotes related to maximum age eligibility and enrollment procedures have been revised to show 19 TAC §89.1070(f) and TEC, §26.0125.

Language has been revised to state that a district may accept documentation of an updated address, telephone number, and email address electronically for a student who is continuing enrollment in the district from the prior school year.

The footnotes containing the link and Frequently Asked Questions (FAQ) for residency requirements have been updated.

The name of the Compliance and Inquiries Division has been updated.

Language has been revised to state that students who begin school as homebound, including Compensatory Education Home Instruction (CEHI), may indicate their official entry date as the first day of the school year as long as all the documentation requirements are met and the full number of hours needed are provided by the end of that week.

Language referencing student entitlement to attend school in a particular district has been deleted.

Language stating that districts must accept the transfer application of students whose parent or guardian is an active military servicemember or peace officer and requests a transfer to another campus in the currently enrolled district or to another adjoining school district has been moved from the incorrect section and added to the correct sections.

Language has been revised to change the term "homeless" to "students who experience homelessness."

Language has been revised to state that a student who experiences homelessness or a student who is in foster care should be admitted temporarily for 30 days if acceptable evidence of vaccination is not available.

Language has been revised to list the requirements to enroll an infant or toddler in the district or the Regional Day School Program for the Deaf (RDSPD) that will be providing the appropriate services as described in the Individualized Family Services Plan (IFSP).

Language has been revised to state that once withdrawn, students in Grades 7-12 must be reported as school leavers and cannot be considered dropouts according to the Code 162 (C162) Exit Withdraw Type table in TEDS.

Language concerning student records and record transfer has been revised to include an original copy of the home language survey (HLS), Language Proficiency Assessment Committee (LPAC) documentation, and either parental permission/denial forms for bilingual education programs or English as a second language (ESL) program services, if applicable.

Language has been revised to include an alternative attendance-taking time for students receiving special education services through an 18 plus program that provides community-based instruction.

Language has been revised to state that if a school district provides instructional services for special education after school or on Saturday, the contact hours may be counted for job coaching for a student in a work-based learning opportunity that is available only in the evening.

Language has been revised in an example referring to attendance and students who are not in membership or are served outside the home district.

Language referring to effective dates for program changes has been deleted.

Language has been revised to state that the district providing instruction must establish a written agreement with the nonres-

idential treatment facility. Students receiving special education services in this situation may still be eligible for those services during their time at a nonresidential treatment facility.

Language has been revised to state that a student who has an infant (0-6 months) considered medically fragile and who meets the criteria for General Education Homebound (GEH) program may also be considered for the GEH program.

Language referring to provision of additional remote instruction in the GEH program has been removed.

Language in the footnote has been revised to show the current link to the Texas Medical Board.

References to supplementing in-person homebound instruction with virtual instruction has been deleted.

Language has been revised to state that students who begin school on GEH may indicate their official entry date as the first day of the school year as long as all the documentation requirements are met and the full number of hours needed are provided by the end of that week.

Language has been revised in the table showing required number of operational and instructional minutes to include Subchapter G, Adult High School Charter School Program. The footnote would be revised to show TEC, §12.251.

Language has been revised to state that all the students in a particular school or track will have the same number of school days (Number Days Taught).

Language has been revised to update waivers listed in Section 3.8, Calendar.

Language has been revised to state that days with low attendance that do not qualify for a waiver must still be reported as instructional days.

Language has been revised to state that, effective with the 2025-2026 school year, school districts and open-enrollment charter schools with four-day school weeks are not eligible to receive staff development waivers.

Language has been revised to state that the staff development waiver only covers real-time staff development involving all district staff at once, replacing student instruction. Exchange or trade days or individual professional development outside regular hours cannot count toward waiver requirements for staff development minutes.

Language has been revised to state that if TEA grants a district a waiver for a missed school day or a low-attendance day, the district must treat the day as a non-school day in the district's student attendance accounting system and report the day with a Calendar Waiver Event Type (E1570).

Language has been revised to state that a waiver for a dual credit course must be submitted using the Other Waiver application in TEA's automated waiver application system.

Language referencing a school safety training waiver has been added.

Language referencing footnote TEC, §25.0815, has been added.

Language has been revised to specify the date for initial TSDS PEIMS summer submission and the dates for resubmission.

Language has been revised to reflect changes in examples listed in Section 3.

Language has been added to state example for using the life-threatening illness provision to claim funding.

Language has been revised to show the change in numbering order of examples.

In response to public comment, Section 3.3.5 was modified at adoption to clarify that the entry date is the student's first day of school and not the first day of the school year.

In response to public comment, Section 3.8 was modified at adoption to clarify that some standalone programs, like early education (EE) programs, may be reported on the main campus calendar track.

In response to public comment, Section 3.8.1.4 was modified at adoption to clarify that staff development on staff development waiver days may be specific to the needs of individual campuses/workgroups and may be delivered at different physical locations.

In response to public comment, Section 3 of the Student Attendance Accounting Handbook (SAAH) was modified at adoption to include mealtime for combined prekindergarten and EE programs.

Section 4, Special Education

TEC, Chapter 48, specifically §48.102, authorizes funding for special education in certain circumstances. TEC, §48.004, authorizes the commissioner to require reports that may be necessary to implement and administer the FSP. The following changes implement reporting for special education to account for attendance and funding.

Language has been added to state that special education staff, not attendance staff, must provide coding information. Special education directors ensure accuracy of data and communicate to attendance personnel. Special education staff must check the Student Detail Report at the end of each six-week period.

Language has been revised to state that eligibility for special education and related services is determined for children aged birth to two years who have a visual impairment, who are DHH, or who are both.

Language has been revised to state that a student is coded as 00 in the TSDS PEIMS Student Special Education Program Association Entity when receiving only speech therapy, regardless of the delivery model, or when receiving speech therapy along with other related services but no instructional special education services.

Language has been revised to describe situations when a student will not have an instructional setting code of 00.

Language has been revised to state that for code 1, home instruction may be used for infants or toddlers (birth to two years of age) with visual impairment (VI) or DHH as determined by the IFSP committee, and for students aged three to five as decided by the admission, review, and dismissal (ARD) committee.

Language has been revised to state that in making eligibility and placement decisions for students six years of age and older, the ARD committee must consider information from a licensed physician.

Language has been revised to state that infants and toddlers (children from birth through two years of age) who are DHH, VI, or both may receive home instruction as determined by the IFSP team and be reported as homebound.

Language has been revised to state that students who begin school as homebound, including CEHI, may indicate their official entry date as the first day of the school year as long as all the documentation requirements are met and the full number of hours needed are provided by the end of that week.

Language has been revised to state that code 02 is used for students receiving special education in a hospital or residential care facility by district personnel. If a student in such a facility receives services on a campus outside their parent's district, they are coded with a residential care and treatment code. If the parent resides in the facility's district, the student is reported based on the arrangement at the campus. A student who is receiving special education services by school district personnel at the facility but is not residing in the facility is in an off-home campus instructional setting.

Language has been revised to state that code 08 is used for students in job training aligned with their postsecondary employment goals with direct special education involvement in an individualized education program (IEP) implementation. It covers services in Career Technical Education (CTE) classes or specified work-based learning. Eligibility requires the student's employment in a job with special education personnel directly involved, excluding mere employer consultation.

Language has been revised to state that a student must meet special education eligibility requirements to be reported as a student in special education.

Language has been revised to state that codes 41 or 42 are used for students receiving related services in a special education setting, except if they receive only speech therapy alongside other related services. If a student gets special education instruction and speech therapy, the resource room code is used and Special Education Program Service 25 is reported.

Language has been revised to state that code 60 is used for students who are served in off-campus programs as these are defined in 19 TAC §89.1094.

Language has been revised to include Student School Association Entity in code 71.

Language has been revised to state that codes 81-89 are used for students in residential care facilities who receive special education services on a local district campus where the facility is located, but their parents do not reside in that district. Students under Department of Family and Protective Services conservatorship in relative or kinship care or foster homes will not use this code, except those in cottage homes or congregate care meeting the criteria.

Language has been revised to state that Code 87 indicates that a student resides in a facility and receives special education and related services by school district personnel in a facility (other than the one in which the student resides and other than a nonpublic day school) not operated by a school district.

Language has been revised to state that codes 91-98 will be used when a student receives special education and related services at South Texas Independent School District or Windham School District. This includes partial hospitalization programs or other outpatient facilities at which school district personnel are providing instruction. The student is in a non-district community setting, aiding their transition to postsecondary education, integrated employment, or independent living, with instruction or involvement from district personnel aligning with their individual transition goals.

Language has been revised to state that code 96 also applies to students who are receiving services, after having met graduation requirements and determined eligible by the student's ARD committee, on property that is owned or operated by a school district.

Language has been revised to state that Student Detail Reports and the TSDS PEIMS Student Special Education Program Association Entity must contain speech therapy reporting information (Descriptor Table Special Education Program Service (C341)) for any student receiving special education services.

Language has been revised to state the specific usage of Special Education Program Service 24.

Language has been revised to state that for Special Education Program Service 25, the student's TSDS PEIMS Special Education Program Reporting Period Attendance Entity must display both the student's primary instructional setting code (other than 00) and code 00. However, if the student is in a mainstream setting and receives speech therapy, only code 00 should be reported.

Language has been revised to state the specific usage of Special Education Program Service 23.

Language has been revised to state that, starting from the 2025-2026 school year, TEA will gradually remove references to programs for children with disabilities (PPCD) in its publications to emphasize that children eligible for these services must be served in the least restrictive environment outlined in their IEP.

Language referencing ECSE services and Kindergarten programs has been deleted. A revision has been made to state that the PPCD indicator should be changed when a student turns six.

Language referencing ECSE services and Head Start has been deleted along with the footnotes.

Language referencing shared service agreements has been revised to state that students must be reported on the Student School Association Entity as a transfer student (attribution 06 - Transfer Student).

Language has been revised to include changes for students who receive instructional services through the RDSPD.

Language has been revised to reflect changes in the coding chart table detailing services for students with disabilities.

Language has been revised to state that district must report Extended School Year services data to TEA using Extended School Year Services Attendance Entity according to the TEDS.

Language has been revised to reflect changes in the examples for Vocational Adjustment Class specifically for the local credit course and the CTE classes.

Language has been revised in mainstream examples to indicate changes in reporting of instructional codes using Special Education Program Service.

Language referencing examples for resource room codes 41 and 42 has been revised.

Language has been revised to reflect changes in the Self-Contained, Regular Campus examples, specifically for the reporting of the instructional setting code.

Language has been revised to reflect changes in the Off Home Campus examples, specifically for the reporting of the instructional setting code.

Language has been revised to reflect changes in the Speech Therapy only and Speech Therapy with Other Services examples, specifically for the reporting of instructional setting code.

In response to public comment, Sections 3 and 4 of the SAAH as well as the glossary were modified to align with necessary edits to reflect the adoption of 19 TAC Chapter 89.

Section 5, Career and Technical Education (CTE)

TEC, Chapter 48, including §48.106, authorizes funding for CTE in certain circumstances. TEC, Chapter 29, Subchapter F, establishes general parameters for CTE programs. TEC, §48.004, authorizes the commissioner to require reports as may be necessary to implement and administer the FSP. The following changes implement reporting for CTE to account for attendance and funding.

Language has been revised to reflect the current link for state-approved CTE courses.

Language referencing enrollment procedures has been revised to state that the ARD committee will create the student's transition plan, aligning courses of study with their postsecondary goals and updating the personal graduation plan as needed for students receiving special education services.

Language has been revised to state that after five consecutive days without CTE services being provided, local education agency (LEA) personnel must remove the student from the TSDS PEIMS CTE Program Reporting Period Attendance Entity's eligible days present effective the first day of placement in the disciplinary setting.

Language has been revised to state that LEAs can claim a maximum of three contact hours (V3) for a single course. To qualify for CTE weighted funding, course periods must average a minimum of 45 minutes per day throughout the calendar year including pep rallies, assemblies, modified bell schedules etc., but excluding days covered under Attendance Accounting during Testing Days, Staff Professional Development Waivers, and Closures for Bad Weather or Other Health and Safety Issues.

Language has been revised to show updated CTE Weighted Funding Tiers as calculated by TEA.

Language has been revised to state that student instruction during one class period per week is required to be a minimum of 45 minutes in length in a practicum instructional arrangement.

Language has been revised to state that adaptations such as accommodations or modifications must be implemented as specified by a student's IEP, as applicable, for project-based capstone courses.

Language has been revised to state that to receive CTE weighted funding, class periods are required to be a minimum of 45 minutes in length and an average of 45 minutes during the calendar year.

Language throughout the examples in Section 5 has been revised to show the change from course Service ID to CTE Service ID.

In response to public comment, Section 5 of the SAAH was modified at adoption to clarify that LEAs that receive CTE weighted funding must ensure CTE class periods are a minimum of 45 minutes on standard/regular bell scheduled days.

Section 6, Bilingual/English as a Second Language (ESL)

TEC, Chapter 48, specifically §48.105, authorizes funding for bilingual or special language programs in certain circumstances. TEC, Chapter 29, Subchapter B, establishes general parameters for bilingual and special language programs. TEC, §48.004, authorizes the commissioner to require reports as may be necessary to implement and administer the FSP. The following changes implement reporting for bilingual and special language programs to account for attendance and funding.

Language has been revised to state that reclassification is when the LPAC decides an emergent bilingual (EB) student meets criteria to be English proficient (EP), entering year one of monitoring. Exit occurs when the student is no longer classified as EB, ending bilingual or ESL program participation per LPAC recommendation and parental approval.

Language has been revised to state that LEAs are required to clarify in a timely manner which of the two non-English languages is used most of the time, if multiple languages are indicated in the HLS.

Language has been revised in the footnote to show the current link for appropriate bilingual program type codes.

Language has been revised to state that for students transferring within Texas, if the sending district cannot provide the original HLS, the receiving district documents that the original HLS was not included in the student's cumulative folder and documents the attempts and/or reason why the HLS was not obtained.

Language has been revised to state that after five consecutive days without participation in the bilingual or ESL education program, district personnel should remove the student's days from the TSDS PEIMS Bilingual ESL Program Reporting Period Attendance Entity.

Language has been revised to provide the current link for current reclassification requirements.

Language has been revised to update the list of required documents.

Language has been revised to provide the current link for additional resources for program implementation.

Section 7, Prekindergarten (Pre-K)

TEC, Chapter 29, Subchapter E, establishes special general parameters for prekindergarten (pre-K) programs. TEC, Chapter 48, including §48.005, establishes ADA requirements and authorizes funding for certain circumstances. TEC, §48.004, authorizes the commissioner to require reports that may be necessary to implement and administer the FSP. The following changes implement reporting for prekindergarten to account for attendance and funding.

Language has been revised to state that, regardless of whether a district runs a three-year-old pre-K program, students three years of age who are eligible for special education and related services may be placed in a pre-K class by the ARD committee.

Language has been revised to show a change in terminology from an English learner to emergent bilingual.

Language has been revised to include documentation regarding what languages were used in the home setting if the student had a previous home setting.

Language related to pre-K eligibility based on homelessness has been deleted.

In response to public comment, Section 7.2.3 of the SAAH was updated to include clarification regarding documentation for this criterion.

In response to public comment, the chart on page 128 of the SAAH was amended at adoption to include 3-year-old pre-K programs.

Section 9, Pregnancy-Related Services (PRS)

TEC, Chapter 48, including §48.104, authorizes funding for students who are pregnant under certain circumstances. TEC, §48.004, authorizes the commissioner to adopt reports that may be necessary to implement and administer the FSP. The following changes implement reporting for pregnancy- related services (PRS) to account for attendance and funding.

Language has been revised to state that students who do not come to school and who do not receive CEHI or general education or special education homebound services must be counted absent in accordance with the charts provided in this section.

Language has been revised to state the different entities that PRS student needs to identify within the TSDS PEIMS.

Language has been revised to include the current link for Texas Medical Board.

Language has been revised to state that for a baby recovery period, a note from a medical practitioner stating the infant's need for hospital confinement is required.

Language has been revised to state that a student who commences school on homebound (including CEHI) may indicate their official entry date as the first day of the school year as long as all the documentation requirements are met and the full number of hours needed are provided by the end of that week.

Language has been revised to state that a pregnant student's ARD committee and PRS program staff members must collaboratively address the student's service needs.

Language has been revised to state that the period of homebound postpartum services for a student receiving special education services may exceed 10 weeks if determined necessary by the ARD committee.

Language has been revised to state that a CEHI teacher may maintain additional documentation as to when a student physically returns to campus to resume their regular schedule. This may or may not be the date the student was scheduled to return.

Language has been revised to show the accurate CTE Program Association Entity.

Language has been revised in the example to state that if all of the required documentation is obtained and the student is provided the full amount of CEHI hours by the end of the first week, the district may claim her entry date.

In response to public comment, the SAAH was modified at adoption include the word "on-campus" to indicate that regular classes must be taken on campus.

Section 10, Alternative Education Programs (AEPS) and Disciplinary Removals

TEC, Chapter 48, specifically §48.270, establishes the requirements for violation of presenting reports that contain false information. TEC, §48.004, authorizes the commissioner to adopt reports that may be necessary to implement and administer the FSP. TEC, §44.010, allows for the review of budget, fiscal, and audit reports to determine whether all legal requirements have been met. The following changes implement reporting for audit requirements to account for attendance and funding.

Language has been revised to state that the leaver code reported on the TSDS PEIMS Student School Association Entity is 98.

Language has been revised to state that neither the TEC nor the TAC outline teacher requirements for the disciplinary alternative setting of an in-school suspension program.

Language has been revised to state that a district should contact TEA to establish a separate campus for the district's Juvenile Justice Alternative Education Program (JJAEP) students and enroll students at this JJAEP campus as the students are placed at the JJAEP facility.

Language has been revised to state that while in a Disciplinary Alternative Education Program (DAEP) or JJAEP, a student served by special education must receive all current IEP-designated services.

Language has been revised to state that a student is not eligible for ADA if the student has been assigned out-of-school suspension for the first day of school. A student cannot be absent on the first day of school.

Section 11, Nontraditional Programs

TEC, Chapter 29, Subchapter A, establishes special general parameters for nontraditional programs. TEC, Chapter 48, including §48.005, establishes ADA requirements and authorizes funding for certain circumstances. TEC, §48.004, authorizes the commissioner to require reports that may be necessary to implement and administer the FSP. The following changes implement reporting for nontraditional programs to account for attendance and funding.

Language has been revised to reflect changes made to the College Credits Program table. Language has also been revised to state the requirements for a dual credit or dual enrollment course.

Language has been revised to state that dual credit includes a course for which a high school student may earn credit only at an institution of higher education (previously referred to as a dual enrollment course) if the course meets the requirements of 19 TAC Chapter 4, Subchapter D. Dual credit and dual enrollment are synonymous. An institution is not required to offer dual credit courses for high school students.

Language has been revised to state student eligibility requirements specific to dual credit courses.

Language referencing the table for minimum passing standards to demonstrate dual credit eligibility has been deleted.

Language has been revised to state that a student enrolled in a TEA-designated Early College High School or TEA-designated Pathway in Technology Early College High School program may enroll in dual credit courses if the student demonstrates college readiness in alignment 19 TAC §§4.51-4.63 and 4.81-4.86.

Language has been revised to state that Additional Days School Year (ADSY) provides half-day formula funding for school systems that add instructional days to any of their pre-K through Grade 5 campuses (TEC, §48.0051).

Language has been revised to state that should an LEA utilizing ADSY funding file for and receive a low attendance waiver, the granting of a low attendance waiver does not reduce the 180 days of instruction for ADSY purposes. An ADSY waiver is not required to be filed for the same date as an approved low-attendance-day waiver.

Language has been revised to state that special education services for students who have completed credit and assessment requirements for graduation and have been determined eligible by their ARD committee to continue enrollment as specified in 19 TAC §89.1070(h) or (i) do not meet the statutory eligibility for Optional Flexible School Day Program (OFSDP). The district should follow the schedule of services in the IEP and claim the applicable ADA funding.

Language has been revised to state that changing the record type during a reporting period is allowed in specific cases, like when a student starts OFSDP, when a student transitions in or out of DAEP, or when an OFSDP student begins receiving PRS CEHI services mid-reporting period.

Language referencing funding eligibility for students 21 through 25 years of age has been deleted.

Language has been revised to state that all attendance must be reported through the OFSDP Flexible Regular Program Reporting Period Attendance Entity.

Language has been revised to state that high school equivalency program attendance is reported using the Flexible Regular Program Reporting Period Attendance Entity.

Section 12, Virtual, Remote, and Electronic Instruction

TEC, Chapter 30A, establishes the general parameters for the Texas Virtual School Network (TXVSN). TEC, §30A.153, authorizes funding for the TXVSN for the FSP under certain circumstances. TEC, §48.004, authorizes the commissioner to adopt reports that may be necessary to implement and administer the FSP. The following changes implement reporting for the TXVSN to account for attendance and funding.

Language has been revised to provide the current link for a list of TXVSN online schools officially recognized by the agency.

Language has been deleted for Remote Instruction That is Not Delivered through the TXVSN.

Language has been revised to state that a student who has an infant (0-6 months) considered medically fragile and who meets the criteria for Remote Conferencing-Regular Students may also be considered for the GEH program. If a waiver is granted, the affected student will generate attendance according to the two-through-four-hour rule and based on if the student is virtually present at the official attendance-taking time.

Language has been revised to state that the district can submit a request for a general waiver using TEA's automated waiver application system, which is available in TEA Login (TEAL) and cite the requirements in the general waiver section.

Language has been deleted from Remote Conferencing-Students Receiving Special Education and Related Services.

Language has been revised to state if a waiver is approved, attendance will be tracked based on the two-through-four-hour rule. If a student is scheduled to be on campus, their attendance will be recorded if they are physically present. If they are scheduled to be off campus, they will be marked as present if they attend virtually at the official attendance time.

Language referencing the entire section on Virtual Instruction (Local Remote Learning Programs) under TEC, §29.9091, or as modified by TEC, §48.007(c), has been deleted.

Section 13, Appendix: Average Daily Attendance (ADA) and Funding

Language has been revised to state that days in attendance are the total number of days that a student was in attendance (present at the designated attendance-taking time or absent for a purpose described by 19 TAC §129.1025) during a specific period (for example, a 180-day school year) while that student was eligible to generate funding (in membership).

Language has been revised to provide the current link for the CTE Program Reporting Period Attendance Entity.

Language has been revised to provide the current link for the course level provided in the CTE Lookup - Table.

Language has been revised to provide the current link for further guidance on the Bilingual Education Allotment.

Glossary

Language has been revised to update the definition of at-risk.

Language has been revised to update the definition of bilingual/ESL eligible days.

Language referencing EP has been deleted.

Language has been revised to update the definition of in-school suspension, prekindergarten (pre-K), and reclassification.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began June 21, 2024, and ended July 22, 2024. Following is a summary of the public comments received and agency responses.

Section 2 - Audit Requirements

Comment: An education service center (ESC) employee requested the student social security number or state assigned alternative identification number not be included in the required Student Detail Report.

Response: The agency disagrees as the report and the required data used on the Student Detail Report is accurate as formatted.

Section 3 - General Attendance

Comment: An assistant superintendent requested that the SAAH assign numbers to the 19 funded absence codes rather than using bullet points.

Response: The agency disagrees as the use of bullet points in Section 3.6.3 is reflective of standard SAAH formatting.

Comment: A PEIMS coordinator requested that siblings be included in the group with parents, stepparents, and legal guardians for a state excused absence when missing school to visit with a deployed military service member.

Response: The agency disagrees. Including siblings in the group with parents, stepparents, and other legal guardians to be excused for attendance for state funding would require a legislative amendment to TEC, §25.087(b-4).

Comment: A PEIMS coordinator suggested that language in Section 3.3.5 be modified to indicate that a student cannot be reported absent on the student' s first day of school rather than the first day of school.

Response: The agency agrees and has modified Section 3.3.5 of the SAAH at adoption to clarify that the entry date is the student's first day of school and not the first day of the school year.

Comment: Twenty-eight individuals expressed concern with the term attendance personnel in the SAAH when referring to the duties of local education agency (LEA) individuals who assign and review special program coding. These individuals suggest that the SAAH use the term data entry clerks instead.

Response: The agency disagrees as staff roles and responsibilities are a local LEA decision.

Comment: An ESC employee requested that Section 3.8 be updated to allow grade level EE be reported on the regular campus track.

Response: The agency agrees and has updated language in Section 3.8 of SAAH at adoption to clarify that some standalone programs like EE programs may be reported on the main campus calendar track.

Comment: Nine individuals and the superintendents of Kelton Independent School District (ISD), Boles ISD, Westbrook ISD, Crane ISD, Rochelle ISD, and Lovejoy ISD expressed concern with the proposed language in Section 3 of the SAAH that would repeal the Staff Development Waiver starting with the 2025-2026 school year for those LEAs that follow a 4-day week schedule.

Response: The agency disagrees. The agency is clarifying and implementing that staff development waiver minutes are not applicable to regular days of non-instruction for schools that function on a 4-day week calendar, as staff development is not being provided in lieu of student instruction on that day. Additionally, as LEAs on a 4-day instructional week calendar have a day available to them during the traditional work week on which to have staff development without reducing instructional days or time, no waiver is needed. A staff development waiver does not prevent or limit the amount of staff development that an LEA may provide, particularly on days where there is no scheduled student instruction.

Comment: An individual suggested that language be updated to require LEAs to retain copies of military orders received by military families for average daily attendance (ADA) and other funding purposes.

Response: The agency disagrees as documentation to prove military connection, active or otherwise, for the purpose of program eligibility or ADA is already required for audit.

Comment: Four individuals expressed concern with the proposed SAAH language that restricts the staff development waiver to real time, district-wide staff development that would cause districts to revise their calendars prior to the start of the school year.

Response: The agency disagrees that this change would cause districts to revise their calendar prior to the start of the school year. However, the agency has provided clarification at adoption in Section 3.8 regarding the application of staff development related to the staff development waiver both district and campus wide.

Comment: Two individuals expressed concern that the proposed changes to staff development waivers requiring synchronous staff development may require revisions of already approved LEA calendars.

Response: The agency agrees and has added language at adoption to Section 3.8 to clarify that staff development on staff development waiver days may be specific to the needs of individual campuses/workgroups and may be delivered at different physical locations. However, the professional development must be synchronous and scheduled to take place at the same time and for the same length of time for all staff employed at the same campus on the day(s) the district is claiming staff development waiver minutes for that campus. Staff development not utilized as part of the waiver may still take place; however, "exchange/trade" days or professional development that staff receive on their own time outside of the school/workday may not be counted toward the waiver minutes allotted for staff development.

Comment: An employee from an ESC requested that Section 3.3.2 be updated to indicate that student record requests are not allowed before July 1.

Response: The agency disagrees as TEC, §25.002(a-1), only mandates that records be sent in 10 working days but makes no provision to limit the time that an LEA may request records from another LEA.

Comment: An individual requested that Section 3.3.2 of the SAAH be modified to clarify the expectation for submission of student records through the Texas Records Exchange (TREx) system according to TEC, §25.002(a-1).

Response: The agency disagrees as TEC, §25.002(a-1), already mandates that LEAs must fulfill records requests made through TREx in 10 working days. The agency has clarified the SAAH at adoption to indicate that records may be requested upon a student seeking or intending to enroll in the LEA.

Comment: An employee from an ESC requested that mealtime and recess also apply to grade level EE as included in the instructional time.

Response: The agency agrees and has modified the language in the SAAH at adoption to include mealtime for combined pre-K and EE programs.

Section 4 - Special Education

Comment: Disability Rights Texas commented that the proposed changes to 19 TAC Chapter 89 should be adopted before the rules are reflected in the adopted version of the SAAH.

Response: The agency agrees and has made necessary edits to align with 19 TAC §§89.1049, 89.1065, and 89.1141 in Sections 3 and 4 of the SAAH as well as in the glossary.

Comment: An individual requested that the Texas Education Agency consider including dyslexia and dyslexia services in Section 4 of the SAAH.

Response: The agency disagrees as dyslexia is already included where appropriate throughout Section 4.

Section 5 - Career and Technical Education (CTE)

Comment: Twenty-nine individuals and the superintendent of Tomball ISD expressed concern with the proposed language in Section 5 of the SAAH requiring that all bell schedules, including shortened schedules for pep rallies and assemblies, be used to calculate the 45-minute average for CTE courses for funding.

Response: The agency agrees. LEAs that receive CTE weighted funding must ensure CTE class periods are a minimum of 45 minutes on standard regular bell scheduled days. At

adoption, proposed amendments to the SAAH were modified to remove the requirements that CTE average course lengths include shortened bell schedules and other schedules not following the regular or standard bell schedule.

Section 7 - Prekindergarten (PRE-K)

Comment: An individual commented that the current restriction in the SAAH that does not allow LEAs to verify prekindergarten (pre-K) eligibility before April 1 is a hinderance to their registration process.

Response: The agency disagrees that the pre-K eligibility verification date should begin prior to April 1. The agency has determined that, because the preregistration window is impliedly connected to emergent bilingual needs, moving the verification date could result in emergent bilingual students not having the same opportunity to preregister as other eligible groups of students.

Comment: Two individuals requested that the SAAH be modified to clarify that participation in the National School Lunch Program (NSLP) through Medicaid Free and Reduced benefits is a pre-K qualifier while participation in medical Medicaid alone is not a pre-K qualifier.

Response: The agency agrees that clarification is needed regarding acceptable documentation to determine student eligibility for free pre-K for educationally disadvantaged children. At adoption, the agency has updated Section 7.2.3, Pre-K Eligibility Based on Being Educationally Disadvantaged (Eligible for the NSLP), to include clarification regarding documentation for this criterion.

Comment: An individual requested that the note associated with the chart on page 128 of the SAAH be amended to include 3-year-old pre-K programs.

Response: The agency agrees and revised and adjusted the chart at adoption for clarification.

Section 9 - Pregnancy Related Services

Comment: A data specialist requested that a bullet point in Section 9 of the SAAH be modified to include the word "on-campus" to indicate that regular classes must be taken on campus.

Response: The agency agrees, and the SAAH has been modified at adoption include the word "on-campus" to indicate that regular classes must be taken on campus.

Section 11 - Nontraditional Programs

Comment: Two individuals and the superintendent of Pharr-San Juan-Alamo ISD requested that Section 11.6.2 be updated to allow for Optional Flexible School Day Program attendance to carry over beyond a 6-week term in order to count toward funding.

Response: The agency disagrees. The agency has interpreted the applicable portion of TEC, §29.0822, since its enactment as a limitation on the amount of attendance that can be accumulated within a 6-week term in the proposed and past versions of the SAAH. TEA will establish a working group to understand the programmatic implications along with determining the optimal attendance funding and will update the next version of the SAAH.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code, §7.055(b)(35), which states that the commissioner shall perform duties in connection with the Foundation School Program (FSP) as prescribed by TEC, Chapter 48; TEC §12.251, which states the definition of adult high school charter school programs; TEC, §25.001, which states that a school district must allow for an active duty member of the armed forces of the United States to be allowed 90 days to provide proof of residency; TEC, §25.0344, which states that a parent serving as a peace officer or service member may request a transfer to a district and campus of their choice; TEC, §25.081, which states that, for each school year, each school district must operate so that the district provides for at least 75,600 minutes, including time allocated for instruction, intermissions, and recesses, for students; TEC, §25.081(d), which authorizes the commissioner to adopt rules to implement the section; TEC, §25.081(g), which states that a school district may not provide student instruction on Memorial Day but that if a school district would be required to provide student instruction on Memorial Day to compensate for minutes of instruction lost because of school closures caused by disaster, flood, extreme weather conditions, fuel curtailment, or another calamity, the commissioner shall approve the instruction of students for fewer than the number of minutes required under TEC, §25.081(a); TEC, §25.0812, which states that school districts may not schedule the last day of school for students before May 15; TEC, §25.087,which provides purposes for which a school district shall excuse a student from attending school; TEC, §28.02124, which states that a parent may request that a student repeat a course for high school credit; TEC, §29.081, which states that attendance accounting and FSP funding for Optional Flexible School Day Program participation may be generated through a remote or hybrid dropout recovery education program; TEC, §29.0822, which enables a school district to provide a program under this section that meets the needs of students described by TEC, §29.0822(a), for a school district that meets application requirements, including allowing a student to enroll in a dropout recovery program in which courses are conducted online. TEC, §29.0822, authorizes the commissioner to adopt rules for the administration of the section; TEC, §30A.153, which states that, subject to the limitation imposed under TEC, §30A.153(a-1), a school district or open-enrollment charter school in which a student is enrolled is entitled to funding under TEC, Chapter 48, or in accordance with the terms of a charter granted under TEC, §12.101, for the student's enrollment in an electronic course offered through the state virtual school network in the same manner that the district or school is entitled to funding for the student's enrollment in courses provided in a traditional classroom setting, provided that the student successfully completes the electronic course; TEC, §30A.153(d), which authorizes the commissioner to adopt rules necessary to implement the section, including rules regarding student attendance accounting; TEC, §48.004, which states that the commissioner shall adopt rules, take action, and require reports consistent with TEC, Chapter 48, as necessary to implement and administer the FSP; TEC, §48.005, which states that average daily attendance (ADA) is the quotient of the sum of attendance for each day of the minimum number of days of instruction as described under TEC, §25.081(a), divided by the minimum number of days of instruction; TEC, §48.005(m), which authorizes the commissioner to adopt rules necessary to implement the section and subsections (m-1) and (m-2), which address virtual or remote instruction-related funding; TEC, §48.102, which states that for each student in average daily attendance in a special education program under TEC, Chapter 29, Subchapter A, in a mainstream instructional arrangement, a school district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by 1.15. For each full-time equivalent student in average daily

attendance in a special education program under TEC, Chapter 29, Subchapter A, in an instructional arrangement other than a mainstream instructional arrangement, a district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by a weight determined according to its instructional arrangement; TEC, §48.103, which states that for each student that a district serves who has been identified as having dyslexia or a related disorder, the district is entitled to an annual allotment equal to the basic allotment multiplied by 0.1 or a greater amount provided by appropriation; TEC, §48.104, which states that for each student who does not have a disability and resides in a residential placement facility in a district in which the student's parent or legal guardian does not reside, a district is entitled to an annual allotment equal to the basic allotment multiplied by 0.2 or, if the student is educationally disadvantaged, 0.275. For each full-time equivalent student who is in a remedial and support program under TEC, §29.081, because the student is pregnant, a district is entitled to an annual allotment equal to the basic allotment multiplied 2.41; TEC, §48.105, which states that for each student in average daily attendance in a bilingual education or special language program under TEC, Chapter 29, Subchapter B, a district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by 0.1 or 0.15 if the student is in a bilingual education program using a dual language immersion/one-way or two-way program model, and for students not described in subdivision (1), 0.05 if the student is in bilingual education program using a dual language immersion/two-way program model; TEC, §48.106, which states that for each full-time equivalent student in average daily attendance in an approved career and technology education program in Grades 7-12 or in career and technology education programs, a district is entitled to an annual allotment equal to the basic allotment multiplied by a weight of 1.35 and $50 for each student that is enrolled in two or more advanced career and technology classes for a total of three or more credits; a campus designated as a Pathways in Technology Early College High School (P- TECH) school under TEC, §29.556; or a campus that is a member of the New Tech Network and that focuses on project-based learning and work-based education; TEC, §48.108, which states that for each student in average daily attendance in Kindergarten-Grade 3, a district is entitled to an annual allotment equal to the basic allotment multiplied by 0.1 if the student is educationally disadvantaged or a student of limited English proficiency, as defined by TEC, §29.052, and in bilingual education or special language program under TEC, Chapter 29, Subchapter B; TEC, §48.109, which states that for each student in the gifted and talented category, the district is entitled to an annual allotment equal to the basic allotment multiplied by 0.07 for each school year or a greater amount provided by appropriation. If by the end of the 12th month after receiving an allotment for developing a program a district has failed to implement a program, the district must refund the amount of the allotment to the agency within 30 days. Not more than five percent of a district's students in average daily attendance are eligible for funding under this section. If the state funds exceed amount of state funds appropriated in any year for the programs, the commissioner shall reduce the districts tier one allotment. If funds are less than the total amount appropriated for the school year, the commissioner shall transfer the remainder to any program. After each district has received allotted funds for this program, the State Board of Education may use up to $500,000 of the funds allocated under this section for other programs; TEC, §48.270, which states that when, in the opinion of the agency's director of school audits, audits or reviews of accounting, enrollment, or other records of a school district reveal deliberate falsification of the records, or violation of the provisions of TEC, Chapter 48, through which the district's share of state funds allocated under the authority of this chapter would be, or has been, illegally increased, the director shall promptly and fully report the fact to the State Board of Education, the state auditor, and the appropriate county attorney, district attorney, or criminal district attorney; and TEC, §49.204, which states that a school district with a local revenue in excess of entitlement may reduce the district's local revenue level by serving nonresident students who transfer to the district and are educated by the district but who are not charged tuition.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§7.055(b)(35), 12.251, 25.001, 25.0344, 25.081, 25.0812, 25.087, 28.02124, 29.081; 29.0822, 30A.153, 48.004, 48.005, 48.102, 48.103, 48.104, 48.105, 48.106, 48.108, 48.109, 48.270, and 49.204.

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

Filed with the Office of the Secretary of State on September 11, 2024.

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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For further information, please call: (512) 475-1497

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CHAPTER 150. COMMISSIONER'S RULES CONCERNING EDUCATOR APPRAISAL
SUBCHAPTER AA. TEACHER APPRAISAL

19 TAC §150.1012

The Texas Education Agency (TEA) adopts an amendment to §150.1012, concerning local optional teacher designation systems. The amendment is adopted with changes to the proposed text as published in the June 7, 2024 issue of the *Texas Register* (49 TexReg 3997) and will be republished. The adopted amendment updates procedures and terminology and provides TEA additional discretion to allow system changes outside the existing approval timeline in certain situations.

REASONED JUSTIFICATION: Section 150.1012 implements Texas Education Code (TEC), §21.3521 and §48.112, by establishing the requirements for school districts and charter schools to implement local teacher designation systems.

Following is a description of the adopted amendment to §150.1012.

The adopted amendment to §150.1012(a)(1)(D) updates the definition of the term "data capture year" to align with current program terminology.

The adopted amendment to §150.1012(c)(1)(A) clarifies existing procedure to include resubmissions of applications for review.

Adopted new §150.1012(d)(2) allows flexibility for school districts by expanding TEA's authority to accept a modification of

a district's local optional designation system outside of the existing timeline in cases where the timeline is unfeasible based on circumstances outside of a district's control. Based on public comment, the language was changed at adoption to add clarity.

The adopted amendment to §150.1012(f)(1) updates language to align with current program terminology. The amended language specifies that a renewal application is required in a district's fourth year after the system application is accepted.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began June 7, 2024, and ended July 8, 2024. Following is a summary of the public comments received and agency responses.

Comment: The Texas Classroom Teachers Association (TCTA) recommended further defining "designated teacher" in §150.1012(a)(1)(E) and including eligibility requirements.

Response: The agency disagrees. The relevant definition refers only to existing designated teachers for purposes of this rule. Eligibility requirements are clarified in other parts of this rule and through policy.

Comment: TCTA suggested language to clarify §150.1012(d)(2).

Response: The agency agrees. Therefore, §150.1012(d)(2) has been modified at adoption to clarify that the paragraph applies to system changes outlined in subsection (d) and that TEA makes the determination of whether the application timeline is unfeasible due to circumstances beyond a district's control.

Comment: TCTA recommended defining the process for requesting system changes that are outside of the approval timeline, as well as additional requirements.

Response: The agency disagrees. For these types of changes, the agency anticipates needing to work with districts to identify the need so the district can continue to implement its local designation system. The agency will consider processes to ensure transparency for stakeholders.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §21.3521, which establishes a local optional teacher designation system; and TEC, §48.112, which establishes a teacher incentive allotment.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §21.3521 and §48.112.

§150.1012. Local Optional Teacher Designation System.

(a) General provisions.

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

(A) Beginning of course--The first nine weeks of a year-long course or the first six weeks of a semester course.

(B) Charter school--A Texas public school that meets one of the following criteria:

(i) is operated by a charter holder under an open-enrollment charter granted either by the State Board of Education or commissioner of education pursuant to Texas Education Code (TEC), §12.101, identified with its own county district number;

(ii) has a charter granted under TEC, Chapter 12, Subchapter C, and is eligible for benefits under TEC, §11.174 and §48.252;

(iii) has a charter granted under TEC, §29.259, and Human Resources Code, §221.002; or

(iv) has a charter granted under TEC, §11.157(b).

(C) Classroom teacher--An educator, as defined by TEC, §5.001, who is employed by a school district and who, not less than an average of four hours each day, teaches in an academic instructional setting or a career and technical instructional setting. This term does not include an educational aide or a full-time administrator.

(D) Data capture year--The school year in which the teacher observation and student growth measure data is collected based on the accepted local teacher designation system.

(E) Designated teacher--An exemplary, master, or recognized teacher.

(F) Eligible teaching assignment--An assignment based on campus, subject taught, or grade taught.

(G) End of course--The last twelve weeks of a year-long course or the last six weeks of a semester course.

(H) National Board certification--Certification issued by the National Board for Professional Teaching Standards.

(I) Provisional approval--Conditional approval of a school district local optional teacher designation system that would require resubmission of system review, data validation, additional required documentation, video submission, and/or other technical assistance for further data submission.

(J) Reliability--The degree to which an instrument used to measure teacher performance and student growth produces stable and consistent results.

(K) Rural--A campus within a school district with fewer than 5,000 enrolled students that is categorized as a rural, non-metropolitan: stable, or non-metropolitan: fast growing district type by the Texas Education Agency (TEA); a campus within a school district with fewer than 5,000 enrolled students categorized as rural by the National Center for Education Statistics; or a campus defined in TEC, §48.112(a)(1).

(L) School district--The definition of a school district includes charter schools as defined in subparagraph (B) of this paragraph.

(M) Student growth--Student academic progress achieved in response to the pedagogical practices of teachers, as measured at the individual teacher level by one or more measures of student growth aligned to the standards of the course.

(N) Teacher category--One or more eligible teaching assignments evaluated with the same teacher observation rubric, student growth measure, and optional components and weighting as defined in a district's local designation system.

(O) Teacher observation--One or more observations of a teacher instructing students for a minimum of 45 minutes or multiple observations that aggregate to at least 45 minutes.

(P) Texas Student Data System (TSDS)--Data collected annually during the Class Roster Winter Submission.

(Q) Validity--The degree to which an instrument used to measure teacher performance and student growth measures what it is intended to measure.

(2) Fees for teacher incentive allotment teacher designation and system renewal. A school district requesting approval of a teacher designation system or renewal of such a system shall pay the applicable

fees listed in subparagraphs (A) and (B) of this paragraph. The following fees must be paid by the district and cannot be paid by the teachers submitted for designation:

(A) a $500 fee for each teacher submitted for designation to TEA; and

(B) a $2,500 system renewal fee for districts where all campuses meet the definition of rural pursuant to paragraph (1)(K) of this subsection the year prior to renewal application submission or a $10,000 system renewal fee for districts where not all campuses meet the definition of rural pursuant to paragraph (1)(K) of this subsection.

(b) Teacher eligibility.

(1) Teachers eligible to earn or receive designations under an approved local optional teacher designation system must meet the following requirements:

(A) the teacher is employed by the recommending school district or charter partner pursuant to subsection (a)(1)(B)(ii) or (iv) of this section in a role ID coded as 087 (Teacher) and corresponding class roles of 01, 02, or 03, if applicable, in TSDS for 90 days at 100% of the day (equivalent to four and one-half months or a full semester) or 180 days at 50-99% of the day and compensated for that employment. A charter partner operating under subsection (a)(1)(B)(ii) or (iv) of this section is required to report teacher-level data in TSDS or provide teacher-level data to its partner school district for reporting by the district in TSDS;

(B) the teacher was employed by the recommending school district or charter partner pursuant to subsection (a)(1)(B)(ii) or (iv) of this section during the year the teacher's effectiveness was collected in alignment with the recommended designation;

(C) the teacher is not currently designated under a local optional teacher designation system, unless the teacher is being recommended for a higher designation; and

(D) the teacher does not have a suspension, revocation, permanent surrender, or surrender of a certificate issued by the State Board for Educator Certification and is not found on the registry of persons not eligible for employment in public schools under TEC, §22.092, and Chapter 153, Subchapter EE, of this title (relating to Commissioner's Rules Concerning Registry of Persons Not Eligible for Employment in Public Schools).

(2) School districts are eligible to receive funding for each designated teacher if the teacher meets the requirements in paragraph (1)(A) of this subsection for each district. TEA may exercise administrative discretion to determine the eligibility of a teacher if a district disputes TSDS data. Disputes must be received by TEA by the second Friday in May each year; however, TEA may exercise administrative discretion to allow disputes to be considered outside of this timeline.

(c) Application procedures and approval process.

(1) The following provisions apply to applications submitted under this section.

(A) If TEA determines that an application or resubmission is incomplete, TEA may provide the applicant with notice of the deficiency and an opportunity to submit missing required information. If the missing required information is not submitted within seven business days after the original submission deadline, the application will be denied.

(B) If TEA determines that a system application does not meet the standards established under TEC, §21.3521, and this section, TEA shall permit the applicant to resubmit the application by June 30. If no resubmission is made by the deadline, the application will be denied.

(C) Applicants that are determined to meet the standards established under TEC, §21.3521 and §48.112, and the requirements of the statutorily based framework provided in the figure in this subparagraph shall be approved.
Figure: 19 TAC §150.1012(c)(1)(C) (No change.)

(D) Applications that are determined to meet the standards established under TEC, §21.3521 and §48.112, and this section shall be approved for an initial term of five years. Applications that are determined to need ongoing support may result in provisional approval.

(2) The application shall include the following for each eligible teaching assignment:

(A) components of a local system for issuing designations, including:

(i) a teacher observation component that contains:

(I) a plan for calibration, using the rubric approved under subclause (II) of this clause, that includes congruence among appraisers, a review of teacher observation data and the correlation between teacher observation and student growth data, and implementation of next steps; and

(II) an approved teacher observation rubric including the Texas Teacher Evaluation and Support System, Marzano's Teacher Evaluation Model and rubric created by the National Institute for Excellence in Teaching and The Danielson Group, or another rubric that is based on observable, job-related behaviors that are described with progressive descriptors for each dimension, including alignment to §149.1001 of this title (relating to Teacher Standards) and a clear proficiency indicator. A school district may be required to provide teacher observation videos if the ratings cannot be verified from the data submitted; and

(ii) a specified student growth component by measure and/or assessment that:

(I) if using a student learning objective, is aligned to the Texas Student Learning Objectives (SLO) process described on the TEA website for SLOs at https://texasslo.org;

(II) if using a portfolio method, demonstrates that student work is aligned to the standards of the course, demonstrates mastery of standards, utilizes a skills proficiency rubric, and includes criteria for scoring various artifacts;

(III) if using school district- or teacher-created assessments, is aligned to the standards of the course and conforms to a district rubric for district- or teacher-created assessments. A school district must approve district- or teacher-created assessments for the purpose of determining student growth by using a district process and rubric for approval of such assessments. Assessments must measure beginning of course to end of course or from end of course from the previous course to end of current course;

(IV) if using a school district- or teacher-created assessment in conjunction with a third-party assessment, is aligned to the standards of the course and conforms to a district rubric for district- or teacher-created assessments. A school district must approve district- or teacher-created assessments for the purpose of determining student growth by using a district process and rubric for approval of such assessments. Assessments must measure beginning of course to end of course or from end of course from the previous course to end of current course;

(V) if using third-party assessments with third-party accompanying growth targets, is aligned to the standards for the course and contains questions that cover a range of student skill levels. Assessments must measure beginning of course to end of course or from end of course from the previous course to end of current course; or

(VI) if using third-party assessments with district-created growth targets, is aligned to the standards of the course and contains questions that cover a range of student skill levels. Assessments must measure beginning of course to end of course or from end of course from the previous course to end of current course. Mid-year data may be used in instances where the student was not present for the beginning of course administration.

(B) test administration processes for all student growth that will lead to validity and reliability of results, including:

(i) test security protocols;

(ii) testing windows;

(iii) testing accommodations; and

(iv) annual training for test administrators; and

(C) data for all teachers in eligible teaching assignments, including student growth, and observation data for all teachers in eligible teaching assignments for the data capture year in alignment with TEC, §21.351 or §21.352. Multi-year data shall include student growth and observation data from the same year and teacher category. Single-year data shall include student growth and observation data from the same teacher category. TEA may exercise administrative discretion regarding the requirements of this subparagraph in situations in which data is difficult to provide due to circumstances beyond a district's control and the district would otherwise be unable to provide sufficient data for application consideration.

(d) System expansion, spending modifications, and changes.

(1) School districts must apply for approval through the system application process the year prior to implementation if:

(A) adding new eligible teaching assignments or campuses (if started with less than all campuses in the district);

(B) adding a new teacher observation rubric;

(C) changing a previously approved teacher observation rubric;

(D) adding new student growth measures;

(E) changing the student growth measure used by an eligible teaching assignment;

(F) adding or changing the third-party assessment used in a student growth measure;

(G) adding or changing the type of assessment used in a student growth measure;

(H) removing a student growth measure used by an eligible teaching assignment;

(I) removing an eligible teaching assignment; or

(J) modifying a district's spending plan. TEA may exercise administrative discretion to allow spending modifications outside of the approval timeline outlined in this subsection.

(2) TEA may exercise administrative discretion to allow system changes outlined in this subsection outside of the approval timeline outlined in this subsection in situations in which TEA determines that the application timeline is unfeasible due to circumstances beyond a district's control, causing the district to be unable to implement its current system with fidelity.

(e) Monitoring and annual program submission of approved local designation systems.

(1) For the program submission, approved school districts shall submit the following information regarding a local teacher designation system and associated spending:

(A) the distribution of allotment funds from the previous school year in accordance with the funding provisions of subsection (g) of this section;

(B) a response and implementation plan to annual surveys developed by TEA administered to teachers, campus principals, and human resources personnel gauging the perception of a school district's local designation system; and

(C) teacher observations and student growth measure data for all teachers in eligible teaching assignments if school districts are submitting new teacher designations collected in alignment with §150.1003(b)(5) and (l)(3) of this title (relating to Appraisals, Data Sources, and Conferences). TEA reserves the right to request data for the purposes of performance evaluation and investigation based on data review outcomes. TEA may exercise administrative discretion in circumstances where data is difficult to provide and a district would otherwise be unable to provide sufficient data for application consideration.

(2) Outcomes of the annual program submission may lead to a review, pursuant to TEC, §48.272(e), and subject to the period of review limitation in TEC, §48.272(f), of the local optional designation system that may be conducted at any time at the discretion of TEA staff.

(f) Continuing approval and renewal.

(1) Approved local optional teacher designation systems are subject to review at least once every five years. However, a review may be conducted at any time at the discretion of TEA. The renewal application is required in a district's fourth year after the system application is accepted and will follow the process and requirements outlined in subsection (c) of this section.

(A) Charter management organizations that operate approved systems with multiple campus district numbers shall submit an application for each system at the time of required renewal.

(B) Systems with provisional approval in a district's fourth year shall renew in the year after receiving system approval.

(2) Approval of local optional designation systems are voidable by TEA for one or more of the following reasons:

(A) failure to fulfill all local optional designation system requirements as defined in this section;

(B) failure to comply with annual program submission requirements;

(C) failure to comply with the provisions of TEC, §21.3521 and §48.112;

(D) failure to implement the local optional teacher designation system as approved by TEA;

(E) failure to remove district employees from the designation determination process who have a conflict of interest and acted in bad faith to influence designations; or

(F) at the discretion of the commissioner.

(3) Approval of individual teacher designations are voidable by TEA for one or more of the following reasons:

(A) a teacher has not fulfilled all designation requirements;

(B) the school district at which the designation was earned has had its local optional designation system voided;

(C) the National Board for Professional Teaching Standards revokes a National Board certification that provided the basis for a teacher's designation;

(D) the suspension, revocation, permanent surrender, or surrender of a certificate issued by the State Board for Educator Certification to a designated teacher;

(E) the addition of the designated teacher to the registry of persons not eligible for employment in public schools under TEC, §22.092, and Chapter 153, Subchapter EE, of this title;

(F) the district issued a designation in bad faith by not removing a district employee from the designation determination process who had a conflict of interest; or

(G) at the discretion of the commissioner.

(g) Funding.

(1) State funding.

(A) School districts will receive teacher incentive allotment funds based on prior-year estimates. The final amount will be based on data from the current school year as provided in subparagraph (D) of this paragraph. Any difference from the estimated amount will be addressed as part of the Foundation School Program settle-up process according to the provisions in TEC, §48.272.

(B) A school district is eligible to earn the base allotment for each designated teacher assigned to a zero-enrollment campus, a campus with fewer than 20 students, a juvenile justice alternative education program, a disciplinary alternative education program, a residential facility, or central administration if the designated teacher meets the requirements in subsection (b)(2) of this section, plus the multiplier based on the school district's average student point value and rural status, if applicable.

(C) Funding for teachers who work at multiple campuses shall be calculated and split equally among the campuses where the employee is working in a role coded as 087 (Teacher) in TSDS at each campus.

(D) Designated teacher campus and district of employment shall be determined annually by data collected in TSDS.

(E) School districts shall annually verify and confirm teacher designations and corresponding allotments.

(F) TEA may exercise administrative discretion to redirect or recalculate funds to the district where the designated teacher works if a district disputes TSDS data. Disputes must be received by the second Friday in May each year; however, TEA may exercise administrative discretion to allow disputes to be considered outside of this timeline.

(G) The average point value and rural status for the Texas School for the Deaf and the Texas School for the Blind and Visually Impaired will be calculated by utilizing the home districts of the schools' students.

(2) Status and use of state funds. A school district that receives teacher incentive allotment funding must comply with the requirements of TEC, §48.112, including the requirement that at least 90% of each allotment must be used for compensation of teachers employed at the campus at which the teacher for whom the district received the allotment is employed. School districts that receive funding for designated teachers employed by the charter partner for charter partnerships pursuant to subsection (a)(1)(B)(ii) or (iv) of this section shall pass along at least 90% of the teacher incentive allotment funding and 100% of fees pursuant to subsection (a)(2) of this section paid by the charter partner to the charter partner. Charter partners and districts shall work together to ensure that the spending requirements of TEC, §48.112, are met.

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

Filed with the Office of the Secretary of State on September 11, 2024.

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 289. RADIATION CONTROL
SUBCHAPTER E. REGISTRATION REGULATIONS

25 TAC §289.229

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), adopts amendment to §289.229, concerning Radiation Safety Requirements for Accelerators, Therapeutic Radiation Machines, Simulators, and Electronic Brachytherapy Devices. The amendment to §289.229 is adopted with changes to the proposed text as published in the June 14, 2024, issue of the *Texas Register* (49 TexReg 4329). This rule will be republished.

BACKGROUND AND JUSTIFICATION

The adoption updates regulations concerning accelerator facilities and operations. These changes address concerns developing in the field, requiring a comprehensive update to ensure the safety, quality, and effectiveness of accelerator-based facilities.

Language was added to hold a facility using an accelerator to the requirements in §289.229, even if they are not registered. Veterinary requirements have been removed from this rule and incorporated into §289.233, concerning Radiation Control Regulations for Radiation Machines Used in Veterinary Medicine, which is dedicated to veterinary-specific facilities.

Equipment Performance Evaluation (EPE) requirements have been introduced for Computed Tomography (CT) units used in

simulation. This addition enhances safety and promotes the principle of ALARA (as low as reasonably achievable).

Safety interlock requirements have been included for add-on equipment. This measure ensures the addition of equipment into accelerator systems, after installation, meets specified safety standards protecting both patients and operators.

The rule has been reorganized with Electronic Brachytherapy (EBT) requirements relocated from the end of the rule to the general requirements section. This reorganization makes the rule more accessible and coherent.

COMMENTS

The 31-day comment period ended Monday, July 15, 2024.

During this period, DSHS received comments regarding the proposed rule from five commenters, including the American Society of Radiologic Technologists (ASRT), the Texas Medical Association (TMA), RefleXion, the Texas Society of Radiologic Technologists (TxSRT), and one internal comment from DSHS. A summary of comments relating to the §289.229 and DSHS responses follows.

Comment: The ASRT comments to commend DSHS, "by requiring persons operating radiation machines for human use to meet the credentialing requirements as specified under the Medical Radiologic Technologist Certification Act and limiting supervision to physicians, Texas is taking critical steps to ensure that Texans receive safe, high-quality care."

Response: DSHS Radiation Program appreciates ASRT's comment and agrees to keep the language as written.

Comment: TMA comments to express concern for language removed from §289.229(b) concerning "supervision."

Response: DSHS appreciates TMA's comment and agrees. The removal of this language does change the intent of the rule. DSHS added this language back into the adopted rule. The language is relocated to §289.229(c)(5) and (6) in the Prohibitions subsection.

Comment: RefleXion's comment requests clarity in §289.229(c)(4) because "this language is ambiguous as to whether it only applies to remote production of radiation or remote operation of all aspects of the system. We agree that remote production of radiation should be prohibited as a safety practice but other aspects of remote operations, including service should be allowed."

Response: DSHS Radiation Program appreciates RefleXion's comment. DSHS agrees the language needs clarification. The language is updated to "remote operation of radiation machines on humans is prohibited."

Comment: TxSRT's comment expresses support for the amendment to "§289.229(c)(4) which prohibits remote operation of any radiation machine."

Response: DSHS Radiation Program appreciates TxSRT's comment and updates language to include "on humans" as noted in the previous response.

Comment: DSHS internal comment notes the definition of "person" in §289.231 applies to §289.229 registrants because §289.229(b)(2)(F) requires registrants to follow the additional requirements in §289.231. The definition of "person" in §289.231 includes "any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, local government, any other state or political subdivision or agency thereof, or any other legal entity, and any legal successor, representative, agent, or agency of the foregoing, other than the NRC [Nuclear Regulatory Commission], and other than federal government agencies licensed or exempted by the NRC." The requirements in §289.229(d), (e)(48), (e)(58), (f)(3)(H)(v), (f)(4)(A), (h)(1)(C) and (E), (h)(3)(C)(i)(I), (h)(5)(E)(i)(V) and (VI), and (h)(5)(E)(ii) and (iii), are intended to apply to a human individual not a person as defined above.

Response: DSHS made changes to the rule references noted above. The word "person" is changed to "individual."

STATUTORY AUTHORITY

The amendment is authorized by Texas Health and Safety Code Chapter 401 (the Texas Radiation Control Act), which provides for DSHS radiation control rules and regulatory program to be compatible with federal standards and regulations; §401.051, which provides the required authority to adopt rules and guidelines relating to the control of sources of radiation; §401.064, which provides for the authority to adopt rules related to inspection of x-ray equipment; §401.101, providing for DSHS registration of facilities possessing sources of radiation; Chapter 401, Subchapter J, which authorizes enforcement of the Act; and Texas Government Code §531.0055 and Texas Health and Safety Code §1001.075, which authorize the Executive Commissioner of HHSC to adopt rules and policies for the operation and provision of health and human services by DSHS and the administration of Texas Health and Safety Code Chapter 1001.

§289.229. Radiation Safety Requirements for Accelerators, Therapeutic Radiation Machines, Radiation Therapy Simulation Systems, and Electronic Brachytherapy Devices.

(a) Purpose. This section establishes the following requirements for using accelerators, therapeutic radiation machines, radiation therapy simulation systems, and electronic brachytherapy (EBT) devices.

(1) Requirements for the registration of a person using radiation machines used in healing arts.

(A) A person must not use radiation machines except as authorized in a certificate of registration issued by the Department of State Health Services (department) as specified in the requirements of this section.

(B) A person who receives, possesses, uses, owns, or acquires radiation machines before receiving a certificate of registration is subject to the requirements of this chapter.

(2) Requirements are intended to control receipt, possession, use, and transfer of radiation machines by any person so the total radiation dose to an individual, excluding background radiation, does not exceed the standards for protection against radiation prescribed in this section. This section does not limit actions necessary to protect public health and safety during an emergency.

(3) Requirements for specific record keeping and general provisions of records and reports.

(b) Scope.

(1) This section applies to a person who receives, possesses, uses, acquires, or transfers an accelerator used in industrial operations and research and development, therapeutic radiation machines, radiation therapy simulation systems, and EBT devices used in the healing arts. The registrant is responsible for the administrative control and for directing the use of the accelerators, other therapeutic

radiation machines, radiation therapy simulation systems, and EBT devices.

(2) The requirements of this section are in addition to and not in substitution for other applicable requirements of:

(A) §289.203 of this chapter (relating to Notices, Instructions, and Reports to Workers; Inspections);

(B) §289.204 of this chapter (relating to Fees for Certificates of Registration, Radioactive Material Licenses, Emergency Planning and Implementation, and Other Regulatory Services);

(C) §289.205 of this chapter (relating to Hearing and Enforcement Procedures);

(D) §289.226 of this chapter (relating to Registration of Radiation Machine Use and Services);

(E) §289.227 of this chapter (relating to Use of Radiation Machines in the Healing Arts); and

(F) §289.231 of this chapter (relating to General Provisions and Standards for Protection Against Machine-Produced Radiation).

(3) Registrants engaged in industrial radiographic operations are subject to the requirements of §289.255 of this chapter (relating to Radiation Safety Requirements and Licensing and Registration Procedures for Industrial Radiography).

(4) Registrants engaged in veterinary accelerator operations are subject to the requirements of §289.233 of this chapter (relating to Radiation Control Regulations for Radiation Machines Used in Veterinary Medicine).

(5) An entity, defined in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) as a "covered entity" under 45 Code of Federal Regulations (CFR) Parts 160 and 164 may be subject to privacy standards governing how information identifying a patient can be used and disclosed. Failure to follow HIPAA requirements may result in the department referring a potential violation to the United States Department of Health and Human Services.

(c) Prohibitions.

(1) The department prohibits the use of accelerators, therapeutic radiation machines, radiation therapy simulation systems, or EBT devices posing a significant threat or danger to occupational and public health and safety, as specified in §289.205 and §289.231 of this chapter.

(2) An individual must not be exposed to the useful beam of accelerators, therapeutic radiation machines, radiation therapy simulation systems, or EBT devices except for healing arts purposes and unless a physician of the healing arts has authorized such exposure. This provision specifically prohibits the deliberate exposure of an individual for training, demonstration, or other non-healing arts purposes.

(3) Research and development using radiation machines on humans is prohibited unless approved by an Institutional Review Board (IRB) as required by 45 CFR Part 46 and 21 CFR Part 56. The IRB must include at least one physician of the healing arts to direct any use of radiation as specified in §289.231(b) of this chapter.

(4) Remote operation of radiation machines on humans is prohibited.

(5) Use of therapeutic radiation machines in the healing arts without the supervision of a physician of the healing arts is prohibited.

(6) Use of EBT devices in the healing arts without the supervision of a certified physician, as defined in subsection (e)(12) of this section, is prohibited.

(d) Exemptions. An individual who is a sole physician, sole operator, and the only occupationally exposed individual is exempt from the following requirements:

(1) §289.203(b) and (c) of this chapter; and

(2) subsection (h)(1)(G) of this section.

(e) Definitions. When used in this section, the following words and terms have the following meaning unless the context indicates otherwise.

(1) Absorbed dose (D)--The mean energy imparted by ionizing radiation to matter. Absorbed dose is determined as the quotient of dE by dM, where dE is the mean energy imparted by ionizing radiation to the mass dM. The System International (SI) unit of absorbed dose is joule per kilogram and the special name of the unit of absorbed dose is gray (Gy). The previously used special unit of absorbed dose (rad) is replaced by gray.

(2) Absorbed dose rate--Absorbed dose per unit time for machines with timers, or dose monitor unit per unit time for linear accelerators.

(3) Accelerator beam quality--The type and penetrating power of the ionizing radiation produced for certain machine settings.

(4) Air kerma--The kinetic energy released in air by ionizing radiation. Kerma is the quotient of dE by dM, where dE is the sum of the initial kinetic energies of all the charged ionizing particles liberated by uncharged ionizing particles in air of mass dM. The SI unit of air kerma is joule per kilogram and the special name for the unit of kerma is Gy.

(5) Barrier--See definition for protective barrier.

(6) Beam axis--The axis of rotation of the beam limiting device.

(7) Beam-flattening filter--See definition for field-flattening filter.

(8) Beam-limiting device--A field-defining collimator, integral to the therapeutic radiation machine, which provides a means to restrict the dimensions of the useful beam.

(9) Beam monitoring system--A system designed and installed in the radiation head to detect and measure the radiation present in the useful beam.

(10) Beam quality--The penetrating power of the x-ray beam identified numerically by the half-value layer and influenced by kilovolt peak (kVp) and filtration.

(11) Central axis of the beam--An imaginary line passing through the center of the useful beam and the center of the plane figure formed by the edge of the first beam-limiting device.

(12) Certified physician--A physician licensed by the Texas Medical Board and certified in radiation oncology or therapeutic radiology.

(13) Coefficient of variation or C--The ratio of the standard deviation to the mean value of a population of observations. It is estimated using the following equation:
Figure: 25 TAC §289.229(e)(13)

(14) Collimator--A device or mechanism by which the x-ray beam is restricted in size.

(15) Computed tomography (CT)--The production of a tomogram by the acquisition and computer processing of x-ray transmission data.

(16) Continuous pressure type switch--A switch that can only power a device when the operator maintains continuous pressure on the switch.

(17) Control panel--The part of the radiation machine where the switches, knobs, push buttons, and other hardware necessary for manually setting the technique factors are located. For purposes of this section, console is an equivalent term.

(18) Conventional radiation therapy simulator--A radiation machine with radiographic or fluoroscopic capabilities uniquely designed for the direct purpose of simulating radiation therapy treatment ports.

(19) CT conditions of operation--All selectable parameters governing the operation of a CT x-ray system, including nominal tomographic section thickness, filtration, and the technique factors as defined in this subsection.

(20) CT radiation therapy simulator--CTs that interface with radiation therapy linear accelerators.

(21) Diaphragm--A device or mechanism by which the x-ray beam is restricted in size.

(22) Dose monitor unit (DMU)--A unit response from the beam monitoring system from which the absorbed dose can be calculated.

(23) Dosimetry system--An ion chamber used as a dosimeter for measurement of clinical photon and electron beams with calibration coefficients determined either in air or in water and traceable to a national primary standards dosimetry laboratory.

(24) Electronic brachytherapy--A method of radiation therapy using electrically generated x-rays to deliver a radiation dose at a distance of up to a few centimeters by intracavitary, intraluminal, or interstitial application, or by applications with the source in contact with the body surface or very close to the body surface.

(25) Electronic brachytherapy (EBT) device--The system used to produce and deliver therapeutic radiation, including the x-ray tube, the control mechanism, the cooling system, and the power source.

(26) External beam radiation therapy--Therapeutic irradiation in which the source of radiation is at a distance from the body.

(27) Field-flattening filter--A filter used to homogenize the absorbed dose rate over the radiation field.

(28) Field size--The dimensions along the major axes of an area in a plane perpendicular to the central axis of the beam at the nominal treatment or examination source-to-image distance and defined by the intersection of the major axes and the 50 percent isodose line.

(29) Focal spot--The area projected on the anode of the x-ray tube bombarded by the electrons accelerated from the cathode and from which the useful beam originates.

(30) Gantry--The part of the radiation therapy system that supports and allows possible movements of the radiation head about the center of rotation.

(31) Gray (Gy)--The SI unit of absorbed dose, kerma, and specific energy imparted equal to 1 joule per kilogram. The previous unit of absorbed dose (rad) is replaced by the gray (1 Gy = 100 rad).

(32) Half-value layer (HVL)--The thickness of a specified material that attenuates x-radiation or gamma radiation to the extent the exposure rate (air kerma rate) or absorbed dose rate is reduced to one-half of the value measured without the material at the same point.

(33) Healing arts--Any treatment, operation, diagnosis, prescription, cure, relief, palliation, adjustment, or correction of any human disease, ailment, deformity, injury, or unhealthy or abnormal physical or mental condition.

(34) Image receptor--Any device that transforms incident x-ray photons either into a visible image or into another form made into a visible image by further transformations.

(35) Institutional Review Board (IRB)--Any board, committee, or other group formally designated by an institution to review, approve the initiation of, and conduct a periodic review of biomedical research involving human subjects.

(36) Image-Guided Radiation Therapy (IGRT)--Radiation therapy employing advanced imaging to maximize accuracy and precision throughout the entire process of treatment delivery with the goal of optimizing the accuracy and reliability of radiation therapy to the target while minimizing dose to normal tissues.

(37) Intensity-Modulated Radiation Therapy (IMRT)--A technology for delivering highly conformal external beam radiation to a well-defined treatment volume with radiation beams whose intensity varies across the beam.

(38) Interlock--A device preventing the start or continued operation of equipment unless certain predetermined conditions prevail.

(39) Interruption of irradiation--The stopping of irradiation with the possibility of continuing irradiation without resetting of operating conditions at the control panel.

(40) Irradiation--The exposure of a living being or matter to ionizing radiation.

(41) Irradiation filter (filter)--Radiation absorbers or beam-modifying devices placed in the useful high-energy beam to shape the beam and optimize the target volume dose distribution in therapeutic radiation machines subject to subsection (h) of this section. Irradiation filter types are defined as follows.

(A) Dynamic or virtual wedge--A wedge produced by computer-controlled movement of one or more collimator jaws. The wedge generates a spatial dose distribution similar to a physical wedge. The wedge-shaped graduated attenuation across the radiation beam can produce symmetric or asymmetric radiation fields.

(B) Multileaf collimator (MLC) wedge filter--A beam-limiting device made of individual "leaves" of a high atomic numbered material, usually tungsten, that can move independently in and out of the path of a radiotherapy beam to shape and vary its intensity.

(C) Physical wedge filter--Physical wedges are made of metallic material and are manually placed in the useful radiation beam. The wedges are shaped in such a way as to produce graduated attenuation across the radiation field.

(D) Stereotactic radiosurgery (SRS) filter--A precise form of target localization delivering radiation through narrow circular cones or circular collimator tubes with lenses or computer leaf-driven systems enabling more precise beam filtering or shaping for complex radiation fields.

(42) Isocenter--The center of the sphere through which the useful beam axis passes while the gantry moves through its full range of motions.

(43) Kilovolt (kV) (kilo electron volt (keV))--The energy given to a particle with one electron charge when passing through a potential difference of one thousand volts in a vacuum. (Note: current convention is to use kV for photons and keV for electrons.)

(44) Kilovolt peak (kVp)--See definition for peak tube potential.

(45) Lead equivalent--The thickness of lead affording the same attenuation, under specified conditions, as the material in question.

(46) Leakage radiation--Radiation emanating from the source assembly except for the useful beam and radiation produced when the exposure switch or timer is not activated.

(47) Leakage technique factors--The technique factors associated with the source assembly used when measuring leakage radiation.

(48) Licensed medical physicist--An individual holding a current Texas license under the Medical Physics Practice Act, Texas Occupations Code Chapter 602.

(49) Light field--The area illuminated by light, simulating the radiation field.

(50) Medical event--An event meeting the criteria specified in subsection (i) of this section.

(51) Megavolt (MV) (megaelectron volt (MeV))--The energy given to a particle with one electron charge when passing through a potential difference of one million volts in a vacuum.

(52) Mobile EBT device--An EBT device transported from one address to be used at another address.

(53) Moving beam radiation therapy--Radiation therapy with any planned displacement of radiation field or patient relative to each other, or with any planned change of absorbed dose distribution. It includes arc, skip, conformal, intensity modulation, and rotational therapy.

(54) Nominal treatment distance--The following nominal treatment distances apply.

(A) For electron irradiation, the distance from the scattering foil, virtual source, or exit window of the electron beam to the entrance surface of the irradiated object along the central axis of the useful beam, as specified by the manufacturer.

(B) For x-ray irradiation, the virtual source or target to isocenter distance along the central axis of the useful beam to the isocenter. For non-isocentric equipment, this distance is specified by the manufacturer.

(55) Output--The exposure rate (air kerma rate), dose rate, or a quantity related to these rates from a therapeutic radiation machine.

(56) Peak tube potential--The maximum value of the potential difference in kilovolts across the x-ray tube during exposure.

(57) Phantom--An object behaving in essentially the same manner as tissue, with respect to absorption or scattering of the ionizing radiation in question.

(58) Physician--An individual licensed by the Texas Medical Board to practice medicine under Texas Occupations Code Chapter 155.

(59) Port film--An x-ray exposure made with a radiation therapy system to visualize a patient's treatment area using radiographic film.

(60) Portable shielding--Moveable shielding placed in the primary or secondary beam to reduce radiation exposure to the patient, occupational worker, or a member of the public. The shielding can be easily moved to position using mobility devices or by hand.

(61) Prescribed dose--The total dose and dose per fraction as documented in the written directive. The prescribed dose is an estimation from measured data from a specified therapeutic machine using clinically acceptable and historically consistent assumptions for the treatment technique and calculations previously used for patients treated with the same clinical technique.

(62) Primary dose monitoring system--A system monitoring the useful beam during irradiation and terminating irradiation when a preselected number of monitor units are delivered.

(63) Protective apron--An apron made of radiation-absorbing materials used to reduce radiation exposure.

(64) Protective barrier--A barrier of radiation-absorbing materials used to reduce radiation exposure. The types of protective barriers are as follows.

(A) Primary protective barrier. A barrier sufficient to attenuate the useful beam to the required degree.

(B) Secondary protective barrier. A barrier sufficient to attenuate the scatter radiation to the required degree.

(65) Protective glove--A glove made of radiation-absorbing materials used to reduce radiation exposure.

(66) Quality assurance (QA) check--A test or analysis performed at a specified interval to verify the consistent output of radiation equipment.

(67) Radiation detector--A device providing, by either direct or indirect means, a signal or other indication suitable for use in measuring one or more quantities of incident radiation.

(68) Radiation field--See definition for useful beam.

(69) Radiation machine--Any device capable of producing ionizing radiation except those devices with radioactive material as the only source of radiation.

(70) Radiation therapy simulation system --An x-ray system intended for localizing and confirming the volume to be irradiated during radiation treatment and confirming the position and size of the therapeutic irradiation field.

(71) Radiation therapy system--A system utilizing machine-produced, prescribed doses of ionizing radiation for treatment.

(72) Radiation treatment head--The structure from which the useful beam emerges.

(73) Scan--The complete process of collecting x-ray transmission data to produce one or more tomograms.

(74) Scan increment--The amount of relative displacement of the patient with respect to the CT x-ray system between successive scans measured along the direction of such displacement.

(75) Scan sequence--A preselected set of two or more scans performed consecutively under preselected CT conditions of operation.

(76) Scan time--The period between the beginning and end of x-ray transmission data accumulation for a single scan.

(77) Scattered radiation--Secondary radiation occurring when the beam intercepts an object causing the x-rays to be scattered.

(78) Secondary dose monitoring system--A system terminating irradiation in the event of failure of the primary dose monitoring system.

(79) Shutter--A device attached to the tube housing assembly capable of completely intercepting the useful beam and with a lead equivalency greater than or equal to the tube housing assembly.

(80) Source-to-skin distance (SSD)--The distance from the source to the skin of the patient.

(81) Stationary beam therapy--Radiation therapy without displacement of one or more mechanical axes relative to the patient during irradiation.

(82) Supervision--Delegating the task of applying radiation to a person by a physician. The physician can only delegate tasks to an individual certified under the Medical Radiologic Technologist Act, Texas Occupations Code Chapter 601. The physician assumes full responsibility for these tasks and ensures the tasks are administered correctly.

(83) Target--The part of an x-ray tube or accelerator onto which a beam of accelerated particles is directed to produce ionizing radiation.

(84) Termination of irradiation--The stopping of irradiation in a fashion not permitting the continuation of irradiation without resetting operating conditions at the control panel.

(85) Therapeutic radiation machine--X-ray, particle, or electron-producing equipment designed and used for external beam radiation therapy.

(86) Traceable to a national standard--This indicates a quantity or a measurement has been compared to a national standard, for example the National Institute of Standards and Technology, directly or indirectly through one or more intermediate steps and that all comparisons have been documented.

(87) Tube housing assembly--The tube housing with tube installed.

(88) Useful beam--Radiation passing through the window, aperture, cone, or other collimating device of the source housing. Also referred to as the primary beam.

(89) Virtual simulation--A process using the import, manipulation, display, and storage of electronic patient images to create linear accelerator treatment ports.

(90) Virtual source--A point from which radiation appears to originate.

(91) Wedge transmission factor--The ratio of doses, with and without the wedge, at a point along the central axis of the useful beam that compensates for the decrease in dose produced by the filter.

(92) Written directive--An order in writing for the administration of radiation to a specific patient as specified in subsection (h)(1)(F)(ii) of this section.

(f) Accelerators used for research and development or industrial operations.

(1) Registration. Each person possessing an accelerator for non-human use must apply for and receive a certificate of registration from the department before beginning use of the accelerator. A person may energize the accelerator for purposes of installation and acceptance testing before receiving a certificate of registration from the department as specified in §289.226(i)(1) of this chapter.

(2) Facility requirements.

(A) Each accelerator facility must be provided with primary and secondary barriers necessary to assure compliance with §289.231(m) and (o) of this chapter.

(B) A radiation survey must be conducted when the accelerator is registered and capable of producing radiation to determine compliance with §289.231(m) and (o) of this chapter.

(C) The registrant must maintain a copy of the initial and all subsequent vault survey reports for inspection by the department as specified in subsection (l) of this section. Vault surveys must be performed:

(i) on all new and existing facilities not previously surveyed by, or under the direction of, the registrant; and

(ii) upon installation, replacement, or upgrade to a higher energy accelerator.

(D) The registrant must maintain a copy of the initial survey report for inspection by the agency in accordance with subsection (l) of this section. A completed survey report must include:

(i) a diagram of the facility detailing building structures and the position of the accelerator, control panel, and associated equipment;

(ii) a description of the accelerator, including the manufacturer, model and serial number, beam type, and beam energy;

(iii) a description of the instrumentation used to determine radiation measurements, including the date and source of the most recent calibration for each instrument used;

(iv) conditions under which radiation measurements were taken;

(v) survey data including:

(I) projected annual total effective dose equivalent (TEDE) in areas adjacent to the accelerator; and

(II) a description of workload, use, and occupancy factors employed in determining the projected annual TEDE; and

(vi) documentation of all instances where the facility violates this chapter's applicable requirements. Any deficiencies detected during the survey must be corrected before using the accelerator.

(3) Safety requirements.

(A) Interlock systems, including inherent, add-on, and aftermarket devices attaching to the accelerator, must comply with the following requirements.

(i) Instrumentation, readouts, and controls in the accelerator console are clearly identified.

(ii) Each entrance into a target room or other high radiation area is provided with a safety interlock terminating the useful beam under conditions of barrier penetration.

(iii) When the production of radiation has been interrupted, it is only possible to resume operation of the accelerator by manually resetting the interlock at the console.

(iv) Each safety interlock is on an electrical circuit allowing the interlock to operate independently of all other safety interlocks.

(v) All safety interlocks are designed so any defect or component failure in the interlock system prevents operating the accelerator.

(vi) A scram button or other emergency power cut-off switch is labeled. The scram button or cut-off switch includes a manual reset so the accelerator cannot be restarted from the accelerator console without resetting the cut-off switch.

(vii) The safety interlock system includes a visible or audible alarm indicating when any interlock has been activated.

(viii) All interlocks and visible or audible alarms are tested for proper operation at intervals meeting or exceeding nationally recognized, published guidelines from a professional body with expertise in accelerator radiation technologies, or manufacturer recommendations.

(ix) If an interlock or alarm is operating improperly, it is immediately labeled as defective and repaired within seven calendar days.

(x) Records of tests and repairs required by this paragraph are made and maintained as specified in subsection (l) of this section for inspection by the department.

(B) Each registrant must develop, implement, and maintain written operating and safety procedures (OSP) as specified in subsection (h)(1)(G) of this section.

(C) The registrant must ensure radiation measurements are performed with a calibrated dosimetry system. The dosimetry system calibration must be traceable to a national standard. Instruments and equipment must be calibrated at an interval not to exceed 24 months. Each accelerator facility must have appropriate portable monitoring equipment available that is operable and calibrated for the radiation produced at the facility.

(D) A radiation protection survey must be performed and the results recorded when changes have been made in shielding, operation, equipment, or occupancy of adjacent areas.

(E) For portable or mobile accelerators, such as neutron generators used at temporary job sites where permanent shielding is not available, radiation protection must be provided by temporary shielding or by providing an adequate exclusion area around the accelerator while it is in use.

(F) Records of calibration and survey results made as specified in subparagraphs (C) and (D) of this paragraph must be maintained according to subsection (l) of this section.

(G) The registrant must perform radiation surveys and contamination smears before the transfer or disposal of an accelerator operating at or above 10 MeV. The survey must be documented and maintained by the registrant for inspection by the department as specified in subsection (l) of this section.

(H) The registrant must retain records of receipt, transfer, and disposal of all radiation machines specific to each authorized use location. The records must be maintained by the registrant for inspection by the department as specified in subsection (l) of this section. The records must include the:

(i) date;

(ii) manufacturer name;

(iii) model;

(iv) serial number from the control panel or console of the radiation machine; and

(v) name of the individual making the record.

(4) Training requirements for operators.

(A) An individual must not operate an accelerator unless the individual has received instruction in and demonstrated competence with the following:

(i) OSP as specified in paragraph (3)(B) of this subsection;

(ii) radiation warning and safety devices incorporated into the equipment and in the room;

(iii) identification of radiation hazards associated with the use of the equipment; and

(iv) procedures for reporting a medical event or an actual or suspected exposure to the operator.

(B) Records of the training specified in subparagraph (A) of this paragraph must be made and maintained for department inspection as specified in subsection (l) of this section.

(g) Requirements for an accelerator used in industrial radiography. In addition to the requirements in subsections (f)(1), (f)(2), and (f)(3)(C) - (H) of this section, accelerators used for industrial radiography must meet the applicable requirements of §289.255 of this chapter.

(h) Requirements for therapeutic radiation machines, radiation therapy simulation systems used in the healing arts, and EBT devices.

(1) General requirements.

(A) Each person possessing a therapeutic radiation machine capable of operating at or above 1 MeV or an EBT device must apply for and receive a certificate of registration from the department before using the accelerator for human use. A person may energize the accelerator for purposes of installation and acceptance testing before receiving a certificate of registration from the department.

(B) A person possessing a radiation therapy simulation system or a therapeutic radiation machine capable of operating below 1 MeV must apply for a certificate of registration within 30 days after energizing the equipment.

(C) An individual who operates a radiation machine for human use must meet the appropriate credentialing requirements as specified in the Medical Radiologic Technologist Certification Act, Texas Occupations Code Chapter 601. Copies of the credentialing document must be maintained at the location where the individual is working. A copy of the credentialing document must be maintained by the registrant for inspection by the department as specified in subsection (l) of this section.

(D) The EBT registration requires the physician to be:

(i) licensed by the Texas Medical Board; and

(ii) certified in:

(I) radiation oncology or therapeutic radiology by the American Board of Radiology; or

(II) radiation oncology by the American Osteopathic Board of Radiology.

(E) The registrant must ensure an operator of an EBT device completes device-specific training and maintains a record of each individual's training as specified in subsection (l) of this section. The device-specific training must include:

(i) completing a training program provided by the manufacturer; or

(ii) training substantially equivalent to the manufacturer's training program from a certified physician or a licensed medical physicist trained to use the device.

(F) Each facility must develop a written QA program or an electronic reporting system. The QA program must be implemented to minimize deviations from facility procedures and to document preventative measures taken before serious patient injury or therapeutic misadministration.

(i) The QA program must include the following topics:

(I) treatment planning and patient simulation;

(II) charting and documenting treatment field parameters;

(III) dose calculation and review procedures;

(IV) review of daily treatment records; and

(V) for EBT devices, verification of catheter placement and device exchange procedures.

(ii) A written directive must be prepared before administration of a therapeutic radiation dose except where a delay in providing a written directive would jeopardize the patient's health. If an oral directive must be made, the information contained in the oral directive must be documented immediately in the patient's record. A written directive must be prepared within 24 hours of the oral directive.

(iii) A written directive changing an existing written directive for any therapeutic radiation procedure is only acceptable if the revision is dated and signed by a certified physician before the administration of the therapeutic dose, or the next fractional dose.

(iv) Deviations from the prescribed treatment, from the facility's QA program, or from the OSP must be investigated and brought to the attention of the certified physician or licensed medical physicist, and the radiation safety officer (RSO).

(v) The patient's identity must be verified by more than one method as the individual named in the written directive before administration.

(vi) The discovery of each medical event must be reported as specified in subsections (i) and (j) of this section.

(vii) The review of the QA program must include all the deviations from the prescribed treatment and must be conducted at intervals not to exceed 14 months. A signed record of each dated review must be maintained for inspection by the department as specified in subsection (l) of this section and must include evaluations and findings of the review.

(G) Written OSP must be developed by a licensed medical physicist with a specialty in therapeutic radiological physics and must include any restrictions required for the safe operation of each therapeutic radiation machine. These procedures must be available in the control area of the therapeutic radiation machine, radiation therapy simulation system, or EBT device. The registrant must maintain records of OSP as specified in subsection (l) of this section for inspection by the department. The operator must be able to demonstrate familiarity with these procedures. The OSP must address the following requirements:

(i) therapeutic radiation machines must not be used for irradiation of a patient unless full calibration measurements and QA checks have been completed;

(ii) therapeutic radiation machines must not be used in the administration of radiation therapy if a QA check indicates a significant change in the operating characteristics of a system as specified in the written procedures;

(iii) therapeutic radiation machines must not be left unattended unless secured by a locking device, or computerized password system, preventing unauthorized use;

(iv) mechanical supporting or restraining devices must be used when there is a need to immobilize a patient or port film for radiation therapy;

(v) no individual, other than the patient, is allowed in the treatment room during exposures from therapeutic radiation machines operating above 150 kV;

(vi) at energies less than or equal to 150 kV, any individual in the treatment room, other than the patient, must be protected by a barrier sufficient to meet the requirements of §289.231(m) and (o) of this chapter;

(vii) a technique chart for radiation therapy simulation systems must be used as specified in paragraph (5)(A)(i) of this subsection;

(viii) occupational and public radiation dose must be controlled as specified in §289.231(m) and (o) of this chapter;

(ix) occupational dose must be monitored as specified in §289.231(n) of this chapter;

(x) protective devices must be used for radiation therapy simulation systems as specified in paragraph (5)(A)(iii) of this subsection;

(xi) operators of radiation machines must be credentialled as specified in subparagraph (C) of this paragraph;

(xii) film processing program for conventional radiation therapy simulation systems must be performed as specified in paragraph (5)(E)(i) of this subsection;

(xiii) procedures for restriction and alignment of the beam for conventional radiation therapy simulation systems as specified in paragraph (5)(F)(iii) of this subsection;

(xiv) methods utilized for testing interlocks, entrance controls, and alarm systems;

(xv) notifications and reports must be provided to individuals as specified in §289.203(d) of this chapter; and

(xvi) notices to workers must be posted as specified in §289.203(b) of this chapter.

(H) A registrant with equipment granted variances by the United States Food and Drug Administration (FDA) to 21 CFR Part 1020 must maintain copies of those variances at authorized use locations as specified in subsection (l) of this section.

(I) The registrant must perform radiation surveys and contamination smears before the transfer or disposal of an accelerator operating at or above 10 MeV. Surveys must be documented and maintained by the registrant for inspection by the department as specified in subsection (l) of this section.

(J) Where applicable, the licensed medical physicist must perform acceptance testing on the treatment planning system of therapy-related computer systems as specified in protocols accepted by nationally recognized, published guidelines, from a professional body with expertise in the use of therapeutic radiation technologies.

In the absence of such a published protocol, the manufacturer's current protocol must be followed.

(2) Therapeutic radiation machines capable of operating at energies below 1 MeV.

(A) Equipment requirements.

(i) When the tube is operated at its leakage technique factors, the leakage radiation must not exceed the values specified at the distance stated for the classification of the radiation machine system shown in the following Table I. The leakage technique factors are the maximum-rated peak tube potential and the maximum-rated continuous tube current for the maximum-rated peak tube potential.
Figure: 25 TAC §289.229(h)(2)(A)(i)

(ii) Permanent fixed diaphragms or cones used for limiting the useful beam must provide the same or a higher degree of protection as required for the tube housing assembly.

(iii) Removable and adjustable beam-limiting devices must meet the following requirements.

(I) Removable beam-limiting devices must, for the portion of the useful beam to be blocked by these devices, transmit not more than 1 percent of the useful beam at the maximum kVp and maximum treatment filter. This requirement does not apply to auxiliary blocks or materials placed in the x-ray field to shape the useful beam to the individual patient.

(II) Adjustable beam-limiting devices must, for the portion of the x-ray beam to be blocked by these devices, transmit not more than 5 percent of the useful beam at the maximum kVp and maximum treatment filter.

(III) Adjustable beam-limiting devices must meet the requirements of subclause (I) of this clause.

(iv) The filter system must be designed so:

(I) the filters cannot be accidentally displaced at any possible tube orientation;

(II) an interlock system prevents irradiation if the proper filter is not in place;

(III) the air kerma rate escaping from the filter slot must not exceed 1 centigray/hour (cGy/hr) at 1 meter (m) under any operating conditions; and

(IV) each filter is marked as to its material of construction and its thickness. For wedge filters, the wedge angle must appear on the wedge or wedge tray.

(v) The tube housing assembly must be capable of being immobilized for stationary treatments.

(vi) The tube housing assembly must be marked so it is possible to determine the location of the focal spot to within 5 millimeters (mm), and such marking must be readily accessible for use during calibration procedures.

(vii) The contact therapy tube housing assembly must have a removable shield of at least 0.5 mm lead equivalency at 100 kVp capable of being positioned over the entire useful beam exit port during periods when the beam is not in use.

(viii) The timer must:

(I) have a display provided at the treatment control panel and a pre-set time selector;

(II) activate with the production of radiation and retain its reading after irradiation is interrupted;

(III) be reset to zero after irradiation is terminated and before irradiation can be re-initiated;

(IV) terminate irradiation when a pre-selected time has elapsed, if any dose monitoring system present has not previously terminated irradiation;

(V) permit selection of exposure times as short as 1 second;

(VI) not permit exposure if set at zero;

(VII) not activate until the shutter is opened when irradiation is controlled by a shutter mechanism unless calibration includes a timer factor to compensate for mechanical lag; and

(VIII) be accurate to within 1 percent of the selected value or 1 second, whichever is greater.

(ix) The control panel, in addition to the displays required in clause (viii)(I) of this subparagraph, must have the following:

(I) an indication of whether electrical power is available at the control panel and if activation of the x-ray tube is possible;

(II) an indication of whether x-rays are being produced;

(III) means for indicating x-ray tube potential and current;

(IV) means for terminating an exposure at any time;

(V) a locking device preventing unauthorized use of the therapeutic radiation system (a computerized password system also constitutes a locking device);

(VI) a positive display of specific filters in the beam; and

(VII) emergency buttons or switches clearly labeled as to their functions.

(x) There must be a means of initially determining the SSD to within 1 centimeter (cm) and of reproducing this measurement to within 2 mm.

(xi) Unless it is possible to bring the radiation output to the prescribed exposure parameters within 5 seconds, the beam must be attenuated by a shutter having a lead equivalency not less than that of the tube housing assembly. After the unit is at operating parameters, the shutter must be controlled electrically by the operator from the control panel. An indication of shutter position must appear at the control panel.

(xii) Each therapeutic radiation system equipped with a beryllium or other low-filtration window must be clearly labeled on the tube housing assembly and at the control panel.

(B) Facility requirements for therapeutic radiation systems capable of operating above 50 kVp.

(i) Provision must be made for continuous two-way aural communication between the patient and the operator at the control panel.

(ii) Windows, mirrors, closed-circuit television, or an equivalent system must be provided to permit continuous observation of the patient during irradiation and be located so the operator can observe the patient from the control panel.

(I) If the viewing system described in clause (ii) of this subparagraph fails or is inoperative, treatment must not be performed with the unit until the system is restored.

(II) If a facility has a primary viewing system by electronic means and an alternate viewing system, and both viewing systems described in clause (ii) of this subparagraph fail or are inoperative, treatment must not be performed with the unit until one of the systems is restored.

(C) Additional facility requirements for therapeutic radiation systems capable of operation above 150 kVp.

(i) Each installation must be provided with primary and secondary barriers as necessary to assure compliance with §289.231(m) and (o) of this chapter. All protective barriers must be fixed except for entrance doors or beam interceptors.

(ii) The control panel must be located outside the treatment room or in an enclosed booth inside the room.

(iii) Interlocks must be provided to ensure all entrance doors are closed, including doors to any interior booths, before treatment can be initiated or continued. If the radiation beam is interrupted by any door opening, it must not be possible to restore the machine to operation without closing the door and reinitiating irradiation by manual action at the control panel. When any door is opened while the x-ray tube is activated, the exposure at a distance of 1 m from the source must be reduced to less than 1 milligray per hour (mGy/hr) (100 millirad per hour (mrad/hr)).

(D) Surveys, calibrations, and QA checks.

(i) Surveys must be performed as follows.

(I) All new and existing facilities not previously surveyed must have an initial shielding survey made by a licensed medical physicist, as authorized by 22 Texas Administrative Code (TAC) §160.17 (relating to Medical Physicist Scope of Practice), who must provide a written report of the survey to the registrant. Additional surveys must be done after any change in the facility, facility design, or equipment that might cause a significant increase in radiation hazard.

(II) The registrant must maintain a copy of the initial survey report and all subsequent survey reports required by subclause (I) of this clause as specified in subsection (l) of this section for inspection by the department.

(III) The survey report must indicate all instances where the installation violates this chapter's applicable requirements.

(ii) Full calibrations must be performed as follows.

(I) The calibration of a therapeutic radiation system must be performed at intervals not to exceed 12 months and after any change or replacement of components that could cause a change in the radiation output. The calibrations must ensure the dose at a reference point in a water or plastic phantom can be calculated to within an uncertainty of 5 percent.

(II) The calibration of the radiation output of the therapeutic radiation system is performed by a licensed medical physicist with a specialty in therapeutic radiological physics, physically present at the facility during such calibration.

(III) The calibration of the therapeutic radiation system includes:

(-a-) verification the radiation therapy system is operating in compliance with the design specifications;

(-b-) HVL for each kV setting and filter combination used;

(-c-) the exposure rates (air kerma rates) as a function of field size, technique factors, filter, and treatment distance used; and

(-d-) the degree of congruence between the radiation field and the field indicated by the localizing device, if such device is present, which must be within 5 mm for any field edge.

(IV) Calibration measurements of the radiation output of a therapeutic radiation system must be performed with a calibrated dosimetry system. Calibration of the dosimetry system must be performed and completed at intervals not to exceed 24 months and traceable to a national standard.

(V) Records of calibration measurements specified in this clause must be maintained by the registrant as specified in subsection (l) of this section for inspection by the department.

(VI) A copy of the latest calibrated absorbed dose rate measured on a particular therapeutic radiation system must be available at a designated area within the therapy facility housing the therapeutic radiation system.

(iii) QA checks must be performed on therapeutic radiation systems capable of operation at greater than 150 kVp. Such measurements must meet the following requirements.

(I) The QA check procedures must be in writing or documented in an electronic reporting system, and must have been developed by a licensed medical physicist with a specialty in therapeutic radiological physics.

(II) If a licensed medical physicist does not perform the QA check measurements, the results of the QA check measurements must be reviewed by a licensed medical physicist with a specialty in therapeutic radiological physics within five treatment days and a record made of the review. If the output varies by more than 5 percent from the expected value, a licensed medical physicist with a specialty in therapeutic radiological physics must be notified immediately.

(III) The written QA check procedures must specify the testing or measurement frequency and state that the QA check must be performed during the calibration specified in clause (ii) of this subparagraph. The acceptable tolerance for each parameter measured when compared to the value for that parameter determined in the calibration specified in clause (ii) of this subparagraph must be stated.

(IV) The written QA check procedures must include special operating instructions required to be carried out whenever a parameter in subclause (III) of this clause exceeds an acceptable tolerance.

(V) Whenever a QA check indicates a significant change in the operating characteristics of a system, as specified in the procedures, the system must be recalibrated, as required in clause (ii) of this subparagraph.

(VI) Records of written QA checks and any necessary corrective actions must be maintained by the registrant as specified in subsection (l) of this section for inspection by the department. A copy of the most recent QA check must be available at a designated area within the therapy facility housing the therapeutic radiation system.

(VII) QA checks must be obtained using a system satisfying the requirements of clause (ii)(IV) of this subparagraph.

(iv) All testing reports must meet or exceed nationally recognized, published guidelines from a professional body with expertise in the use of therapeutic radiation technologies or manufacturer recommendations.

(3) Therapeutic radiation machines capable of operating at energies of 1 MeV and above.

(A) Equipment requirements.

(i) For operating conditions producing maximum leakage radiation, the absorbed dose in rads (mGy) due to leakage radiation (including x-rays, electrons, and neutrons) must not exceed 0.1 percent of the maximum absorbed dose in rads (mGy) of the unattenuated useful beam. The absorbed dose for this leakage radiation requirement must be measured at any point in a circular plane of 2 m radius centered on and perpendicular to the central axis of the beam at the isocenter or nominal treatment distance and outside the maximum useful beam size. The unattenuated useful beam must be measured at the point of intersection of the central axis of the beam and the plane surface.

(I) Measurements excluding those for neutrons must be averaged over an area up to, but not exceeding, 100 square centimeters (cm^2) at the positions specified.

(II) Measurements of the portion of the leakage radiation dose contributed by neutrons must be averaged over an area up to, but not exceeding, 200 cm^2.

(III) For each system, the registrant must determine, or obtain from the manufacturer, the leakage radiation existing at the positions specified for the specified operating conditions.

(IV) Records on leakage radiation measurements must be maintained as specified in subsection (l) of this section for inspection by the department.

(ii) Irradiation filters.

(I) Dynamic or virtual wedge filter.

(-a-) An interlock system must be provided to prevent irradiation if any virtual or dynamic wedge selected in the treatment room does not agree with the virtual or dynamic wedge selection and operation carried out at the treatment console.

(-b-) The dose distribution selected must include:

(-1-) beam energy;

(-2-) field size; and

(-3-) wedge angle.

(-c-) A virtual wedge transmission factor must be established and utilized.

(II) Multileaf collimator (MLC) filter.

(-a-) An interlock system must be provided to prevent irradiation if the spatial dose distribution selected in the treatment room does not agree with the filter selection and operation carried out at the treatment console.

(-b-) The distribution selected must include:

(-1-) beam energy; and

(-2-) MLC selection.

(III) Stereotactic radiosurgery (SRS) filter.

(-a-) An interlock system must be provided to prevent irradiation if the spatial dose distribution selected in the treatment room does not agree with the filter selection and operation carried out at the treatment console.

(-b-) The distribution selected must include:

(-1-) beam energy;

(-2-) SRS cone; or

(-3-) MLC selection.

(-c-) A virtual wedge transmission factor must be established and utilized.

(IV) Physical wedge filter.

(-a-) Each wedge filter removable from the system must be marked with an identification number.

(-b-) Documentation must be available at the console containing a description of the filter.

(-c-) The wedge angle must appear on the wedge or wedge tray (if permanently mounted to the tray).

(-d-) If the wedge or wedge tray is damaged, the wedge must be removed from clinical service.

(-e-) Irradiation must not be possible until a selection of a filter or a positive selection to use "no filter" has been made at the treatment console, either manually or automatically.

(-f-) A display must be provided at the treatment console showing the accelerator beam quality in use.

(-g-) An interlock system must be provided to prevent irradiation if any filter selection operation carried out in the treatment room does not agree with the filter selection and operation carried out at the treatment console.

(iii) Beam Quality. The registrant must determine data sufficient to assure the following beam quality requirements in tissue equivalent material are met.

(I) The absorbed dose resulting from x-rays in a useful electron beam at a point on the central axis of the beam 10 cm greater than the practical range of the electrons must not exceed the values stated in Table II. Linear interpolation must be used for values not stated.

Figure: 25 TAC §289.229(h)(3)(A)(iii)(I) (No change.)

(II) Compliance with subclause (I) of this clause must be determined using:

(-a-) a measurement within a tissue equivalent phantom with the incident surface of the phantom at the nominal treatment distance and normal to the central axis of the beam;

(-b-) a field size of 10 cm by 10 cm; and

(-c-) a phantom whose cross-sectional dimensions exceed the measurement radiation field by at least 5 cm and whose depth is sufficient to perform the required measurement.

(III) The absorbed dose at a surface located at the nominal treatment distance, at the point of intersection of that surface with the central axis of the useful beam during x-ray irradiation, must not exceed the limits stated in the following Table III. Linear interpolation must be used for values not stated.

Figure: 25 TAC §289.229(h)(3)(A)(iii)(III) (No change.)

(IV) Compliance with subclause (III) of this clause must be determined by measurements:

(-a-) within a tissue equivalent phantom using an instrument allowing extrapolation to the surface absorbed dose;

(-b-) using a phantom whose size and placement meet the requirements of subclause (II) of this clause;

(-c-) after removal of all beam-modifying devices capable of being removed without the use of tools, except for beam-scattering or beam-flattening filters; and

(-d-) using the largest field size available not exceeding 15 cm by 15 cm.

(iv) All therapeutic radiation systems must be provided with radiation detectors in the gantry head. These must include the following, as appropriate.

(I) At least two independent radiation detectors must be used. The detectors must be incorporated into two independent dose monitoring systems.

(II) The incorporated detector and monitoring system must meet the following requirements.

(-a-) Each detector must be removable only with tools and must be interlocked to prevent incorrect positioning.

(-b-) Each detector must form part of a dose monitoring system from whose readings in dose monitor units the absorbed dose at a reference point in the treatment volume can be calculated.

(-c-) Each dose monitoring system must be capable of independently monitoring, interrupting, and terminating irradiation.

(-d-) The design of the dose monitoring systems must assure the malfunctioning of one system does not affect the correct functioning of the secondary system; and failure of any element common to both systems affecting the correct function of both systems must terminate irradiation.

(-e-) Each dose monitoring system must have a legible display at the treatment console. Each display must:

(-1-) maintain a reading until intentionally reset to zero;

(-2-) have only one scale and no scale multiplying factors;

(-3-) utilize a design so increasing dose is displayed by increasing numbers and if there is an overdosage of radiation, the absorbed dose may be accurately determined; and

(-4-) retain the dose monitoring information in at least one system for 15 minutes in the event of a power failure.

(v) For equipment inherently capable of producing useful beams with unintentional asymmetry exceeding 5 percent, the asymmetry of the radiation beam in two orthogonal directions must be monitored before the beam passes through the beam-limiting device. If the difference in dose rate between one region and another region symmetrically displaced from the central axis of the beam exceeds 5 percent of the central axis dose rate, an indication of this condition must be displayed at the console; and if this difference exceeds 10 percent of the central axis dose rate, the irradiation must be terminated.

(vi) Selection and display of dose monitor units must meet the following requirements.

(I) Irradiation must not be possible until a selection of dose monitor units has been made at the treatment console.

(II) The preselected number of dose monitor units must be displayed at the treatment console until reset manually for the next irradiation.

(III) After termination of irradiation, it must be necessary to reset the dosimeter display to zero before subsequent treatment can be initiated.

(IV) After termination of irradiation, the preselected dose monitor units must be reset manually before irradiation can be initiated.

(vii) Termination of irradiation by the dose monitoring system or systems during stationary beam therapy must meet the following requirements.

(I) Each primary system must terminate irradiation when the preselected number of dose monitor units has been detected by the system.

(II) A secondary dose monitoring system must be present. The system must be capable of terminating irradiation when not more than 10 percent or 25 dose monitoring units, whichever is smaller, above the preselected number of dose monitor units set at the console has been detected by the secondary dose monitoring system.

(III) An indicator on the console must show which dose monitoring system has terminated irradiation.

(viii) A locking device must be provided in the system to prevent unauthorized use of the x-ray system. A computerized password system would also constitute a locking device.

(ix) It must be possible to interrupt irradiation and equipment movements at any time from the operator's position at the treatment console. Following an interruption, it must be possible to restart irradiation by operator action without any reselection of operating conditions. If any change is made of a preselected value during an interruption, irradiation and equipment movements must be automatically terminated.

(x) It must be possible to terminate irradiation and equipment movements or go from an interruption condition to termination conditions at any time from the operator's position at the treatment console.

(xi) Timers must meet the following requirements.

(I) A timer with a display is provided at the treatment console. The timer has a preset time selector and an elapsed time indicator.

(II) The timer is a cumulative timer activating with the production of radiation and retaining its reading after irradiation is interrupted or terminated. After irradiation is terminated and before irradiation can be reinitiated, it is necessary to reset the elapsed time indicator to zero.

(III) After termination of irradiation and before irradiation can be reinitiated, the preset time selector is reset manually.

(IV) The timer terminates irradiation when a preselected time has elapsed if the dose monitoring systems have not previously terminated irradiation.

(xii) Equipment capable of producing more than one radiation type must meet the following additional requirements.

(I) Irradiation is not possible until a selection of radiation type has been made at the treatment console.

(II) An interlock system is provided to:

(-a-) ensure the equipment can emit only the radiation type selected;

(-b-) prevent irradiation if any selected operations carried out in the treatment room do not agree with the selected operations carried out at the treatment console;

(-c-) prevent irradiation with x-rays except to obtain a port film when electron applicators are fitted; and

(-d-) prevent irradiation with electrons when accessories specific for x-ray therapy are fitted.

(III) The radiation type selected is displayed at the treatment console before and during irradiation.

(xiii) Equipment capable of generating radiation beams of different energies must meet the following requirements.

(I) Irradiation is not possible until a selection of energy has been made at the treatment console.

(II) An interlock system is provided to prevent irradiation if any selected operations carried out in the treatment room do not agree with the selected operations carried out at the treatment console.

(III) The nominal energy value selected is displayed at the treatment console before and during irradiation.

(xiv) Equipment capable of both stationary beam therapy and moving beam therapy must meet the following requirements.

(I) Irradiation is not possible until a selection of stationary beam therapy or moving beam therapy has been made at the treatment console.

(II) An interlock system is provided to prevent irradiation if any selected operations carried out in the treatment room do not agree with the selected operations carried out at the treatment console.

(III) The selection of stationary or moving beam is displayed at the treatment console. An interlock system must be provided to ensure the equipment can only operate in the selected mode.

(IV) An interlock system is provided to terminate irradiation if movement of the gantry occurs during stationary beam therapy or stops during moving beam therapy unless such stoppage is a preplanned function.

(V) Moving beam therapy is controlled to obtain the selected relationships between incremental dose monitor units and incremental angle of movement.

(-a-) An interlock system must be provided to terminate irradiation if the number of dose monitor units delivered in any 10 degrees of arc differs by more than 20 percent from the selected value.

(-b-) Where gantry angle terminates the irradiation in arc therapy, the dose monitor units must be within 5 percent from the value calculated from the absorbed dose per unit angle relationship.

(VI) Where the dose monitor system terminates the irradiation in moving beam therapy, the termination of irradiation must meet the requirements of clause (vii) of this subparagraph.

(xv) A system must be provided from whose readings the absorbed dose rate at a reference point in the treatment volume can be calculated. The radiation detectors specified in clause (iv) of this subparagraph may form part of this system. In addition, the dose monitor unit rate must be displayed at the treatment console. If the equipment can deliver, under any conditions, an absorbed dose rate at the nominal treatment distance more than twice the maximum value specified by the manufacturer for any machine parameters utilized, a device must be provided to terminate irradiation when the absorbed dose rate exceeds a value twice the specified maximum. The dose rate at which the irradiation will be terminated must be in a record maintained by the registrant as specified in subsection (l) of this section for department inspection.

(xvi) The registrant must determine, or obtain from the manufacturer, the location with reference to an accessible point on the gantry, of the x-ray target, or the virtual source of x-rays and the electron window, or the virtual source of electrons if the system has electron beam capabilities.

(xvii) Capabilities must be provided so all radiation safety interlocks can be checked for correct operation.

(B) Facility and shielding requirements.

(i) Each installation must be provided with primary and secondary barriers as are necessary to assure compliance with §289.231(m) and (o) of this chapter.

(ii) All protective barriers must be fixed except for entrance doors or beam interceptors.

(iii) The console must be located outside the treatment room and all emergency buttons or switches must be clearly labeled as to their functions.

(iv) Windows, mirrors, closed-circuit television, or an equivalent system must be provided to permit continuous observation of the patient following positioning and during irradiation and must be located so the operator can see the patient from the console.

(I) If the viewing system described in clause (iv) of this subparagraph fails or is inoperable, treatment must not be performed with the unit until the system is restored.

(II) In a facility with a primary viewing system by electronic means and an alternate viewing system, if both viewing systems described in clause (iv) of this subparagraph fail or are inoperative, treatment must not be performed with the unit until one of the systems is restored.

(v) Provision must be made for continuous two-way aural communication between the patient and the operator at the console independent of the accelerator. However, where excessive noise levels or treatment requirements make aural communication impractical, other methods of communication must be used. When this is the case, a description of the alternate method must be submitted to and approved by the department.

(vi) Treatment room entrances must be provided with a warning light in a readily observable position near the outside of all access doors to indicate when the useful beam is "on."

(vii) Interlocks must be provided to ensure all entrance doors are closed before treatment can be initiated or continued. If the radiation beam is interrupted by any door opening, it must not be possible to restore the machine to operation without closing the door and reinitiating irradiation by manual action at the console.

(C) Surveys, dose calibrations, QA checks, and operational requirements.

(i) Surveys must be performed as follows.

(I) All new and existing facilities not previously surveyed must have an initial shielding survey made by a licensed medical physicist as authorized by 22 TAC §160.17 who must provide a written report of the survey to the registrant. The physicist who performs the survey must be an individual who:

(-a-) did not consult in the design of the therapeutic radiation machine installation and;

(-b-) is not employed by or within any corporation or partnership with the person who consulted in the design of the installation.

(II) The survey report must include:

(-a-) a diagram of the facility detailing building structures and the position of the console, therapeutic radiation machine, and associated equipment;

(-b-) a description of the therapeutic radiation system, including the manufacturer, model and serial number, beam type, and beam energy;

(-c-) a description of the instrumentation used to determine radiation measurements, including the date and source of the most recent calibration for each instrument used;

(-d-) conditions under which radiation measurements were taken; and

(-e-) survey data including:

(-1-) projected annual TEDE in areas adjacent to the therapy room; and

(-2-) a description of workload, use, and occupancy factors employed in determining the projected annual TEDE.

(III) The registrant must maintain a copy of the survey report, and a copy of the survey report must be provided to the department within 30 days of completion of the survey. Records of the survey report must be maintained as specified in subsection (l) of this section for inspection by the department.

(IV) The survey report must include documentation of all instances where the installation is in violation of applicable regulations. Any deficiencies detected during the survey must be corrected before using the machine.

(V) In addition, such surveys must be done after any change in the facility or equipment that might cause a significant increase in radiation hazard.

(ii) Dose calibrations. Records of calibration measurements specified in subclause (I) of this clause and dosimetry system calibrations specified in subclause (III) of this clause must be maintained by the registrant as specified in subsection (l) of this section for inspection by the department. A copy of the latest calibrated absorbed dose rate measured as specified in subclause (I) of this clause must be available at a designated area within the facility housing the radiation therapy system. Calibrations of therapeutic systems must be performed as follows.

(I) The calibration of systems subject to this subsection are performed as specified in an established calibration protocol before the system is first used for irradiation of a patient and then at intervals not exceeding 12 months and after any change significantly altering the calibration, spatial distribution, or other characteristics of the therapy beam.

(-a-) The calibration procedures must be in writing, or documented in an electronic reporting system, and must have been developed by a licensed medical physicist with a specialty in therapeutic radiological physics.

(-b-) Acceptance testing, commissioning, and dose calibration must be performed as specified in current published recommendations from a nationally recognized professional association with expertise in the use of therapeutic radiation technologies. In the absence of a protocol published by a national professional association, the manufacturer's protocol, or equivalent quality, safety, and security protocols, must be followed.

(-c-) At a minimum, the calibration protocol must include all items in subclauses (III) - (V) of this clause.

(II) The calibration is performed by a licensed medical physicist with a specialty in therapeutic radiological physics who is physically present at the facility during the calibration.

(III) Calibration radiation measurements required by subclause (I) of this clause are performed using a dosimetry system:

(-a-) having a calibration factor for cobalt-60 gamma rays traceable to a national standard;

(-b-) traceable to a national standard and at an interval not to exceed 24 months;

(-c-) calibrated to the extent an uncertainty can be stated for the radiation quantities monitored by the system; and

(-d-) having constancy checks performed as specified by the licensed medical physicist with a specialty in therapeutic radiological physics.

(IV) Calibrations must be in sufficient detail to ensure the dose at a reference point in a tissue equivalent phantom can be calculated to within an uncertainty of 5 percent.

(V) The calibration of the therapy unit must include the following determinations.

(-a-) Verification that the equipment is operating in compliance with the design specifications concerning the light field, patient positioning lasers, and back-pointer lights with the isocenter when applicable; variation in the axis of rotation for the table, gantry, and collimator system; and beam flatness and symmetry at the specified depth.

(-b-) Verification of the accuracy of the absorbed dose rate at various depths in a tissue equivalent phantom for the range of field sizes and effective energies used in all therapy procedures.

(-c-) Uniformity of the radiation field to include symmetry, flatness, and dependence on the gantry angle.

(-d-) Verification that existing isodose charts applicable to the specific machine continue to be valid or are updated to existing machine conditions.

(-e-) Verification of transmission factors for all accessories such as wedges, block trays, and universal and custom-made beam modifying devices.

(VI) Calibration of therapeutic systems containing asymmetric jaws, multileaf collimation, or dynamic or virtual wedges must be performed with an established protocol. The procedures must be developed by a licensed medical physicist with a specialty in therapeutic radiological physics and must be in writing or documented in an electronic reporting system.

(iii) QA checks must be performed on systems subject to this paragraph during calibrations and then at weekly intervals with the period between QA checks not to exceed five treatment days. Such radiation output measurements must meet the following requirements.

(I) The QA check procedures must be performed as specified in established protocol, be in writing or documented in an electronic reporting system, and be developed by a licensed medical physicist with a specialty in therapeutic radiological physics. The protocol must meet or exceed nationally recognized, published guidelines from a professional body with expertise in the use of therapeutic radiation technologies or manufacturer recommendations. At a minimum, the QA check protocol must include all items in subclauses (III) - (VI) of this clause.

(II) If a licensed medical physicist does not perform the QA check measurements, the results of the QA check measurements must be reviewed by a licensed medical physicist at a frequency not to exceed five treatment days and a record kept of the review. If the output varies by more than 3 percent from the expected value, a licensed medical physicist must be notified immediately.

(III) The written QA check procedures must specify the frequency at which tests or measurements are performed and the acceptable tolerance for each parameter measured in the QA

check when compared to the value for that parameter determined in the calibration.

(IV) Where a system has built-in devices providing a measurement of any parameter during irradiation, such measurement must not be utilized as a QA check measurement.

(V) A parameter exceeding a tolerance set by a licensed medical physicist must be corrected before the system is used for patient irradiation.

(VI) Whenever a QA check indicates a significant change in the operating characteristics of a system, as specified in a licensed medical physicist's written procedures, the system must be recalibrated.

(VII) Records of QA check measurements and any necessary corrective actions must be maintained by the registrant as specified in subsection (l) of this section for inspection by the department.

(VIII) QA checks must be completed using a system satisfying the requirements of clause (ii)(III) of this subparagraph.

(iv) Facilities with therapeutic radiation machines with energies of 1 MeV and above must procure the services of a licensed medical physicist with a specialty in therapeutic radiological physics.

(I) The physicist must be responsible for:

(-a-) dose calibration of radiation machines;

(-b-) supervision and review of beam and clinical dosimetry;

(-c-) measurement, analysis, and tabulation of beam data;

(-d-) establishment of QA procedures and performance of QA check review; and

(-e-) review of absorbed doses delivered to patients.

(II) The licensed medical physicist described in subclause (I) of this clause must also be available and responsive to immediate problems or emergencies.

(4) Requirements for EBT devices. In addition to the requirements in paragraph (1) of this subsection, EBT devices must meet the requirements in this paragraph.

(A) Technical requirements for EBT devices.

(i) The timer must:

(I) have a display provided at the treatment control panel and a pre-set time selector;

(II) activate with the production of radiation and retain its reading after irradiation is interrupted;

(III) be reset to zero after irradiation is terminated and before irradiation can be re-initiated;

(IV) terminate irradiation when a pre-selected time has elapsed, if any dose monitoring system present has not previously terminated irradiation;

(V) permit selection of exposure times as short as 1 second;

(VI) not permit an exposure if set at zero; and

(VII) be accurate to within 1 percent of the selected value or 1 second, whichever is greater.

(ii) The control panel, in addition to the displays required in subparagraph (A)(i) of this paragraph, must have:

(I) an indication of whether electrical power is available at the control panel and if activation of the x-ray tube is possible;

(II) means for indicating x-rays are being produced;

(III) means for indicating x-ray tube potential and current; and

(IV) means for terminating an exposure at any time.

(iii) All emergency buttons or switches must be clearly labeled as to their functions.

(B) Surveys, calibrations, and QA checks.

(i) Survey procedures.

(I) All new and existing facilities with an EBT device must have an initial shielding survey made by a licensed medical physicist, as authorized by 22 TAC §160.17, who must provide a written survey report to the registrant. Additional surveys must be done when:

(-a-) making any change in the portable shielding; and

(-b-) relocating the electronic therapy device.

(II) The registrant must maintain a copy of the initial survey report and all subsequent survey reports as specified in subsection (l) of this section for inspection by the department.

(III) The survey report must indicate all instances where the installation is in violation of the applicable requirements of this chapter.

(ii) Calibrations procedures. Records of calibration measurements must be maintained by the registrant as specified in subsection (l) of this section for inspection by the department. A copy of the latest calibrated absorbed dose rate measured on the EBT device must be available at a designated area within the therapy facility housing the EBT device.

(I) Calibration procedures must be in writing, or documented in an electronic reporting system, and must have been developed by a licensed medical physicist with a specialty in therapeutic radiological physics.

(II) The registrant must make calibration measurements required by this section as specified in any current recommendations from a recognized national professional association (such as the American Association of Physicists in Medicine Report Number 152) for an EBT device, when available. Equivalent alternative methods are acceptable. In the absence of a protocol by a national professional association, a published protocol included in the device manufacturer operator's manual must be followed.

(III) The calibration of the EBT device must be performed after changing the x-ray tube or replacing components that could cause a change in the radiation output. The calibration must ensure the dose at a reference point in a water or plastic phantom can be calculated to within an uncertainty of 5 percent.

(IV) The calibration of the radiation output of the EBT device must be performed by a licensed medical physicist with a specialty in therapeutic radiological physics who is physically present at the facility during such calibration.

(V) The calibration of the therapeutic EBT device must include verification that the EBT device is operating in compliance with the design specifications.

(VI) Calibration of the radiation output of the EBT device must be performed with a calibrated dosimetry system. The dosimetry calibration must be traceable to a national standard. The calibration interval must not exceed 24 months.

(iii) QA check. Records of the written QA checks and any necessary corrective actions must be maintained by the registrant as specified in subsection (l) of this section for inspection by the department. A copy of the most recent QA check must be available at a designated area within the therapy facility housing the therapeutic radiation system.

(I) QA check procedures must be in writing, or documented in an electronic reporting system, and must have been developed by a licensed medical physicist with a specialty in therapeutic radiological physics.

(II) If a licensed medical physicist does not perform the QA check measurements, the results of the QA check measurements must be reviewed by a licensed medical physicist with a specialty in therapeutic radiological physics within two treatment days, and a record made of the review.

(III) The written QA check procedures must specify the operating instructions required to be carried out whenever a parameter exceeds an acceptable tolerance as established by the licensed medical physicist.

(IV) The certified physician or licensed medical physicist must prevent the clinical use of a malfunctioning device until the malfunction identified in the QA check has been evaluated and corrected or, if necessary, the equipment repaired.

(V) QA checks must be completed using a dosimetry system satisfying the requirements of clause (ii)(VI) of this subparagraph.

(5) Radiation therapy simulation systems.

(A) General requirements. In addition to the requirements in paragraph (1)(B), (C), (F), and (H) of this subsection, radiation therapy simulation systems must comply with the following:

(i) Technique chart. A technique chart relevant to the radiation machine is provided or electronically displayed in the vicinity of the console and used by all operators.

(ii) Operating and safety procedures. Each registrant develops, implements, and maintains written OSP as specified in paragraph (1)(G) of this subsection and §289.227(i)(2)(A) of this chapter.

(iii) Protective devices. When utilized, protective devices meet the following requirements.

(I) Protective devices must be made of no less than 0.25 mm lead equivalent material.

(II) Protective devices, including aprons, gloves, and shields, are checked annually for defects, such as holes, cracks, and tears. The registrant must perform these checks by visual, tactile, or x-ray imaging. If a defect is found, equipment must be replaced or removed from service until repaired. A record of this test is made and maintained by the registrant as specified in subsection (l) of this section for inspection by the department.

(iv) Viewing system. Windows, mirrors, closed circuit television, or an equivalent system is provided to permit the operator to continuously observe the patient during irradiation. The operator is able to maintain continuous verbal, visual, and aural contact with the patient.

(v) Operator position. The operator's position during the exposure ensures the operator's exposure is as low as reasonably achievable (ALARA). The operator is a minimum of 6 feet from the source of radiation or protected by an apron, gloves, or other shielding having a minimum of 0.25 mm lead equivalent material.

(vi) Holding of the tube. An individual does not hold the tube or tube housing assembly supports during any radiographic exposure.

(vii) No individuals other than the patient and the operator are allowed in the treatment room during the operation of the simulator.

(B) Facility design requirements.

(i) Provision must be made for two-way aural communication between the patient and the operator at the control panel.

(ii) Windows, mirrors, closed-circuit television, or an equivalent must be provided to permit continuous patient observation during irradiation and be located so the operator can see the patient from the console. If the viewing system described in this clause fails or is inoperable, the unit must not be used until the system is restored.

(iii) In a facility with a primary viewing system by electronic means and an alternate viewing system, and both viewing systems described in this clause fail or are inoperative, the unit must not be used until one of the systems is restored.

(C) Requirements for radiation therapy simulation systems utilizing standard CT systems.

(i) Equipment requirements.

(I) Tomographic systems must meet the following requirements.

(-a-) For any single tomogram system, means must be provided to permit visual determination of the tomographic plane or a reference plane offset from the tomographic plane.

(-b-) For any multiple tomogram system, means must be provided to permit visual determination of the tomographic plane or a reference plane offset from the tomographic plane.

(-c-) If a device using a light source is used to satisfy the requirements of item (-a-) or (-b-) of this subclause, the light source must provide illumination levels sufficient to permit visual determination of the location of the tomographic plane or reference plane under ambient light conditions of up to 500 lux.

(II) The CT system must be designed so the CT conditions of operation to be used during a scan or a scan sequence are indicated before the initiation of a scan or a scan sequence. For equipment having all or some of these conditions of operation at fixed values, this requirement may be met by permanent markings. Indication of CT conditions must be visible from any position from which scan initiation is possible.

(III) The CT control and gantry must provide visual indication whenever x-rays are produced and, if applicable, whether the shutter is open or closed.

(IV) Means must be provided to require operator initiation of each individual scan or series of scans.

(V) All emergency buttons or switches must be clearly labeled as to their functions.

(VI) Termination of exposure must meet the following requirements.

(-a-) Means must be provided to terminate the x-ray exposure automatically by either de-energizing the x-ray source or shuttering the x-ray beam in the event of equipment failure affecting data collection. Such termination must occur within an interval limiting the total scan time to no more than 110 percent of its preset value using either a backup timer or a device that monitors equipment function.

(-b-) A signal visible to the operator must indicate when the x-ray exposure has been terminated through the means required by item (-a-) of this subclause.

(-c-) The operator must be able to terminate the x-ray exposure at any time during a scan or series of scans under CT system control of greater than 0.5 second duration. Termination of the x-ray exposure must necessitate resetting the CT conditions of operation before initiation of another scan.

(VII) CT systems containing a gantry must meet the following requirements.

(-a-) The total error in the indicated location of the tomographic plane or reference plane must not exceed 5 mm.

(-b-) If the x-ray production period is less than 0.5 seconds, the indication of x-ray production must be actuated for at least 0.5 seconds. Indicators at or near the gantry must be discernible from any point external to the patient opening, where insertion of any part of the human body into the primary beam is possible.

(-c-) The deviation of indicated scan increment versus actual increment must not exceed plus or minus 1 mm with any mass from 0 to 100 kilograms (kg) resting on the support device. The patient support device must be incremented from a typical starting position to the maximum incremented distance or 30 cm, whichever is less, and then returned to the starting position. Measurement of actual versus indicated scan increment can be taken anywhere along this travel.

(ii) Additional requirements for CT systems integrated with virtual simulation features and linear accelerator capabilities (e.g., 3-D cone beam or modulation).

(I) QA procedures for the CT simulation system must be performed with an established protocol meeting or exceeding nationally recognized, published guidelines from a professional body with expertise in the use of therapeutic radiation technologies or manufacturer recommendations.

(II) QA procedures for the CT simulation system must be in writing, or documented in an electronic reporting system, by a licensed medical physicist with a specialty in therapeutic radiological physics.

(III) The electronic transfer of the treatment delivery parameters to the delivery system must be verified at the treatment location. The CT simulation treatment planning and the linear accelerator must interface accurately.

(iii) QA for CT simulation software.

(I) QA procedures for CT simulation software systems must be in writing, or documented in an electronic reporting system, by a licensed medical physicist with a specialty in therapeutic radiological physics.

(II) The protocol established must meet or exceed nationally recognized, published guidelines from a professional body with expertise in the use of therapeutic radiation technologies or manufacturer recommendations.

(III) The CT QA procedures must include:

(-a-) spatial/geometry accuracy tests;

(-b-) evaluation of digitally reconstructed radiographs; and

(-c-) periodic QA testing.

(IV) The electronic transfer of the treatment delivery parameters to the delivery system must be verified at the treatment location. The software for the CT simulation treatment planning computer and the linear accelerator must interface accurately.

(iv) Dose measurements of the radiation output of the CT system.

(I) Dose measurements must be completed as specified in §289.227(n)(3) of this chapter.

(II) Equipment performance evaluations (EPEs) must be completed as specified in §289.227(o) of this chapter.

(III) Records of dose measurements and EPEs specified in subclause (I) and (II) of this clause must be maintained by the registrant as specified in subsection (l) of this section for inspection by the department.

(D) A maintenance schedule must be developed as specified by the manufacturer. The schedule must include:

(i) dose measurements required by subparagraph (C)(iv) of this paragraph; and

(ii) acquisition of images obtained with phantoms using the same processing mode and CT conditions of operation as are used to perform dose measurements required by subparagraph (F) of this paragraph. The registrant must maintain either of the following as specified in subsection (l) of this section for inspection by the department:

(I) copies of the images obtained from the image display device; or

(II) images stored in digital form.

(E) Conventional radiation therapy simulation systems designed with x-ray or fluoroscopic capabilities.

(i) Film processing.

(I) Films must be developed according to the time-temperature relationships recommended by the film manufacturer. The specified developer temperature for automatic processing and the time-temperature chart for manual processing must be posted in the darkroom. If the registrant determines an alternate time-temperature relationship is more appropriate for a specific facility, the time-temperature relationship must be documented and posted.

(II) Chemicals must be replaced according to the chemical manufacturer's or supplier's recommendations or at an interval not to exceed three months.

(III) Darkroom light leak tests must be performed and any light leaks corrected at intervals not to exceed six months.

(IV) Lighting in the film processing and loading area must be maintained with the filter, bulb wattage, and distances recommended by the film manufacturer for that film emulsion or with products providing an equivalent level of protection against fogging.

(V) Corrections or repairs of the light leaks or other deficiencies in subclauses (II), (III), and (IV) of this clause must be initiated within 72 hours of discovery and completed no longer than 15 days from detection of the deficiency unless a longer time is authorized by the department. Records of the correction or repairs must in-

clude the date and initials of the individual performing these functions and must be maintained as specified in subsection (l) of this section for inspection by the department.

(VI) Documentation of the items in subclauses (II), (III), and (V) of this clause must be maintained at the site where performed and must include the date and initials of the individual completing these items. These records must be kept as specified in subsection (l) of this section for inspection by the department.

(ii) Alternative processing systems. Users of daylight processing systems, laser processors, self-processing film units, or other alternative processing systems must follow the manufacturer's recommendations for image processing. Documentation that the registrant is following the manufacturer's recommendations must include the date and initials of the individual completing the document and must be maintained at the site where performed as specified in subsection (l) of this section for inspection by the department.

(iii) Digital imaging acquisition systems. Users of digital imaging acquisition systems must follow the QA protocol for image processing established by the manufacturer or, if no manufacturer's protocol is available, by the registrant. The registrant must include the protocol, whether established by the registrant or the manufacturer, in its OSP. The registrant must document the frequency at which the QA protocol is performed. Documentation must include the date and initials of the individual completing the document and must be maintained at the site where performed as specified in subsection (l) of this section for inspection by the department.

(F) Additional requirements for conventional radiation therapy simulation systems used in the general radiographic mode of operation for radiation therapy port documentation.

(i) Beam quality. The half-value layer of the useful beam for a given x-ray tube potential must not be less than the values shown in Table IV. If it is necessary to determine such half-value layer at an x-ray tube potential not listed in Table IV, linear interpolation may be made.
Figure: 25 TAC §289.229(h)(5)(F)(i)

(ii) Technique and exposure indicators.

(I) The technique factors to be used during an exposure must be indicated before the exposure begins except when automatic exposure controls are used, in which case the technique factors set before the exposure must be indicated.

(II) The indicated technique factors must meet the manufacturer's specifications. If these specifications are not available from the manufacturer, the factors must be accurate to within plus or minus 10 percent of the indicated setting.

(iii) Beam limitation.

(I) The beam limiting device (collimator) must restrict the useful beam to the area of clinical interest.

(II) A method must be provided to visually define the center (cross-hair centering) of the x-ray field to within a 2 mm diameter.

(III) A method must be provided to accurately indicate the distance to within 2 mm.

(IV) The delineator wires must be accurate with the indicated setting within 2 mm.

(V) The x-ray field must be congruent with the light field within 2 mm.

(iv) Timers. Means must be provided to terminate the exposure at a preset time interval, a preset product of current and time, a preset number of pulses, or a preset radiation exposure to the image receptor. In addition, it must not be possible to make an exposure when the timer is set to a "zero" or "off" position and a visual and audible signal must indicate when an exposure has been terminated.

(v) Automatic exposure control (AEC). When an AEC is provided, an indication must be made on the control panel when this mode of operation is selected.

(vi) Timer reproducibility. When all technique factors are held constant, including control panel selections associated with AEC systems, the coefficient of variation of exposure interval for both manual and AEC systems must not exceed 0.05. This requirement applies to clinically used techniques.

(vii) Exposure reproducibility. When all technique factors are held constant, including control panel selections associated with AEC systems, the coefficient of variation of exposure for both manual and AEC systems must not exceed 0.05. This requirement applies to clinically used techniques.

(viii) Linearity.
Figure: 25 TAC §289.229(h)(5)(F)(viii)

(G) Additional requirements for radiation therapy simulation systems utilizing fluoroscopic capabilities.

(i) X-ray production in the fluoroscopic mode must be controlled by a device requiring continuous pressure by the fluoroscopist for the entire time of the exposure (continuous pressure type switch).

(ii) During fluoroscopy and cinefluorography, the kV and the Milliampere (mA) must be continuously indicated at the control panel and the fluoroscopist's position.

(iii) The SSD must not be less than 20 cm for image-intensified fluoroscopes used for examinations as specified in the registrant's OSP. The written OSP must provide precautionary measures to be adhered to during the use of this device. The procedures must provide information on the means to restore the unit to a 30 cm SSD when the unit is returned to general service.

(iv) Fluoroscopic timers must meet the following requirements.

(I) Means must be provided to preset the cumulative on-time of the fluoroscopic x-ray tube. The maximum cumulative time of the timing device must not exceed five minutes without resetting.

(II) A signal audible to the fluoroscopist must indicate the completion of any preset cumulative on-time. The signal must continue to sound while x-rays are produced until the timing device is reset. In lieu of such a signal, the timer must terminate the beam after the preset cumulative on-time is completed.

(v) The exposure foot switch must be permanently mounted in the control booth to ensure the operator cannot enter the simulator room while the fluoroscope is activated.

(vi) Radiation therapy simulation systems must duplicate the geometric conditions of the radiation therapy equipment plan, and therefore measurements regarding geometric conditions must be performed as specified in subsection (h)(3)(C)(iii)(I) of this section.

(vii) If the treatment-planning system is different from the treatment-delivery system, the accuracy of electronic transfer

of the treatment-delivery parameters to the treatment-delivery unit must be verified at the treatment location.

(i) Medical events.

(1) Medical events involving equipment operating at energies below 1 MeV and EBT devices must be reported when:

(A) the event involves the wrong individual, or the wrong treatment site;

(B) the treatment consists of three or fewer fractions, and the calculated total administered dose differs from the total prescribed dose by more than 10 percent; or

(C) the calculated total administered dose differs from the total prescribed dose by more than 20 percent.

(2) Medical events involving equipment operating with energies of 1 MeV and above must be reported when:

(A) the event involves the wrong individual, wrong type of radiation, wrong energy, or wrong treatment site;

(B) the treatment consists of three or fewer fractions, and the calculated total administered dose differs from the total prescribed dose by more than 10 percent;

(C) the calculated total administered dose differs from the total prescribed dose by more than 20 percent; or

(D) the combination of external beam radiation therapy and radioactive material therapy causes over-radiation of a patient resulting in physical injury or death.

(j) Reports of medical events.

(1) For a medical event, a registrant must do the following:

(A) notify the department by telephone no later than 24 hours after the discovery of the event;

(B) notify the referring physician and the patient of the event no later than 24 hours after its discovery, unless the referring physician personally informs the registrant that either the referring physician will inform the patient or that based on medical judgment, telling the patient would be harmful. The registrant is not required to notify the patient without first consulting the referring physician. If the referring physician or patient cannot be reached within 24 hours, the registrant must notify the patient as soon as possible. The registrant may not delay any appropriate medical care for the patient, including any necessary remedial care as a result of the event, because of any delay in notification;

(C) submit a written report to the department within 15 days after the discovery of the event. The report must not include the patient's name or other information that could lead to the identification of the patient. The written report must include the following:

(i) registrant's name and certificate of registration number;

(ii) prescribing physician's name;

(iii) a brief description of the event;

(iv) why the event occurred;

(v) the effect on the patient;

(vi) what improvements are needed to prevent recurrence;

(vii) actions taken to prevent recurrence;

(viii) whether the registrant notified the patient, or the patient's responsible relative or guardian (this person will be subsequently referred to as "the patient"); and if not, why not; and

(ix) if the patient was notified, what information was provided to the patient; and

(D) furnish the following to the patient within 15 days after discovery of the event if the patient was notified:

(i) a copy of the report that was submitted to the department; or

(ii) a brief description of both the event and the consequences, as they may affect the patient, provided a statement is included that the report submitted to the department can be obtained from the registrant.

(2) Each registrant must retain a record of each event as specified in subsection (l) of this section for inspection by the department. The record must contain the following:

(A) the names of all involved (including the prescribing physician, allied health personnel, the patient, and the patient's referring physician);

(B) the patient's identification number;

(C) a brief description of the event;

(D) why it occurred;

(E) the effect on the patient;

(F) what improvements are needed to prevent recurrence; and

(G) the actions taken to prevent a recurrence.

(3) Aside from the notification requirement, nothing in subsection (i) of this section and paragraphs (1) and (2) of this subsection affects any rights or duties of registrants, and physicians in relation to each other, patients, or the patient's responsible relatives or guardians.

(k) Emerging and future technologies.

(1) Each registrant must develop, implement, and maintain a dedicated quality management program to control the process of administering therapeutic radiation with newly acquired FDA-cleared emerging technologies or previously unused features of a future technology system.

(2) Implementation and ongoing clinical use of the technology dated before the technology arrives at the facility or the new features are used must include:

(A) an explicit strategy to ensure the quality of processes and patient safety; and

(B) an approval from facility management and the radiation oncology safety team before the technology arrives or new features are used.

(3) The radiation oncology safety team must develop the quality management program.

(4) The quality management program must address, at a minimum:

(A) education and training about the new technology and features;

(B) a system and timeline for ongoing competency assessment;

(C) a system for real-time recording of ongoing issues related to the technology and clinical use of the new technology or features;

(D) a strategy for timely investigation and adjudication of accidents and process deviations that may be captured in the system developed in paragraph (2) of this subsection;

(E) a strategy for routine review at intervals not to exceed 12 months of the clinical use of the new technology and features, which includes an assessment of the current use compared to paragraph (2) of this subsection and plan to either update the clinical use plan or steps to bring the clinical use back into alignment with paragraph (2) of this subsection;

(F) a strategy to ensure the quality of equipment functions; and

(G) an explicit strategy for ensuring quality after hardware and software updates and after equipment repair.

(5) The quality management program must follow current published recommendations from a recognized national professional association with expertise in therapeutic radiation technologies. In the absence of a protocol published by a national professional association, the manufacturer's protocol or equivalent quality, safety, and security protocol must be followed.

(6) New technology issues must be reported to the manufacturer and the department, and be reviewed and addressed via the registrant's reporting system.

(l) Records for department inspection. The registrant must maintain the following records at the time intervals specified, for inspection by the department. The records may be maintained in electronic format.
Figure: 25 TAC §289.229(l)

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

Filed with the Office of the Secretary of State on September 10, 2024.

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Cynthia Hernandez
General Counsel
Department of State Health Services
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Proposal publication date: June 14, 2024
For further information, please call: (512) 834-6655

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 550. LICENSING STANDARDS FOR PRESCRIBED PEDIATRIC EXTENDED CARE CENTERS

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts amendments to §§550.1, 550.5, 550.101 - 550.106, 550.108 - 550.115, 550.118 - 550.123, 550.202, 550.203, 550.205 - 550.207, 550.210, 550.211, 550.301, 550.303 - 550.306, 550.308 - 550.311, 550.402 - 550.406, 550.409 - 550.411, 550.413, 550.415, 550.417, 550.418, 550.504, 550.506 - 550.508, 550.510, 550.511, 550.601 - 550.608, 550.701, 550.703, 550.705, 550.707, 550.802, 550.803, 550.901 - 550.906, 550.1001 - 550.1003, 550.1101, 550.1102, 550.1202 - 550.1204, 550.1206, 550.1207, 550.1211, 550.1215, 550.1217 - 550.1220, 550.1222, 550.1224, 550.1301 - 550.1305, and 550.1401 - 550.1408.

The amendments to §§550.1, 550.5, 550.101 - 550.106, 550.108 - 550.115, 550.118 - 550.123, 550.202, 550.203, 550.205 - 550.207, 550.210, 550.211, 550.301, 550.303 - 550.306, 550.308 - 550.311, 550.402 - 550.406, 550.409 - 550.411, 550.413, 550.415, 550.417, 550.418, 550.504, 550.506 - 550.508, 550.510, 550.511, 550.601 - 550.608, 550.701, 550.703, 550.705, 550.707, 550.802, 550.803, 550.901 - 550.906, 550.1001 - 550.1003, 550.1101, 550.1102, 550.1202 - 550.1204, 550.1206, 550.1207, 550.1211, 550.1215, 550.1217 - 550.1220, 550.1222, 550.1224, 550.1301 - 550.1305, and 550.1401 - 550.1408 are adopted without changes to the proposed text as published in the June 14, 2024, issue of the *Texas Register* (49 TexReg 4357). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The amendments are necessary to comply with House Bill (H.B.) 1009 and H.B. 3550 from the 88th Legislature, Regular Session, 2023, that apply to Prescribed Pediatric Extended Care Centers (PPECC). H.B. 1009 requires a facility to suspend an employee who has been found by HHSC to have engaged in reportable conduct for purposes of inclusion on the Employee Misconduct Registry during any appeals. H.B. 3550 establishes minimum standards for transportation services whereby a center coordinates the schedule of transportation services with a minor's parent, guardian, or other legally authorized representative; determines what type of provider needs to be present during transportation; and permits a minor's parent, guardian, or other legally authorized representative to decline a center's transportation services entirely or only on a specific date. The rules also set forth that a center may not require a plan of care or physician's order to document a minor's need for transportation services to access PPECC services or consider transportation services as nursing services in a minor's plan of care. The amendments also update terminology and references throughout the chapter and reflect current processes.

COMMENTS

The 31-day comment period ended July 15, 2024.

During this period, HHSC received two comments regarding the proposed rules from two commenters, Earth Angels Pediatric Day Center and one individual. A summary of comments relating to the rules and HHSC's responses follows.

Comment: One commenter expressed full agreement with the amended rules.

Response: HHSC appreciates the support of the rules.

Comment: One commenter suggested an amendment to §550.418 to allow providers to place employees in temporary roles rather than suspend them, or to pay employees while they are on suspension during the appeals process when HHSC makes a referral to the Employee Misconduct Registry. The commenter also suggested clearing the suspension from the employee's personnel record if the employee wins on appeal.

Response: HHSC declines to make the suggested change. HHSC Long-term Care regulations do not address employee assignments or pay. Also, the rule reflects the language used in H.B. 1009 from current Texas Health and Safety Code §253.0025. Section 253.0025 requires the PPECC to suspend the employment of the employee HHSC finds engaged in reportable conduct throughout any applicable appeals process.

SUBCHAPTER A. PURPOSE, SCOPE, LIMITATIONS, COMPLIANCE, AND DEFINITIONS

26 TAC §550.1, §550.5

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §248A.101, which provides that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 248A, including for prescribing minimum standards to protect the health and safety of the public and to ensure the health, safety, and comfort of minors being served in PPECCs.

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

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

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Karen Ray
Chief Counsel
Health and Human Services Commission
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Proposal publication date: June 14, 2024
For further information, please call: (512) 438-3161

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SUBCHAPTER B. LICENSING APPLICATION, MAINTENANCE, AND FEES

26 TAC §§550.101 - 550.106, 550.108 - 550.115, 550.118 - 550.123

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §248A.101, which provides that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 248A, including for prescribing minimum standards to protect the health and safety of the public and to ensure the health, safety, and comfort of minors being served in PPECCs.

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

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Karen Ray
Chief Counsel
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SUBCHAPTER C. GENERAL PROVISIONS DIVISION 1. OPERATIONS AND SAFETY PROVISIONS

26 TAC §§550.202, 550.203, 550.205 - 550.207, 550.210, 550.211

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §248A.101, which provides that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 248A, including for prescribing minimum standards to protect the health and safety of the public and to ensure the health, safety, and comfort of minors being served in PPECCs.

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DIVISION 2. ADMINISTRATION AND MANAGEMENT

26 TAC §§550.301, 550.303 - 550.306, 550.308 - 550.311

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §248A.101, which provides that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 248A, including for prescribing minimum standards to protect the health and safety of the public and to

ensure the health, safety, and comfort of minors being served in PPECCs.

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DIVISION 3. NURSING AND STAFFING REQUIREMENTS

26 TAC §§550.402 - 550.406, 550.409 - 550.411, 550.413, 550.415, 550.417, 550.418

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §248A.101, which provides that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 248A, including for prescribing minimum standards to protect the health and safety of the public and to ensure the health, safety, and comfort of minors being served in PPECCs.

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DIVISION 4. GENERAL SERVICES

26 TAC §§550.504, 550.506 - 550.508, 550.510, 550.511

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §248A.101, which provides that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 248A, including for prescribing minimum standards to protect the health and safety of the public and to ensure the health, safety, and comfort of minors being served in PPECCs.

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DIVISION 5. ADMISSION CRITERIA, CONFERENCE, ASSESSMENT, INTERDISCIPLINARY PLAN OF CARE, AND DISCHARGE OR TRANSFER

26 TAC §§550.601 - 550.608

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §248A.101, which provides that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 248A, including for prescribing minimum standards to protect the health and safety of the public and to ensure the health, safety, and comfort of minors being served in PPECCs.

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DIVISION 6. PHYSICIAN, PHARMACY, MEDICATION, AND LABORATORY SERVICES

26 TAC §§550.701, 550.703, 550.705, 550.707

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §248A.101, which provides that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 248A, including for prescribing minimum standards to protect the health and safety of the public and to ensure the health, safety, and comfort of minors being served in PPECCs.

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DIVISION 7. CARE POLICIES, COORDINATION OF SERVICES, AND CENSUS

26 TAC §550.802, §550.803

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §248A.101, which provides that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 248A, including for prescribing minimum standards to protect the health and safety of the public and to ensure the health, safety, and comfort of minors being served in PPECCs.

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DIVISION 8. RIGHTS AND RESPONSIBILITIES, ADVANCE DIRECTIVES, ABUSE, NEGLECT, AND EXPLOITATION, INVESTIGATIONS, DEATH REPORTING, AND INSPECTION RESULTS

26 TAC §§550.901 - 550.906

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §248A.101, which provides that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 248A, including for prescribing minimum standards to protect the health and safety of the public and to ensure the health, safety, and comfort of minors being served in PPECCs.

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DIVISION 9. MEDICAL RECORDS, QUALITY ASSESSMENT AND PERFORMANCE IMPROVEMENT, DISSOLUTION AND RETENTION OF RECORDS

26 TAC §§550.1001 - 550.1003

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §248A.101, which provides that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 248A, including for prescribing minimum standards to protect the health and safety of the public and to ensure the health, safety, and comfort of minors being served in PPECCs.

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SUBCHAPTER D. TRANSPORTATION

26 TAC §550.1101, §550.1102

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §248A.101, which provides that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 248A, including for prescribing minimum standards to protect the health and safety of the public and to ensure the health, safety, and comfort of minors being served in PPECCs.

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SUBCHAPTER E. BUILDING REQUIREMENTS

26 TAC §§550.1202 - 550.1204, 550.1206, 550.1207, 550.1211, 550.1215, 550.1217 - 550.1220, 550.1222, 550.1224

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §248A.101, which provides that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 248A, including for prescribing minimum standards to protect the health and safety of the public and to ensure the health, safety, and comfort of minors being served in PPECCs.

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SUBCHAPTER F. INSPECTIONS AND VISITS

26 TAC §§550.1301 - 550.1305

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §248A.101, which provides that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 248A, including for prescribing minimum standards to protect the health and safety of the public and to ensure the health, safety, and comfort of minors being served in PPECCs.

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SUBCHAPTER G. ENFORCEMENT

26 TAC §§550.1401 - 550.1408

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §248A.101, which provides that the Executive Commissioner of HHSC shall adopt rules necessary to implement Chapter 248A, including for prescribing minimum standards to protect the health and safety of the public and to ensure the health, safety, and comfort of minors being served in PPECCs.

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

CHAPTER 341. GENERAL STANDARDS FOR JUVENILE PROBATION DEPARTMENTS
SUBCHAPTER C. CHIEF ADMINISTRATIVE OFFICER RESPONSIBILITIES

37 TAC §341.304

The Texas Juvenile Justice Department (TJJD) adopts new 37 TAC §341.304, Requirement to Apply for Diversion Funds, with changes to the proposed text as published in the June 21, 2024, issue of the *Texas Register* (49 TexReg 4577). The new rule will be republished.

SUMMARY OF CHANGES

Section 341.304 explains that, prior to a court committing a juvenile to TJJD, the chief administrative officer or designee must submit an application for diversion funds to divert a youth from commitment to TJJD. The new section also describes situations in which the requirement does not apply.

The new change to §341.304 adds an additional situation in which the requirement does not apply: when a youth has been previously committed to TJJD.

PUBLIC COMMENTS

TJJD received a public comment from El Paso County.

Comment: For a diversion application to be submitted to TJJD, a facility must have first accepted that youth for placement. When no facility is willing to accept a youth, there will be no alternative other than commitment to TJJD. This should be an exception to the requirement to submit a diversion application prior to commitment.

Response: The revision proposed in the comment was discussed at length in collaboration with county stakeholders, and TJJD believes sufficient processes can be developed to address the issue. The approval process for Regional Diversion Alternatives applications is not contained within rule, and TJJD will make changes to this non-rule process so that an approved facility is not a requirement for an application to be considered complete.

STATUTORY AUTHORITY

The new section is adopted under §223.001(d-1), Human Resources Code, which requires a juvenile probation department to apply for the placement of a child in a regional specialized program before a juvenile court commits the child to the department's custody and allows for the establishment of exceptions to this requirement.

No other statute, code, or article is affected by this adoption.

§341.304. Requirement to Apply for Diversion Funds.

(a) Prior to a court committing a juvenile to TJJD, the chief administrative officer or designee must submit an application for diversion funds to divert a juvenile from commitment to TJJD.

(b) The requirement in subsection (a) does not apply if:

(1) the youth has committed conduct that is eligible for a determinate sentence under §51.031 or §53.045, Family Code, whether or not the petition was approved by the grand jury;

(2) the youth has been previously placed and discharged within the last year from a post-adjudication secure juvenile correctional facility;

(3) the juvenile has been previously committed to TJJD;

(4) the youth is at least 17 years of age on the date of disposition or modification of disposition; or

(5) a juvenile probation department is not recommending commitment.

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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