

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 6. ORGANIZATION AND ADMINISTRATION

The Texas Ethics Commission (the TEC) adopts amendments to Texas Ethics Commission Rules in Chapter 6, §§6.1, 6.9, 6.21, 6.23, 6.35, 6.39, 6.43, 6.45 and 6.47. The amendments are adopted without changes to the proposed text as published in the August 9, 2024, issue of the *Texas Register* (49 TexReg 5839). The rules will not be republished.

Specifically, the TEC adopts amendments to rules in Subchapter A of Chapter 6 (relating to General Rules), including §6.1 regarding Definitions, and §6.9 regarding Computation of Time.

The TEC also adopts amendments to rules in Subchapter B of Chapter 6 (relating to Officers and Employees of the Commission), including §6.21 regarding Officers of the Commission, and §6.23 regarding Commission Staff.

The TEC also adopts amendments to rules in Subchapter C of Chapter 6 (relating to Commission Meetings), including §6.35 regarding Called Meetings, §6.39 regarding Meeting Agenda, §6.43 regarding Speakers Addressing the Commission, §6.45 regarding Order and Conduct of Commission Meeting and §6.47 regarding Tape Recording of Meeting; Minutes.

This adoption, along with the contemporaneous adoption of the repeal of certain other rules in Chapter 6, amends the rules used in the organization and administration of the TEC.

State law requires state agencies to "review and consider for readoption each of its rules" not later than the fourth anniversary of the date on which the rule takes effect and every four years after that date." Tex. Gov't Code §2001.039. The law further requires agencies to "readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section."

The TEC is continuing its comprehensive review with a review of the TEC's rules regarding its organization and administration, which are codified in Chapter 6. The repeal of some rules and adoption of amendments to other rules seek to shorten, simplify, and reorganize the rules to eliminate surplusage and improve clarity on the TEC's organization and administration.

SUBCHAPTER A. GENERAL RULES

1 TAC §6.1, §6.9

The amended rules are adopted under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The adopted amended rules affect Subchapter E of Chapter 571 of the Government Code.

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 Ethics Commission

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SUBCHAPTER B. OFFICERS AND EMPLOYEES OF THE COMMISSION

1 TAC §6.21, §6.23

The amended rules are adopted under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The adopted amended rules affect Subchapter E of Chapter 571 of the Government Code.

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

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SUBCHAPTER C. COMMISSION MEETINGS

1 TAC §§6.35, 6.39, 6.43, 6.45, 6.47

The amended rules are adopted under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The adopted amended rules affect Subchapter E of Chapter 571 of the Government Code.

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 6. ORGANIZATION AND ADMINISTRATION

The Texas Ethics Commission (the TEC) adopts the repeal of Texas Ethics Commission rules in Chapter 6.

Specifically, the TEC adopts the repeal of rules in Subchapter A of Chapter 6 (relating to General Rules), including §6.5 regarding Authority to Adopt Rules, and §6.7 regarding Actions That Require Six Votes.

The TEC also adopts the repeal of rules in Subchapter C of Chapter 6 (relating to Commission Meetings), including §6.31 regarding Quorum, and §6.33 regarding Frequency of Meetings.

These repeals are adopted without changes to the proposed text as published in the August 9, 2024, issue of the *Texas Register* (49 TexReg 5842). The rules will not be republished.

This adoption, along with the contemporaneous adoption of amendments to certain other rules in Chapter 6, amends the rules used in the organization and administration of the TEC.

State law requires state agencies to "review and consider for readoption each of its rules ... not later than the fourth anniversary of the date on which the rule takes effect and every four years after that date." Tex. Gov't Code §2001.039. The law further requires agencies to "readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section." *Id.*

The TEC is continuing its comprehensive review with a review of the TEC's rules regarding its organization and administration, which are codified in Chapter 6. The repeal of some rules and adoption of amendments to other rules seek to shorten, simplify, and reorganize the rules to eliminate surplusage and improve clarity on the TEC's organization and administration.

No public comments were received on these repealed rules.

SUBCHAPTER A. GENERAL RULES

1 TAC §6.5, §6.7

The repealed rules are adopted under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The adopted repealed rules affect Chapter 571 of the Government Code.

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

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SUBCHAPTER C. COMMISSION MEETINGS

1 TAC §6.31, §6.33

The repealed rules are adopted under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The adopted repealed rules affect Chapter 571 of the Government Code.

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 12. SWORN COMPLAINTS

The Texas Ethics Commission (the Commission) adopts new Chapter 12 in Texas Ethics Commission Rules, regarding Sworn Complaints. The amendments are adopted with non-substantive changes to the proposed text as published in the August 9, 2024, issue of the *Texas Register* (49 TexReg 5843). A typo is corrected in §12.43(a) regarding Motion to Dismiss and a mis-cite is corrected in §12.51 regarding Conduct and Decorum. These rules will be republished. Sections 12.1 - 12.4, 12.11 - 12.15, 12.21 - 12.26, 12.31 - 12.39, 12.41, 12.42, 12.44, 12.45, 12.52, 12.53, 12.61 - 12.66, 12.71, 12.72, 12.81 - 12.86, and 12.91 - 12.94 are adopted without changes to the proposed text as published in the August 9, 2024, issue of the *Texas Register* (49 TexReg 5843). These rules will not be republished.

Specifically, the Commission adopts new rules in Subchapter A of Chapter 12 (relating to Respondent's Rights), including §12.1 regarding Notice, §12.2 regarding Representation by Counsel, §12.3 regarding *Ex Parte* Communications, and §12.4 regarding Agreements to be in Writing.

The TEC also adopts new rules in Subchapter B of Chapter 12 (relating to Filing and Initial Processing of Complaint), including §12.11 regarding Deadline for Filing a Complaint, §12.12 regard-

ing File Date for a Complaint, §12.13 regarding Description of Violation, §12.14 regarding Statement of Facts, and §12.15 regarding Commission Initiated Complaint.

The TEC also adopts new rules in Subchapter C of Chapter 12 (relating to Investigation and Discovery), including §12.21 regarding Response to Notice of Complaint, §12.22 regarding Written Questions, §12.23 regarding Production of Documents During Preliminary Review, §12.24 regarding Adopted Settlement Before Preliminary Review Hearing, §12.25 regarding Subpoenas Issued by Commission, and §12.26 regarding Subpoenas Issued by Counsel for the Respondent.

The TEC also adopts new rules in Division 1 of Subchapter D of Chapter 12 (relating to Pleadings and Motions: General Rules), including §12.31 regarding Purpose and Effect of Motions, §12.32 regarding Required Form of Motions, §12.33 regarding Certificate of Conference, §12.34 regarding Motion Deadlines, §12.35 regarding Method of Filing, §12.36 regarding Service of Documents, §12.37 regarding Non-conforming Documents, §12.38 regarding Amended and Supplemental Filings, and §12.39 regarding Application of this Subchapter.

The TEC also adopts new rules in Division 2 of Subchapter D of Chapter 12 (relating to Pleadings and Motions: Types of Motions), including §12.41 regarding Motion to Extend Time, §12.42 regarding Motion for Continuance, §12.43 regarding Motion to Dismiss, §12.44 regarding Motion for Summary Disposition, and §12.45 regarding Motion for Sanctions.

The TEC also adopts new rules in Division 1 of Subchapter E of Chapter 12 (relating to Hearings: General Rules), including §12.51 regarding Conduct and Decorum, §12.52 regarding Private Deliberations, and §12.53 regarding Record of Rulings.

The TEC also adopts new rules in Division 2 of Subchapter E of Chapter 12 (relating to Hearings: Powers of the Presiding Officer), including §12.61 regarding Selection and Delegation of Presiding Officer, §12.62 regarding Set Hearings, §12.63 regarding Consolidate or Sever Matters for Hearing, §12.64 regarding Conduct Hearings, §12.65 regarding Rule of Evidentiary Matters, and §12.66 regarding Sign Orders and Subpoenas.

The TEC also adopts new rules in Division 3 of Subchapter E of Chapter 12 (relating to Hearings: Preliminary Review Hearings), including §12.71 regarding Notice of Preliminary Review Hearing, and §12.72 regarding Preliminary Review Hearing.

The TEC also adopts new rules in Division 4 of Subchapter E of Chapter 12 (relating to Hearings: Formal Hearings), including §12.81 regarding Order of Formal Hearing, §12.82 regarding Notice of Formal Hearing, §12.83 regarding Formal Hearing: Venue, §12.84 regarding Presentation of Evidence, §12.85 regarding Rules of Evidence, and §12.86 regarding Number of Exhibits.

The TEC also adopts new rules in Subchapter F of Chapter 12 (relating to Resolutions), including §12.91 regarding Agreed Resolutions, §12.92 regarding Resolution of Technical or De Minimis Allegations, §12.93 regarding Default Proceedings and §12.94 regarding Final Orders After Formal Hearings.

This adoption, along with the contemporaneous adoption of the repeal of all existing rules in Chapter 12, amends the rules used in sworn complaint proceedings at the Ethics Commission.

State law requires state agencies to "review and consider for readoption each of its rules . . . not later than the fourth anniversary of the date on which the rule takes effect and every four

years after that date." Tex. Gov't Code §2001.039. The law further requires agencies to "readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section." *Id.*

TEC staff started its comprehensive review with the TEC's rules regarding sworn complaint procedures, which are codified in Chapter 12. The repeal of existing rules and adoption of new rules seek to shorten, simplify, and reorganize the rules to eliminate surplusage and improve clarity on sworn complaint procedures.

The TEC received comments from Ross Fischer at its June and September 2024 Commission meetings. Mr. Fischer suggested changing the amount of days that adding language to new §12.83 that would give Respondents.

The TEC agreed with Mr. Fischer's suggestion to extend the amount of time required for a notice of hearing. The TEC published a change of the proposed the minimum notice time from 10 days to 30 days following its June meeting. The TEC adopts the rule providing a minimum of 30 days' notice.

Mr. Fischer also suggested the rules should be amended to allow the respondent to decide whether a formal hearing would be heard by the State Office of Administrative Hearings or before the commissioners sitting en banc.

The TEC decided to keep the long-standing practice of deciding whether a formal hearing should be heard by the commissioners directly or docketed at SOAH. The commissioners are best positioned to decide whether the additional time and expense of docketing a formal hearing at SOAH is justified.

Finally, Mr. Fischer suggested the TEC not re-adopt Section 12.83(c)(2) (to be re-numbered Section 12.23). Mr. Fischer asserts that any rule tolling the statutory deadline that requires the TEC to propose a resolution to a sworn complaint within 120 days of receiving a response in written to a complaint or to written questions is contrary to statute. Tex. Gov't Code § 571.1242(g).

The TEC disagrees with that interpretation. The rule implements the TEC's clear statutory authority to extend deadlines and to adopt procedural rules for the efficient management of its sworn complaint docket.

First, the rule clarifies that a subpoena is a species of "written questions" and therefore acts to toll the 120-day deadline consistent with the statutory language. Second, beyond its general grant of rulemaking authority, the TEC is required to "adopt procedures for the conduct of preliminary reviews and preliminary review hearings" that "must include . . . the tolling or extension of otherwise applicable deadlines where: (A) the commission issues a subpoena and the commission's meeting schedule makes it impossible both to provide a reasonable time for response and to comply with the otherwise applicable deadlines." *Id.* § 571.1244. The TEC then has to include those "rules of procedure" in the notice it sends to respondents in a preliminary review. *Id.* § 571.124(e). Moreover, the "commission may, on its own motion or on the reasonable request of a respondent, extend any deadline for action relating to a sworn complaint, motion, preliminary review hearing, or formal hearing." *Id.* § 571.136.

SUBCHAPTER A. RESPONDENT'S RIGHTS

1 TAC §§12.1 - 12.4

The new rules are adopted under Texas Government Code §571.062, which authorizes the TEC to adopt rules to administer

Chapter 571 of the Government Code. The TEC has additional authority to adopt rules regarding: (1) procedure in a formal hearing (§571.131), (2) technical and de minimis violations (§571.0631), and (3) procedures for preliminary review and preliminary review hearings (§571.1244).

The adopted rules affect Subchapter E of Chapter 571 of the Government Code.

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

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SUBCHAPTER B. FILING AND INITIAL PROCESSING OF COMPLAINT

1 TAC §§12.11 - 12.15

The new rules are adopted under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The adopted rules affect Subchapter E of Chapter 571 of the Government Code.

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

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SUBCHAPTER C. INVESTIGATION AND DISCOVERY

1 TAC §§12.21 - 12.26

The new rules are adopted under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The adopted rules affect Subchapter E of Chapter 571 of the Government Code.

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SUBCHAPTER D. PLEADINGS AND MOTIONS

DIVISION 1. GENERAL RULES

1 TAC §§12.31 - 12.39

The new rules are adopted under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The adopted rules affect Subchapter E of Chapter 571 of the Government Code.

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. TYPES OF MOTIONS

1 TAC §§12.41 - 12.45

The new rules are adopted under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The adopted rules affect Subchapter E of Chapter 571 of the Government Code.

§12.43. *Motion to Dismiss.*

(a) A party may move to dismiss a complaint in whole or in part on the grounds that an alleged violation has no basis in law or fact. An alleged violation has no basis in law if the allegations, if taken as true, together with inferences reasonably drawn from them do not constitute a violation of a rule adopted by or a law administered and enforced by the commission. An alleged violation has no basis in fact if no reasonable person could believe the facts alleged.

(b) A motion to dismiss must identify each alleged violation to which it is addressed, and must state specifically the reasons the alleged violation has no basis in law, no basis in fact, or both.

(c) The commission may, but is not required to, conduct an oral hearing on the motion to dismiss. The commission may not consider evidence in ruling on the motion and must decide the motion based solely on the facts alleged in the complaint, together with any complaint exhibits permitted by commission rule or statute.

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

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SUBCHAPTER E. HEARINGS DIVISION 1. GENERAL RULES

1 TAC §§12.51 - 12.53

The new rules are adopted under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The adopted rules affect Subchapter E of Chapter 571 of the Government Code.

§12.51. Conduct and Decorum.

(a) Parties, representatives, and other participants at a hearing shall conduct themselves with dignity, show courtesy and respect for one another and for the commission, and follow any additional guidelines of decorum prescribed by the presiding officer, including adherence to the amount of time allotted for the hearing. Attorneys shall adhere to the standards of conduct in the Texas Lawyer's Creed promulgated by the Supreme Court of Texas and the Court of Criminal Appeals and the Texas Disciplinary Rules of Professional Conduct promulgated by the Supreme Court of Texas.

(b) Attorneys should advise their clients and witnesses of the applicable rules of conduct and decorum.

(c) All objections, arguments, and other comments by parties shall be directed to the commission and not to an opposing party.

(d) While a party is addressing the commission or questioning a witness, any other party shall not interrupt for any purpose except to make a valid objection.

(e) Parties shall not approach the dais without leave of the presiding officer and must not lean on the dais.

(f) Parties shall remain seated at the counsel table at all times except:

- (1) when addressing the commission; and
- (2) whenever it may be proper to handle documents, exhibits, or other evidence.

(g) Parties must question witnesses and deliver arguments to the commission while seated at the counsel table or standing at the lectern. If a party seeks to question or argue from another location, leave of the presiding officer must be requested and granted.

(h) Parties must request leave of the presiding officer to conduct a demonstration.

(i) The presiding officer may take appropriate action to maintain and enforce proper conduct and decorum, including:

- (1) issuing a warning;
- (2) sanctioning a party pursuant to §12.45 of this chapter;
- (3) excluding persons from the proceeding;
- (4) recessing the proceeding; and
- (5) clearing the hearing room of persons causing a disruption.

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. POWERS OF THE PRESIDING OFFICER

1 TAC §§12.61 - 12.66

The new rules are adopted under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The adopted rules affect Subchapter E of Chapter 571 of the Government Code.

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. PRELIMINARY REVIEW HEARINGS

1 TAC §12.71, §12.72

The new rules are adopted under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The adopted rules affect Subchapter E of Chapter 571 of the Government Code.

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. FORMAL HEARINGS

1 TAC §§12.81 - 12.86

The new rules are adopted under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The adopted rules affect Subchapter E of Chapter 571 of the Government Code.

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

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SUBCHAPTER F. RESOLUTIONS

1 TAC §§12.91 - 12.94

The new rules are adopted under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The adopted rules affect Subchapter E of Chapter 571 of the Government Code.

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 12. SWORN COMPLAINTS

The Texas Ethics Commission (the TEC) adopts the repeal of all existing rules in Texas Ethics Commission Chapter 12. These repeals are adopted without changes to the proposed text as published in the August 9, 2024, issue of the *Texas Register* (49 TexReg 5855). The rules will not be republished.

Specifically, the Commission adopts the repeal of all rules in Subchapter A of Chapter 12 (relating to General Provision and Procedures), including §12.5, regarding Deadline for Filing a Complaint, §12.6 regarding File Date for Purposes of Commission Response Deadline, §12.7 regarding Confidentiality, §12.9 regarding Compliance with Open Meetings Law and Open Records Law, §12.11 regarding Delegation to Executive Director, §12.13 regarding Representation by Counsel, §12.15 regarding Appearance of Complainant at Hearing, §12.19 regarding Agreements to be in Writing, §12.21 regarding Notice, §12.23 regarding Hearing in Respondent's Absence, §12.25 regarding Waiver of Hearing, §12.27 regarding Deadline Extension, §12.28 regarding Production of Documents During Preliminary Review, §12.29 regarding Subpoenas Issued by Commission, §12.30 regarding Subpoenas Issued by Counsel for the Respondent, §12.31 regarding Conduct and Decorum, §12.33 regarding Sanctioning Authority, §12.34 regarding Agreed Orders, §12.35 regarding Frivolous Complaint and §12.36 regarding Assessment of Civil Penalty.

The TEC also adopts the repeal of all rules in Subchapter B of Chapter 12 (relating to Filing and Initial Processing of a Complaint), including §12.51 regarding Non-Complying Complaint, §12.52 regarding Response to Notice of Complaint, §12.53 regarding Commission Initiated Complaint, §12.59 regarding Description of Violation, §12.61 regarding Statement of Facts and §12.67 regarding Copies and Documents Provided by the Commission.

The TEC also adopts the repeal of all rules in Subchapter C of Chapter 12 (relating to Investigation and Preliminary Review), including §12.81 regarding Technical, Clerical or De Minimis Violations and §12.83 regarding Preliminary Review.

The TEC also adopts the repeal of all rules in Subchapter D of Chapter 12 (relating to Preliminary Review Hearing), including §12.84 regarding Notice of Preliminary Review Hearing, §12.85 regarding Preliminary Review Hearing, §12.86 regarding Motions for Continuance and §12.87 regarding Resolution of Preliminary Review Hearing.

The TEC also adopts the repeal of all rules in Division 1 of Subchapter E of Chapter 12 (relating to Formal Hearing: General Procedures), including §12.101 regarding Application and Construction, §12.102 regarding Order of Formal Hearing, §12.103 regarding Notice of Formal Hearing, §12.117 regarding Formal Hearing: Venue and §12.119 regarding Resolution after a Formal Hearing.

The TEC also adopts the repeal of all rules in Division 2 of Subchapter E of Chapter 12 (relating to Formal Hearing: Scheduling, Filing, and Service), including §12.121 regarding Prehearing Conferences, §12.123 regarding Scheduling Orders, §12.125 regarding Filing of Documents, and §12.127 regarding Service of Documents.

The TEC also adopts the repeal of all rules in Division 3 of Subchapter E of Chapter 12 (relating to Formal Hearing: Powers and Duties of Commission and Presiding Officer), including §12.131 regarding Powers and Duties of the Presiding Officer, and §12.133 regarding Orders From the Commission.

The TEC also adopts the repeal of all rules in Division 5 of Subchapter E of Chapter 12 (relating to Formal Hearing: Pleadings and Motions), including §12.151 regarding Required Form of Pleadings, §12.153 regarding Motions, Generally, and §12.155 regarding Motions for Continuance and to Extend Time.

The TEC also adopts the repeal of all rules in Division 6 of Subchapter E of Chapter 12 (relating to Formal Hearing: Hearings and Prehearing Conferences), including §12.161 regarding Time Allotted to Parties, §12.163 regarding Presentation of Evidence, §12.165 regarding Rules of Evidence, and §12.167 regarding Numbering of Exhibits.

The TEC also adopts the repeal of all rules in Division 7 of Subchapter E of Chapter 12 (relating to Formal Hearing: Disposition of Formal Hearing), including §12.171 regarding Standard of Proof, §12.173 regarding Default Proceedings, §12.174 regarding Summary Disposition, and §12.175 regarding Resolution of Formal Hearing.

This adoption, along with the contemporaneous adoption of new Subchapters and Divisions in Chapter 12, amends the rules used in sworn complaint proceedings at the Ethics Commission.

No comments were received regarding the proposed repeals of these rules.

SUBCHAPTER A. GENERAL PROVISIONS AND PROCEDURES

1 TAC §§12.5 - 12.7, 12.9, 12.11, 12.13, 12.15, 12.19, 12.21, 12.23, 12.25, 12.27 - 12.31, 12.33 - 12.36

The repealed rules are adopted under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The adopted repealed rules affect Subchapter E of Chapter 571 of the Government Code.

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

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SUBCHAPTER B. FILING AND INITIAL PROCESSING OF A COMPLAINT

1 TAC §§12.51 - 12.53, 12.59, 12.61, 12.67

The repealed rules are adopted under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The adopted repealed rules affect Subchapter E of Chapter 571 of the Government Code.

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

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SUBCHAPTER C. INVESTIGATION AND PRELIMINARY REVIEW

1 TAC §12.81, §12.83

The repealed rules are adopted under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The adopted repealed rules affect Subchapter E of Chapter 571 of the Government Code.

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 October 7, 2024.

TRD-202404756

Jim Tinley

General Counsel

Texas Ethics Commission

Effective date: October 27, 2024

Proposal publication date: August 9, 2024

For further information, please call: (512) 463-5800



SUBCHAPTER D. PRELIMINARY REVIEW HEARING

1 TAC §§12.84 - 12.87

The repealed rules are adopted under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The adopted repealed rules affect Subchapter E of Chapter 571 of the Government Code.

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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Jim Tinley

General Counsel

Texas Ethics Commission

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For further information, please call: (512) 463-5800



SUBCHAPTER E. FORMAL HEARING DIVISION 1. GENERAL PROCEDURES

1 TAC §§12.101 - 12.103, 12.117, 12.119

The repealed rules are adopted under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The adopted repealed rules affect Subchapter E of Chapter 571 of the Government Code.

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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Jim Tinley

General Counsel

Texas Ethics Commission

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For further information, please call: (512) 463-5800



DIVISION 2. SCHEDULING, FILING, AND SERVICE

1 TAC §§12.121, 12.123, 12.125, 12.127

The repealed rules are adopted under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The adopted repealed rules affect Subchapter E of Chapter 571 of the Government Code.

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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Jim Tinley

General Counsel

Texas Ethics Commission

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For further information, please call: (512) 463-5800



DIVISION 3. POWERS AND DUTIES OF COMMISSION AND PRESIDING OFFICER

1 TAC §12.131, §12.133

The repealed rules are adopted under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The adopted repealed rules affect Subchapter E of Chapter 571 of the Government Code.

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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Jim Tinley

General Counsel

Texas Ethics Commission

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For further information, please call: (512) 463-5800



DIVISION 5. PLEADINGS AND MOTIONS

1 TAC §§12.151, 12.153, 12.155

The repealed rules are adopted under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The adopted repealed rules affect Subchapter E of Chapter 571 of the Government Code.

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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Jim Tinley

General Counsel

Texas Ethics Commission

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For further information, please call: (512) 463-5800



DIVISION 6. HEARINGS AND PREHEARING CONFERENCES

1 TAC §§12.161, 12.163, 12.165, 12.167

The repealed rules are adopted under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The adopted repealed rules affect Subchapter E of Chapter 571 of the Government Code.

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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TRD-202404762

Jim Tinley

General Counsel

Texas Ethics Commission

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For further information, please call: (512) 463-5800



DIVISION 7. DISPOSITION OF FORMAL HEARING

1 TAC §§12.171, 12.173 - 12.175

The repealed rules are adopted under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The adopted repealed rules affect Subchapter E of Chapter 571 of the Government Code.

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 October 7, 2024.

TRD-202404763

Jim Tinley

General Counsel

Texas Ethics Commission

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Proposal publication date: August 9, 2024

For further information, please call: (512) 463-5800



CHAPTER 18. GENERAL RULES CONCERNING REPORTS

1 TAC §18.31

The Texas Ethics Commission (the Commission) adopts amendments to Texas Ethics Commission rules in Chapter 18. Specifically, the Commission amends §18.31, regarding Adjustments to Reporting Thresholds. The amendment is adopted without changes to the proposed text as published in the August 2, 2024, issue of the *Texas Register* (49 TexReg 5613). The rule will not be republished.

Section 571.064(b) of the Government Code requires the Commission to annually adjust reporting thresholds upward to the nearest multiple of \$10 in accordance with the percentage increase for the previous year in the Consumer Price Index for Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor. The laws under the Commission's authority that include reporting thresholds are Title 15 of the Election Code (campaign finance law), Chapter 305 of the Government Code (lobby law), Chapter 572 of the Government Code (personal financial statements), Chapters 302 and 303 of the Government Code (speaker election, governor for a day, and speaker's reunion day ceremony reports), and section 2155.003 of the Government Code (reporting requirements applicable to the comptroller).

The Commission first adopted adjustments to reporting thresholds in 2019, which were effective on January 1, 2020. These new adjustments, if adopted, will be effective on January 1, 2025, to apply to contributions and expenditures that occur on or after that date.

No public comments were received on this amended rule.

The amended rule is adopted under Texas Government Code Section 571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code, Chapters 302, 303, 305, 572, and section 2155.003 of the Government Code. The amended rule affects Title 15 of the Election Code, Chapters 302, 303, 305, 572, and section 2155.003 of the Government Code.

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 October 7, 2024.

TRD-202404774

Jim Tinley

General Counsel

Texas Ethics Commission

Effective date: January 1, 2025

Proposal publication date: August 2, 2024

For further information, please call: (512) 463-5800



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 103. HEALTH AND SAFETY SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING SAFE SCHOOLS

19 TAC §103.1205

The Texas Education Agency adopts new §103.1205, concerning safe schools. The amendment is adopted without changes to the proposed text as published in the July 19, 2024 issue of the *Texas Register* (49 TexReg 5248) and will not be republished. The adopted new rule implements House Bill (HB) 114, 88th Texas Legislature, Regular Session, 2023, by defining violent conduct for the purpose of disciplinary alternative education program (DAEP) placement when the program is at capacity.

REASONED JUSTIFICATION: Texas Education Code (TEC), §37.009(a-2), as added by HB 114, 88th Texas Legislature, Regular Session, 2023, states that if a DAEP is at capacity at the time the campus behavior coordinator is determining placement of a student who engaged in an expellable offense under TEC, §37.007, for violent conduct, as defined by commissioner of education rule, a student who is currently placed at the DAEP for a marijuana, e-cigarette, alcohol, or abusable, volatile chemical offense could be removed from the DAEP and placed in in-school suspension (ISS) to make a position available for the student who engaged in violent conduct. The student moved to ISS would be returned to the DAEP if a position became available before the end of their assigned placement.

Adopted new §103.1205 defines violent conduct as required by statute.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began July 19, 2024, and ended August 19, 2024. Following is a summary of the public comment received and the agency response.

Comment: The Texas Council of Administrators of Special Education requested an amendment to subsection (a) to include additional clarification regarding students who are removed from a DAEP and placed in in-school suspension; an amendment to subsection (c) to include a reference to TEC, §37.004, regarding the placement of students with disabilities and TEC, §37.009, regarding the conference, hearing, and review process; and clarification on which staff members can determine placement for a student in a DAEP.

Response: The agency disagrees to make these detailed clarifications, as local education agencies must comply with both statute and rule, making it unnecessary to reference or repeat statutory language or sections when it is not essential for rule implementation.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code, §37.006, as amended by House Bill (HB) 114, 88th Texas Legislature, Regular Session, 2023, which establishes criteria for the removal of a student to a disciplinary alternative education program for certain conduct; TEC, §37.007, as amended by HB 114, 88th Texas Legislature, Regular Session, 2023, which establishes criteria for the expulsion of a student for serious offenses; and TEC, §37.009, as amended by HB 114, 88th Texas Legislature, Regular Session, 2023, which establishes criteria for the conference, hearing, and review process for a student who has been removed.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §§37.006, 37.007, and 37.009, as amended by House Bill 114, 88th Texas Legislature, Regular Session, 2023.

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

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

TRD-202404792

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: October 29, 2024

Proposal publication date: July 19, 2024

For further information, please call: (512) 457-1497

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TITLE 25. HEALTH SERVICES

**PART 1. DEPARTMENT OF STATE
HEALTH SERVICES**

**CHAPTER 133. HOSPITAL LICENSING
SUBCHAPTER C. OPERATIONAL
REQUIREMENTS**

25 TAC §133.41, §133.49

The Texas Health and Human Services Commission (HHSC) adopts amendments to §133.41, concerning Hospital Functions and Services, and §133.49, concerning Reporting Requirements.

Amended §133.41 is adopted without changes to the proposed text as published in the June 14, 2024, issue of the *Texas Register* (49 TexReg 4148). This rule will not be republished.

Amended §133.49 is adopted with changes to the proposed text as published in the June 14, 2024, issue of the *Texas Register* (49 TexReg 4148). This rule will be republished.

BACKGROUND AND JUSTIFICATION

The adoption is necessary to implement House Bill (H.B.) 3162, 88th Legislature, Regular Session, 2023. H.B. 3162 amended Texas Health and Safety Code (HSC) Chapter 166, Subchapters B and E, and HSC Chapter 313.

HSC §166.046, as amended by H.B. 3162, in part, requires a facility's ethics or medical committee to review a physician's refusal to honor an advance directive or health care or treatment decision made by or on behalf of a patient determined to be incompetent or otherwise mentally or physically incapable of communication. Amended HSC §166.046 also requires the facility to provide a written notice to the person responsible for the patient's health care decisions that the facility's ethics or medical committee will meet at least seven days later to review the physician's refusal to honor the patient's advanced directive or health care treatment decision.

HSC §166.054, as added by H.B. 3162, requires health care facilities to report certain information to HHSC within 180 days after the health care facility provides the written notice required under HSC §166.046. New HSC §166.054 also requires HHSC to adopt rules for reporting, protecting, and aggregating this information.

COMMENTS

The 31-day comment period ended July 15, 2024.

During this period, HHSC received comments regarding the proposed rules from five commenters, including Not Dead Yet, the Texas Hospital Association (THA), the Texas Medical Association (TMA), and two individuals. THA and TMA commented jointly. A summary of comments relating to the rules and HHSC's responses follows.

Comment: An individual commenter stated they are in support of the rules and the opportunity to aggregate information surrounding refused advanced directives.

Response: HHSC acknowledges this comment.

Comment: An individual commenter requested HHSC amend HSC §166.046 to require facilities to include the reason why a physician refused to honor a patient's advance directive in addition to the notice required by HSC §166.046(b)(3)(D)(i). The commenter also noted the word "notice" is vague.

Response: HHSC does not have the authority to revise HSC §166.046. No revisions are made to §133.41 or §133.49 because the language is consistent with HSC §166.046.

Comment: Not Dead Yet requested HHSC clarify in §133.41 and §133.49 that an ethics or medical committee must not consider a patient's pre-existing disability or any disability that may arise from the patient's injury or disease.

Response: HHSC declines to revise §133.41 and §133.49 because such revisions are beyond the scope of the amendments in §133.41 and new reporting requirements in §133.49. Additionally, HHSC notes §133.45(c) already prohibits a hospital from discriminating based on a patient's disability.

Comment: THA and TMA requested HHSC amend §133.49(d) to closely mirror HSC §166.054. THA and TMA stated §133.49(d) as proposed may be interpreted to mean a facility must deliver the written notice about the meeting to review a physician's refusal to honor an advance directive regardless of whether the physician refused to honor an advance directive.

Response: HHSC revises §133.49(d) by replacing the words "delivers the" with "provides" and deleting the word "required" to further align §133.49(d) with HSC §166.054.

Comment: THA and TMA suggested HHSC revise §133.49(d)(5) by splitting the paragraph into two paragraphs and adding language to clarify "if life-sustaining treatment was withheld or withdrawn from the patient at the hospital after expiration of the time period described by HSC §166.046(e), the disposition of the patient after the withholding or withdrawal of life-sustaining treatment at the hospital, as selected from the following categories."

THA and TMA also requested HHSC amend §133.49(e) to clarify "HHSC publishes on its website by April 1st of each year an aggregate report as described by HSC §166.054(c)-(d) that does not include any information included in previous aggregate reports. THA and TMA stated §133.49(e) as proposed does not account for instances in which the annual report may contain information aggregated from multiple prior years.

Response: HHSC declines to revise §133.49(d)(5) and §133.49(e) because the language as proposed is in accordance with HSC §166.054(c)-(e). HHSC notes that HHSC is required to comply with statute and has internal policies in place to ensure such compliance.

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; HSC §241.026, which requires HHSC to develop, establish, and enforce standards for the construction, maintenance, and operation of licensed hospitals; and HSC §166.054, which requires HHSC to adopt rules to establish a standard form for the requirements for reporting meetings of an ethics or medical committee meeting to review a physician's refusal to honor an advance directive of or health care or treatment decision made by or on behalf of a patient who is determined to be incompetent or is otherwise mentally or physically incapable of

communication and to protect and aggregate any information HHSC receives under this section.

§133.49. Reporting Requirements.

(a) A hospital shall submit reports to the Texas Department of State Health Services (DSHS) in accordance with the reporting requirements in Texas Health and Safety Code (HSC) §98.103 and §98.1045.

(b) A hospital that donates human fetal tissue under HSC Chapter 173 shall submit an annual report to the Texas Health and Human Services Commission (HHSC) that includes for each donation the specific type of fetal tissue donated and the accredited public or private institution of higher learning that received the donation. The hospital shall submit the annual report no later than January 31st of the subsequent year.

(c) A hospital that diagnoses or treats an abortion complication, as defined in §139.2 of this title (relating to Definitions), shall comply with §139.5 of this title (relating to Additional Reporting Requirements).

(d) Pursuant to HSC §166.054, a hospital shall complete and submit to HHSC the Ethics or Medical Committee Reporting Form, which is located on the HHSC website, no later than the 180th day after the hospital provides written notice under HSC §166.046(b)(1). The Ethics or Medical Committee Reporting Form collects the following information:

(1) the number of days that elapsed from the patient's admission to the hospital to the date notice was provided under HSC §166.046(b)(1);

(2) whether the ethics or medical committee met to review the case under HSC §166.046 and, if the committee did meet, the number of days that elapsed from the date notice was provided under HSC §166.046(b)(1) to the date the meeting was held;

(3) whether the patient was:

(A) transferred to a physician within the same hospital who was willing to comply with the patient's advance directive or a health care or treatment decision made by or on behalf of the patient;

(B) transferred to a different health care facility; or

(C) discharged from the hospital to a private residence or other setting that is not a health care facility;

(4) whether the patient died while receiving life-sustaining treatment at the hospital;

(5) whether life-sustaining treatment was withheld or withdrawn from the patient at the hospital after expiration of the time period described by HSC §166.046(e) and, if so, the disposition of the patient after the withholding or withdrawal of life-sustaining treatment at the hospital, as selected from the following categories:

(A) the patient died at the hospital;

(B) the patient is currently a patient at the hospital;

(C) the patient was transferred to a different health care facility; or

(D) the patient was discharged from the facility to a private residence or other setting that is not a health care facility;

(6) the age group of the patient selected from the following categories:

(A) 17 years of age or younger;

(B) 18 years of age or older and younger than 66 years of age; or

(C) 66 years of age or older;

(7) the health insurance coverage status of the patient selected from the following categories:

(A) private health insurance coverage;

(B) public health plan coverage; or

(C) uninsured;

(8) the patient's sex;

(9) the patient's race;

(10) whether the hospital was notified of and able to reasonably verify any public disclosure of the contact information for the hospital's personnel, physicians or health care professionals who provide care at the hospital, or members of the ethics or medical committee in connection with the patient's stay at the hospital; and

(11) whether the hospital was notified of and able to reasonably verify any public disclosure by hospital personnel of the contact information for the patient's immediate family members or the person responsible for the patient's health care decisions in connection with the patient's stay at the hospital.

(e) In accordance with HSC §166.054(c)-(e), HHSC publishes on its website an aggregate report of information submitted under subsection (d) of this section in the preceding year by April 1st of each year.

(f) Pursuant to HSC §166.054(g), information collected or submitted under subsection (d) of this section:

(1) is not admissible in a civil or criminal proceeding in which a physician, health care professional acting under the direction of a physician, or health care facility is a defendant;

(2) may not be used in relation to any disciplinary action by a licensing or regulatory agency with oversight over a physician, health care professional acting under the direction of a physician, or health care facility; and

(3) is not public information or subject to disclosure under Texas Government Code Chapter 552, except as permitted by Texas Government Code §552.008.

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 October 9, 2024.

TRD-202404806

Karen Ray

Chief Counsel

Department of State Health Services

Effective date: November 1, 2024

Proposal publication date: June 14, 2024

For further information, please call: (512) 834-4591



CHAPTER 181. VITAL STATISTICS

SUBCHAPTER B. VITAL RECORDS

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), adopts an amendment to §181.22, concerning Fees Charged for Vital Records Services;

and the repeal of §181.35, concerning Parental Consent of Underage Applicants to Marriage.

The amendment to §181.22 and repeal of §181.35 are adopted without changes to the proposed text as published in the August 2, 2024, issue of the *Texas Register* (49 TexReg 5683). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The amendment is necessary to clarify and enhance the transparency of Vital Statistics fees in rule and the repeal is necessary to remove outdated rules identified during the rule review process.

The amendment to §181.22 consolidates fees charged for vital records services to clearly state each fee amount. There is no fee increase with this consolidation.

The expedited service fee, which shortens processing time, is available if the applicant chooses to pay the extra sum. The expedited service fee increased from \$5 to \$25 per application. This expedited service fee has not increased in 33 years and does not cover the costs for the service. The public does not need to pay this fee to obtain a vital record.

The amendment includes longstanding services being provided but not listed in rule.

Section 181.35 is repealed to comply with Senate Bill 1705, 85th Legislature, Regular Session, 2017, that repealed the statutory authority in Texas Family Code §2.102.

COMMENTS

The 31-day comment period ended September 3, 2024.

During this period, DSHS did not receive any comments regarding the proposed rules.

25 TAC §181.22

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055 and Texas Health and Safety Code §1001.075, which authorize the Executive Commissioner of HHSC to adopt rules necessary for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001; and Texas Health and Safety Code §191.0045, which authorizes rules necessary to prescribe fees for vital statistics services.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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 October 9, 2024.

TRD-202404790

Cynthia Hernandez

General Counsel

Department of State Health Services

Effective date: November 20, 2024

Proposal publication date: August 2, 2024

For further information, please call: (512) 776-7646



25 TAC §181.35

STATUTORY AUTHORITY

The repeal is adopted under Texas Government Code §531.0055 and Texas Health and Safety Code §1001.075, which authorize the Executive Commissioner of HHSC to adopt rules necessary for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001; and Texas Health and Safety Code §191.0045, which authorizes rules necessary to prescribe fees for vital statistics services.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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 October 9, 2024.

TRD-202404793

Cynthia Hernandez

General Counsel

Department of State Health Services

Effective date: November 20, 2024

Proposal publication date: August 2, 2024

For further information, please call: (512) 776-7646



CHAPTER 289. RADIATION CONTROL SUBCHAPTER F. LICENSE REGULATIONS

25 TAC §289.252

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), adopts an amendment to §289.252, concerning Licensing of Radioactive Material. The amendment to §289.252 is adopted without changes to the proposed text as published in the July 19, 2024, issue of the *Texas Register* (49 TexReg 5261), and therefore will not be republished.

BACKGROUND AND JUSTIFICATION

The amendment is necessary for Texas (an Agreement State) to comply with United States Nuclear Regulatory Commission (NRC) requirements, as identified in the Review Summary Sheets for Regulation Amendments (RATS Identification). The amendment updates NRC information, including the sum of ratios equation, used for determining whether aggregate quantities of radionuclides exceed the category 1 or category 2 radioactive material thresholds. An additional RATS Identification prescribes an update to the 21 Code of Federal Regulations (CFR) reference used when evaluating applications for specific licenses to manufacture, prepare, or transfer for commercial distribution, radioactive drugs containing radioactive material.

The amendment clarifies Radiation Safety Officer training requirements; updates licensee responsibility for providing documentation to support nuclear pharmacist designation; specifies cut-off dates for nuclear pharmacy practice experience as they relate to authority to designate nuclear pharmacists; corrects the reference for reporting and notifying DSHS when radiopharmaceutical generator eluates exceed permissible concentrations;

and simplifies the "Form of records" requirements for category 1 and category 2 protection standards by removing references to obsolete storage media. The amendment ensures compatibility with NRC requirements not specifically mentioned in the RATS Identification.

The amendment updates, corrects, improves, and clarifies the rule language and incorporates plain language where appropriate.

COMMENTS

The 31-day comment period ended August 19, 2024.

During this period, DSHS received no public comments regarding the proposed rule.

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 regulation; §401.051, which provides the required authority to adopt rules and guidelines relating to the control of sources of radiation; §401.052, which provides authority for rules providing for transportation and routing of radioactive material and waste in Texas; §401.103, which provides authority for licensing and registration for transportation of sources of radiation; §401.104 which provides for rulemaking authority for general or specific licensing of radioactive material and devices or equipment using radioactive material; §401.224, which provides rulemaking authority relating to the packaging of radioactive waste; Chapter 401, Subchapter J, which authorizes enforcement of the Act; Texas Government Code §531.0055; and Texas Health and Safety Code §1001.075, which authorizes the Executive Commissioner of HHSC to adopt rules and policies for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001.

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 October 9, 2024.

TRD-202404785

Cynthia Hernandez

General Counsel

Department of State Health Services

Effective date: October 29, 2024

Proposal publication date: July 19, 2024

For further information, please call: (512) 834-6655



TITLE 26. HEALTH AND HUMAN SERVICES PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 506. SPECIAL CARE FACILITIES SUBCHAPTER C. OPERATIONAL REQUIREMENTS

26 TAC §506.40

The Texas Health and Human Services Commission (HHSC) adopts new §506.40, concerning Advance Directives Reporting Requirements.

New §506.40 is adopted with changes to the proposed text as published in the June 14, 2024, issue of the *Texas Register* (49 TexReg 4355). This rule will be republished.

BACKGROUND AND JUSTIFICATION

The adoption is necessary to implement House Bill (H.B.) 3162, 88th Legislature, Regular Session, 2023. H.B. 3162 amended Texas Health and Safety Code (HSC) Chapter 166, Subchapters B and E, and HSC Chapter 313.

HSC §166.046, as amended by H.B. 3162, in part, requires a facility's ethics or medical committee to review a physician's refusal to honor an advance directive or health care or treatment decision made by or on behalf of a patient determined to be incompetent or otherwise mentally or physically incapable of communication. Amended HSC §166.046 also requires the facility to provide a written notice to the person responsible for the patient's health care decisions that the facility's ethics or medical committee will meet at least seven days later to review the physician's refusal to honor the patient's advanced directive or health care treatment decision.

HSC §166.054, as added by H.B. 3162, requires health care facilities to report certain information to HHSC within 180 days after the health care facility provides the written notice required under HSC §166.046. New HSC §166.054 also requires HHSC to adopt rules for reporting, protecting, and aggregating this information.

COMMENTS

The 31-day comment period ended July 15, 2024.

During this period, HHSC received comments regarding the proposed rule from six commenters, including Not Dead Yet, the Texas Hospital Association (THA), the Texas Medical Association (TMA), and three individuals. THA and TMA commented jointly. A summary of comments relating to the rule and HHSC's responses follows.

Comment: An individual commenter stated they are in support of the rule and the opportunity to aggregate information surrounding refused advanced directives.

Response: HHSC acknowledges this comment.

Comment: An individual commenter requested HHSC amend HSC §166.046 to require facilities to include the reason why a physician refused to honor a patient's advance directive in addition to the notice required by HSC §166.046(b)(3)(D)(i). The commenter also noted the word "notice" is vague.

Response: HHSC does not have the authority to revise HSC §166.046. No revisions are made to §506.40 because the language is consistent with HSC §166.046.

Comment: An individual commenter noted proposed §506.40 addresses an ongoing concern about the potential for one's final wishes to be dismissed at a provider's discretion as well as potential provider burden. The commenter stated mandating a review by an ethics or medical committee eliminates the potential for a provider to make a potentially biased independent decision and restores a fair and ethical approach to a critical decision.

Response: HHSC acknowledges this comment.

Comment: Not Dead Yet requested HHSC clarify in §506.40 that an ethics or medical committee must not consider a patient's pre-existing disability or any disability that may arise from the patient's injury or disease.

Response: HHSC declines to revise §506.40 because such revisions are beyond the scope of the new reporting requirements in §506.40. Additionally, HHSC notes §133.45(c) already prohibits a hospital from discriminating based on a patient's disability.

Comment: THA and TMA requested HHSC amend §506.40(a) to closely mirror HSC §166.054. THA and TMA argue §506.40(a) as proposed may be interpreted to mean a facility must deliver the written notice about the meeting to review a physician's refusal to honor an advance directive regardless of whether the physician refused to honor an advance directive.

Response: HHSC revises §506.40(a) by replacing the words "delivers the" with "provides" and deleting the word "required" to further align §506.40(a) with HSC §166.054.

Comment: An individual commenter requested HHSC amend §506.40(a)(3) to require the Ethics or Medical Committee Reporting Form collect information about whether the patient was denied a time sensitive opportunity to enforce a previously delivered advanced directive. The commenter also shared a study about do not resuscitate orders before invasive procedures.

Response: HHSC declines to revise §506.40(a)(3) because the language is consistent with HSC §166.054.

Comment: THA and TMA suggested HHSC revise §506.40(a)(5) by splitting the paragraph into two paragraphs and adding language to clarify "if life-sustaining treatment was withheld or withdrawn from the patient at the hospital after expiration of the time period described by HSC §166.046(e), the disposition of the patient after the withholding or withdrawal of life-sustaining treatment at the hospital, as selected from the following categories."

THA and TMA also requested HHSC amend §506.40(b) to clarify "HHSC publishes on its website by April 1st of each year an aggregate report as described by HSC §166.054(c) - (d) that does not include any information included in previous aggregate reports. THA and TMA stated §506.40(b) as proposed does not account for instances in which the annual report may contain information aggregated from multiple prior years.

Response: HHSC declines to revise §506.40(a)(5) and §506.40(b) because the language as proposed is in accordance with HSC §166.054(c) - (e). HHSC notes that HHSC is required to comply with statute and has internal policies in place to ensure such compliance.

STATUTORY AUTHORITY

The new section is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; HSC §248.006, which requires HHSC to adopt rules establishing minimum standards for special care facilities; and HSC §166.054, which requires HHSC to adopt rules to establish a standard form for the requirements for reporting meetings of an ethics or medical committee meeting to review a physician's refusal to honor an advance directive of or health care or treatment decision made by or on behalf of a patient who is determined to be incompetent or is otherwise mentally or physically incapable of communication and to protect and aggregate any information HHSC receives under this section.

§506.40. *Advance Directives Reporting Requirements.*

(a) Pursuant to Texas Health and Safety Code (HSC) §166.054, a facility shall complete and submit to the Texas Health and Human Services Commission (HHSC) the Ethics or Medical Committee Reporting Form, which is located on the Texas HHSC website, no later than the 180th day after the facility provides written notice under HSC §166.046(b)(1). The Ethics or Medical Committee Reporting Form collects the following information:

(1) the number of days that elapsed from the patient's admission to the facility to the date notice was provided under HSC §166.046(b)(1);

(2) whether the ethics or medical committee met to review the case under HSC §166.046 and, if the committee did meet, the number of days that elapsed from the date notice was provided under HSC §166.046(b)(1) to the date the meeting was held;

(3) whether the patient was:

(A) transferred to a physician within the same facility who was willing to comply with the patient's advance directive or a health care or treatment decision made by or on behalf of the patient;

(B) transferred to a different health care facility; or

(C) discharged from the facility to a private residence or other setting that is not a health care facility;

(4) whether the patient died while receiving life-sustaining treatment at the facility;

(5) whether life-sustaining treatment was withheld or withdrawn from the patient at the facility after expiration of the time period described by HSC §166.046(e) and, if so, the disposition of the patient after the withholding or withdrawal of life-sustaining treatment at the facility, as selected from the following categories:

(A) the patient died at the facility;

(B) the patient is currently a patient at the facility;

(C) the patient was transferred to a different health care facility; or

(D) the patient was discharged from the facility to a private residence or other setting that is not a health care facility;

(6) the age group of the patient selected from the following categories:

(A) 17 years of age or younger;

(B) 18 years of age or older and younger than 66 years of age; or

(C) 66 years of age or older;

(7) the health insurance coverage status of the patient selected from the following categories:

(A) private health insurance coverage;

(B) public health plan coverage; or

(C) uninsured;

(8) the patient's sex;

(9) the patient's race;

(10) whether the facility was notified of and able to reasonably verify any public disclosure of the contact information for the facility's personnel, physicians or health care professionals who provide care at the facility, or members of the ethics or medical committee in connection with the patient's stay at the facility; and

(11) whether the facility was notified of and able to reasonably verify any public disclosure by facility personnel of the contact information for the patient's immediate family members or the person responsible for the patient's health care decisions in connection with the patient's stay at the facility.

(b) In accordance with HSC §166.054(c)-(e), HHSC publishes on its website an aggregate report of information submitted under subsection (a) of this section in the preceding year by April 1 of each year.

(c) Pursuant to HSC §166.054(g), information collected or submitted under subsection (a) of this section:

(1) is not admissible in a civil or criminal proceeding in which a physician, health care professional acting under the direction of a physician, or health care facility is a defendant;

(2) may not be used in relation to any disciplinary action by a licensing or regulatory agency with oversight over a physician, health care professional acting under the direction of a physician, or health care facility; and

(3) is not public information or subject to disclosure under Texas Government Code Chapter 552, except as permitted by Texas Government Code §552.008.

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 October 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



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER J. RULES TO IMPLEMENT THE AMUSEMENT RIDE SAFETY INSPECTION AND INSURANCE ACT

28 TAC §§5.9001 - 5.9004, 5.9006 - 5.9014

The commissioner of insurance adopts amendments to 28 TAC §§5.9001 - 5.9004 and 5.9006 - 5.9014, concerning inspection of amusement rides. The amendments implement House Bill 1553, 88th Legislature, 2023, which revised the definition of "amusement ride" in Occupations Code §2151.002. The amendments are adopted without changes to the proposed text published in the August 16, 2024, issue of the *Texas Register* (49 TexReg 6150). The rules will not be republished.

REASONED JUSTIFICATION. HB 1553 revised the definition of "amusement ride" in Occupations Code §2151.002 to exclude from the definition water slides in which passengers are carried

along a course that is less than 200 feet in length, are substantially constructed from vinyl or vinyl-coated polyester, and are not mechanically inflated using a continuous airflow device. The current definition of "amusement ride" in §5.9002 uses the language of the previous statutory definition, so the rule text needs to be updated to reflect the change made to the statute.

To reduce the need for additional rule amendments if the definition of "amusement ride" in Occupations Code §2151.002 is revised in the future, the definition of "amusement ride" is changed to state that it is "as defined in Occupations Code §2151.002," rather than restating the statute's definition in rule text. Similar amendments are made to the definitions of other terms that are already defined in Occupations Code §2151.002.

Amendments also make revisions to the rule text to address changes since the rules were last adopted or amended, including revising text for consistent use of form names and to update form revision dates where necessary, and updating the program area name and mailing address for form submissions.

In addition, amendments make nonsubstantive changes for consistency with current TDI rule text drafting preferences. These include revising use of the word "shall" for consistency with TDI's current plain language preferences; and removing the unnecessary designation of "TDI" as an acronym in separate sections, since "TDI" is a defined term applicable throughout the subchapter. These amendments are not noted in the following descriptions of the sections unless it is necessary or appropriate to provide additional context or explanation.

Details of the sections' amendments follow.

Section 5.9001. Amendments to §5.9001 update citations to the Occupations Code in the section's initial sentences and in paragraph (1), update citations to the Insurance Code in paragraphs (4) and (6), and revise punctuation in paragraph (7).

Section 5.9002. Amendments to §5.9002 revise the definitions of "Amusement ride," "Class A amusement ride," "Class B amusement ride," and "Mobile amusement ride" to remove text that repeats statutory language. Amendments instead define the terms by pointing to the definitions in Occupations Code §2151.002. Amendments also update citations to the Occupations Code and other codes throughout the section, replace the word "five" with the numeral "5" in paragraph (6)(B), lowercase "commissioner of insurance" in paragraph (7), remove a duplicate acronym designation for "ASTM" in paragraph (8), and replace "his or its" with "that person or entity's" in paragraph (13).

Section 5.9003. An amendment to §5.9003 updates the internet address where an amusement ride owner or operator may pay the annual fee required by the Amusement Ride Safety Inspection and Insurance Act. Additional amendments revise punctuation, replace the phrase "over the Internet" with the word "online," and remove an unnecessary use of the word "online."

Section 5.9004. Amendments throughout §5.9004 update citations to the Occupations Code and make minor nonsubstantive wording and grammar changes for clarity. References to forms in subsections (b)(5), (b)(8), (c), (c)(11), (c)(12), (e)(3), and (f) are also revised, as are program area names in subsections (c)(11), (c)(12), (e)(3), and (f). Amendments in subsections (b)(6), (c)(7), and (d) change the words "prior to" to "before." Amendments also replace TDI's old mailing address with its new mailing address and provide TDI's website where referenced forms may be obtained in subsections (c)(11), (e)(3), and (f), and an amendment

in subsection (f) provides the TDI mailing address where the referenced form may be obtained. Another amendment replaces the word "line" with "lines" and "prior to" with "before."

Section 5.9006. Amendments to §5.9006 clarify and improve the readability of signage requirements in paragraph (1) and replace the words "at which" with "where" in paragraph (3).

Section 5.9007. Amendments to §5.9007 update references to forms in subsections (a)(1) and (b)(1). Amendments also update the applicable program area name and replace TDI's old mailing address with its new mailing address in subsections (a)(1) and (b)(1), and amendments in subsections (a)(1) and (b)(1) provide TDI's website where the referenced forms may be obtained. Plain language changes make minor nonsubstantive wording, punctuation, and grammar changes throughout the section for clarity.

Section 5.9008. An amendment to the introductory sentence of §5.9008 updates a citation to the Occupations Code. Additional amendments change the words "prior to" to "before" in paragraph (1) and revise a reference to a form in paragraph (2).

Section 5.9009. Amendments to §5.9009 make minor nonsubstantive wording, punctuation, and grammar changes throughout the section for clarity and update a citation to the Occupations Code.

Section 5.9010. Amendments to §5.9010 replace the words "at which" with "where" in subsection (a) and revise references to forms in subsections (a) and (b).

Section 5.9011. An amendment to §5.9011 removes the unnecessary designation of the acronym "ASTM." "ASTM" is a defined term applicable throughout the subchapter, so it is not necessary to establish it as an acronym in the section.

Section 5.9012. Amendments to §5.9012 remove or replace the word "such" in subsections (a) and (d) and remove the phrase "set forth" in subsection (d). Citations to the Occupations Code in subsections (e) and (f) are also revised. Amendments also make minor nonsubstantive wording and punctuation changes throughout the section for clarity.

Section 5.9013. Amendments to §5.9013 update a statutory reference to use the defined term "the Act," add the word "with," change "his/her agent's" to "the state attorney general's agents," and insert a comma.

Section 5.9014. Amendments to §5.9014(a) change "he/she" to "the owner/operator," insert the word "it," and add the words "of this title" to a reference to an Administrative Code section. An amendment to subsection (b) revises text for better consistency with statutory language concerning compliance with the rules and statutes. Amendments in subsections (b) and (c) update citations to the Occupations Code.

SUMMARY OF COMMENTS. TDI provided an opportunity for public comment on the rule proposal for a period that ended on September 16, 2024. TDI did not receive any comments on the proposed amendments.

STATUTORY AUTHORITY. The commissioner adopts amendments to §§5.9001 - 5.9004 and 5.9006 - 5.9014 under Occupations Code §§2151.051, 2151.1021, and 2151.105 and Insurance Code §36.001.

Occupations Code §2151.051 provides that the commissioner administer and enforce Occupations Code Chapter 2151, which addresses the regulation of amusement rides.

Occupations Code §2151.1021 provides that the commissioner adopt rules requiring operators of mobile amusement rides to perform inspections of mobile amusement rides, including rules requiring daily inspections of safety restraints.

Occupations Code §2151.105 provides that the commissioner adopt rules requiring that a sign be posted to inform the public how to report an amusement ride that appears to be unsafe or to report an amusement ride operator who appears to be violating the law. The rules must require the sign to be posted at the principal entrance to the site at which an amusement ride is located or at any location on that site at which tickets for an amusement ride are available.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

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

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Jessica Barta
General Counsel
Texas Department of Insurance
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For further information, please call: (512) 676-6555



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 1. CENTRAL ADMINISTRATION SUBCHAPTER A. PRACTICE AND PROCEDURES

DIVISION 1. PRACTICE AND PROCEDURES

34 TAC §1.6

The Comptroller of Public Accounts adopts amendments to §1.6, concerning service of documents on parties, without changes to the proposed text as published in the August 2, 2024, issue of the *Texas Register* (49 TexReg 5751). The rule will not be republished. The amendments update the mailing address of the Administrative Hearings Section, which has moved to Suite 14.301 of the George H.W. Bush Building at 1801 Congress Ave., Austin, Texas 78701.

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

The amendments are adopted under Tax Code, §111.002 (Comptroller's Rules, Compliance, Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2 (State Taxation).

This section implements Tax Code, §111.00455 (Contested Cases Conducted by State Office of Administrative Hearings).

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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Jenny Burleson
Director, Tax Policy
Comptroller of Public Accounts
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Proposal publication date: August 2, 2024
For further information, please call: (512) 475-2220



34 TAC §1.10

The Comptroller of Public Accounts adopts amendments to §1.10, concerning requesting a hearing, without changes to the proposed text as published in the August 2, 2024, issue of the *Texas Register* (49 TexReg 5752). The rule will not be republished. The amendments update the mailing addresses for the Audit Division and the Administrative Hearings Section, both of which moved to the George H.W. Bush Building at 1801 Congress Ave., Austin, Texas 78701.

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

The amendments are adopted under Tax Code, §111.002 (Comptroller's Rules, Compliance, Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2 (State Taxation).

This section implements Tax Code, §111.00455 (Contested Cases Conducted by State Office of Administrative Hearings).

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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34 TAC §1.35

The Comptroller of Public Accounts adopts amendments to §1.35, concerning motion for rehearing, without changes to the proposed text as published in the August 2, 2024, issue of the *Texas Register* (49 TexReg 5753). The rule will not be republished. The amendments implement Senate Bill 903, 87th Legislature, 2021 and House Bill 2080, 87th Legislature, 2021.

Subsection (a) is amended to implement Senate Bill 903, which enacted Tax Code, §111.106 (Tax Refund: Notice of Intent to Bypass Hearing). Effective September 1, 2021, a taxpayer who files a notice of intent to bypass the refund hearing, and who either participates in a conference with a designated comptroller employee or is excused from participation in such a conference by the comptroller, may file suit in district court. The last sentence in subsection (a), providing that a motion for rehearing is a prerequisite for a tax refund lawsuit, is therefore an incomplete statement of the law and is deleted.

Subsection (b) is amended to implement House Bill 2080, which enacted Tax Code, Chapter 112, Subchapter E, (Suit After Redetermination). New paragraph (3) references Tax Code, §112.201(a) and states that a motion for rehearing of a redetermination must identify the disputed amounts associated with the grounds of error raised. Current paragraph (3) is renumbered as paragraph (4) and non-substantive changes are made to mirror the syntax of the new subsection.

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

The amendments are adopted under Tax Code, §111.002 (Comptroller's Rules, Compliance, Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2 (State Taxation).

This section implements Tax Code, §111.106 (Tax Refund: Notice of Intent to Bypass Hearing) and Tax Code, §112.201 (Suit After Redetermination).

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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Jenny Burleson

Director, Tax Policy

Comptroller of Public Accounts

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CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER HH. MIXED BEVERAGE TAXES

34 TAC §3.1001

The Comptroller of Public Accounts adopts amendments to §3.1001, concerning mixed beverage gross receipts tax, without changes to the proposed text as published in the September 6, 2024, issue of the *Texas Register* (49 TexReg 6969). The rule will not be republished.

The comptroller amends this section to reflect the changes in Alcoholic Beverage Code, §§28.1001 (Pickup and Delivery of Alcoholic Beverages for Off-Premises Consumption), 32.01 (Authorized Activities), 32.15 (Removal of Beverages from Premises), 32.155 (Pickup and Delivery of Alcoholic Beverages

for Off-Premises Consumption), 32.17 (Cancellation of Suspension of Permit; Grounds), and 57.01 (Authorized Activities), made by House Bill 1024, 87th Legislature, 2021, effective May 12, 2021. The comptroller also amends the section throughout to implement House Bill 1545, 86th Legislature, 2019, effective September 1, 2021, which updated the definition of "permittee" in Tax Code, §183.001 (Definitions) and eliminated the distinction between ale, beer, or malt liquor which are now referred to as a malt beverage. This change is made throughout the section. The comptroller further amends this section throughout to add statutory citations.

The comptroller amends subsection (a)(2) by adding clarification language to define a bad debt as uncollectible. In addition, the comptroller moves language related to the requirements for claiming a bad debt to subsection (n) to be consistent with Tax Code, §183.027 (Credits and Refunds for Bad Debts). The comptroller amends subsection (a)(3) to delete language related to acceptable payment methods to purchase alcoholic beverages. Only distributors, manufactures, and retailers have restrictions under the Alcoholic Beverage Code related to acceptable types of payments. The comptroller also amends subsection (a)(8) to update the definition of the term "permittee." House Bill 1545 consolidated, repealed, and created certain licenses and permits to streamline the permitting process. In addition, the comptroller amends language to be consistent with the definition of Permittee and Licensee as defined in the Alcoholic Beverage Code §1.04 (11) and (16) (Definitions).

The comptroller deletes subsection (b)(4), a graphic related to separate tax disclosure statements, as it is available on the comptroller's website.

The comptroller deletes subsection (c)(1)(I), to delete language related to temporary permits, as only one temporary permit exists within the definition of permittee based on changes made from House Bill 1545. The comptroller renumbers all subsequent paragraphs accordingly.

The comptroller amends subsection (e) to delete redundant language for a holder of a temporary permit to report and remit mixed beverage gross receipts tax as they are included in the definition of "permittee" provided by subsection (a)(8).

The comptroller amends subsection (f) to add new paragraph (8) to include alcoholic beverages sold by a permittee for off-premises consumption in the list of items excluded from mixed beverage gross receipts tax. House Bill 1024 amended the Alcoholic Beverages Code to allow permittees to sell alcoholic beverages for off-premise consumption. Only alcoholic beverages sold for on-premises consumption by a permittee are taxed under Tax Code, §183.021 (Tax imposed on Gross Receipts of Permittee from Mixed Beverages). Because these beverages are for off-premises consumption, the comptroller interprets this to mean these sales are not subject to the mixed beverage gross receipts tax. The comptroller renumbers all subsequent paragraphs accordingly.

The comptroller amends subsection (n)(1) to add new subparagraphs (A) through (C) with language moved from subsection (a)(2). The new subparagraphs are consistent with Tax Code, §183.027.

The comptroller amends subsection (o)(3), to add average pour figures the comptroller may accept for malt beverages and wine in the absence of records or evidence made available for audit. These presumptions are recognized and accepted in the depletion-analysis methodology by the comptroller for auditing

mixed beverage taxpayers. See e.g., Comptroller Decision No. 117,284 (2021).

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

The comptroller adopts the amendments under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture) which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2 (State Taxation).

The amendments implement Tax Code, §183.021 (Tax Imposed on Gross Receipts of Permittee from Mixed Beverages) and Alcoholic Beverage Code, §§28.1001 (Pickup and Delivery of Alcoholic Beverages for Off-Premises Consumption), 32.01 (Authorized Activities), 32.15 (Removal of Beverages from Premises), 32.17 (Cancellation of Suspension of Permit; Grounds), 32.155 (Pickup and Delivery of Alcoholic Beverages for Off-Premises Consumption), 57.01 (Authorized Activities).

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

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Jenny Burleson

Director, Tax Policy

Comptroller of Public Accounts

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



34 TAC §3.1002

The Comptroller of Public Accounts adopts amendments to §3.1002, concerning mixed beverage sales tax, without changes to the proposed text as published in the September 6, 2024, issue of the *Texas Register* (49 TexReg 6974). The rule will not be republished.

The comptroller amends the section to reflect the changes in Alcoholic Beverage Code, §§28.1001 (Pickup and Delivery of Alcoholic Beverages for Off-Premises Consumption), 32.01 (Authorized Activities), 32.15 (Removal of Beverages from Premises), 32.155 (Pickup and Delivery of Alcoholic Beverages for Off-Premises Consumption), 32.17 (Cancellation of Suspension of Permit; Grounds), and 57.01 (Authorized Activities), made by House Bill 1024, 87th Legislature, 2021, effective May 12, 2021.

The comptroller amends subsection (a) to delete references to definitions defined in other statutes and rules and adds those definitions from those references to enhance readability. The comptroller amends paragraph (1) to add the definition of an alcoholic beverage as defined in Alcoholic Beverage Code, §1.04(1) (Definitions). The comptroller amends paragraph (2)

to add the definition of complimentary alcoholic beverage as defined in §3.1001 (Mixed Beverage Gross Receipts). The comptroller amends paragraph (3) to add the definition of a governmental entity as defined in Tax Code, §151.309. The comptroller amends paragraph (5) to define the term permittee as defined in Tax Code, §183.001(b)(1) (Definitions).

The comptroller amends subsection (b) to replace the reference to §3.1001(f)(7) (Mixed Beverage Gross Receipts Tax) with §3.1001(f)(8). This implements House Bill 1024, which relates to alcoholic beverages sold by a permittee for off-premises consumption. These types of beverages are not subject to mixed beverage taxes as they are not consumed on premises as required by Tax Code, §183.041 (Tax Imposed on Sales of Mixed Beverages and Related Items). The change is consistent with proposed amendments to §3.1001 of this title.

The comptroller rearranges subsection (c)(5) related to bad debts for readability.

The comptroller deletes subsection (d)(4), a graphic related to examples of disclosure of tax statements, as it is available on the comptroller's website.

The comptroller amends subsection (f)(6) by deleting reference to obsolete mixed beverage permits and adding general language of permit, license, or certificate.

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

The comptroller adopts the amendments under Tax Code, §111.002 (Comptroller Rules; Compliance; Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2 (State Taxation).

The amendments implement Alcoholic Beverage Code, §§28.1001 (Pickup and Delivery of Alcoholic Beverages for Off-Premises Consumption), 32.01 (Authorized Activities), 32.15 (Removal of Beverages from Premises), 32.155 (Pickup and Delivery of Alcoholic Beverages for Off-Premises Consumption), 32.17 (Cancellation of Suspension of Permit; Grounds), and 57.01 (Authorized Activities).

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Jenny Burleson

Director, Tax Policy

Comptroller of Public Accounts

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