

---

# TEXAS REGISTER

*Volume 45 Number 34*

*August 21, 2020*

*Pages 5697 - 5992*

---



# TEXAS REGISTER

a section of the  
Office of the Secretary of State  
P.O. Box 12887  
Austin, Texas 78711  
(512) 463-5561  
FAX (512) 463-5569

<https://www.sos.texas.gov>  
[register@sos.texas.gov](mailto:register@sos.texas.gov)

***Texas Register***, (ISSN 0362-4781, USPS 12-0090), is published weekly (52 times per year) for \$340.00 (\$502.00 for first class mail delivery) by Matthew Bender & Co., Inc., 3 Lear Jet Lane Suite 104, P. O. Box 1710, Latham, NY 12110.

Material in the *Texas Register* is the property of the State of Texas. However, it may be copied, reproduced, or republished by any person without permission of the *Texas Register* director, provided no such republication shall bear the legend *Texas Register* or "Official" without the written permission of the director.

The *Texas Register* is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Easton, MD and at additional mailing offices.

**POSTMASTER:** Send address changes to the *Texas Register*, 4810 Williamsburg Road, Unit 2, Hurlock, MD 21643.

***Secretary of State*** - Ruth R. Hughs

***Director*** - Robert Summers

***Editor-in-Chief*** - Jill S. Ledbetter

***Editors***

Liz Cordell

Eddie Feng

Belinda Kirk

Cecilia Mena

Joy L. Morgan

Breanna Mutschler

Barbara Strickland

# IN THIS ISSUE

## **GOVERNOR**

Appointments.....	5703
Proclamation 41-3755.....	5703
Proclamation 41-3756.....	5704

## **ATTORNEY GENERAL**

Requests for Opinions.....	5705
Opinions.....	5705

## **EMERGENCY RULES**

### **HEALTH AND HUMAN SERVICES COMMISSION**

#### COVID-19 EMERGENCY HEALTH CARE FACILITY LICENSING

26 TAC §500.21.....	5707
---------------------	------

#### LICENSING STANDARDS FOR ASSISTED LIVING FACILITIES

26 TAC §553.2001.....	5707
26 TAC §553.2003.....	5709

### **TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION**

#### EMERGENCY RULES

28 TAC §167.1.....	5711
--------------------	------

### **DEPARTMENT OF AGING AND DISABILITY SERVICES**

#### NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

40 TAC §19.2802.....	5711
40 TAC §19.2803.....	5713

### **TEXAS WORKFORCE COMMISSION**

#### UNEMPLOYMENT INSURANCE

40 TAC §815.1.....	5715
40 TAC §815.12, §815.29.....	5715
40 TAC §§815.170 - 815.172, 815.174.....	5716
40 TAC §815.173.....	5716

## **PROPOSED RULES**

### **TEXAS HEALTH AND HUMAN SERVICES COMMISSION**

#### REIMBURSEMENT RATES

1 TAC §355.112.....	5718
1 TAC §355.723.....	5719

### **TEXAS STATE LIBRARY AND ARCHIVES COMMISSION**

#### GENERAL POLICIES AND PROCEDURES

13 TAC §§2.116, 2.119, 2.120.....	5722
-----------------------------------	------

### **TEXAS LOTTERY COMMISSION**

#### CHARITABLE BINGO OPERATIONS DIVISION

16 TAC §402.200.....	5725
16 TAC §402.300, §402.301.....	5727
16 TAC §§402.400, 402.401, 402.404, 402.408, 402.420, 402.450, 402.451.....	5734
16 TAC §§402.502, 402.503, 402.511.....	5741
16 TAC §402.601, §402.602.....	5743
16 TAC §§402.700, 402.702, 402.703.....	5744

### **TEXAS HIGHER EDUCATION COORDINATING BOARD**

#### AGENCY ADMINISTRATION

19 TAC §1.223.....	5747
--------------------	------

#### RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

19 TAC §4.314.....	5748
--------------------	------

#### DEGREE GRANTING COLLEGES AND UNIVERSITIES OTHER THAN TEXAS PUBLIC INSTITUTIONS

19 TAC §7.54.....	5749
-------------------	------

#### STUDENT FINANCIAL AID PROGRAMS

19 TAC §22.11.....	5750
19 TAC §22.28.....	5751
19 TAC §§22.225 - 22.231, 22.233, 22.234, 22.241.....	5752
19 TAC §§22.232, 22.235, 22.238 - 22.240, 22.242.....	5761
19 TAC §22.261.....	5761
19 TAC §§22.329, 22.330, 22.339, 22.341.....	5763
19 TAC §§22.331 - 22.336, 22.342 - 22.344.....	5764

#### EDUCATION LOAN REPAYMENT PROGRAMS

19 TAC §§23.65 - 23.67.....	5764
19 TAC §23.211, §23.214.....	5766

### **TEXAS EDUCATION AGENCY**

#### SCHOOL DISTRICTS

19 TAC §61.1025.....	5767
----------------------	------

#### STUDENT ATTENDANCE

19 TAC §129.1027.....	5769
-----------------------	------

### **STATE BOARD FOR EDUCATOR CERTIFICATION**

#### ACCOUNTABILITY SYSTEM FOR EDUCATOR PREPARATION PROGRAMS

19 TAC §229.1, §229.4.....	5772
----------------------------	------

REQUIREMENTS FOR PUBLIC SCHOOL PERSONNEL ASSIGNMENTS	
19 TAC §§231.3, 231.9, 231.15, 231.17, 231.19.....	5785
19 TAC §§231.49, 231.51, 231.55, 231.61, 231.63, 231.65.....	5787
19 TAC §231.91, §231.93.....	5791
19 TAC §§231.123, 231.125, 231.127, 231.129.....	5791
19 TAC §231.151, §231.153.....	5793
19 TAC §231.177.....	5793
19 TAC §§231.191, 231.193, 231.195.....	5794
19 TAC §§231.201, 231.203, 231.205, 231.207, 231.209, 231.211, 231.213, 231.215, 231.217, 231.219.....	5795
19 TAC §§231.251, 231.253, 231.255, 231.257, 231.259.....	5798
19 TAC §231.271.....	5798
19 TAC §§231.283, 231.287, 231.289.....	5799
19 TAC §231.305.....	5800
19 TAC §§231.331, 231.333, 231.335, 231.337, 231.339, 231.341.....	5801
19 TAC §231.361, §231.365.....	5803
19 TAC §§231.392 - 231.395, 231.397.....	5804
19 TAC §§231.421, 231.423, 231.425, 231.427.....	5806
19 TAC §231.445.....	5807
19 TAC §§231.483, 231.485, 231.487, 231.491.....	5807
19 TAC §231.485.....	5808
19 TAC §231.503.....	5809
19 TAC §231.521, §231.525.....	5809
19 TAC §§231.541, 231.543, 231.545.....	5810
19 TAC §§231.565, 231.567, 231.569, 231.573, 231.575, 231.577, 231.579, 231.581, 231.585, 231.587, 231.589, 231.591, 231.593, 231.595.....	5811
19 TAC §231.591, §231.595.....	5815
19 TAC §231.631, §231.633.....	5815
19 TAC §231.651.....	5816
19 TAC §§231.611, 231.613, 231.615, 231.617, 231.619, 231.621, 231.623.....	5817
19 TAC §§231.701, 231.703, 231.705, 231.707, 231.709, 231.711, 231.713.....	5817
19 TAC §§231.641, 231.643, 231.645.....	5819
19 TAC §§231.751, 231.753, 231.755.....	5819
STUDENT SERVICES CERTIFICATES	
19 TAC §239.101, §239.103.....	5820
<b>TEXAS BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS</b>	
ORGANIZATION AND ADMINISTRATION	
22 TAC §131.33.....	5824
22 TAC §131.49.....	5824
<b>TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS</b>	
LICENSING PROCEDURE	
22 TAC §329.5.....	5824
ADMINISTRATIVE FINES AND PENALTIES	
22 TAC §344.1.....	5825
<b>TEXAS DEPARTMENT OF INSURANCE</b>	
CORPORATE AND FINANCIAL REGULATION	
28 TAC §7.88, §7.89.....	5826
<b>TEXAS WATER DEVELOPMENT BOARD</b>	
GROUNDWATER MANAGEMENT	
31 TAC §356.10.....	5842
31 TAC §356.70.....	5843
RURAL WATER ASSISTANCE FUND	
31 TAC §365.41.....	5845
<b>COMPTROLLER OF PUBLIC ACCOUNTS</b>	
TAX ADMINISTRATION	
34 TAC §3.9.....	5846
34 TAC §3.285.....	5851
34 TAC §3.292.....	5855
34 TAC §3.305.....	5858
<b>TEXAS DEPARTMENT OF PUBLIC SAFETY</b>	
COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES	
37 TAC §4.12.....	5860
<b>TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS</b>	
DISCIPLINARY ACTIONS/DETRIMENTAL PRACTICE/COMPLAINT PROCESS/CODE OF ETHICS/LICENSURE OF PERSONS WITH CRIMINAL CONVICTIONS	
40 TAC §374.1.....	5863
<b>TEXAS DEPARTMENT OF MOTOR VEHICLES</b>	
MANAGEMENT	
43 TAC §206.22.....	5866
43 TAC §206.151.....	5868
FINANCE	
43 TAC §209.23.....	5869
MOTOR VEHICLE DISTRIBUTION	

43 TAC §§215.22, 215.55, 215.59 - 215.63 .....	5870
43 TAC §215.500, §215.504.....	5874
<b>MOTOR CARRIERS</b>	
43 TAC §218.72.....	5876
<b>OVERSIZE AND OVERWEIGHT VEHICLES AND LOADS</b>	
43 TAC §219.2.....	5880
43 TAC §§219.11, 219.13 - 219.15.....	5883
43 TAC §219.42, §219.43.....	5894
43 TAC §§219.61 - 219.63 .....	5896
<b>OVERSIZE AND OVERWEIGHT VEHICLES AND LOADS</b>	
43 TAC §219.31.....	5900
43 TAC §219.83.....	5901
43 TAC §219.126.....	5901
<b>SALVAGE VEHICLE DEALERS</b>	
43 TAC §221.96.....	5902
<b>COMPLIANCE AND INVESTIGATIONS DIVISION</b>	
43 TAC §223.101.....	5903
<b>ADOPTED RULES</b>	
<b>TEXAS DEPARTMENT OF AGRICULTURE</b>	
<b>QUARANTINES AND NOXIOUS AND INVASIVE PLANTS</b>	
4 TAC §19.110 - 19.113.....	5905
<b>CREDIT UNION DEPARTMENT</b>	
<b>CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS</b>	
7 TAC §91.708.....	5906
<b>TEXAS STATE LIBRARY AND ARCHIVES COMMISSION</b>	
<b>STATE RECORDS</b>	
13 TAC §§6.1, 6.5, 6.8.....	5906
<b>LOCAL RECORDS</b>	
13 TAC §§7.1, 7.7, 7.10.....	5907
<b>TEXAS LOTTERY COMMISSION</b>	
<b>ADMINISTRATION OF STATE LOTTERY ACT</b>	
16 TAC §401.158, §401.160.....	5908
16 TAC §§401.301, 401.302, 401.304, 401.305, 401.307, 401.308, 401.312, 401.315 - 401.317, 401.320, 401.321 .....	5909
16 TAC §401.322.....	5909
16 TAC §§401.351, 401.353, 401.355, 401.363, 401.366, 401.368 .....	5909

<b>TEXAS EDUCATION AGENCY</b>	
<b>SCHOOL DISTRICTS</b>	
19 TAC §61.1008.....	5909
<b>TEXAS BOARD OF NURSING</b>	
<b>LICENSURE, PEER ASSISTANCE AND PRACTICE</b>	
22 TAC §217.4.....	5910
22 TAC §217.5.....	5912
<b>TEXAS PARKS AND WILDLIFE DEPARTMENT</b>	
<b>FINANCE</b>	
31 TAC §53.13.....	5913
31 TAC §53.15.....	5915
<b>FISHERIES</b>	
31 TAC §§57.391, 57.392, 57.394 - 57.398, 57.400, 57.401 .....	5915
<b>OYSTERS, SHRIMP, AND FINFISH</b>	
31 TAC §§58.350 - 58.361 .....	5916
<b>WILDLIFE</b>	
31 TAC §65.49.....	5923
31 TAC §§65.352, 65.353, 65.357 - 65.362, 65.365 .....	5923
<b>COMPTROLLER OF PUBLIC ACCOUNTS</b>	
<b>STATEWIDE PROCUREMENT AND SUPPORT SERVICES</b>	
34 TAC §20.160 - 20.166 .....	5927
<b>TEXAS FORENSIC SCIENCE COMMISSION</b>	
<b>DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES</b>	
37 TAC §651.7.....	5930
<b>DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES</b>	
37 TAC §651.10.....	5930
37 TAC §§651.101 - 651.106 .....	5931
37 TAC §§651.207, 651.208, 651.220, 651.221.....	5931
37 TAC §651.219.....	5932
37 TAC §651.302, §651.309.....	5932
<b>DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES</b>	
<b>CHILD PROTECTIVE SERVICES</b>	
40 TAC §700.1003.....	5933
<b>TEXAS DEPARTMENT OF MOTOR VEHICLES</b>	
<b>VEHICLE TITLES AND REGISTRATION</b>	
43 TAC §217.144.....	5933
43 TAC §217.182.....	5934

**RULE REVIEW**

**Proposed Rule Reviews**

State Board for Educator Certification.....5935

**TABLES AND GRAPHICS**

.....5937

**IN ADDITION**

**Office of the Attorney General**

Texas Health and Safety Code and Texas Water Code Settlement Notice.....5965

**State Bar of Texas**

Committee on Disciplinary Rules and Referenda Proposed Rule Changes: Proposed Rule 1.00, Texas Disciplinary Rules of Professional Conduct .....5965

Committee on Disciplinary Rules and Referenda Proposed Rule Changes: Proposed Rule 1.18, Texas Disciplinary Rules of Professional Conduct .....5970

Committee on Disciplinary Rules and Referenda Proposed Rule Changes: Proposed Rule 13.05, Texas Rules of Disciplinary Procedure .....5972

**Office of Consumer Credit Commissioner**

Notice of Rate Ceilings.....5974

**Texas Commission on Environmental Quality**

Agreed Orders .....5975

Enforcement Orders .....5977

Notice of Costs to Administer the Voluntary Cleanup Program and the Innocent Owner/Operator Program.....5978

Notice of Water Quality Application .....5979

**Texas Health and Human Services Commission**

Notice of Public Hearing on Health and Human Services System Coordinated Strategic Plan 2021-2025.....5979

**Texas Department of Insurance**

Company Licensing .....5980

**Texas Department of Insurance, Division of Workers' Compensation**

Proposed Fiscal Year 2021 Research Agenda.....5980

**Texas Lottery Commission**

Notice of Public Comment Hearing.....5980

Scratch Ticket Game Number 2271 "COOL RICHES" .....5981

Scratch Ticket Game Number 2286 "MONEY MONEY MONEY" .....5986

# THE GOVERNOR

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

## Appointments

### Appointments for August 5, 2020

Appointed to the Texas Industrialized Building Code Council, for a term to expire February 1, 2021, Otis W. Jones, Jr. of Houston, Texas (replacing Roberto "Robert" Lay-Su of Sugar Land, whose term expired).

Appointed to the Texas Industrialized Building Code Council, for a term to expire February 1, 2021, Binoy J. Kurien of Pearland, Texas (replacing Douglas O. Robinson of Coppel, whose term expired).

Appointed to the Texas Industrialized Building Code Council, for a term to expire February 1, 2022, Suzanne R. Arnold of Garland, Texas (Ms. Arnold is being reappointed).

Appointed to the Texas Industrialized Building Code Council, for a term to expire February 1, 2022, Janet M. Hoffman of Galveston, Texas (Ms. Hoffman is being reappointed).

Appointed to the Texas Industrialized Building Code Council, for a term to expire February 1, 2022, Edwin O. "Scooter" Lofton, Jr. of Horseshoe Bay, Texas (replacing Brian A. Bailey of Austin, whose term expired).

Appointed to the Texas Industrialized Building Code Council, for a term to expire February 1, 2022, Marcela A. Rhoads of Dallas, Texas (Ms. Rhoads is being reappointed).

Appointed to the Texas Industrialized Building Code Council, for a term to expire February 1, 2022, John D. "Johnny" Scholl, III, of Claude, Texas (replacing Randall R. "Randy" Childers of Hewitt, whose term expired).

Appointed to the Texas Industrialized Building Code Council, for a term to expire February 1, 2022, William F. "Dubb" Smith, III, of Dripping Springs, Texas (Mr. Smith is being reappointed).

### Appointments for August 6, 2020

Appointed to the Pediatric Acute-Onset Neuropsychiatric Syndrome Advisory Council, for a term to expire August 31, 2021, Joel B. "Brandon" Brock, D.N.P. of Sunnyvale, Texas (replacing Darcy J. McMaughan, Ph.D. of College Station, who resigned).

Appointed to the Texas State Board of Acupuncture Examiners, for a term to expire January 31, 2021, Maria M. Garcia of Plano, Texas (replacing Peggy L. "Lew" Vassberg of Lyford, who resigned).

Appointed to the Texas State Board of Acupuncture Examiners, for a term to expire January 31, 2021, Dawn Lin of Sugar Land, Texas (replacing Claudine K. Vass of Richmond, who resigned).

Appointed to the Texas State Board of Acupuncture Examiners, for a term to expire January 31, 2025, Elisabeth Lee "Ellee" Carlson, D.A.O.M. of Garland, Texas (replacing Allen D. Cline of Austin, whose term expired).

Appointed to the Texas State Board of Acupuncture Examiners, for a term to expire January 31, 2025, Sheri J. Davidson of Houston, Texas (replacing Rachele L. Webb of Austin, whose term expired).

Designated as presiding officer of the Texas State Board of Acupuncture Examiners, for a term to expire at the pleasure of the Governor, Donna S. Guthery, D.A.O.M. of Bellaire, Texas (Dr. Guthery is replacing Allen D. Cline of Austin).

### Appointments for August 11, 2020

Appointed as presiding officer of the Webb County - City of Laredo Regional Mobility Authority, for a term to expire February 1, 2022, Jed A. Brown of Laredo, Texas (Mr. Brown is being reappointed).

Appointed to the OneStar Foundation, for a term to expire March 15, 2023, George L. Green of New Braunfels, Texas (Mr. Green is being reappointed).

Appointed to the OneStar Foundation, for a term to expire March 15, 2023, Elexis Grimes of Cedar Park, Texas (Ms. Grimes is being reappointed).

Appointed to the OneStar Foundation, for a term to expire March 15, 2023, Shelley R. Rayburn of Fort Worth, Texas (Ms. Rayburn is being reappointed).

Greg Abbott, Governor

TRD-202003321



Proclamation 41-3755

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

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on March 13, 2020, certifying under Section 418.014 of the Texas Government Code that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all counties in the State of Texas; and

WHEREAS, in each subsequent month effective through today, I have issued proclamations renewing the disaster declaration for all Texas counties; and

WHEREAS, the Commissioner of the Texas Department of State Health Services, Dr. John Hellerstedt, has determined that COVID-19 represents a public health disaster within the meaning of Chapter 81 of the Texas Health and Safety Code; and

WHEREAS, I have issued executive orders and suspensions of Texas laws in response to COVID-19, aimed at protecting the health and safety of Texans and ensuring an effective response to this disaster; and

WHEREAS, a state of disaster continues to exist in all counties due to COVID-19;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the disaster proclamation for all counties in Texas.

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

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

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 8th day of August, 2020.

Greg Abbott, Governor

TRD-202003229



Proclamation 41-3756

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

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, issued a disaster proclamation on August 23, 2017, certifying that Hurricane Harvey posed a threat of imminent disaster for Aransas, Austin, Bee, Brazoria, Calhoun, Chambers, Colorado, DeWitt, Fayette, Fort Bend, Galveston, Goliad, Gonzales, Harris, Jackson, Jefferson, Jim Wells, Karnes, Kleberg, Lavaca, Liberty, Live Oak, Matagorda, Nueces, Refugio, San Patricio, Victoria, Waller, Wharton, and Wilson counties; and

WHEREAS, the disaster proclamation of August 23, 2017, was subsequently amended on August 26, August 27, August 28, and September

14 to add the following counties to the disaster proclamation: Angelina, Atascosa, Bastrop, Bexar, Brazos, Burleson, Caldwell, Cameron, Comal, Grimes, Guadalupe, Hardin, Jasper, Kerr, Lee, Leon, Madison, Milam, Montgomery, Newton, Orange, Polk, Sabine, San Augustine, San Jacinto, Trinity, Tyler, Walker, Washington, and Willacy; and

WHEREAS, on September 20, 2017, and in each subsequent month effective through today, I issued proclamations renewing the disaster declaration for all counties listed above; and

WHEREAS, due to the catastrophic damage caused by Hurricane Harvey, a state of disaster continues to exist in those same counties;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the disaster proclamation for the 60 counties listed above.

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

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

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 8th day of August, 2020.

Greg Abbott, Governor

TRD-202003230





# THE ATTORNEY GENERAL

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

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

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

## Requests for Opinions

### RQ-0369-KP

#### Requestor:

The Honorable Terry Canales  
Chair, House Committee on Transportation  
Texas House of Representatives  
Post Office Box 2910  
Austin, Texas 78768-2910

Re: Whether the actions of a city councilmember implicate the automatic resignation provisions of the Texas Constitution (RQ-0369-KP)

#### Briefs requested by September 8, 2020

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

TRD-202003302  
Lesley French  
General Counsel  
Office of the Attorney General  
Filed: August 11, 2020



## Opinions

### Opinion No. KP-0324

The Honorable Brandon Creighton  
Chair, Senate Committee on Higher Education  
Texas State Senate  
Post Office Box 12068  
Austin, Texas 78711-2068

Re: Authority of local governmental entities operating under local emergency declarations, to delay, prohibit, or restrict eviction procedures established by the Legislature in chapter 24 of the Property Code (RQ-0362-KP)

#### S U M M A R Y

Chapter 418 of the Government Code grants emergency powers to the Governor and local officials operating under a disaster declaration. Yet, it does not authorize local governmental entities operating under a de-

clared disaster to independently rewrite state law such as Property Code chapter 24 governing evictions.

### Opinion No. KP-0325

The Honorable John P. Cyrrier  
Chair, House Committee on Culture, Recreation & Tourism  
Texas House of Representatives  
Post Office Box 2910  
Austin, Texas 78768-2910

Re: Whether section 2166.003 of the Government Code applies to the possible removal of the Lawrence Sullivan Ross statue at Texas A&M University, and if so, who may provide approval to remove the statue (RQ-0361-KP)

#### S U M M A R Y

Section 2166.5011 of the Government Code establishes requirements for the removal or relocation of a monument or memorial located on state property that honors a Texas citizen for military service. Because the Lawrence Sullivan Ross statue on the campus of Texas A&M University is located on state property and honors Ross at least in part for his military service, a court is likely to conclude that Texas A&M University must comply with the requirements of section 2166.5011 before removing or relocating the Ross statue.

Pursuant to subsection 2166.5011(c), Texas A&M University may move the Ross statue if needed to accommodate construction, repair, or improvements to the surrounding property, but if permanently removing the statue, the University must relocate it to a prominent location. Otherwise, only the Legislature may authorize removal or relocation of the Ross statue. While subsection 2166.5011(b) also provides the Historical Commission and the State Preservation Board with general authority to remove monuments or memorials, a court is unlikely to conclude that those entities possess authority to remove the Ross statue because Texas A&M University lies outside their respective jurisdictions.

### Opinion No. KP-0326

The Honorable R. David Holmes  
Hill County Attorney  
Post Office Box 253  
Hillsboro, Texas 76645

Re: Whether subsection 2054.5191(a-1) of the Government Code requires a member of the board of directors of an appraisal district to complete certified cybersecurity training

(RQ-0332-KP)

**S U M M A R Y**

Government Code subsection 2054.5191(a-1) requires certain employees and elected officials of a local government to complete a cybersecurity training program. Under Tax Code section 6.03, board members of an appraisal district are "appointed." A court would likely conclude that the members of the board of an appraisal district are not elected officials within the scope of subsection 2054.5191(a-1), and thus they are not required to complete the certified cybersecurity training program it mandates.

**Opinion No. KP-0327**

The Honorable Eddie Lucio, Jr.

Chair, Committee on Intergovernmental Relations

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Standards applicable to roads constructed by the Bastrop County Water Control and Improvement District No. 2 under section 11001.008 of the Special District and Local Laws Code (RQ-0333-KP)

**S U M M A R Y**

Chapter 11001 of the Special District and Local Laws Code requires the Bastrop County Water Control and Improvement District No. 2 to improve roads for acceptance by Bastrop County into the County system of roads. The County has discretion about the standard it will utilize to approve District improvements, provided the standard is based on good engineering practices according to specified statutory considerations. The County may impose a one-year warranty period on District road improvements, provided that the warranty period constitutes a standard that (1) does not exceed the minimum standards the County currently prescribes in the County and (2) is based on good engineering practices related to subjects such as vehicle and pedestrian safety, soil and terrain variables, watershed impacts, projected traffic use, and future maintenance requirements.

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

TRD-202003303

Lesley French

General Counsel

Office of the Attorney General

Filed: August 11, 2020



# EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034).

## TITLE 26. HEALTH AND HUMAN SERVICES

### PART 1. HEALTH AND HUMAN SERVICES COMMISSION

#### CHAPTER 500. COVID-19 EMERGENCY

##### HEALTH CARE FACILITY LICENSING SUBCHAPTER B. END STAGE RENAL DISEASE FACILITIES

###### 26 TAC §500.21

The Health and Human Services Commission is renewing the effectiveness of emergency new §500.21 for a 60-day period. The text of the emergency rule was originally published in the April 24, 2020, issue of the *Texas Register* (45 TexReg 2607).

Filed with the Office of the Secretary of State on August 13, 2020.

TRD-202003361

Karen Ray

Chief Counsel

Health and Human Services Commission

Original effective date: April 16, 2020

Expiration date: October 12, 2020

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



#### CHAPTER 553. LICENSING STANDARDS

##### FOR ASSISTED LIVING FACILITIES

##### SUBCHAPTER K. COVID-19 RESPONSE

###### 26 TAC §553.2001

The Executive Commissioner of the Health and Human Services Commission (HHSC or Commission) adopts on an emergency basis in Title 26, Texas Administrative Code, Chapter 553, Licensing Standards for Assisted Living Facilities, new §553.2001, concerning an emergency rule in response to COVID-19 and requiring assisted living facility actions to mitigate and contain COVID-19. As authorized by Texas Government Code §2001.034, the Commission may adopt an emergency rule without prior notice or hearing if it finds that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Texas Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

###### BACKGROUND AND PURPOSE

The purpose of the emergency rulemaking is to support the Governor's March 13, 2020 proclamation certifying that the

COVID-19 virus poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. In this proclamation, the Governor authorized the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster and directed that government entities and businesses would continue providing essential services. The Commission accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this emergency rule for Assisted Living Facility COVID-19 Response.

To protect assisted living facility residents and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to require assisted living facility actions to mitigate and contain COVID-19. The purpose of the new rule is to describe these requirements.

###### STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §§2001.034 and 531.0055, and Texas Health and Safety Code §247.025 and §247.026. Texas Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Texas Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. Texas Health & Safety Code §247.026 requires the Executive Commissioner of HHSC to adopt rules prescribing minimum standards to protect the health and safety of assisted living residents. Texas Health & Safety Code §247.025 requires the Executive Commissioner of HHSC to adopt rules necessary to implement Texas Health and Safety Code Chapter 247 concerning assisted living facilities.

The new section implements Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 247.

*§553.2001. Assisted Living Facility COVID-19 Response.*

(a) The following words and terms, when used in this section, have the following meanings.

(1) Cohort--A group of residents placed in rooms, halls, or sections of an assisted living facility with others who have the same COVID-19 status or the act of grouping residents with other residents who have the same COVID-19 status.

(2) COVID-19 negative--A person who has tested negative for COVID-19, is not exhibiting symptoms of COVID-19, and has had no known exposure to the virus since the negative test.

(3) COVID-19 positive--A person who has tested positive for COVID-19 and does not yet meet Centers for Disease Control and Prevention (CDC) guidance for the discontinuation of transmission-based precautions.

(4) COVID-19 status--The status of a person based on COVID-19 test results, symptoms, or other factors that consider the person's potential for having the virus.

(5) Isolation--The separation of people who are COVID-19 positive from those who are COVID-19 negative and those whose COVID-19 status is unknown.

(6) PPE--Personal protective equipment. PPE is specialized clothing or equipment worn by assisted living facility staff for protection against transmission of infectious diseases such as COVID-19, including masks, goggles, face shields, gloves, and disposable gowns.

(7) Quarantine--The separation of a people with unknown COVID-19 status from those who are COVID-19 positive and those who are COVID-19 negative.

(8) Unknown COVID-19 status--A person who is a new admission, readmission, or has spent one or more nights away from the facility, has had known exposure or close contact with a person who is COVID-19 positive, or who is exhibiting symptoms of COVID-19 while awaiting test results.

(b) An assisted living facility must have a protocol in place included in their COVID-19 response plan that describes how the facility will transfer a COVID-19 positive resident to another facility capable of isolating and caring for the COVID-19 positive resident, if the facility cannot successfully isolate the resident.

(1) An assisted living facility must have contracts or agreements with alternative appropriate facilities for caring for COVID-19 positive residents.

(2) An assisted living facility must assist the resident and family members to transfer the resident to the alternate facility.

(c) An assisted living facility must have a COVID-19 response plan that includes:

(1) Designated space for:

(A) COVID-19 negative residents;

(B) residents with unknown COVID-19 status; and

(C) COVID-19 positive residents, when the facility is able to care for a resident at this level or until arrangements can be made to transfer the resident to a higher level of care.

(2) Spaces for staff to don and doff PPE that minimize the movement of staff through other areas of the facility.

(3) Resident transport protocols.

(4) Plans for obtaining and maintaining a two-week supply of PPE, including surgical facemasks, gowns, gloves, and goggles or face shields.

(5) If the facility cares for or houses COVID-19 positive residents, a resident recovery plan for continuing care when a resident is recovering from COVID-19.

(d) An assisted living facility must screen all residents, staff, and people who come to the facility, in accordance with the following criteria:

(1) fever, defined as a temperature of 100.4 Fahrenheit and above, or signs or symptoms of a respiratory infection, such as cough, shortness of breath, or sore throat;

(2) signs or symptoms of COVID-19, including chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, or diarrhea;

(3) additional signs and symptoms as outlined by the CDC in Symptoms or Coronavirus at [cdc.gov](https://www.cdc.gov);

(4) contact in the last 14 days with someone who has a confirmed diagnosis of COVID-19, is under investigation for COVID-19, or is ill with a respiratory illness, unless the person is entering the facility to provide critical assistance; and

(5) international travel within the last 14 days.

(e) An assisted living facility must screen residents according to the following timeframes:

(1) for the criteria in subsection (d)(1) - (5) of this section upon admission or readmission to the facility; and

(2) for the criteria in subsection (d)(1) - (3) of this section at least twice a day.

(f) An assisted living facility must screen each employee or contractor for the criteria in subsection (d)(1) - (5) of this section before entering the facility at the start of their shift. Staff screenings must be documented in a log kept at the facility entrance and must include the name of each person screened, the date and time of the evaluation, and the results of the evaluation. Staff who meet any of the criteria must not be permitted to enter the facility and must be sent home.

(g) An assisted living facility must assign each resident to the appropriate cohort based on the resident's COVID-19 status.

(h) A resident with unknown COVID-19 status must be quarantined and monitored for fever and symptoms of COVID-19 per CDC guidance.

(i) A COVID-19 positive resident must be isolated until the resident meets CDC guidelines for the discontinuation of transmission-based precautions, if cared for in the facility.

(j) If a COVID-19 positive resident must be transferred for a higher level of care, the facility must isolate the resident until the resident can be transferred.

(k) An assisted living facility must implement a staffing policy requiring the following:

(1) the facility must designate staff to work with each cohort and not change designation from one day to another, unless required in order to maintain adequate staffing for a cohort;

(2) staff must wear appropriate PPE based on the cohort with which they work;

(3) staff must inform the facility per facility policy prior to reporting for work if they have known exposure or symptoms;

(4) staff must perform self-monitoring on days they do not work; and

(5) the facility must develop and implement a policy regarding staff working with other long-term care (LTC) providers that:

(A) limits the sharing of staff with other LTC providers and facilities, unless required in order to maintain adequate staffing at a facility;

(B) maintains a list of staff who work for other LTC providers or facilities that includes the names and addresses of the other employers;

(C) requires all staff to inform the facility immediately, if there are COVID-19 positive cases at the staff's other place of employment;

(D) requires the facility to notify the staff's other place of employment, if the staff member is diagnosed with COVID-19; and

(E) requires staff to inform the facility which cohort they are assigned to at the staff's other place of employment. The facility must maintain the same cohort designation for that employee in all facilities in which the staff member is working, unless required in order to maintain adequate staffing for a cohort.

(l) All assisted living facility staff must wear a facemask while in the facility. Staff who are caring for COVID-19 positive residents and those caring for residents with unknown COVID-19 status must wear an N95 mask, gown, gloves, and goggles or a face shield. All facemasks and N95 masks must be in good functional condition as described in COVID-19 Response Plan for Assisted Living Facilities, and worn appropriately, completely covering the nose and mouth, at all times.

(1) A facility must comply with CDC guidance on the optimization of PPE when supply limitations require PPE to be reused.

(2) A facility must document all efforts made to obtain PPE, including the organization contacted and the date of each attempt.

(m) An assisted living facility must report COVID-19 activity as required by 26 TAC §553.41(n)(3) (relating to Standards for Type A and Type B Assisted Living Facilities). COVID-19 activity must be reported to HHSC Complaint and Incident Intake as described below:

(1) Report the first confirmed case of COVID-19 in staff or residents, and the first confirmed case of COVID-19 after a facility has been without cases for 14 days or more, to HHSC Complaint and Incident Intake through Texas Unified Licensure Information Portal (TULIP), or by calling 1-800-458-9858 within 24 hours of the positive confirmation.

(2) Submit Form 3613-A, Provider Investigation Report, to HHSC Complaint and Incident Intake through TULIP or by calling 1-800-458-9858 within five days from the day a confirmed case is reported.

(n) If an executive order or other direction is issued by the Governor of Texas, the President of the United States, or another applicable authority, that is more restrictive than this rule or any minimum standard relating to an assisted living facility, the assisted living facility must comply with the executive order or other direction.

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

Filed with the Office of the Secretary of State on August 11, 2020.

TRD-202003299

Karen Ray

General Counsel

Health and Human Services Commission

Effective date: August 11, 2020

Expiration date: December 8, 2020

For further information, please call: (512) 438-3161



## 26 TAC §553.2003

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 26, Texas Administrative Code, Chapter 553, Licensing Standards for Assisted Living Facilities, new §553.2003, concerning an emergency rule in response to COVID-19 and per-

mitting limited visitation in assisted living facilities. As authorized by Texas Government Code §2001.034, the Commission may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Texas Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

## BACKGROUND AND PURPOSE

The purpose of the emergency rulemaking is to support the Governor's March 13, 2020, proclamation certifying that the COVID-19 virus poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. In this proclamation, the Governor authorized the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster and directed that government entities and businesses would continue providing essential services. The Commission accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this Emergency Rule for Facility Response to COVID-19.

To protect assisted living facility residents and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to reduce the risk of spreading the coronavirus (COVID-19) to residents. The purpose of the new rule is to describe the requirements assisted living facilities must put into place in order to be able to move to a Phase 1 reopening with limited visitation.

## STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §2001.034 and §531.0055, and Texas Health and Safety Code §247.025 and §247.026. Texas Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Texas Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. Texas Health & Safety Code §247.026 requires the Executive Commissioner of HHSC to adopt rules prescribing minimum standards to protect the health and safety of assisted living residents. Texas Health & Safety Code §247.025 requires the Executive Commissioner of HHSC to adopt rules necessary to implement Texas Health and Safety Code Chapter 247 concerning assisted living facilities.

The new section implements Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 247.

§553.2003. Assisted Living Facility COVID-19 Response - Phase 1 Visitation.

(a) The following words and terms, when used in this section, have the following meanings.

(1) Compassionate care visit--A personal visit between one permanently designated visitor and a resident experiencing a failure to thrive.

(2) Failure to thrive--A state of decline in a resident's physical or mental health, diagnosed by a physician and documented in the resident records, which may be caused by chronic concurrent disease and functional impairment. Signs of a failure to thrive include weight loss, decreased appetite, poor nutrition, and inactivity. Prevalent and

predictive conditions that might lead to a failure to thrive include: impaired physical function, malnutrition, depression, and cognitive impairment.

(3) Outbreak--One or more laboratory confirmed cases of COVID-19 identified in either a resident or paid/unpaid staff.

(4) Outdoor visit--A personal visit between a resident and one or more personal visitors that occurs in-person in a dedicated outdoor space.

(5) Plexiglass indoor visit--A personal visit between a resident and one or more personal visitors, during which the resident and the visitor are both inside the facility but within a booth separated by a plexiglass barrier and the resident remains on one side of the barrier and the visitor remains on the opposite side of the barrier.

(6) Vehicle parade--A personal visit between a resident and one or more personal visitors, during which the resident remains outdoors on the assisted living facility campus, and a visitor drives past in a vehicle.

(7) Window visit--A personal visit between a visitor and a resident during which the resident and personal visitor are separated by an open or closed window.

(b) An assisted living facility with a Phase 1 facility designation approved by HHSC may allow limited personal visitation as permitted by this section.

(c) To request a Phase 1 facility designation, an assisted living facility submits a completed LTCR Form 2192, COVID-19 Status Attestation Form, to the Regional Director in the LTCR Region where the facility is located.

(d) To receive a Phase 1 facility designation, an assisted living facility must demonstrate:

(1) there have been no confirmed COVID-19 cases in staff for at least 14 consecutive days;

(2) there are no active COVID-19 cases in residents; and

(3) if an assisted living facility has had previous cases of COVID-19 in staff or residents, HHSC LTCR has conducted a verification survey and confirmed the following:

(A) all staff and residents have fully recovered;

(B) the facility has adequate staffing to continue care for all residents and monitor visits permitted by this section; and

(C) the facility is in compliance with infection control requirements and emergency rules related to COVID-19.

(e) An assisted living facility with a Phase 1 facility designation may allow outdoor visits, window visits, vehicle parades, limited indoor visits, and compassionate care visits involving residents and personal visitors. The following requirements apply to all visitation allowed under this section.

(1) Visits must be scheduled in advance and are by appointment only.

(2) Visitation appointments must be scheduled to allow time for cleaning and sanitation of the visitation area between visits.

(3) Physical contact between residents and visitors is prohibited.

(4) Visits are permitted where adequate space is available that meets criteria and when adequate staff are available to monitor visits.

(5) All visitors must be screened outside of the assisted living facility prior to being allowed to visit, except visitors participating in a vehicle parade and closed window visits. Visitors who meet any of the following screening criteria must leave the assisted living facility campus and reschedule the visit:

(A) fever defined as a temperature of 100.4 Fahrenheit and above, or signs or symptoms of a respiratory infection, such as cough, shortness of breath, or sore throat;

(B) signs or symptoms of COVID-19, including chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, or diarrhea;

(C) additional signs and symptoms as outlined by the Centers for Disease Control and Prevention (CDC) in Symptoms of Coronavirus at [cdc.gov](https://www.cdc.gov);

(D) contact in the last 14 days with someone who has a confirmed diagnosis of COVID-19, is under investigation for COVID-19, or is ill with a respiratory illness; or

(E) international travel within the last 14 days.

(6) The resident must wear a facemask or face covering (if tolerated) throughout the visit.

(7) The assisted living facility must ensure social distancing of at least six feet is maintained between visitors and residents and limit the number of visitors and residents in the visitation area as needed.

(8) The assisted living facility can limit the number of visitors per resident per week, and the length of time per visit, to ensure equal access by all residents to visitors.

(9) Cleaning and disinfecting of the visitation area, furniture, and all other items must be performed, per CDC guidance, before and after each visit.

(10) The assisted living facility must ensure a comfortable and safe outdoor visiting area (e.g., considering outside air temperatures and ventilation).

(11) For outdoor visits, the assisted living facility must designate an outdoor area for visitation that is separated from residents and limits the ability of the visitor to interact with residents.

(f) The following requirements apply to outdoor visits, window visits, plexiglass indoor visits, and compassionate care visits.

(1) An assisted living facility must provide hand washing stations, or hand sanitizer, to the visitor and resident before and after visits.

(2) The visitor and the resident must practice hand hygiene before and after the visit.

(3) The visitor must wear a facemask or face covering over both the mouth and nose throughout the visit.

(g) The following requirements apply to vehicle parades.

(1) Visitors must remain in their vehicles throughout the parade.

(2) The assisted living facility must ensure social distancing of at least six feet is maintained between residents throughout the parade.

(3) The assisted living facility must ensure residents are not closer than 10 feet to the vehicles for safety reasons.

(4) The resident must wear a facemask or face covering (if tolerated) throughout the visit.

(h) The following requirements apply to plexiglass indoor visits.

(1) The plexiglass booth must be installed in an area of the facility that does not impede a means of egress, does not impede or interfere with any fire safety equipment or system, and prevents the movement of visitors through the facility and their contact with other residents.

(2) The facility must submit, for approval, a photo of the plexiglass visitation booth and its location in the facility to the Life Safety Code Program Manager in the LTCR Region in which the facility is located prior to use.

(3) The visit must be supervised by facility staff for the duration of the visit.

(4) The resident must wear a facemask or face covering (if tolerated) throughout the visit.

(5) The visitor must wear a facemask or face covering over both the mouth and nose throughout the visit.

(6) The facility shall limit the number of visitors and residents in the visitation area as needed.

(i) The following requirements apply to compassionate care visits.

(1) The visit is limited to residents experiencing a failure to thrive.

(2) The visit is limited to one permanently designated personal visitor per resident at any time.

(3) If the resident experiencing failure to thrive cannot tolerate an outdoor visit, the visit can take place in the resident's room or other area of the facility separated from other residents. The assisted living facility must limit the movement of the visitor through the facility to ensure interaction with other residents is minimized.

(4) The visit must be supervised by facility staff for the duration of the visit.

(5) The resident must wear a facemask or face covering (if tolerated) throughout the visit.

(6) The facility must ensure social distancing of at least six feet is maintained between visitors and residents at all times.

(7) The visitor must wear a facemask or face covering over both the mouth and nose throughout the visit.

(j) If, at any time after designation as a Phase 1 facility by HHSC, the facility experiences an outbreak of COVID-19, the facility must notify the Regional Director in the LTCR Region where the facility is located that the facility no longer meets Phase 1 criteria, and all Phase 1 visitation must be cancelled until the facility meets the criteria described in subsection (d) of this section.

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

Filed with the Office of the Secretary of State on August 7, 2020.  
TRD-202003200

Karen Ray  
Chief Counsel  
Health and Human Services Commission  
Effective date: August 7, 2020  
Expiration date: December 4, 2020  
For further information, please call: (512) 438-3161

◆ ◆ ◆  
**TITLE 28. INSURANCE**

**PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION**

**CHAPTER 167. EMERGENCY RULES**  
**SUBCHAPTER A. COVID-19 EMERGENCY RULES**

**28 TAC §167.1**

The Texas Department of Insurance, Division of Workers' Compensation is renewing the effectiveness of emergency new §167.1 for a 60-day period. The text of the emergency rule was originally published in the April 24, 2020, issue of the *Texas Register* (45 TexReg 2611).

Filed with the Office of the Secretary of State on August 10, 2020.

TRD-202003264  
Kara Mace  
Deputy Commissioner of Legal Services  
Texas Department of Insurance, Division of Workers' Compensation  
Original effective date: April 13, 2020  
Expiration date: October 9, 2020  
For further information, please call: (512) 804-4375

◆ ◆ ◆  
**TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

**PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES**

**CHAPTER 19. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION**  
**SUBCHAPTER CC. COVID-19 EMERGENCY RULE**

**40 TAC §19.2802**

The Executive Commissioner of the Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 40, Texas Administrative Code, Chapter 19, Nursing Facility Requirements for Licensure and Medicaid Certification, new §19.2802, concerning an emergency rule in response to COVID-19 and requiring nursing facility actions to mitigate and contain COVID-19. As authorized by Texas Government Code §2001.034, the Commission may adopt an emergency rule without prior notice or hearing if it finds that an imminent peril to

the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Texas Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

## BACKGROUND AND PURPOSE

The purpose of the emergency rulemaking is to support the Governor's March 13, 2020 proclamation certifying that the COVID-19 virus poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. In this proclamation, the governor authorized the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster and directed that government entities and businesses would continue providing essential services. The Commission accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this Nursing Facility COVID-19 Response.

To protect nursing facility residents and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to require nursing facility actions to mitigate and contain COVID-19. The purpose of the new rule is to describe these requirements.

## STATUTORY AUTHORITY

The emergency rule is adopted under Texas Government Code §§2001.034 and 531.0055, and Texas Health and Safety Code §242.001 and §242.037. Texas Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Texas Government Code §531.0055, authorizes the Executive Commissioner of HHSC to adopt rules governing the operation and provision of health and human services by HHSC. Texas Health and Safety Code §242.037 requires the Executive Commissioner of HHSC to make and enforce rules prescribing minimum standards quality of care and quality of life for nursing facility residents. Texas Health and Safety Code §242.001 states the goal of Chapter 242 is to ensure that nursing facilities in Texas deliver the highest possible quality of care and establish the minimum acceptable levels of care for individuals who are living in a nursing facility.

The new rule implements Texas Government Code §531.0055 and §531.021 and Texas Human Resources Code §32.021.

### §19.2802. Nursing Facility COVID-19 Response.

(a) The following words and terms, when used in this subchapter, have the following meanings.

(1) Cohort--A group of residents placed in rooms, halls, or sections of the facility with others who have the same COVID-19 status or the act of grouping residents with other residents who have the same COVID-19 status.

(2) COVID-19 status--The status of a person based on COVID-19 test results, symptoms, or other factors that consider the person's potential for having the virus.

(3) COVID-19 positive--A person who has tested positive for COVID-19 and does not yet meet CDC guidance for the discontinuation of transmission-based precautions.

(4) COVID-19 negative--A person who has tested negative for COVID-19, is not exhibiting symptoms of COVID-19, and has had no known exposure to the virus since the negative test.

(5) Isolation--The separation of people who are COVID-19 positive from those who are COVID-19 negative and those whose COVID-19 status is unknown.

(6) PPE--Personal protective equipment. Specialized clothing or equipment worn by nursing facility staff for protection against transmission of infectious diseases such as COVID-19, including masks, goggles, face shields, gloves, and disposable gowns.

(7) Quarantine--The separation of a person with unknown COVID-19 status from those who are COVID-19 positive and those who are COVID-19 negative.

(8) Unknown COVID-19 status--A person who is a new admission, readmission, has spent one or more nights away from the facility, has had known exposure or close contact with a person who is COVID-19 positive, or who is exhibiting symptoms of COVID-19 while awaiting test results.

(b) A nursing facility must have a COVID-19 response plan that includes:

(1) Cohorting plans that include designated space for COVID-19 negative residents, COVID-19 positive residents, and residents with unknown COVID-19 status.

(2) Spaces for staff to don and doff PPE that minimize the movement of staff through other areas of the facility.

(3) Resident transport protocols.

(4) Plans for obtaining and maintaining a two-week supply of PPE, including surgical facemasks, N95 facemasks, gowns, gloves, and goggles or face shields.

(5) Resident recovery plans for continuing care after a resident recovers from COVID-19.

(c) A nursing facility must screen all residents, staff, and people who come to the facility for the following criteria:

(1) fever defined as a temperature of 100.4 Fahrenheit and above, or signs or symptoms of a respiratory infection, such as cough, shortness of breath, or sore throat;

(2) signs or symptoms of COVID-19, including chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, or diarrhea;

(3) additional signs and symptoms as outlined by the Centers for Disease Control and Prevention (CDC) in Symptoms of Coronavirus at cdc.gov;

(4) contact in the last 14 days, unless to provide critical assistance, with someone who has a confirmed diagnosis of COVID-19, is under investigation for COVID-19, or is ill with a respiratory illness; and

(5) international travel, unless to provide critical assistance, within the last 14 days.

(d) A nursing facility must screen each resident as described below. Resident screenings must be documented in the resident's chart. Residents who meet any of the criteria must be cohorted appropriately.

(1) for the criteria in subsection (c)(1)-(5) upon admission or readmission to the facility; and

(2) for the criteria in subsection (c)(1)-(3) at least three times a day, occurring at least once each shift.

(e) A nursing facility must screen each employee or contractor for the criteria in subsection (c)(1)-(5) before entering the facility at



the start of their shift. Staff screenings must be documented in a log kept at the facility entrance and must include the name of each person screened, the date and time of the evaluation, and the results of the evaluation. Staff who meet any of the criteria must not be permitted to enter the facility and must be sent home.

(f) A nursing facility must cohort residents based on the residents' COVID-19 status.

(g) A resident with unknown COVID-19 status must be quarantined and monitored for fever and symptoms of COVID-19, per CDC guidance.

(h) A COVID-19 positive resident must be isolated until the resident meets CDC guidelines for the discontinuation of transmission-based precautions.

(i) A nursing facility must implement a staffing policy requiring:

(1) the facility to designate staff to work with each cohort and not change that designation from one day to another, unless required to maintain adequate staffing for a cohort;

(2) staff to wear appropriate PPE, based on the cohort with which they work;

(3) staff to report to the facility via phone prior to reporting for work if they have known exposure or symptoms; and

(4) staff to perform self-monitoring on days they do not work.

(j) A nursing facility must develop and implement a policy regarding staff working with other long-term care (LTC) providers that:

(1) limits the sharing of staff with other LTC providers and facilities, unless required in order to maintain adequate staffing at a facility.

(2) maintains a list of staff who work for other LTC providers or facilities that includes the names and addresses of the other employers.

(3) requires all staff to report to the facility immediately if there are COVID-19 positive cases at the staff's other place of employment.

(4) requires the facility to notify the staff's other place of employment if the staff member is diagnosed with COVID-19; and

(5) requires staff to report to the facility which cohort they are assigned to at the staff's other place of employment. The NF must maintain the same cohort designation for that employee, unless required in order to maintain adequate staffing for a cohort.

(k) All nursing facility staff must wear facemasks while in the facility. Staff who are caring for COVID-19 positive residents and those caring for residents with unknown COVID-19 status must wear an N95 mask, gown, gloves, and goggles or a face shield. All facemasks and N95 masks must be in good functional condition, as described in the COVID-19 Response for Nursing Facilities at [hhs.texas.gov](https://hhs.texas.gov), and worn appropriately, completely covering the nose and mouth, at all times.

(1) A nursing facility must comply with CDC guidance on the optimization of PPE when supply limitations require PPE to be reused.

(2) A nursing facility must document all efforts made to obtain PPE, including the organization contacted and the date of each attempt.

(l) A nursing facility must report COVID-19 activity as required by §19.1601(d)(2) and 42 Code of Federal Regulations §483.80(g)(1)-(2). COVID-19 activity must be reported to HHSC Complaint and Incident Intake, as described below.

(1) Report the first confirmed case of COVID-19 in staff or residents, and the first confirmed case of COVID-19 after a facility has been without new cases for 14 days or more, to HHSC Complaint and Incident Intake through TULIP or by calling 1-800-458-9858 within 24 hours of the confirmed positive result.

(2) Submit a Form 3613-A, Provider Investigation Report, to HHSC Complaint and Incident Intake through TULIP or by calling 1-800-458-9858 within five days from the day a confirmed case is reported to CII.

(m) If an executive order or other direction is issued by the Governor of Texas, the President of the United States, or another applicable authority, that is more restrictive than this rule or any minimum standard relating to a nursing facility, the nursing facility must comply with the executive order or other direction.

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

Filed with the Office of the Secretary of State on August 6, 2020.

TRD-202003191

Karen Ray

Chief Counsel

Department of Aging and Disability Services

Effective date: August 6, 2020

Expiration date: December 3, 2020

For further information, please call: (512) 438-3161



#### **40 TAC §19.2803**

The Executive Commissioner of the Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 40, Texas Administrative Code, Chapter 19, Nursing Facility Requirements for Licensure and Medicaid Certification, new §19.2803, concerning an emergency rule in response to COVID-19 describing requirements for limited outdoor visitation in a facility during Phase 1. As authorized by Texas Government Code §2001.034, the Commission may adopt an emergency rule without prior notice or hearing if it finds that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Texas Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

#### **BACKGROUND AND PURPOSE**

The purpose of the emergency rulemaking is to support the Governor's March 13, 2020 proclamation certifying that the COVID-19 virus poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. In this proclamation, the Governor authorized the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster and directed that government entities and businesses would continue providing essential services. The Commission accordingly finds that an imminent peril to the public health, safety, and welfare

of the state requires immediate adoption of this Nursing Facility COVID-19 Response - Phase 1 Visitation.

To protect nursing facility residents and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to allow limited outdoor visitation in a nursing facility during phase 1. The purpose of the new rule is to describe the requirements related to such visits.

#### STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §2001.034 and §531.0055, and Texas Health and Safety Code §242.001 and §242.037. Texas Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Texas Government Code §531.0055, authorizes the Executive Commissioner of HHSC to adopt rules governing the operation and provision of health and human services by the health and human services system. Texas Health and Safety Code §242.037 requires the Executive Commissioner of HHSC to make and enforce rules prescribing minimum standards quality of care and quality of life for nursing facility residents. Texas Health and Safety Code §242.001 states the goal of Chapter 242 is to ensure that nursing facilities in Texas deliver the highest possible quality of care and establish the minimum acceptable levels of care for individuals who are living in a nursing facility.

The new rule implements Texas Government Code §531.0055 and §531.021, Texas Health and Safety Code Chapter 242, and Texas Human Resources Code §32.021.

#### §19.2803. Nursing Facility COVID-19 Response - Phase 1 Visitation.

(a) The following words and terms, when used in this section, have the following meanings.

(1) Outdoor visit--A personal visit between a resident and one or more personal visitors that occurs in-person in a dedicated outdoor space.

(2) Window visit--A personal visit between a visitor and a resident during which the resident and personal visitor are separated by an open window.

(3) Vehicle parade--A personal visit between a resident and one or more personal visitors, during which the resident remains outdoors on the nursing facility campus, and a visitor drives past in a vehicle.

(4) Compassionate care visit--A personal visit between one permanently designated visitor and a resident experiencing a failure to thrive.

(5) Failure to thrive--A state of decline in a resident's physical or mental health, diagnosed by a physician and documented in the resident records, which may be caused by chronic concurrent disease and functional impairment. Signs of a failure to thrive include weight loss, decreased appetite, poor nutrition, and inactivity. Prevalent and predictive conditions that might lead to a failure to thrive include impaired physical function, malnutrition, depression, and cognitive impairment.

(6) Outbreak--One or more laboratory confirmed cases of COVID-19 identified in either a resident or paid/unpaid staff.

(b) A nursing facility with a Phase 1 facility designation approved by the Texas Health and Human Services Commission (HHSC) may allow limited personal visitation as permitted by this section.

(c) To request a Phase 1 facility designation, a nursing facility submits a completed LTCR form 2192, Phase 1 COVID-19 Status Attestation Form, to the Regional Director in the LTCR Region where the facility is located.

(d) To receive a Phase 1 facility designation, a nursing facility must demonstrate:

(1) there have been no confirmed COVID-19 cases in staff for at least 14 consecutive days;

(2) there are no active COVID-19 cases in residents;

(3) facility staff are tested for COVID-19 weekly; and

(4) if a nursing facility has had previous cases of COVID-19 in staff or residents, HHSC LTCR has conducted a verification survey and confirmed the following:

(A) all staff and residents have fully recovered;

(B) the nursing facility has adequate staffing to continue care for all residents and supervise visits permitted by this section; and

(C) the nursing facility is in compliance with infection control requirements and emergency rules related to COVID-19.

(e) A nursing facility with a Phase 1 facility designation may allow outdoor visits, window visits, vehicle parades, and compassionate care visits involving residents and personal visitors. The following requirements apply to all visitation allowed under this section:

(1) Visits must be scheduled in advance and are by appointment only.

(2) Visitation appointments must be scheduled to allow time for cleaning and sanitation of the visitation area between visits.

(3) Physical contact between residents and visitors is prohibited.

(4) Visits are permitted where adequate space is available that meets criteria and when adequate staff are available to monitor visits.

(5) All visitors must be screened outside of the nursing facility prior to being allowed to visit, except visitors participating in a vehicle parade. Visitors who meet any of the following screening criteria must leave the nursing facility campus and reschedule the visit:

(A) fever defined as a temperature of 100.4 Fahrenheit and above, or signs or symptoms of a respiratory infection, such as cough, shortness of breath, or sore throat;

(B) signs or symptoms of COVID-19, including chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, or diarrhea;

(C) additional signs and symptoms as outlined by the Centers for Disease Control and Prevention (CDC) in Symptoms of Coronavirus at [cdc.gov](https://www.cdc.gov);

(D) contact in the last 14 days with someone who has a confirmed diagnosis of COVID-19, is under investigation for COVID-19, or is ill with a respiratory illness; or

(E) international travel within the last 14 days.

(6) The resident must wear a facemask or face covering (if tolerated) throughout the visit.

(7) The nursing facility must ensure social distancing of at least six feet is maintained between visitors and residents at all times

and limit the number of visitors and residents in the visitation area as needed.

(8) The nursing facility can limit the number of visitors per resident per week, and the length of time per visit, to ensure equal access by all residents to visitors.

(9) Cleaning and disinfecting of the visitation area, furniture, and all other items must be performed, per CDC guidance, before and after each visit.

(10) The nursing facility must ensure a comfortable and safe outdoor visiting area (i.e., considering outside air temperatures and ventilation).

(11) The nursing facility must designate an outdoor area for visitation that is separated from residents and limits the ability of the visitor to interact with residents.

(f) The following requirements apply to outdoor visits, window visits, and compassionate care visits:

(1) A nursing facility must provide hand washing stations, or hand sanitizer, to the visitor and resident before and after visits.

(2) The visitor and the resident must practice hand hygiene before and after the visit.

(3) The visitor must wear a facemask or face covering over both the mouth and nose throughout the visit.

(g) The following requirements apply to vehicle parades.

(1) Visitors must remain in their vehicles throughout the parade.

(2) The nursing facility must ensure social distancing of at least six feet is maintained between residents throughout the parade.

(3) The nursing facility must ensure residents are not closer than 10 feet to the vehicles for safety reasons.

(4) The resident must wear a facemask or face covering (if tolerated) throughout the visit.

(h) The following requirements apply to compassionate care visits:

(1) The visit is limited to residents experiencing a failure to thrive.

(2) The visit is limited to one permanently designated personal visitor per resident at any time.

(3) If the resident experiencing failure to thrive cannot tolerate an outdoor visit, the visit can take place in the resident's room or other area of the facility separated from other residents. The nursing facility must limit the movement of the visitor through the facility to ensure interaction with other residents is minimized.

(4) The visit must be supervised by facility staff for the duration of the visit.

(5) The resident must wear a facemask or face covering (if tolerated) throughout the visit.

(6) The nursing facility must ensure social distancing of at least six feet is maintained between visitors and residents at all times.

(7) The visitor must wear a facemask or face covering over both the mouth and nose throughout the visit.

(i) If, at any time after designation as a Phase 1 facility by HHSC, the facility experiences an outbreak of COVID-19, the facility must notify the Regional Director in the LTRC Region where the

facility is located that the facility no longer meets Phase 1 criteria, and all Phase 1 visitation must be cancelled until the facility meets the criteria described in subsection (d) of this section.

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

Filed with the Office of the Secretary of State on August 7, 2020.

TRD-202003201

Karen Ray

Chief Counsel

Department of Aging and Disability Services

Effective date: August 7, 2020

Expiration date: December 4, 2020

For further information, please call: (512) 438-3161



## PART 20. TEXAS WORKFORCE COMMISSION

### CHAPTER 815. UNEMPLOYMENT INSURANCE

#### SUBCHAPTER A. GENERAL PROVISIONS

##### 40 TAC §815.1

The Texas Workforce Commission is renewing the effectiveness of emergency amended §815.1 for a 60-day period. The text of the emergency rule was originally published in the May 8, 2020, issue of the *Texas Register* (45 TexReg 2953).

Filed with the Office of the Secretary of State on August 7, 2020.

TRD-202003195

Dawn Cronin

Director, Workforce Program Policy

Texas Workforce Commission

Original effective date: April 28, 2020

Expiration date: October 24, 2020

For further information, please call: (512) 689-9855



#### SUBCHAPTER B. BENEFITS, CLAIMS, AND APPEALS

##### 40 TAC §815.12, §815.29

The Texas Workforce Commission is renewing the effectiveness of emergency amended §815.12 and §815.29 for a 60-day period. The text of the emergency rule was originally published in the April 24, 2020, issue of the *Texas Register* (45 TexReg 2612).

Filed with the Office of the Secretary of State on August 7, 2020.

TRD-202003194

Dawn Cronin

Director, Workforce Program Policy

Texas Workforce Commission

Original effective date: April 14, 2020

Expiration date: October 10, 2020

For further information, please call: (512) 689-9855



SUBCHAPTER F. EXTENDED BENEFITS

**40 TAC §§815.170 - 815.172, 815.174**

The Texas Workforce Commission is renewing the effectiveness of emergency amended §§815.170 - 815.172 and 815.174 for a 60-day period. The text of the emergency rule was originally published in the May 8, 2020, issue of the *Texas Register* (45 TexReg 2951).

Filed with the Office of the Secretary of State on August 7, 2020.

TRD-202003196

Dawn Cronin

Director, Workforce Program Policy

Texas Workforce Commission

Original effective date: April 28, 2020

Expiration date: October 24, 2020

For further information, please call: (512) 689-9855



**40 TAC §815.173**

The Texas Workforce Commission is renewing the effectiveness of emergency repeal §815.173 for a 60-day period. The text of the emergency rule was originally published in the May 8, 2020, issue of the *Texas Register* (45 TexReg 2951).

Filed with the Office of the Secretary of State on August 7, 2020.

TRD-202003197

Dawn Cronin

Director, Workforce Program Policy

Texas Workforce Commission

Original effective date: April 28, 2020

Expiration date: October 24, 2020

For further information, please call: (512) 689-9855



# PROPOSED RULES

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

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

## TITLE 1. ADMINISTRATION

### PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

#### CHAPTER 355. REIMBURSEMENT RATES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §355.112, concerning Attendant Compensation Rate Enhancement, and §355.723, concerning Reimbursement Methodology for Home and Community-Based Services and Texas Home Living Programs.

##### BACKGROUND AND PURPOSE

The purpose of the proposed amendments to §355.112 and §355.723 is to ensure compliance with the 21st Century Cures Act, which added Section 1903(l) to the Social Security Act to require that all states implement the use of electronic visit verification (EVV). Section 1903(l) requires that EVV be used for all Medicaid personal care services requiring an in-home visit by a service provider. EVV is a computer-based system that verifies that a service is provided and electronically documents information about the service visit such as the name of the individual who received the service, the name of the service provider, the date and time the service begins and ends, and the location at which the service was provided.

Currently, Home and Community-Based Services (HCS) and Texas Home Living (TxHmL) providers bill day habilitation (DH) using a service code that does not distinguish between in-home and out-of-home DH and bill respite using a service code that does not distinguish between in-home and out-of-home respite. The proposed amendments establish separate service codes for in-home and out-of-home DH and respite to allow HHSC to compare service claims for in-home DH and in-home respite with the information in the EVV aggregator regarding the provision of those services. Further, the proposed amendments establish multiple service codes for out-of-home respite based on the location in which the service is provided to allow HHSC to collect appropriate service cost and claims information. HHSC is currently working to transition HCS and TxHmL claims processing to the Texas Medicaid & Healthcare Partnership. The proposed changes to service codes will be effective when that transition is complete.

##### SECTION-BY-SECTION SUMMARY

The proposed amendment to §355.112 adds new subsection (l)(3), which establishes the methodology for calculating the attendant compensation rate components for HCS and TxHmL DH and respite services.

The proposed amendment to §355.723(b)(1) specifies the HCS and TxHmL DH and respite services with rates that vary by level of need (LON).

The proposed amendment to §355.723(b)(2) specifies the HCS and TxHmL DH and respite services with rates that do not vary by LON.

The proposed amendment to §355.723(d)(10) revises the methodology for calculating the administration and operations cost component to include HCS and TxHmL DH and respite services.

The proposed amendments to §355.723(c); §355.723(d)(1) - (d)(9); and §355.723(d)(11) - (d)(12) implement clarifying edits.

##### FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules do not have foreseeable implications relating to costs or revenues of state or local governments. The proposed rule amendments are administrative in nature, and the current rates will be maintained so no additional cost is anticipated.

##### GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rules will be in effect:

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to HHSC;
- (5) the proposed rules will not create a new rule;
- (6) the proposed rules will not expand, limit, or repeal existing rules;
- (7) the proposed rules will not change the number of individuals subject to the rule; and
- (8) the proposed rules will not affect the state's economy.

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rules do not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules.

## LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

## COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules do not impose a cost on regulated persons, and they are necessary to receive a source of federal funds or comply with federal law.

## PUBLIC BENEFIT AND COSTS

Victoria Grady, Director of Rate Analysis, has determined that for each year of the first five years the rules are in effect, the public benefit will be compliance with the 21st Century Cures Act, a federal law that requires all states to use EVV for Medicaid personal care services.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because the rules implement changes to establish a rate methodology for HCS TxHmL DH and respite services.

## TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

## PUBLIC COMMENT

Written comments on the proposal may be submitted to the HHSC Rate Analysis Department, Mail Code H-400, P.O. Box 85200, Austin, Texas 78705-5200, or by email to RAD-LTSS@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the Texas Register. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) faxed or emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When faxing or emailing comments, please indicate "Comments on Proposed Rule 20R054" in the subject line.

## SUBCHAPTER A. COST DETERMINATION PROCESS

### 1 TAC §355.112

#### STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for Med-

icaid payments under Texas Human Resources Code Chapter 32.

The amendments affect Texas Government Code §531.0055, Texas Government Code Chapter 531, and Texas Human Resources Code Chapter 32.

#### §355.112. *Attendant Compensation Rate Enhancement.*

(a) - (k) (No change).

(l) Determination of attendant compensation rate component for nonparticipating contracts.

(1) For the PHC; DAHS; RC; CLASS--DSA; CBA--HCSS; DBMD; and CBA--AL/RC programs, HHSC will calculate an attendant compensation rate component for nonparticipating contracts as follows.

(A) Determine for each contract included in the cost report database used in determination of rates in effect on September 1, 1999, the attendant compensation cost center from subsection (c) of this section.

(B) Adjust the cost center data from subparagraph (A) of this paragraph in order to account for inflation utilizing the inflation factors used in the determination of the September 1, 1999 rates.

(C) For each contract included in the cost report database used to determine rates in effect on September 1, 1999, divide the result from subparagraph (B) of this paragraph by the corresponding units of service. Provider projected costs per unit of service are rank-ordered from low to high, along with the provider's corresponding units of service. For DAHS, the median cost per unit of service is selected. For all other programs, the units of service are summed until the median unit of service is reached. The corresponding projected cost per unit of service is the weighted median cost component. The result is multiplied by 1.044 for PHC, CLASS--DSA, CBA--HCSS, and DBMD; and by 1.07 for RC, CBA--AL/RC, and DAHS. The result is the attendant compensation rate component for nonparticipating contracts.

(D) The attendant compensation rate component for nonparticipating contracts will remain constant over time, except in the case of increases to the attendant compensation rate component for nonparticipating contracts explicitly mandated by the Texas legislature and for adjustments necessitated by increases in the minimum wage. Adjustments necessitated by increases in the minimum wage are limited to ensuring that these rates are adequate to cover mandated minimum wage levels.

(2) For ICF/IID DH, ICF/IID residential services, HCS SL/RSS, HCS DH, HCS SHL/CFC PAS HAB, HCS respite, HCS supported employment, HCS employment assistance, TxHmL DH, TxHmL CSS and CFC PAS HAB, TxHmL respite, TxHmL supported employment, and TxHmL employment assistance, for each level of need (LON), HHSC will calculate an attendant compensation rate component for nonparticipating contracts for each service as follows:

(A) For each service, for each LON, determine the percent of the fully-funded model rate in effect on August 31, 2010 for that service accruing from attendants. For ICF/IID, the fully-funded model is the model as calculated under §355.456(d) of this chapter (relating to Reimbursement Methodology) before any adjustments made in accordance with §355.101 of this subchapter (relating to Introduction) and §355.109 of this subchapter (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs). For HCS and TxHmL, the fully-funded model is the model as calculated under §355.723(d) of this chapter (relating to Reimbursement Methodology for Home and Community-based Services

and Texas Home Living Programs) before any adjustments made in accordance with §355.101 and §355.109 of this subchapter for the rate period.

(B) For each service, for each LON, multiply the percent of the fully-funded model rate in effect on August 31, 2010 for that service accruing from attendants from subparagraph (A) of this paragraph by the total adopted reimbursement rate for that service in effect on August 31, 2010. Effective September 1, 2019, the result is multiplied by 1.044 for HCS SHL/CFC PAS HAB, HCS respite, HCS supported employment, HCS employment assistance, TxHmL CSS and CFC/PAS HAB, TxHmL respite, TxHmL supported employment, and TxHmL employment assistance and by 1.07 for HCS SL/RSS, HCS DH, TxHmL DH and ICF Residential and ICF DH. The result is the attendant compensation rate component for that service for nonparticipating contracts.

(C) The attendant compensation rate component for nonparticipating contracts will remain constant over time, except in the case of increases to the attendant compensation rate component for nonparticipating contracts explicitly mandated by the Texas legislature; and for adjustments necessitated by increases in the minimum wage. Adjustments necessitated by increases in the minimum wage are limited to ensuring that these rates are adequate to cover mandated minimum wage levels.

(D) Effective July 1, 2017, the attendant compensation rate component for nonparticipating contracts for HCS SHL/CFC PAS HAB and TxHmL CSS and CFC PAS HAB is equal to \$14.52 per hour.

(E) Effective September 1, 2019, the attendant compensation rate component for nonparticipating contracts for HCS SHL/CFC PAS HAB is calculated using cost data from the most recently audited cost report multiplied by 1.044.

(F) Effective January 1, 2020, the attendant compensation rate component for nonparticipating contracts for HCS SL/RSS is calculated using cost data from the most recently audited cost report multiplied by 1.07.

(3) Effective upon service claims being made billable through the Texas Medicaid & Healthcare Partnership, HHSC will calculate an attendant compensation rate component for nonparticipating contracts for each of the following services per subparagraphs (A) and (B) of this paragraph: HCS in-home DH, HCS out-of-home DH, HCS in-home respite (HCS IHR), HCS out-of-home respite (HCS OHR) in a respite facility, HCS OHR in a setting where HCS SL/RSS is provided, HCS OHR in a setting where host home (HH)/companion care (CC) services are provided, HCS OHR in a camp, HCS OHR in a DH facility, HCS OHR in another setting not listed above, TxHmL in-home DH, TxHmL out-of-home DH, TxHmL IHR, TxHmL OHR in a respite facility, TxHmL OHR in a setting where HCS SL/RSS is provided, TxHmL OHR in a setting where HH/CC services are provided, TxHmL OHR in a camp, TxHmL OHR in a DH facility, and TxHmL out-of-home respite in another setting not listed above.

(A) For each service, for each LON, determine the percent of the fully-funded model rate in effect on August 31, 2019 for that service accruing from attendants. For HCS and TxHmL, the fully-funded model is the model as calculated under §355.723(d) of this chapter before any adjustments made in accordance with §355.101 and §355.109 of this subchapter for the rate period.

(B) For each service, for each LON, multiply the percent of the fully-funded model rate in effect on August 31, 2019 for that service accruing from attendants from subparagraph (A) of this paragraph by the total adopted reimbursement rate for that service in effect on August 31, 2019.

(i) The result is multiplied by 1.044 for HCS in-home DH, HCS IHR, HCS OHR in a respite facility, HCS OHR in a setting where HH/CC services are provided, HCS OHR in a camp, and HCS OHR in another setting.

(ii) The result is multiplied by 1.07 for HCS out-of-home DH, HCS OHR in a DH facility, and HCS OHR in a setting where HCS SL/RSS is provided.

(m) - (hh) (No change.)

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

Filed with the Office of the Secretary of State on August 7, 2020.

TRD-202003202

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: September 20, 2020

For further information, please call: (512) 424-6637



## SUBCHAPTER F. REIMBURSEMENT METHODOLOGY FOR PROGRAMS SERVING PERSONS WITH MENTAL ILLNESS OR INTELLECTUAL OR DEVELOPMENTAL DISABILITY

### 1 TAC §355.723

#### STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for Medicaid payments under Texas Human Resources Code Chapter 32.

The amendments affect Texas Government Code §531.0055, Texas Government Code Chapter 531, and Texas Human Resources Code Chapter 32.

*§355.723. Reimbursement Methodology for Home and Community-Based Services and Texas Home Living Programs.*

(a) Prospective payment rates. The Texas Health and Human Services Commission (HHSC) sets payment rates to be paid prospectively to Home and Community-based Services (HCS) and Texas Home Living (TxHmL) providers.

(b) Levels of need.

(1) Variable rates. Rates vary by level of need (LON) for the following services: [Residential Support Services, Supervised Living, Host Home/Companion Care, and HCS Day Habilitation.]

- (A) HCS day habilitation (DH);
- (B) host home (HH)/companion care (CC);
- (C) residential support services (RSS);
- (D) supervised living (SL); and
- (E) effective upon service claims being made billable through the Texas Medicaid & Healthcare Partnership (TMHP);

- (i) HCS in-home DH;
- (ii) HCS out-of-home DH;
- (iii) HCS out-of-home respite (HCS OHR) in a DH facility;
- (iv) HCS OHR in a setting where SL or RSS is provided; and
- (v) HCS OHR in a setting where HH/CC is provided.

(2) Non-variable rates. Rates do not vary by LON [level of need] for the following services: [Supported Home Living, High Medical Needs Support, Community Support Services, Supported Employment, Employment Assistance, Respite, Registered Nurse (RN), Licensed Vocational Nurse (LVN), High Medical Needs RN, High Medical Needs LVN, Dietary, Behavioral Support, Physical Therapy, Occupational Therapy, Speech Therapy, Audiology, Cognitive Rehabilitative Therapy, Social Work, and TxHmL Day Habilitation.]

- (A) audiology;
- (B) behavioral support;
- (C) cognitive rehabilitative therapy (CRT);
- (D) community support services (CSS);
- (E) dietary;
- (F) employment assistance (EA);
- (G) high medical needs licensed vocational nurse (LVN);
- (H) high medical needs registered nurse (RN);
- (I) high medical needs support;
- (J) LVN;
- (K) occupational therapy (OT);
- (L) physical therapy (PT);
- (M) RN;
- (N) respite;
- (O) social work;
- (P) speech therapy;
- (Q) supported employment (SE);
- (R) supported home living (SHL); and
- (S) effective upon service claims being made billable through TMHP;

- (i) HCS in-home respite (IHR);
- (ii) HCS OHR in a camp;
- (iii) HCS OHR in a respite facility;
- (iv) TxHmL in-home DH;
- (v) TxHmL out-of-home DH;

- (vi) TxHmL OHR in a DH facility;
- (vii) TxHmL OHR in a setting where HH/CC is provided;
- (viii) TxHmL OHR in a setting where SL or RSS is provided; and
- (ix) HCS and TxHmL OHR in a setting that is not listed above.

(c) Recommended rates.

(1) Rate models [Models]. The recommended modeled rates are determined for each HCS and TxHmL service listed in subsection (b)(1) - (2) of this section by type and, for services listed in subsection (b)(1) of this section, by LON [level of need] to include the following cost components: direct care worker staffing costs (wages, benefits, modeled staffing ratios for direct care workers, direct care trainers and job coaches), other direct service staffing costs (wages for direct care supervisors, benefits, modeled staffing ratios); facility costs (for respite care only); room and board costs for overnight, OHR [out-of-home respite] care; administration and operation costs; and professional consultation and program support costs. The determination of all components except for the direct care worker staffing costs component is based on cost reports submitted by HCS and TxHmL providers in accordance with §355.722 of this subchapter (relating to Reporting Costs by Home and Community-based Services (HCS) and Texas Home Living (TxHmL) Providers). The determination of the direct care worker staffing costs component is calculated as specified in §355.112 of this chapter (relating to Attendant Compensation Rate Enhancement).

(2) SHL and CSS [Supported Home Living and Community Support Services].

(A) Effective July 1, 2017, the recommended modeled rates for HCS SHL [Supported Home Living] and TxHmL CSS [Community Support Services] include the following cost components: direct care worker staffing costs, and administration and operation costs. The modeled rates for these two services do not include a cost component for other direct service staffing costs. The determination of the administration and operation cost component is calculated as specified in subsection (d)(10) of this section. The determination of the direct care worker staffing costs component is calculated as specified in §355.112 of this chapter.

(B) Effective September 1, 2019, the recommended modeled rate for HCS SHL [Supported Home Living] is calculated as specified in subsection (c)(1) and subsection (d) of this section.

(C) Effective September 1, 2019, the recommended modeled rate for TxHmL CSS [Community Support Services] is equal to the rate that was in effect for these services on August 31, 2019.

(3) High medical needs support [Medical Needs Support]. Payment rates for high medical needs support [High Medical Needs Support] are developed based on payment rates determined for other programs that provide similar services. If payment rates are not available from other programs that provide similar services, payment rates are determined using a pro forma analysis in accordance with §355.105(h) of this chapter (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

(d) Administration and operation cost component. The administration and operation cost component included in the recommended rates described in subsection (c) of this section for each HCS and TxHmL service type is determined as follows.



(1) Step 1. Determine total projected administration and operation costs and projected units of service by service type using cost reports submitted by HCS and TxHmL providers in accordance with §355.722 of this subchapter.

(2) Step 2. Determine the HH/CC [host home/companion care] coordinator component of the HH/CC [host home/companion care] rate as follows:

(A) For fiscal years 2010 through 2013, the HH/CC [host home/companion care] coordinator component of the HH/CC [host home/companion care] rate was modeled using the weighted average HH/CC [host home/companion care] coordinator wage as reported on the most recently available and reliable audited HCS cost report plus 10.25 percent for payroll taxes and benefits inflated to the rate period and a consumer to HH/CC [host home/companion care] coordinator ratio of 1:15.

(B) For fiscal years 2012 and 2013, the HH/CC [host home/companion care] coordinator component of the HH/CC [host home/companion care] rate was remodeled using a consumer to HH/CC [host home/companion care] coordinator ratio of 1:20.

(C) For fiscal years 2014 and thereafter, this component is determined by summing total reported HH/CC [host home/companion care] coordinator wages and allocated payroll taxes and benefits from the most recently available audited HCS cost report, inflating those costs to the rate period, and dividing the resulting product by the total number of host home units of service reported on that cost report.

(3) Step 3. Determine total HH/CC [host home/companion care] coordinator dollars as follows. Multiply the HH/CC [host home/companion care] coordinator component of the HH/CC [host home/companion care] rate from paragraph (2) of this subsection by the total number of HH/CC [host home care] units of service reported on the most recently available, reliable audited HCS cost report database.

(4) Step 4. Determine total projected administration and operation costs after offsetting total HH/CC [host home/companion care] coordinator dollars as follows. Subtract the total HH/CC [host home/companion care] coordinator dollars from paragraph (3) of this subsection from the total projected administration and operation costs from paragraph (1) of this subsection.

(5) Step 5. Determine projected weighted units of service for each HCS and TxHmL service type as follows. [;]

(A) SL and RSS in HCS [Supervised Living and Residential Support Services in HCS]. Projected weighted units of service for SL and RSS [Supervised Living and Residential Support Services] equal projected SL and RSS [Supervised Living and Residential Support] units of service times a weight of 1.00.

(B) DH [Day Habilitation] in HCS and TxHmL. Projected weighted units of service for DH [Day Habilitation] equal projected DH [Day Habilitation] units of service times a weight of 0.25.

(C) HH/CC [Host Home/Companion Care] in HCS. Projected weighted units of service for HH/CC [Host Home/Companion Care] equal projected HH/CC [Host Home/Companion Care] units of service times a weight of 0.50.

(D) SHL [Supported Home Living] in HCS, high medical needs support [High Medical Needs Support] in HCS, and CSS [Community Support Services] in TxHmL. For each service, projected weighted units of service equal projected units of service times a weight of 0.30.

(E) Respite in HCS and TxHmL. Projected weighted units of service for respite [Respite] equal projected respite [Respite] units of service times a weight of 0.20.

(F) SE [Supported Employment] in HCS and TxHmL. Projected weighted units of service for SE [Supported Employment] equal projected [Supported Employment] units of service times a weight of 0.25.

(G) Behavioral support [Support] in HCS and TxHmL. Projected weighted units of service for behavioral support [Behavioral Support] equal projected behavioral support [Behavioral Support] units of service times a weight of 0.18.

(H) Audiology, CRT, OT, PT, and speech therapy [Physical Therapy, Occupational Therapy, Speech Therapy, Audiology, and Cognitive Rehabilitative Therapy] in HCS and TxHmL. Projected weighted units of service for audiology, CRT, OT, PT, and speech therapy [Physical Therapy, Occupational Therapy, Speech Therapy, Audiology, and Cognitive Rehabilitative Therapy] equal projected audiology, CRT, OT, PT, and speech therapy [Physical Therapy, Occupational Therapy, Speech Therapy, Audiology, and Cognitive Rehabilitative Therapy] units of service times a weight of 0.18.

(I) Social work [Work] in HCS. Projected weighted units of service for social work [Social Work] equal projected social work [Social Work] units of service times a weight of 0.18.

(J) Nursing in HCS and TxHmL and high medical needs nursing [High Medical Needs Nursing] in HCS. Projected weighted units of service for nursing and high medical needs nursing [Nursing and High Medical Needs Nursing] equal projected nursing and high medical needs nursing [Nursing and High Medical Needs Nursing] units of service times a weight of 0.25.

(K) EA [Employment Assistance] in HCS and TxHmL. Projected weighted units of service for EA [Employment Assistance] equal projected EA [Employment Assistance] units of service times a weight of 0.25.

(L) Dietary in HCS and TxHmL. Projected weighted units of service for dietary [Dietary] equal projected dietary [Dietary] units of service times a weight of 0.18.

(6) Step 6. Calculate total projected weighted units of service by summing the projected weighted units of service from paragraph (5)(A) - (L) of this subsection.

(7) Step 7. Calculate the percent of total administration and operation costs to be allocated to the service type by dividing the projected weighted units for the service type from paragraph (5) of this subsection by the total projected weighted units of service from paragraph (6) of this subsection.

(8) Step 8. Calculate the total administration and operation cost to be allocated to that service type by multiplying the percent of total administration and operation costs allocated to the service type from paragraph (7) of this subsection by the total administration and operation costs after offsetting total host home/companion care coordinator dollars from paragraph (4) of this subsection.

(9) Step 9. Calculate the administration and operation cost component per unit of service for each HCS and TxHmL service type by dividing the total administration and operation cost to be allocated to that service type from paragraph (8) of this subsection by the projected units of service for that service type from paragraph (1) of this subsection.

(10) Step 10. The final recommended administration and operation cost component per unit of service for each HCS and TxHmL service type is calculated as follows. [-]

(A) For the following services, [~~HCS supported home living, HCS respite, HCS supported employment, HCS employment assistance, TxHmL community supports services, TxHmL respite, TxHmL supported employment, and TxHmL employment assistance~~] multiply the administration and operation cost component from paragraph (9) of this subsection by 1.044. [-]

(i) CSS;

(ii) EA;

(iii) SE;

(iv) SHL; and

(v) effective upon service claims being made billable through TMHP:

(I) in-home DH;

(II) HCS OHR in a camp;

(III) HCS OHR in a respite facility;

(IV) HCS OHR in a setting where HH/CC is provided; and

(V) HCS OHR in a setting that is not listed.

(B) For the following services, [~~HCS SL/RSS, HCS DH, and TxHmL DH~~] multiply the administration and operation cost component from paragraph (9) of this subsection by 1.07. [-]

(i) RSS;

(ii) SL; and

(iii) effective upon service claims being made billable through TMHP:

(I) out-of-home DH;

(II) HCS OHR in a DH facility; and

(III) HCS OHR in a setting where SL or RSS is provided.

(11) Step 11. Effective July 1, 2017, the final recommended administration and operation cost component per unit of service for SHL [Supported Home Living] in HCS, CSS [Community Support Services] in TxHmL, and high medical needs support [High Medical Needs Support] in HCS is equal to the administrative and facility cost component of habilitation services [Habilitation Services] in the Community Living Assistance and Support Services [(CLASS)] program as specified in §355.505 of this chapter (relating to Reimbursement Methodology for the Community Living Assistance and Support Services Waiver Program).

(12) Step 12. Effective September 1, 2019, the recommended modeled rates for all TxHmL services except TxHmL CSS [Community Support Services] are equal to the rates that were in effect for these services on August 31, 2019. The recommended modeled rate for TxHmL CSS [Community Support Services] is calculated as specified in subsection (c)(2)(C) of this section.

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

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

Filed with the Office of the Secretary of State on August 7, 2020.

TRD-202003203

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: September 20, 2020

For further information, please call: (512) 424-6637



## TITLE 13. CULTURAL RESOURCES

### PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

#### CHAPTER 2. GENERAL POLICIES AND PROCEDURES

##### SUBCHAPTER C. GRANT POLICIES

##### DIVISION 1. GENERAL GRANT GUIDELINES

#### 13 TAC §§2.116, 2.119, 2.120

The Texas State Library and Archives Commission (commission) proposes amendments to §2.116, Uniform Grant Management Standards (UGMS) and §2.119, Multiple Applications, and new §2.120, Applicant Eligibility.

**BACKGROUND.** The proposed amendments and new rules are necessary to provide clarity as to the types of entities that are eligible to apply for grants and particularly to clarify when a non-profit entity is an eligible applicant. The proposed amendments also clarify when an entity may submit multiple applications for a grant and update an outdated citation.

**SUMMARY.** The proposed amendment to §2.116 corrects a typographical error in the rule title and updates the citation to the Texas Comptroller of Public Accounts' (CPA) rules related to Uniform Grant and Contract Standards. The current citation in §2.116 references the rules prior to the transfer of this function from the Office of the Governor to the CPA and needs to be updated.

The proposed amendments to §2.119 clarify that applicants for competitive grants may submit more than one grant application per grant cycle, so long as the applications are for different projects and in different grant programs. The proposed amendments also clarify that the prohibition on submitting the same or similar grant application pertains to grants in the same cycle. Lastly, the proposed amendments clarify that an applicant may submit more than one grant application in a grant program in the same cycle if the grant program contains separate grant application categories and the proposals are different.

Proposed new §2.120 adds a general rule on applicant eligibility. While individual rules pertaining to specific grants speak to eligibility, this rule is necessary to clarify the only entities eligible to apply for any grant under Chapter 1 or Chapter 2 of this Title, and to clarify that a non-profit entity is eligible only if the entity is applying on behalf of accredited libraries or TexShare members and if the entity's organizational charter, operating guidelines, or mission statement includes providing direct support for library activities and goals as a defined objective. The proposed new rule also clarifies that unless the grant guidelines specifically provide otherwise, public school libraries are not eligible applicants

but may participate as partners in grants managed by eligible applicants.

**FISCAL IMPACT.** Jennifer Peters, Director, Library Development and Networking, has determined that for each of the first five years the proposed amendment and new rule are in effect, there will be no increase in costs to the state as a result of enforcing or administering these rules, as proposed. Ms. Peters does not anticipate a fiscal impact to local governments as a result of enforcing or administering these rules, as proposed.

**PUBLIC BENEFIT AND COSTS.** Ms. Peters has determined that for each of the first five years the proposed amendment and new rules are in effect, the anticipated public benefit will be improved clarity in the grant application process. There are no anticipated economic costs to persons required to comply with the proposed amendment and new rule.

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

**SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT STATEMENT.** There will be no adverse economic effect on small businesses, micro-businesses, or rural communities; therefore, a regulatory flexibility analysis under Government Code, §2006.002 is not required.

**COST INCREASE TO REGULATED PERSONS.** The proposed rules do not impose or increase a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the commission is not required to take any further action under Government Code, §2001.0045.

**GOVERNMENT GROWTH IMPACT STATEMENT.** In compliance with Government Code, §2001.0221, the commission provides the following government growth impact statement. For each year of the first five years the proposed rules will be in effect, the commission has determined the following:

1. The proposed rules will not create or eliminate a government program;
2. Implementation of the proposed rules will not require the creation of new employee positions or the elimination of existing employee positions;
3. Implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to the commission;
4. The proposed rules will not require an increase or decrease in fees paid to the commission;
5. The proposed rules will create a new regulation as authorized by Government Code, §441.135;
6. The proposed rules will not expand, limit, or repeal an existing regulation;
7. The proposed rules will not increase the number of individuals subject to the proposed rules' applicability; and
8. The proposed rules will not positively or adversely affect this state's economy.

**TAKINGS IMPACT ASSESSMENT.** No private real property interests are affected by this proposal, and the proposal does not

restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action. Therefore, the proposed rules do not constitute a taking under Texas Gov't Code §2007.043.

**REQUEST FOR PUBLIC COMMENT.** Written comments on the proposed amendment and new rule may be submitted to Jennifer Peters, Director, Library Development and Networking, Texas State Library and Archives Commission, P.O. Box 12927, Austin, Texas, 78711, or via email at [rules@tsl.texas.gov](mailto:rules@tsl.texas.gov). To be considered, a written comment must be received no later than 30 days from the date of publication in the *Texas Register*.

**STATUTORY AUTHORITY.** The amendment and new rule are proposed under Government Code §441.135, which authorizes the commission to adopt rules regarding the guidelines for awarding grants.

**CROSS REFERENCE TO STATUTE.** Government Code, Chapter 441, Subchapter I.

*§2.116. Uniform Grant [Grants] Management Standards (UGMS).*

The agency adopts by reference the Uniform Grant Management Standards. The standards adopted by reference have been published as 34 TAC §§20.456 - 20.467 [~~4 TAC §§5.141 - 5.151 and §5.167~~].

*§2.119. Multiple Applications.*

Applicants for competitive grants may submit more than one grant application per grant cycle, provided that the applications are for different projects[, ] and in different grant programs. Applicants may not submit the same, or nearly the same, application in more than one grant program in the same cycle. Applicants may only submit more than one grant application in [~~for~~] a grant program in the same cycle if the grant program has specified separate categories for application and the proposals submitted are not for the same, or nearly the same, project.

*§2.120. Applicant Eligibility.*

(a) The following Texas entities are eligible to apply for funding through certain grant programs in Chapter 1 and Chapter 2 of this Title through their governing authorities:

(1) public libraries accredited under Subchapter C of Chapter 1 of this Title (relating to Minimum Standards for Accreditation of Libraries in the State Library System);

(2) other TexShare Library Consortium member institutions; or

(3) nonprofit organizations applying on behalf of accredited libraries or TexShare member institutions.

(b) For grant programs that include non-profit organizations among eligible applicants, a non-profit organization is eligible to apply only if the organization's organizational charter, operating guidelines, or mission statement includes providing direct support for activities and goals of one or more eligible entities as a defined objective.

(c) Unless the grant guidelines specifically provide otherwise, public school libraries are not eligible applicants but may participate as partners in grants managed by eligible applicants.

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

Filed with the Office of the Secretary of State on August 10, 2020.



## TITLE 16. ECONOMIC REGULATION

### PART 9. TEXAS LOTTERY COMMISSION

#### CHAPTER 402. CHARITABLE BINGO OPERATIONS DIVISION

The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §§402.200 (General Restrictions on the Conduct of Bingo), 402.300 (Pull-Tab Bingo), 402.301 (Bingo Card/Paper), 402.400 (General Licensing Provisions), 402.401 (Temporary License), 402.404 (License Classes and Fees), 402.408 (Designation of Members), 402.420 (Qualifications and Requirements for Conductor's License), 402.450 (Request for Waiver), 402.451 (Operating Capital), 402.502 (Charitable Use of Net Proceeds Recordkeeping), 402.503 (Bingo Gift Certificates), 402.511 (Required Inventory Records), 402.601 (Interest on Delinquent Tax), 402.602 (Waiver of Penalty, Settlement of Prize Fees, Rental Tax, Penalty and/or Interest), 402.700 (Denials; Suspensions; Revocations; Hearings), 402.702 (Disqualifying Convictions), and 402.703 (Audit Policy).

The proposed rule amendments are a result of both the Commission's recent rule review conducted in accordance with Texas Government Code §2001.039, and several stakeholder meetings between Commission staff and various representatives of the bingo community, including the Bingo Advisory Committee, Texas Charity Advocates, the Bingo Interest Group, Conservative Texans for Charitable Bingo, and the Department of Texas, Veterans of Foreign Wars. The Commission solicited from these representatives any proposed rule changes desired by the bingo community and the proposed changes were discussed at length in the meetings. Many of the bingo community's proposed changes are reflected in this rulemaking proposal, as are certain other changes identified in the rule review and/or desired by the Commission.

The proposed amendments include updates and clarifications of certain terms and remove references and citations that are no longer applicable. The proposal implements procedural guidelines related to temporary suspensions that are required by the Bingo Enabling Act (BEA) and implements procedural changes for processing incomplete license applications that will conserve limited staff resources. The proposed amendments remove record keeping requirements and other restrictions found to be unnecessary to the agency's purpose of ensuring that bingo is conducted fairly and that proceeds go to charities. Finally, the proposal allows organizations to issue electronic gift certificates, to accept and award donated prizes, and to conduct a bingo occasion using a temporary license without having to display verification from the Commission that it received notification of the occasion, all permissible changes that the bingo industry believes will help generate proceeds for charities.

The proposed amendments to Rule 402.200(h) provide that any licensed authorized organization, rather than just those with a non-annual license, may accept or award donated prizes. The proposed amendments to Rule 402.200(i)(4) remove the requirement that organizations maintain final game schedules in their records.

The proposed amendments to Rule 402.300(b)(4) will eliminate the requirement that manufacturers submit a specified number of pull-tab tickets to the Commission for testing after the ticket artwork has been approved. The proposed amendments to Rule 402.301(a)(3) and (11) will clarify that a bonus number can be any number on a bingo card so long as the number is identified as such prior to the start of a bingo game.

The proposed amendments to Rule 402.400(e) provide that an incomplete original application will be returned, rather than denied, 21 days after the Commission requests more information if the applicant fails to respond; proposed amendments to Rule 402.400(l) provide that a license may be placed in administrative hold at any time, rather than only at the time of license renewal; proposed amendments to Rules 402.401(b)(3) and §402.401(d)(3)(D) remove the requirement that a conductor display verification from the Commission during a temporary bingo occasion, thus allowing for the use of temporary-on-demand licenses; proposed amendments to Rule 402.404 remove references to organization license fees, which no longer exist; proposed amendments to Rule 402.408 allow for a designated member of an organization to renew and print licenses online; proposed amendments to Rule 402.420 correct the requirements for licensure of authorized organizations related to time-in-existence; proposed amendments to Rule 402.450(b)(3) provide further clarification that a credible business plan, may, but is not required to contain certain components; and proposed amendments to Rule 402.451(b)(2) provide that bingo account calculations will include prize fees held in the bingo account to be paid to local governments or charitable accounts.

Proposed amendments to Rule 402.502(c)(5) and (6) provide clarification that organizations may, but are not required to, maintain certain documentation for all charitable distributions; proposed amendments to Rule 402.503 allow for the use of electronic gift certificates subject to the same restrictions as paper gift cards; and proposed amendments to Rule 402.511 provide that the Commission will create a form for maintaining perpetual inventory that organizations may use.

Proposed amendments to Rules 402.601 and 402.602 remove all references to rental and gross receipts taxes because they are no longer collected.

Finally, proposed amendments to Rule 402.700(b) provide for a temporary suspension process and guidelines; proposed amendments to Rule 402.702(c)(2) correct a citation to the Texas Code of Criminal Procedure; proposed amendments to Rule 402.702(d) provide that the Commission "may" treat certain deferred adjudications as convictions, rather than doing so "generally"; proposed amendments to Rule 402.702(e) add assault and manufacture, delivery, or possession with the intent to deliver of a controlled substance to the list of directly related offenses; and proposed amendments to Rule 402.703(c)(3) and (d)(2) provide that audits will be completed within one year of an entrance conference and that organizations will be provided with no more than two letters requesting records in an audit.

Kathy Pyka, Controller, has determined that for each year of the first five years the amendments will be in effect, there will be no

significant fiscal impact for state or local governments as a result of the proposed amendments. There will be no adverse effect on small businesses or rural communities, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the amendments, as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Thomas Hanson, Director of the Charitable Bingo Operations Division, has determined that for each year of the first five years the proposed amended rules will be in effect, the anticipated public benefit will be a more efficient process for licensing applicants and a reduction and simplification of regulations in order to help organizations generate more proceeds for their charitable purposes. The proposal also implements procedural guidelines related to temporary suspensions as required by the BEA.

Pursuant to Texas Government Code §2001.0221, the Commission provides the following Government Growth Impact Statement for the proposed rule. For each year of the first five years the proposed amendments will be in effect, Kathy Pyka, Controller, has determined the following:

- (1) The proposed amendments do not create or eliminate a government program.
- (2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of the proposed amendments does not require an increase or decrease in future legislative appropriations to the Commission.
- (4) The proposed amendments do not require an increase or decrease in prize fees paid to the Commission.
- (5) The proposed amendments do not create a new regulation.
- (6) The proposed amendments do not expand or limit an existing regulation.
- (7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability.
- (8) The proposed amendments do not positively or adversely affect this state's economy.

The Commission requests comments on the proposed amendments from any interested person. Comments may be submitted to Tyler Vance, Assistant General Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at [Legal.Input@lottery.state.tx.us](mailto:Legal.Input@lottery.state.tx.us). Comments must be received within thirty (30) days after publication of this proposal in the *Texas Register* in order to be considered. The Commission will also hold a public hearing to receive comments on this proposal at 9:00 a.m. on September 9, 2020, via a Zoom teleconference. More information regarding the teleconference will be available on the Commission website.

## SUBCHAPTER B. CONDUCT OF BINGO

### 16 TAC §402.200

The amendments are proposed under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to

enforce and administer the Bingo Enabling Act; Texas Government Code §467.102, which authorizes the Commission to adopt rules for the laws under the Commission's jurisdiction.

This proposal is intended to implement Texas Occupations Code, Chapter 2001.

#### §402.200. *General Restrictions on the Conduct of Bingo.*

(a) A bingo occasion that is fairly conducted by a licensed authorized organization is one that is impartial, honest, and free from prejudice or favoritism. It is also conducted competitively, free of corrupt and criminal influences, and follows applicable provisions of the Bingo Enabling Act and Charitable Bingo Administrative Rules.

(b) Inspection and use of equipment.

(1) All bingo equipment is subject to inspection at any time by any representative of the Commission. No person may tamper with or modify or allow others to tamper with or modify any bingo equipment in any manner which would affect the randomness of numbers chosen or which changes the numbers or symbols appearing on the face of a bingo card. A licensed authorized organization has a continuing responsibility to ensure that all bingo equipment used by it is in proper working condition.

(2) A registered bingo worker must inspect the bingo balls prior to the first game of each bingo occasion, making sure all of the balls are present and not damaged or otherwise compromised.

(3) Bingo balls that are missing, damaged, or otherwise compromised shall be replaced in complete sets or individually if the bingo balls are of the same type and design.

(4) A registered bingo worker must inspect the bingo console and flashboard to ensure proper working order prior to the first game of each bingo occasion.

(5) The organization must establish and adhere to, and make available to the players upon request, a written procedure that addresses problems during a bingo occasion concerning:

- (A) bingo equipment malfunctions; and
- (B) improper bingo ball calls or placements.

(c) Location of bingo occasion. A bingo occasion may be conducted only on premises which are:

- (1) owned by a licensed authorized organization;
- (2) owned by a governmental agency when there is no charge to the licensed authorized organization for use of the premises;
- (3) leased, or used only by the holder of a temporary license; or
- (4) owned or leased by a licensed commercial lessor.

(d) All bingo games must be conducted and prizes awarded on the days and within the times specified on the license to conduct bingo. If a circumstance occurs that would cause a regular bingo game to continue past the time indicated on the license, the licensed authorized organization may complete the regular bingo game. A written record detailing the circumstance that caused the bingo game to continue past the time indicated on the license must be maintained by the organization for forty-eight (48) months.

(e) Pull-tab bingo event tickets may not be sold after the occurrence of the event used to determine the game's winner(s) unless the organization has a policy and procedure in their house rules addressing the sale and redemption of pull-tab bingo event tickets after the event has taken place.

(f) Merchandise prizes. Any merchandise or other non-cash prize, including bingo equipment, awarded as a bingo prize shall be valued at its current retail price. However, a non-cash prize awarded as a bingo prize may be valued at the price actually paid for that prize provided that the licensed authorized organization maintains a receipt or other documentation evidencing the actual price paid.

(g) "Cash bingo prize" includes cash, coins, checks, money orders, or any other financial instrument that is convertible to cash.

(h) Donated bingo prizes. A [~~Only~~] licensed authorized organization [organizations holding a non-annual temporary license] may accept or award donated bingo prizes. A donated bingo prize shall be valued at its current retail price.

(i) The licensed authorized organization is responsible for ensuring the following minimum requirements are met to conduct a bingo occasion in a manner that is fair. [:]

(1) The licensed authorized organization must make the following information available to players prior to the selling of a pull-tab bingo event ticket game:

(A) how the game will be played;

(B) the prize to be awarded if not United States currency; and

(C) how the winner(s) will be determined.

(2) Each licensed authorized organization shall conspicuously display during all bingo occasions a sign indicating the name(s) of the operator(s) authorized by the licensed authorized organization to be in charge of the occasion.

(A) The letters on the sign shall be no less than one inch tall.

(B) The sign shall inform the players that they should direct any questions or complaints regarding the conduct of the bingo occasion to an operator listed on the sign.

(C) The sign should further state that if the player is not satisfied with the response given by the operator that the player has the right to contact the Commission and file a formal complaint.

(3) Prior to the start of a bingo occasion, the licensed authorized organization shall make a written game schedule available to all patrons. The game schedule must contain the following information:

(A) all regularly scheduled games to be played;

(B) the order in which the games will be played;

(C) the patterns needed to win;

(D) the prize(s) to be paid for each game, including the value of any non-cash bingo prizes as set in subsections (f) and (g) of this section;

(E) whether the prize payout is based on sales or attendance;

(F) the entrance fee and the number of cards associated with the entrance fee, if any; and

(G) the price of each type of bingo card offered for sale.

(4) The licensed authorized organization may amend the game schedule during the bingo occasion to correctly reflect any changes to game play during that occasion provided that the amendments are announced to the patrons and documented, in writing, on the game schedule. If not otherwise prohibited by law, the licensed

authorized organization may conduct a bingo game that was not originally listed on the game schedule if the game and the prize(s) to be awarded for that game are announced to the patrons prior to the start of the game and documented, in writing, on the game schedule. Upon completion of the bingo occasion, the final game schedule must properly account for all games played during that occasion and the prizes awarded for those games. [The final game schedule shall be maintained pursuant to §402.500(a) of this title (relating to General Records Requirements).]

(j) Reservation of bingo cards. No licensed authorized organization may reserve, or allow to be reserved, any bingo card or cards for use by a bingo player.

(k) Bingo worker requirements.

(1) Bingo staff and employees may not play bingo during an occasion in which the bingo staff or employees are conducting or assisting in the conduct of the bingo occasion.

(2) A bingo worker shall not:

(A) communicate verbally, or in any other manner, to the caller the number(s) or symbol(s) needed by any player to win a bingo game;

(B) require anything of value from players, other than payment, for bingo cards, electronic card minding devices, pull-tab bingo tickets, and supplies; or

(C) deduct any cash or portion of a winning prize other than the prize fee without the player's permission.

(l) Caller requirements. The caller shall:

(1) be located so that one or more players can:

(A) observe the drawing of the ball from the bingo receptacle; and

(B) gain the attention of the caller when the players bingo;

(2) be the only person to handle the bingo balls during each bingo game;

(3) call all numbers and make all announcements in a manner clear and audible to all of the playing areas of the bingo premises;

(4) announce:

(A) prior to the start of the regular bingo game, the pattern needed to win and the prize. If the prize amount is based on sales or attendance, the prize amount must be announced prior to the end of the game;

(B) that the game, or a specific part of a multiple-part game, is closed after asking at least two (2) times whether there are any other bingos and pausing to permit additional winners to identify themselves;

(C) whether the bingo is valid and if not, that there is no valid bingo and the game shall resume. The caller shall repeat the last number called before calling any more numbers; and

(D) the number of winners for the game.

(5) return the bingo balls to the bingo receptacle only upon the conclusion of the game; and

(6) not use cell phones, personal digital assistants (PDAs), computers, or other personal electronic devices to communicate any information that could affect the outcome of the bingo game with anyone during the bingo occasion.

(m) Verification.

(1) Winning cards. The numbers appearing on the winning card must be verified at the time the winner is determined and prior to prize(s) being awarded in order to insure that the numbers on the card in fact have been drawn from the receptacle.

(A) This verification shall be done either in the immediate presence of one or more players at a table or location other than the winner's, or displayed on a TV monitor visible by all of the players or by an electronic verifier system visible by all the players.

(B) After the caller closes the game, a winning disposable paper card or an electronic representation of the card for each game shall also be posted on the licensed premises where it may be viewed in detail by the players until at least 30 minutes after the completion of the last bingo game of that organization's occasion.

(2) Numbers drawn. Any player may request a verification of the numbers drawn at the time a winner is determined and a verification of the balls remaining in the receptacle and not drawn.

(A) Verification shall take place in the immediate presence of the operator, one or more players other than the winner, and player requesting the verification.

(B) Availability of this additional verification, done as a request from players, shall be made known either verbally prior to the bingo occasion, printed on the playing schedule, or included with the bingo house rules.

(n) Each licensed authorized organization must establish and adhere to written procedures that address disputes. Those procedures shall be made available to the players upon request.

(o) The total aggregate amount of prizes awarded for regular bingo games during a single bingo occasion may not exceed \$2500. This subsection does not apply to:

(1) a pull-tab bingo game; or

(2) a prize of \$50 or less that is actually awarded in an individual game of regular bingo.

(p) For purposes of §2001.419 of the Occupations Code, a bingo occasion will be considered to have occurred on the date on which the occasion began.

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

Filed with the Office of the Secretary of State on August 10, 2020.

TRD-202003277

Bob Biard

General Counsel

Texas Lottery Commission

Earliest possible date of adoption: September 20, 2020

For further information, please call: (512) 344-5392



## SUBCHAPTER C. BINGO GAMES AND EQUIPMENT

### 16 TAC §402.300, §402.301

The amendments are proposed under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to

enforce and administer the Bingo Enabling Act; Texas Government Code §467.102, which authorizes the Commission to adopt rules for the laws under the Commission's jurisdiction.

This proposal is intended to implement Texas Occupations Code, Chapter 2001.

#### §402.300. Pull-Tab Bingo.

(a) Definitions. The following words and terms, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Bingo Ball Draw--A pulling of a bingo ball(s) to determine the winner of an event ticket by either the number or color on the ball(s).

(2) Deal--A separate and specific game of pull-tab bingo tickets of the same serial number and form number.

(3) Face--The side of a pull-tab bingo ticket, which displays the artwork of a specific game.

(4) Flare--A poster or placard that must display:

(A) a form number of a specific pull-tab bingo game;

(B) the name of the pull-tab bingo game;

(C) the total card count of the pull-tab bingo game;

(D) the cost per pull-tab bingo ticket;

(E) the number of prizes to be awarded and the corresponding prize amounts of the pull-tab bingo game; and

(F) the name of the manufacturer or trademark.

(5) Form Number--The unique identification number assigned by the manufacturer to a specific pull-tab bingo game. A form number may be numeric, alpha, or a combination of numeric and alpha characters.

(6) High Tier--The two highest paying prize amounts as designated on the pull-tab bingo ticket and on the game's flare.

(7) Last Sale--The purchaser of the last pull-tab bingo ticket(s) sold in a deal with this feature is awarded a prize or a registration for the opportunity to win a prize.

(8) Merchandise--Any non-cash item(s), including bingo equipment, provided to a licensed authorized organization that is used as a prize.

(9) Pay-Out--The total sum of all possible prize amounts in a pull-tab bingo game.

(10) Payout Schedule--A printed schedule prepared by the manufacturer that displays:

(A) the name of the pull-tab bingo game;

(B) the form number of the pull-tab bingo game;

(C) the total card count of the pull-tab bingo game;

(D) the cost per pull-tab bingo ticket;

(E) the number of prizes to be awarded and the corresponding prize amount or jackpot for each category of the pull-tab bingo game;

(F) the number of winners for each category of prize;

(G) the profit of the pull-tab bingo game;

(H) the percentage of payout or the percentage of profit of the pull-tab bingo game; and

(I) the payout(s) of the pull-tab bingo game.

(11) Payout Structure--The printed information that appears on a pull-tab bingo ticket that shows the winnable prize amounts, the winning patterns required to win a prize, and the number of winners for each category of prize.

(12) Prize--An award of collectible items, merchandise, cash, bonus pull-tabs, and additional pull-tab bingo tickets, individually or in any combination.

(13) Prize Amount--The value of cash and/or merchandise which is awarded as a prize, as valued under §402.200(f) of this chapter. A collectable item is considered merchandise for determining allowable prize amounts.

(14) Serial Number--The unique identification number assigned by the manufacturer identifying a specific deal of pull-tab bingo tickets. A serial number may be numeric, alpha, or a combination of numeric and alpha characters.

(15) Subset--A part of a deal that is played as a game to itself or combined with more subsets and played as a game. Each subset may be designed to have:

(A) a designated payout; or

(B) a series of designated payouts. Subsets must be of the same form and serial number to have a combined designated payout or a series of designated payouts.

(16) Symbol--A graphic representation of an object other than a numeric or alpha character.

(17) Video Confirmation--A graphic and dynamic representation of the outcome of a bingo event ticket that will have no effect on the result of the winning or losing event ticket.

(18) Wheels--Devices that determine event ticket winner(s) by a spin of a wheel.

(19) Consecutive bingo occasions within one day--More than one bingo occasion conducted by an organization or organizations in the same unit within a 24-hour period without any intervening occasions conducted by another organization or organization from a different unit, commencing at the start of the first occasion.

(b) Approval of pull-tab bingo tickets.

(1) A pull-tab bingo ticket may not be sold in the state of Texas, nor furnished to any person in this state nor used for play in this state until that pull-tab bingo ticket has received approval for use within the state of Texas by the Commission. The manufacturer at its own expense must present their pull-tab bingo ticket to the Commission for approval.

(2) All pull-tab bingo ticket color artwork with a letter of introduction including style of play must be presented to the Commission's Austin, Texas location for review. The manufacturer must submit one complete color positive or hardcopy set of the color artwork for each pull-tab bingo ticket and its accompanying flare. The color artwork may be submitted in an electronic format prescribed by the Commission in lieu of the hardcopy submission. The submission must include the payout schedule. The submission must show both sides of a pull-tab bingo ticket and must be submitted on an 8 1/2" x 11" size sheet. The color artwork will show the actual size of the ticket and a 200% size of the ticket. The color artwork will clearly identify all winning and non-winning symbols. The color artwork will clearly identify the winnable patterns and combinations.

(3) The color artwork for each individual pull-tab bingo ticket must:

(A) display in no less than 26-point diameter circle, an impression of the Commission's seal with the words "Texas Lottery Commission" engraved around the margin and a five-pointed star in the center;

(B) contain the name of the game in a conspicuous location on the pull-tab bingo ticket;

(C) contain the form number assigned by the manufacturer in a conspicuous location on the pull-tab bingo ticket;

(D) contain the manufacturer's name or trademark in a conspicuous location on the pull-tab bingo ticket;

(E) disclose the prize amount and number of winners for each prize amount, the number of individual pull-tab bingo tickets contained in the deal, and the cost per pull-tab bingo ticket in a conspicuous location on the pull-tab bingo ticket;

(F) display the serial number where it will be printed in a conspicuous location on the pull-tab bingo ticket. The color artwork may display the word "sample" or number "000000" in lieu of the serial number;

(G) contain graphic symbols that preserve the integrity of the Commission. The Commission will not approve any pull-tab bingo ticket that displays images or text that could be interpreted as depicting violent acts, profane language, or provocative, explicit, or derogatory images or text, as determined by the Commission. All images or text are subject to final approval by the Commission; and

(H) be accompanied with the color artwork of the pull-tab bingo tickets along with a list of all other colors that will be printed with the game.

(4) Upon approval of the color artwork, the manufacturer may [will] be notified by the Commission to submit a specified number of tickets for testing. The tickets must be submitted for testing to the Commission at the manufacturer's own expense. If necessary, the Commission may request that additional tickets or a deal be submitted for testing.

(5) If the color artwork is approved and the pull-tab bingo tickets pass the Commission's testing, the manufacturer will be notified of the approval. This approval only extends to the specific pull-tab bingo game and the specific form number cited in the Commission's approval letter. If the pull-tab bingo ticket is modified in any way, with the exception of the serial number, index color, or trademark(s), it must be resubmitted to the Commission for approval. Changes to symbols require only an artwork approval from the Commission.

(6) The Commission may require resubmission of an approved pull-tab bingo ticket at any time.

(c) Disapproval of pull-tab bingo tickets.

(1) Upon inspection of a pull-tab bingo ticket by the Commission, if it is deemed not to properly preserve the integrity or security of the Commission including compliance with the art work requirements of this rule, the Commission may disapprove a pull-tab bingo ticket. All pull-tab bingo tickets that are disapproved by the Commission will cease to be allowed for sale until such time as the manufacturer complies with the written instructions of the Commission, or until any discrepancies are resolved. Disapproval of and prohibition to use, purchase, sell or otherwise distribute such a pull-tab bingo ticket is effective immediately upon notice to the manufacturer by the Commission. Upon receipt of such notice, the manufacturer must immediately notify the distributor and the distributor must immediately notify affected licensed authorized organizations to cease all use, purchase, sale or other distribution of the disapproved pull-tab ticket. The dis-



tributor must provide to the Commission, within 15 days of the Commission's notice to the manufacturer, confirmation that the distributor has notified the licensed authorized organization that the pull-tab ticket has been disapproved and sale and use of the disapproved ticket must cease immediately.

(2) If modified by the manufacturer all disapproved pull-tab bingo tickets may be resubmitted to the Commission. No sale of disapproved tickets will be allowed until the resubmitted tickets have passed security testing by the Commission. At any time the manufacturer may withdraw any disapproved pull-tab bingo tickets from further consideration.

(3) The Commission may disapprove a pull-tab bingo game at any stage of review, which includes artwork review and security testing, or at any time in the duration of a pull-tab bingo game. The disapproval of a pull-tab bingo ticket is administratively final.

(d) Manufacturing requirements.

(1) Manufacturers of pull-tab bingo tickets must manufacture, assemble, and package each deal in such a manner that none of the winning pull-tab bingo tickets, nor the location, or approximate location of any winning pull-tab bingo ticket can be determined in advance of opening the deal by any means or device. Nor should the winning pull-tab bingo tickets, or the location or approximate location of any winning pull-tab bingo ticket be determined in advance of opening the deal by manufacture, printing, color variations, assembly, packaging markings, or by use of a light. Each manufacturer is subject to inspection by the Commission, its authorized representative, or designee.

(2) All winning pull-tab bingo tickets as identified on the payout schedule must be randomly distributed and mixed among all other pull-tab bingo tickets of the same serial number in a deal regardless of the number of packages, boxes, or other containers in which the deal is packaged. The position of any winning pull-tab bingo ticket of the same serial numbers must not demonstrate a pattern within the deal or within a portion of the deal. If a deal of pull-tabs is packed in more than one box or container, no individual container may indicate that it includes a winner or contains a disproportionate share of winning or losing tickets.

(3) Each deal's package, box, or other container shall be sealed at the manufacturer's factory with a seal including a warning to the purchaser that the deal may have been tampered with if the package, box, or other container was received by the purchaser with the seal broken.

(4) Each deal's serial number shall be clearly and legibly placed on the outside of the deal's package, box or other container or be able to be viewed from the outside of the package, box or container.

(5) A flare must accompany each deal.

(6) The information contained in subsection (a)(3)(A), (B), (C), (D), and (F) of this section shall be located on the outside of each deal's sealed package, box, or other container.

(7) Manufacturers must seal or tape, with tamper resistant seal or tape, every entry point into a package, box or container of pull-tab bingo tickets prior to shipment. The seal or tape must be of such construction as to guarantee that should the container be opened or tampered with, such tampering or opening would be easily discernible.

(8) All high tier winning instant pull-tab bingo tickets must utilize a secondary form of winner verification.

(9) Each individual pull-tab bingo ticket must be constructed so that, until opened by a player, it is substantially impossible,

in the opinion of the Commission, to determine its concealed letter(s), number(s) or symbol(s).

(10) No manufacturer may sell or otherwise provide to a distributor and no distributor may sell or otherwise provide to a licensed authorized organization of this state or for use in this state any pull-tab bingo game that does not contain a minimum prize payout of 65% of total receipts if completely sold out.

(11) A manufacturer in selling or providing pull-tab bingo tickets to a distributor shall seal or shrink-wrap each package, box, or container of a deal completely in a clear wrapping material.

(12) Pull-tab bingo tickets must:

(A) be constructed of cardboard and glued or otherwise securely sealed along all four edges of the pull-tab bingo ticket and between the individual perforated break-open tab(s) on the ticket. The glue must be of sufficient strength and type so as to prevent the separation of the sides of a pull-tab bingo ticket;

(B) have letters, numbers or symbols that are concealed behind perforated window tab(s), and allow such letters, numbers or symbols to be revealed only after the player has physically removed the perforated window tab(s);

(C) prevent the determination of a winning or losing pull-tab bingo ticket by any means other than the physical removal of the perforated window tab(s) by the player;

(D) be designed so that the numbers and symbols are a minimum of 2/32 (4/64) inch from the dye-cut window perforations;

(E) be designed so that the lines or arrows that identify the winning symbol combinations will be a minimum of 5/32 inch from the open edge farthest from the hinge of the dye-cut window perforations;

(F) be designed so that highlighted "pay-code" designations that identify the winning symbol combinations will be a minimum of 3.5/32 (7/64) inch from the dye-cut window perforations;

(G) be designed so that secondary winner protection codes appear in the left margin of the ticket, unless the secondary winner protection codes are randomly generated serial number-type winner protection codes. Randomly generated serial number-type winner protection codes will be randomly located in either the left or middle column of symbols and will be designed so that the numbers are a minimum of 3.5/32 (7/64) inch from the dye-cut window perforations. Any colored line or bar or background used to highlight the winner protection code will be a minimum 3.5/32 (7/64) inch from the dye-cut window perforations;

(H) have the Commission's seal placed on all pull-tab bingo tickets by only a licensed manufacturer; and

(I) be designed so that the name of the manufacturer or its distinctive logo, form number and serial number unique to the deal, name of the game, price of the ticket, and the payout structure remain when the letters, numbers, and symbols are revealed.

(13) Wheels must be submitted to the Commission for approval. As a part of the approval process, the following requirements must be demonstrated to the satisfaction of the Commission:

(A) wheels must be able to spin at least four times with reasonable effort;

(B) wheels must only contain the same number or symbols as represented on the event ticket; and

(C) locking mechanisms must be installed on wheel(s) to prevent play outside the licensed authorized organization's licensed time(s).

(14) A manufacturer must include with each pull-tab bingo ticket deal instructions for how the pull-tab bingo ticket can be played in a manner consistent with the Bingo Enabling Act and this chapter. The instructions are not required to cover every potential method of playing the pull-tab bingo ticket deal.

(e) Sales and redemption.

(1) Instant pull-tab bingo tickets from a single deal may be sold by a licensed authorized organization over multiple occasions. A licensed authorized organization may bundle pull-tab bingo tickets of different form numbers and may sell those bundled pull-tab tickets. Pull-tab tickets may be sold up to one hour before an occasion, but they may only be redeemed during an occasion.

(2) Except as provided by paragraph (3) or (4) of this subsection, the event used to determine the winner(s) of an event pull-tab bingo ticket deal must occur during the same bingo occasion at which the first event pull-tab bingo ticket from that deal was sold. A winning event pull-tab ticket must be presented for payment during the same bingo occasion at which the event occurred.

(3) For a licensed authorized organization that conducts bingo through a unit created and operated under Texas Occupations Code, Subchapter I-1, any organization in the unit may sell or redeem event pull-tab tickets from a deal on the premises specified in their bingo licenses and during such licensed time on consecutive occasions within one 24-hour period.

(4) For a licensed authorized organization that conducts bingo on consecutive occasions within one day, the organization or organizations within a unit may sell or redeem event pull-tab tickets from a deal during either occasion and may account for and report all of the pull-tab bingo ticket sales and prizes for the occasions as sales and prizes for the final occasion.

(5) Licensed authorized organizations may not display or sell any pull-tab bingo ticket which has in any manner been marked, defaced, tampered with, or which otherwise may deceive the public or affect a person's chances of winning.

(6) A licensed authorized organization may not withdraw a deal of instant pull-tab bingo tickets from play until the entire deal is completely sold out or all winning instant pull-tab bingo tickets of \$25.00 prize winnings or more have been redeemed, or the bingo occasion ends.

(7) A licensed authorized organization may not commingle different serial numbers of the same form number of pull-tab bingo tickets.

(8) A winning instant pull-tab bingo ticket must be presented for payment during the licensed authorized organization's bingo occasion(s) at which the instant pull-tab bingo ticket is available for sale.

(9) The licensed authorized organization's gross receipts from the sale of pull-tab bingo tickets must be included in the reported total gross receipts for the organization, except that an organization or organizations within a unit that conducts consecutive bingo occasions during one day may account for and report all of the pull-tab bingo ticket sales for the occasions as sales for the final occasion. An organization or unit that chooses to account for pull-tab bingo ticket sales for consecutive bingo occasions during one day as sales for the final occasion must also account for pull-tab bingo ticket prizes awarded over those occasions as prizes awarded for the final occasion. Each deal of

pull-tab bingo tickets must be accounted for in sales, prizes or unsold cards.

(10) A licensed authorized organization may use video confirmation to display the results of an event ticket pull-tab bingo game(s). Video confirmation will have no effect on the play or results of any ticket or game.

(11) A licensed authorized organization must sell the pull-tab ticket for the price printed on the pull-tab ticket.

(12) Immediately upon payment of a winning pull-tab ticket of \$25.00 or more, the licensed authorized organization must punch a hole with a standard hole punch through or otherwise mark or deface that winning pull-tab bingo ticket.

(f) Inspection. The Commission, its authorized representative or designee may examine and inspect any individual pull-tab bingo ticket or deal of pull-tab bingo tickets and may pull all remaining pull-tab bingo tickets in an unsold deal.

(g) Records.

(1) Any licensed authorized organization selling pull-tab bingo tickets must maintain a purchase log showing the date of the purchase, the form number and corresponding serial number of the purchased pull-tab bingo tickets.

(2) Licensed authorized organizations must show the sale of pull-tab bingo tickets, prizes that were paid and the form number and serial number of the pull-tab bingo tickets on the occasion cash report, except that an organization or organizations within a unit that conducts consecutive bingo occasions during one day may account for and report all of the pull-tab bingo ticket sales for the occasions as sales for the final occasion. An organization or unit that chooses to account for pull-tab bingo ticket sales for consecutive bingo occasions during one day as sales for the final occasion must also account for pull-tab bingo ticket prizes awarded over those occasions as prizes awarded for the final occasion. The aggregate total sales for the licensed authorized organization must be recorded on the cash register or point of sale station.

(3) Licensed authorized organizations must maintain a perpetual inventory of all pull-tab bingo games. They must account for all sold and unsold pull-tab bingo tickets and pull-tab bingo tickets designated for destruction. The licensed authorized organization will be responsible for the gross receipts and prizes associated with the unaccounted for pull-tab bingo tickets.

(4) As long as a specific pull-tab bingo game serial number is in play, all records, reports, receipts and redeemed winning pull-tab bingo tickets of \$25.00 or more relating to this specific pull-tab bingo game serial number must be retained on the licensed premises for examination by the Commission.

(5) If a deal is removed from play and marked for destruction then all redeemed and unsold pull-tab bingo tickets of the deal must be retained by the licensed authorized organization for a period of four years from the date the deal is taken out of play or until the destruction of the deal is witnessed by the Commission, its authorized representative or designee.

(6) Manufacturers and distributors must provide the following information on each invoice and other document used in connection with a sale, return, or any type of transfer of pull-tab bingo tickets:

- (A) date of sale;
- (B) quantity sold;
- (C) cost per each deal of pull-tab bingo game sold;

(D) form number and serial number of each pull-tab bingo game's deal;

(E) name and address of the purchaser; and

(F) Texas taxpayer number of the purchaser.

(7) All licensed organizations must retain these records for a period of four years.

(h) Style of Play. The following pull-tab bingo tickets are authorized by this rule. A last sale feature can be utilized on any pull-tab bingo ticket.

(1) Sign-up Board. A form of pull-tab bingo that is played with a sign-up board. Sign-up board tickets that contain a winning numeric, alpha or symbol instantly win the stated prize or qualify to advance to the sign-up board. The sign-up board that serves as the game flare is where identified winning sign-up board ticket holders may register for the opportunity to win the prize indicated on the sign-up board.

(2) Sign-up Board Ticket. A sign up board ticket is a form of pull-tab bingo played with a sign-up board. A single window or multiple windows sign-up board ticket reveals a winning (or losing) numeric, alpha or symbol that corresponds with the sign-up board.

(3) Tip Board. A form of pull-tab game where perforated tickets attached to a placard that have a predetermined winner under a seal.

(4) Coin Board. A placard that contains prizes consisting of coin(s). Coin boards can have a sign-up board as part of its placard.

(5) Coin Board Ticket. A form of pull-tab bingo that when opened reveals a winning number or symbol that corresponds with the coin board.

(6) Event Ticket. A form of pull-tab bingo that utilizes some subsequent action to determine the event ticket winner(s), such as a drawing of ball(s), spinning wheel, opening of a seal on a flare(s) or any other method approved by the Commission so long as that method has designated numbers, letters, or symbols that conform to the randomly selected numbers or symbols. When a flare is used to determine winning tickets, the flare shall have the same form number and serial number as the event tickets. Pull-tab bingo tickets used as event tickets must contain more than two instant winners.

(7) Instant Ticket. A form of pull-tab bingo that has predetermined winners and losers and has immediate recognition of the winners and losers.

(8) Multiple Part Event or Multiple Part Instant Ticket. A pull-tab bingo ticket that is broken apart and sold in sections by a licensed authorized organization. Each section of the ticket consists of a separate deal with its own corresponding payout structure, form number, serial number, and winner verification.

(9) Jackpot Pull-Tab Game. A style of pull-tab game that has a stated prize and a chance at a jackpot prize(s). A portion of the stated payout is contributed to the jackpot prize(s). Each jackpot is continuous for the same form number and continues until a jackpot prize(s) is awarded; provided that, any jackpot prize(s) must not exceed the statutory limits.

(10) Video Confirmation shall be subject to Commission approval.

*§402.301. Bingo Cards/Paper.*

(a) Definitions. The following words and terms, shall have the following meaning unless the context clearly indicates otherwise:

(1) Bingo card/paper. A hard card, disposable bingo card/paper, shutter card, or any other bingo card/paper approved by the Commission.

(2) Bingo hard card. A device made of cardboard, plastic or other suitable material that is intended for repeated use of the bingo card at multiple bingo occasions.

(3) Bonus number(s). A number or numbers on any type of bingo card/paper [that has an identified number or numbers] which when called could result in an additional prize awarded. Bonus number(s) must be announced prior to the start of a bingo game.

(4) Braille bingo card. A device that contains raised symbols that reflect numbers on a reusable card.

(5) Break-open bingo. A type of disposable bingo card/paper that is sealed, that conceals the bingo card/paper face, that may be folded, and where the bingo game or a portion of the bingo game has been pre-called.

(6) Case. A receptacle that contains bingo card/paper products.

(7) Cut. Indicates the direction in which a sheet of faces will be cut from the master sheet of disposable bingo card/paper. A cut can be square, horizontal or vertical. The sheet of disposable bingo card/paper printed by the manufacturer of a specific group of disposable bingo card/paper that can be subdivided vertically or horizontally into sheets.

(8) Defective. Bingo card/paper missing specifications as originally approved by the Commission.

(9) Disposable bingo card/paper. A sheet or sheets of paper that is designed or intended for use at a single bingo occasion.

(10) Double numbers. Bingo card/paper with two numbers in each of the 24 spaces on each face.

(11) Face. A specific configuration of numbers, symbols, or blank squares imprinted on paper, cardboard, or other materials, and designed to be used to conduct bingo games. The bingo card/paper normally consists of five rows of five columns that may bear 24 pre-printed numbers between 1 and 75, symbols, or blank squares, except for the center square which is a free space and have the letters B-I-N-G-O appear in order above the five columns[; with the exception of bonus number(s) that may appear on the bingo card/paper].

(12) Free space. The center square on the face of a bingo card/paper.

(13) Loteria. A type of bingo that utilizes symbols or pictures. Normally playing cards are utilized instead of numbered balls.

(14) Multi-part card/paper. A type of disposable bingo card/paper where the player selects the numbers. The player retains one part of the disposable bingo card/paper while the licensee for the purpose of verification retains the other part of the disposable bingo card/paper.

(15) On. The number of faces imprinted on a sheet of disposal bingo card/paper after it is cut. The number of bingo card/paper faces normally precedes this term.

(16) Pre-marked. A bingo card/paper where one or more of the numbers are already marked or identified prior to the start of the game.

(17) Product line. A specific type of bingo card/paper, identifiable by features or characteristics that are unique when compared to other bingo card/paper manufactured by the manufacturer.

(18) Serial number. The unique identification number assigned by the manufacturer to a specific product line of bingo card/paper.

(19) Series number. The specific number assigned by the manufacturer that identifies the unique configuration of numbers that appears on an individual bingo card/paper face.

(20) Sheet. A single piece of paper that contains one or more disposable bingo card/paper faces.

(21) Shutter card. A device made of cardboard or other suitable material with plastic "shutters" that cover a number to simulate the number being daubed.

(22) UP. The number of sheets of disposable bingo paper glued together by the manufacturer. The number of sheets normally precedes this term.

(23) UPS pads. A bound collection of disposable bingo card/paper where each sheet in the collection is used to play a separate bingo game during the occasion.

(b) Approval of bingo card/paper.

(1) Bingo card/paper shall not be sold in the state of Texas, nor furnished to any person in this state, nor used for play in this state until the manufacturer of the bingo card/paper has received written approval for use within the state of Texas by the Commission. The manufacturer at its own expense must present the bingo card/paper to the Commission for approval.

(2) A letter of introduction including the style of play must be presented to Commission headquarters for review. The manufacturer must submit one complete color positive or sample for each type of bingo card/paper. The color positive or sample may be submitted in an electronic format prescribed by the Commission in lieu of the hard-copy submission. The color positive or sample bingo card/paper must:

(A) bear on the face of every disposable bingo card/paper used, sold, or furnished in this state an impression of the State of Texas and a star of five points encircled by olive and live oak branches and the words "Texas Lottery Commission," in accordance with detailed specification, available on request from the Commission. The face of each disposable bingo card/paper must also have printed on it in a conspicuous location the name of the manufacturer or trademark, which has been filed with the Commission; and

(B) contain the serial and series numbers assigned by the manufacturer on the face of each of the bingo card/paper, except in the case of Break-open bingo, which may contain the serial number assigned by the manufacturer on the outside so as not to be concealed.

(3) The bingo card/paper may contain numbers or symbols so long as the numbers or symbols preserve the integrity of the Commission. The Commission will not approve any bingo paper that displays images or text that could be interpreted as depicting violent acts, profane language, or provocative, explicit, or derogatory images or text, as determined by the Commission. All images or text are subject to final approval by the Commission.

(4) If the bingo card/paper is approved the manufacturer will be notified of the approval. This approval only extends to the specific bingo card/paper submitted and will be cited in the Commission's approval letter. If the bingo card/paper is modified in any way, with the exception of the color, series number, and/or serial number it must be resubmitted to the Commission for approval.

(5) The Commission may require resubmission of an approved bingo card/paper at any time.

(6) If an approved bingo card/paper is discontinued or no longer manufactured for sale in Texas, the manufacturer must provide the Commission written notification within ten days of discontinuance or cessation of manufacturing for sale in Texas. The written notification may be sent to the Commission via facsimile, e-mail, delivery services or postal delivery.

(c) Disapproval of bingo card/paper.

(1) After inspection of the bingo card/paper by the Commission, if the bingo card/paper does not comply with the provisions of this rule and/or the Bingo Enabling Act, the Commission shall disapprove the bingo card/paper and shall notify the manufacturer of the disapproval. Any bingo card/paper that is disapproved by the Commission may not be displayed, purchased or sold in the state of Texas. Disapproval of and prohibition to use, purchase, sell or otherwise distribute, is effective immediately upon notice to the manufacturer by the Commission.

(2) A manufacturer shall not sell, or furnish unapproved bingo card/paper to anyone, including another manufacturer or distributor for use in this state. A manufacturer shall not sell, or furnish bingo card/paper not bearing the seal of the Commission on the face of the bingo card/paper and the manufacturer's name or trademark to distributors for use in this state. This requirement also applies to any manufacturer who assembles bingo card/paper for sale in Texas.

(3) A licensed authorized organization shall not purchase, obtain, or use disapproved bingo card/paper in this state.

(4) If the manufacturer modifies the bingo card/paper that was previously disapproved, the manufacturer may resubmit the modified bingo card/paper for Commission approval. At any time the manufacturer may withdraw any disapproved bingo card/paper from further consideration.

(5) The Commission may disapprove the bingo card/paper at any stage of review. The disapproval of the bingo card/paper is administratively final.

(d) Manufacturing requirements.

(1) Bingo card/paper must comply with the following construction standards.

(A) The disposable paper used shall be of sufficient weight and quality to allow for clearly readable numbers and to prevent ink from spreading or bleeding through an UPS pad thereby obscuring other numbers or bingo card/paper;

(B) series numbers may be displayed in the center square of the bingo card/paper;

(C) numbers printed on the bingo card/paper shall be randomly assigned; and

(D) a manufacturer shall not repeat a serial number on or in the same product line, series, and color of bingo card/paper within one year of the last printing of that serial number.

(2) UPS pad must comply with the following construction standards.

(A) Bingo card/paper in UPS pads must only be glued and not stapled; and

(B) the disposable bingo card/paper assembled into UPS pads shall not be separated, with the exception of the multi-part disposable bingo card/paper, nor shall single sheets already manufactured be cut for sale for special bingo games.

(3) Inspection. The Commission, its authorized representative or designee may examine and inspect any individual bingo card/paper or series of bingo card/paper and may pull all remaining bingo card/paper in the inventory if the Commission, its authorized representative or designee determines that the bingo card/paper is defective or has not been approved.

(4) Packaging.

(A) Bingo card/paper shall be sealed in shrink wrap and be designed so that if the shrink wrapped bingo card/paper, package, or case was opened or tampered with, it would be easily noticed.

(B) Barcodes may be included on each bingo card/paper, package, or case provided the barcode contains information required in subparagraph (C).

(C) A label shall be placed on, or be visible from, the exterior of each package or case of bingo card/paper listing the following information:

- (i) Type of product;
- (ii) Series number of the UPS pads and/or sheet(s);
- (iii) Serial numbers of the top sheet of the UPS pads and/or sheet(s);
- (iv) Number of package or cases; and
- (v) Cut and color of paper.

(D) A packing slip shall be included with the package or case listing the following information:

- (i) Type of product;
- (ii) Number of UPS pads or sheets;
- (iii) Series number of the UPS pads and/or sheet(s);
- (iv) Serial numbers of the top sheet of the UPS pads and/or sheet(s);
- (v) Number of package or cases; and
- (vi) Cut and color of paper.

(e) Records.

(1) Manufacturers and distributors must provide the following information on each invoice and other documents used in connection with a sale, return or any other type of transfer of bingo card/paper:

- (A) Date of sale;
- (B) Quantity sold and number of faces per sheet;
- (C) Serial and series number of each bingo card/paper sold;
- (D) Name and address of the purchaser; and
- (E) Texas taxpayer identification number of the purchaser.

(2) Manufacturers and distributors must maintain standard accounting records that include but are not limited to:

- (A) Sales invoice;
- (B) Credit memos;
- (C) Sales journal; and
- (D) Purchase records.

(3) Licensed authorized organization.

(A) A licensed authorized organization must maintain a disposable bingo card/paper sales summary showing the organization's name, taxpayer number, distributor's taxpayer number, invoice date, distributor's name, invoice number, serial number, and series number. Also, the disposable bingo card/paper sales summary must include the number of faces (ON), number of sheets (UP), and color of borders.

(B) A licensed authorized organization must show the date of the occasion on which the disposable bingo card/paper was sold, a beginning inventory, along with the number of disposable bingo card/paper sold.

(C) A licensed authorized organization must maintain a perpetual inventory of all disposable bingo card/paper.

(D) Disposable bingo card/paper marked for destruction cannot be destroyed until witnessed by the Commission, its authorized representative or designee. All destruction documentation must be retained by the licensed organization for a period of four years from the date of destruction.

(4) All records identified in this subsection must be retained for a period of four years from creation of the records.

(f) Braille cards. Visually impaired, legally blind, or persons with disabilities may use their own personal Braille cards when the authorized organization does not provide Braille Cards. Players using Braille cards shall pay the equivalent price to participate in the game. The authorized organization shall have the right to inspect, and to reject any personal Braille card(s). Braille cards are not required to be approved by the Commission. Braille cards are not considered bingo equipment as defined by Occupations Code, §2001.002(5).

(g) Loteria. The symbols or pictures may be identified with Spanish subtitles and each of the 54 cards contains a separate and distinct symbol or picture. The 54 individual cards may be shuffled by the caller and then randomly drawn and announced to the players. The player uses a loteria card, which contains a minimum of sixteen squares and each square has one of the 54 symbols or pictures. There are no duplicate symbols or pictures on the loteria card. Loteria cards are not considered bingo equipment as defined by Occupations Code, §2001.002(5).

(h) Style of play and minimum standards of play. Prizes awarded on any style of play must be in accordance with Occupations Code, §2001.420.

(1) Player pick ems. A game of bingo where a player selects his/her own numbers on a multi-part duplicated disposable bingo card/paper. One copy is retained by the player and used as a bingo card/paper while the other copy is provided to the organization for verification purposes.

(2) Progressive bingo. A game of bingo that either the established prize amount or number of bingo balls and/or objects may be increased from one session to the next scheduled session. If no player completes the required pattern within the specified number of bingo balls or objects drawn, the established prize amount may be increased but shall not exceed the prize amount authorized by the Bingo Enabling Act.

(3) Warm-up or early bird. A bingo game conducted at the beginning of a bingo occasion during the authorized organization's license times, in which prizes are awarded based upon a percentage of the sum of money received from the sale of the warm-up/early bird bingo card/paper.

(4) Shaded/Images bingo. Bingo card/paper that incorporates images where one or more squares on a bingo card/paper face are shaded. Each shaded image conforms to a pattern that must be achieved

to win a bingo game or each shaded square may be used as a free space or a pattern for a bingo game.

(5) Bingo bonus number(s). A bingo game that has additional identified number(s) in excess of the 24 numbers that appear on the bingo card/paper face that, when called, could result in an additional prize awarded. The first player who matches the numbers shown on the bonus number(s) line within the specified number(s) called wins the additional prize.

(6) Multi level or multi tier. Bingo card/paper that has one or more additional lines of number(s) aside from the normal five lines that when played could result in an additional prize. Therefore, a multi level or multi tiered game could be played on this bingo card/paper that provides more opportunities to win.

(7) Multi color bingo. A bingo game played on a bingo card/paper with a different color for each bingo card/paper face. Prizes are awarded based on the color on which the bingo card/paper face that had the bingo.

(8) Pre-called. A game of bingo where the numbers for the game have been pre-called and identified prior to the start of the game.

(9) Double number. A bingo game played on a bingo card/paper that has two numbers per square. A player has two chances to daub each square.

(10) Break-open bingo. A type of bingo game played on sealed disposable bingo card/paper, where the bingo card/paper face is concealed, that may be folded, and where the bingo game has been pre-called. The bingo game may not be pre-called prior to the authorized organization's license time.

(11) Regular bingo. A bingo game played on the standard card face of five rows by five columns with 24 pre-printed numbers between 1 and 75, symbols, or blank squares and a free space square where the winner is determined by a predetermined pattern.

(i) Promotional bingo. This rule shall not apply to bingo card/paper furnished for use in a promotional bingo game conducted in accordance with the Occupations Code, §2001.551. The card/paper may not contain the Commission seal.

(j) Exempt organization. This rule shall not apply to bingo card/paper furnished for use by an organization receiving an exemption from bingo licensing in accordance with the Occupations Code, §§2001.551(b)(3)(A) and (B). The bingo card/paper may not contain the Commission seal.

(k) House rules. A licensed authorized organization playing a style of bingo other than regular bingo must develop house rules on how the game is played. The house rules must be made available to the public.

(l) Card-minding devices. This rule shall be applicable only to bingo card/paper made of paper, cardboard or similar material approved by the Commission and shall not be applicable to the manufacture or use of card-minding devices addressed in §§402.321 - 402.328 of this chapter, with the exception of style of play as defined by this rule and approved by the Commission.

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

Filed with the Office of the Secretary of State on August 10, 2020.  
TRD-202003278

Bob Biard  
General Counsel  
Texas Lottery Commission

Earliest possible date of adoption: September 20, 2020  
For further information, please call: (512) 344-5392

◆ ◆ ◆

## SUBCHAPTER D. LICENSING REQUIREMENTS

### 16 TAC §§402.400, 402.401, 402.404, 402.408, 402.420, 402.450, 402.451

The amendments are proposed under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act; Texas Government Code §467.102, which authorizes the Commission to adopt rules for the laws under the Commission's jurisdiction.

#### §402.400. General Licensing Provisions.

(a) Any person who wants to engage in a bingo related activity shall apply to the Commission for a license. The application must be on a form prescribed by the Commission and all required information must be legible, correct and complete. The initial submittal of an application is incomplete if the following information is not provided:

(1) All information requested on the application form and supplemental forms;

(2) All supplemental information requested during the pre-licensing investigation period;

(3) The applicable license fee for a lessor, distributor, or manufacturer; and

(4) Authorized signatures as required by the Commission.

(b) Information submitted by an applicant on an applicable form shall be considered to be part of the application. Supplemental information should be submitted on a form prescribed by the Commission and all information required must be correct and complete.

(c) Information submitted by an applicant in a format other than an applicable form must be legible and must include the following:

(1) the name and address of the organization as it appears on the application;

(2) the Texas taxpayer identification number; or, if sole owner, the individual's social security number;

(3) a statement identifying the information submitted;

(4) the signature, printed name and telephone number of the person authorized to submit the information; and

(5) all supplemental information requested during the pre-licensing investigation period.

(d) Within 21 calendar days after the Commission has received an original application, the Commission will review the application and notify the applicant if additional information is required.

(e) If an application is incomplete, the Commission will notify the applicant and, if applicable, the applicant's bingo hall. The applicant must provide the requested information within 21 calendar days of such notification. If the applicant fails to respond within 21 calendar days of the notification, the application will be deemed incomplete and returned to the applicant. [Failure to provide the requested information within the 21 calendar day time line or providing incomplete information may result in the denial of the license application.]

(f) For an application to conduct bingo, an organization may choose to submit the application form without including a bond or other security; information regarding previously held licenses; justice precinct, city or county certification; and information on intended playing location, days, times, and starting date.

(1) All other information requested on the application and the accompanying supplements must be complete and in compliance with all other requirements of the Bingo Enabling Act and the Charitable Bingo Administrative Rules.

(2) Within a number of calendar days required by the Commission on the applicable forms, the organization must remit the required bond or other security to the Commission and inform the Commission on the applicable supplemental forms of the intended playing location, days, times, and starting date of the occasions. If the organization fails to provide the required bond or other security as well as complete and accurate supplement forms within the required timeframe, the Commission will deny the application.

(3) An organization that has submitted the appropriate bond or other security and a complete application, including all applicable supplemental forms, must also submit updated, certified meeting minutes, current as of the submission of the applicable supplemental information, stating that the organization voted to conduct bingo at the licensed location.

(g) Prior to the issuance of a license, the Commission may require an applicant to attend a pre-licensing interview. The Commission will identify the person or persons for the applicant who must attend the pre-licensing interview. The pre-licensing interview will consist of, at a minimum, the following:

- (1) review of the Bingo Enabling Act;
- (2) review of the Charitable Bingo Administrative Rules;
- (3) licensee responsibilities;
- (4) process pertaining to the different types of license application;
- (5) bookkeeping and record keeping requirements as it involves bingo; and
- (6) a statement from the person or persons attending the pre-licensing interview that they are aware of and will comply with the provisions of the Bingo Enabling Act and the Charitable Bingo Administrative Rules.

(h) The Commission may deny an application based on information obtained that indicates non-compliance with the provisions of the Bingo Enabling Act and/or the Charitable Bingo Administrative Rules in connection with a pre-licensing interview and/or location inspection.

(i) Each licensed authorized organization issued a temporary authorization is required to file timely and complete required reports, as applicable to the type of licensing activity requested.

(j) A license applicant may withdraw an application at any time prior to the approval or denial of the application. Once the written request for withdrawal is received by the Commission, all processing of the application will cease and the withdrawal is considered final. License application fees for withdrawn license applications will be refunded, as provided for in the Bingo Enabling Act. If the organization wants to reapply for a license, a complete new application and new license fee, if applicable, are required.

(k) Voluntary surrender of a license.

(1) A licensee may surrender its license for cancellation provided it has completed and submitted to the Commission the prescribed form.

(2) If surrendering a license to conduct bingo, the prescribed form must be signed by the bingo chairperson.

(3) If surrendering any other type of license, the prescribed form must be signed by the sole owner, or by two officers, directors, limited liability corporation members, or partners of the organization.

(4) The cancellation of the license shall be final and effective upon receipt by the Charitable Bingo Operations Division of a copy of the resolution, or other authoritative statement of the licensee, requesting cancellation of the license and providing a requested effective date.

(A) The cancellation is effective as of the date identified in the letter provided that the date has not passed.

(B) If no date is identified in the letter, or the date has passed, the effective date shall be the date the Commission receives the letter.

(5) Notwithstanding cancellation of the license, the licensee must file all reports, returns and remittances required by law.

(6) The licensee shall surrender the license to the Commission on the effective date of the surrender.

(7) The Commission will send the licensee a letter confirming the surrender and resulting cancellation of the license.

(l) Administrative Hold. A licensed authorized organization or commercial lessor, other than an association of licensed authorized organizations, may request to place its regular license in administrative hold at any time. [; but only at the time of license renewal, as provided in §402.411 of this Chapter.]

(1) The placement of a license in administrative hold shall be effective on the first day of the license period for which the administrative hold is requested.

(2) The licensee shall submit the license in administrative hold, or a certified statement that the license is not available, to the Commission no later than seven (7) calendar days after the effective date of the placement of the license in administrative hold.

(3) Once the license has been placed in administrative hold, all bingo activity (i.e. leasing, conducting bingo) must cease until the licensee files an amendment and the amended license is issued by the Commission and received by the licensee. A licensed authorized organization with its regular license in administrative hold may not conduct bingo under a temporary license.

(4) Notwithstanding placement of the license in administrative hold, the licensee must file with the Commission:

(A) all applicable reports, returns and remittances required by law; and

(B) a timely and complete application for renewal of the license each time the license is ripe for renewal.

(5) If at the time of license renewal a licensed authorized organization does not have a designated playing location, that license will be placed in administrative hold.

(6) Except for licensed commercial lessors subject to §2001.152(b) of the Occupation Code, a license may not be in administrative hold for more than twelve (12) consecutive quarters.

(7) The fee for a license in administrative hold is set in §402.404(d)(3) of this Chapter.

(8) A license may be removed from administrative hold at any time during a license period. To remove a license from administrative hold, the licensee must file a license amendment application as provided in §2001.306 of the Occupations Code and §402.410 of this Chapter.

(m) Each person required to be named in an application for license under the Bingo Enabling Act other than a temporary license will have a criminal record history inquiry at state and/or national level conducted. Such inquiry may require submission of fingerprint card(s). FBI fingerprint cards are required for an individual listed in an application for a distributor or manufacturer's license and for an individual listed on an application who is not a Texas resident. A criminal record history inquiry at the state and/or national level may be conducted on the operator and officer or director required to be named in an application for a non-annual temporary license under the Bingo Enabling Act.

(n) Representation; personal receipt of documents. For purposes of this subsection, an individual shall be recognized by the Commission as an applicant or licensee's authorized representative only if the applicant or licensee has filed with the Commission a form prescribed by the Commission identifying the individuals currently listed as directors, officers, or operators, or if they are identified on the completed Authorization of Representation for Bingo Licenses form. A person is not an authorized representative of the applicant or licensee unless specifically named on a form prescribed by the Commission as part of the application, or on the Authorization of Representation for Bingo Licenses form that is on file with the Commission. Only those persons specifically named on a form prescribed by the Commission or on the Authorization of Representation for Bingo Licenses form as an authorized representative shall be recognized by the Commission concerning any matter relating to the licensing process or license. Only the applicant or licensee or its authorized representative may receive from the Commission documents relating to the application or license without being required to submit a request under the Public Information Act.

#### §402.401. *Temporary License.*

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

(1) Bingo liability--Includes, but is not limited to, any applicable license fee, late license renewal fee, prize fee, penalty, interest, or administrative penalty.

(2) Regular license--A license to conduct bingo that is effective for a period of one year unless revoked or suspended by the Commission. A regular license may be referred to as an annual license.

(3) Temporary license--A license to conduct bingo that is in effect for a single bingo occasion.

(b) General.

(1) Requirements. The Commission may not issue a temporary license if the applicant has failed to file a required report, failed to pay a bingo liability, has not distributed the proceeds calculated on the quarterly report for a charitable purpose, or has a regular license in administrative hold.

(2) Duration. A temporary license is valid for no more than six consecutive hours during any day.

(3) Display. The licensed authorized organization must conspicuously display during a temporary bingo occasion at the

licensed bingo premises a temporary license. [ ~~and, if applicable, verification of notification as referred to in subsection (d)(3)(D) of this section.~~]

(4) Voluntary surrender of regular license.

(A) An authorized organization that no longer holds a regular license to conduct bingo may conduct any remaining designated temporary occasions so long as the total number of occasions does not exceed six per calendar year. If over six previously specified occasions remain, the licensed authorized organization must provide to the Commission written notification of no more than six of the dates of the temporary licenses that will be utilized. This notification must be provided within ten days of surrender of the regular license. The Commission will automatically revoke all temporary licenses in excess of the six per year.

(B) If the Commission denies or revokes a regular license by final and unappealable order, any temporary license held by the regular license holder that stated the specific date and time of any bingo occasion will likewise be denied or revoked.

(5) All records that are required to be maintained under a regular license must be maintained for a temporary bingo license.

(c) The playing time of a temporary bingo occasion may not conflict with the playing time of any other license at the bingo premises on that date unless otherwise provided by law.

(d) Regular license holder.

(1) A regular license holder must apply for a temporary license at least seven calendar days prior to the bingo occasion.

(2) Quarterly reports filed by a regular license holder must include proceeds from all licensed temporary occasions held during the quarter.

(3) The Commission may issue a temporary license to a regular license holder without listing the specific date or time of a bingo occasion. The temporary bingo occasion must be conducted at the same location as shown on the organization's regular license. Such a license shall be referred to as a "temporary-on-demand license".

(A) The regular license holder must submit an application on the prescribed form that indicates the number of temporary-on-demand [~~temporary~~] licenses requested for the license period.

(B) Before using a temporary-on-demand license, the [~~The~~] regular license holder must notify the Commission of the date and time the temporary license will be used by submitting a form prescribed by the Commission. The Commission will verify receipt of the notice in accordance with Bingo Enabling Act §2001.103(g). The license holder is not required to display the Commission's verification during the occasion but must maintain it in their records pursuant to §402.500(a) of this title (relating to General Records Requirements).

(C) Any temporary-on-demand [~~temporary~~] license [~~issued without the specific date or time identified~~] must be used prior to the expiration date of the regular license in effect at the time the temporary license application was filed.

~~[(D) The Commission shall provide a verification of receipt of notification that must be posted adjacent to the applicable temporary license during the bingo occasion.]~~

(4) In accordance with Occupations Code, §2001.108(e), the Commission may issue to a regular license holder additional temporary licenses in excess of the number of temporary licenses specified under Occupations Code, §2001.103(e) if the following conditions are met:



(A) The regular license holder submits a completed application on the form prescribed by the Commission;

(B) The date and times stated on the application are consistent with the day and times licensed to the organization that has ceased or will cease to conduct bingo as provided in Occupations Code, §2001.108; and

(C) The Commission has not acted on an amendment application filed under Occupations Code, §2001.108(a).

(5) If the organization is issued the amendment license filed under Occupations Code, §2001.108 prior to being issued the temporary license, the temporary license application shall be discontinued.

(e) Non-regular license holder. A non-regular license holder that wishes to conduct a bingo occasion must file a complete application for a temporary license on a form prescribed by the Commission at least 30 calendar days prior to the bingo occasion.

(1) If an organization has never received a temporary license or 3 years have elapsed since the organization last held a temporary bingo occasion, the organization must submit a Texas Application for Temporary Bingo Occasions for Non-Licensed Organization - Section 2.

(2) Organizations who have held a temporary license occasion in the past three years may submit Texas Application for a Temporary Bingo Occasions for Non-Licensed Organization - Section 1 to apply for a temporary license.

§402.404. License Classes and Fees.

(a) Definitions.

(1) License period--For purposes of Texas Occupations Code §2001.104 and §2001.158, the term "license period" means the four full calendar quarters immediately preceding the license end date.

(2) Regular License Classes and Applicable Fee Amount:

~~{(A) There is no annual fee for a license to conduct bingo. The license-class-related amount used solely by the Commission to estimate the pro rata local share of prize fees related to licenses to conduct bingo shall be as follows:}~~

~~{(i) Class A (annual gross receipts of \$25,000 or less) - \$132;}~~

~~{(ii) Class B (annual gross receipts of more than \$25,000 but not more than \$50,000) - \$264;}~~

~~{(iii) Class C (annual gross receipts of more than \$50,000 but not more than \$75,000) - \$396;}~~

~~{(iv) Class D (annual gross receipts of more than \$75,000 but not more than \$100,000) - \$528;}~~

~~{(v) Class E (annual gross receipts of more than \$100,000 but not more than \$150,000) - \$792;}~~

~~{(vi) Class F (annual gross receipts of more than \$150,000 but not more than \$200,000) - \$1,188;}~~

~~{(vii) Class G (annual gross receipts of more than \$200,000 but not more than \$250,000) - \$1,584;}~~

~~{(viii) Class H (annual gross receipts of more than \$250,000 but not more than \$300,000) - \$1,980;}~~

~~{(ix) Class I (annual gross receipts of more than \$300,000 but not more than \$400,000) - \$2,640;}~~

~~{(x) Class J (annual gross receipts of more than \$400,000) - \$3,300.}~~

~~(A) [(B)]~~ The annual fee for a commercial lessor license shall be as follows:

~~(i) Class A (annual gross rentals from licensed organizations of not more than \$12,000) - \$132;~~

~~(ii) Class B (annual gross rentals from licensed organizations of more than \$12,000 but not more than \$20,000) - \$264;~~

~~(iii) Class C (annual gross rentals from licensed organizations of more than \$20,000 but not more than \$30,000) - \$396;~~

~~(iv) Class D (annual gross rentals from licensed organizations of more than \$30,000 but not more than \$40,000) - \$528;~~

~~(v) Class E (annual gross rentals from licensed organizations of more than \$40,000 but not more than \$50,000) - \$792;~~

~~(vi) Class F (annual gross rentals from licensed organizations of more than \$50,000 but not more than \$60,000) - \$1,188;~~

~~(vii) Class G (annual gross rentals from licensed organizations of more than \$60,000 but not more than \$70,000) - \$1,584;~~

~~(viii) Class H (annual gross rentals from licensed organizations of more than \$70,000 but not more than \$80,000) - \$1,980;~~

~~(ix) Class I (annual gross rentals from licensed organizations of more than \$80,000 but not more than \$90,000) - \$2,640;~~

~~(x) Class J (annual gross rentals from licensed organizations of more than \$90,000) - \$3,300.~~

~~(B) [(C)]~~ Manufacturer's License. The annual fee for a manufacturer's license shall be \$3,000.

~~(C) [(D)]~~ Distributor's License. The annual fee for a distributor's license shall be \$1,000.

(b) Original License Application.

(1) Commercial License to Lease Bingo Premises.

(A) License fees for an original license to lease bingo premises submitted by an authorized organization licensed to conduct bingo must be paid from the organization's bingo bank account.

(B) An applicant may be required to submit additional license fees if the estimated gross rental income used to calculate the license fee is not reasonable when compared to the gross rental income at similarly situated bingo premises. These comparative amounts are used to establish the gross rental income amount upon which the applicant's license fee is based and must be submitted.

(2) Understating the anticipated gross receipts or rental income from a licensed activity for any purpose by an applicant or licensed entity may be grounds for administrative disciplinary action against the licensee.

(c) An organization shall re-estimate its annual gross rental income and submit any balance due in license fee amount if there is an increase within six months of the issuance of the original lessor license in:

(1) the number of organizations conducting bingo at a licensed location; and

(2) the number of bingo occasions conducted at the licensed location.

(d) License Renewal Fee.

(1) The amount of license fee to be paid upon renewal of a license to lease bingo premises is the recalculated license fee amount calculated for the preceding license period.

(2) If the recalculation of the license fee amount for the previous license period reflects an underpayment of the license fee amount for that license period, the incremental difference must be submitted by the organization within 30 days of the license expiration date and before the license may be renewed.

(3) Upon written request by an organization to renew its license to lease bingo premises that is in or going in administrative hold, the organization shall pay a Class A license renewal fee, plus any amount due under paragraph (2) of this subsection, in lieu of the recalculated fee amount from the preceding license period. There is no renewal license fee for an organization renewing its license to conduct bingo that is in or going in administrative hold, but the license-class-related amount used solely by the Commission to estimate the pro rata local share of prize fees related to a license to conduct bingo for such an organization is a Class A fee amount.

(4) The Commission may require an amount of license fee in addition to the recalculated fee at renewal if there is a change in:

- (A) playing location; or
- (B) rental amount per occasion.

(5) If a commercial lessor or a licensed authorized organization which leases bingo premises requests its license be placed in administrative hold upon the renewal of its lessor license and submits the requisite fee as set in paragraph (3) of this subsection, the Commission may require the commercial lessor to submit an additional license fee when it files the application to amend a commercial license to lease bingo premises, if the commercial lessor amends its license to begin leasing bingo premises within the first six months of the license term.

(e) Two-Year License Fee Payments. An applicant for a commercial lessor license that is effective for two years must pay an amount equal to two times the amount of the annual license fee, as set in §402.404(a)(2).

(f) Regular License Class Recalculation.

(1) For the purpose of determining the license class recalculation for a license to conduct bingo or license to lease bingo premises, the annual gross receipts or gross rental income, as applicable, shall be based on the four consecutive quarterly returns due immediately prior to the license expiration date.

(2) For the purposes of determining the license class recalculation for a two year license to lease bingo premises, each year of the license period shall be recalculated separately. The final recalculated fee will be the total of the yearly license classes and their associated fees. The annual gross rental income shall be based on the four consecutive quarterly returns due immediately prior to the first year period and the four consecutive quarterly returns due immediately prior to the license expiration date of the second year period.

(3) For accounting units, gross receipts used to recalculate the license class apportioned to a unit member will be calculated by dividing the unit's gross receipts by the total number of members during the quarter.

(4) If an organization fails to file a report for one or more quarter(s) of the license period, or if there are not four quarters available for any other reason, the Commission shall average the quarterly gross receipts or gross rental income for the quarter(s) reported to determine the organization's license class.

(5) License no longer exists.

(A) Notwithstanding the fact that an organization which leased bingo premises under a license that ceased to exist for whatever

reason, the organization must submit the recalculated license fee for the period that the organization leased the premises and collected gross rental income.

(B) If an organization ceases to be licensed for whatever reason, all gross receipts or gross rental income collected (from the period after the last quarterly return used to recalculate the license class for the prior year) is used to recalculate the final license class, and if appropriate, any fee due. If the organization fails to file a return for any required period(s), an estimated return will be used. The organization shall submit any balance due after license class recalculation.

(6) The Commission may recalculate license classes for up to four consecutive immediately preceding license periods if a change in an organization's reported gross receipts or gross rental income occurs as a result of an audit, or if the original recalculation was determined by using estimated gross receipts or gross rental income.

(7) If there is a change in an organization's reported gross receipts or gross rental income, the organization may submit a written request to the Charitable Bingo Operations Division to recalculate its license class for up to four immediately preceding license periods.

(g) Overpayment of License Fee.

(1) An overpayment of a commercial lessor's annual license fee may occur either through a recalculation of the license fee pursuant to subsection (f) of this section, or if a licensee mistakenly submits more money than is actually required for the license fee(s). An overpayment of a manufacturer's or distributor's annual license fee occurs if a licensee mistakenly submits more money than is actually required for the license fee(s). The Commission will determine whether an overpayment has occurred on a case by case basis.

(2) Upon a determination that an overpayment of an annual license fee has occurred, the Charitable Bingo Operations Division shall credit the overpayment to the licensee. Overpayments credited to a licensee may be used for the licensee's outstanding bingo liabilities, including subsequent license fees, but the credits must be used within four years of the latest date on which the annual license fee was due. Overpayments credited to a licensee remain eligible for refund under subsection (h) of this section until the credits are used or the four year refund period expires, whichever comes first.

(3) Overpayments of annual license fees must either be used as credit or claimed for refund within four years of the latest date on which the annual license fees were due. If a licensee fails to use the credits or request a refund within this time period, the overpayments will be retained by the Commission.

(h) Refunds.

(1) An applicant or licensee may request a refund of the fee for an initial or renewal commercial lessor's license, initial or renewal distributor's license, or initial or renewal manufacturer's license if they request withdrawal of the application before the license is issued. Upon such a request, the Commission will retain the lesser of 50 percent of the fee or \$150 and refund the rest of the fee within 30 days of receiving the request.

(2) If the Commission denies an initial or renewal commercial lessor license application, initial or renewal distributor's license application, or initial or renewal manufacturer's license application, it will retain the lesser of 50 percent of the fee or \$150 and refund the rest of the fee within 30 days of denying the application.

(3) A current or former licensee that submits an overpayment of a regular license fee may be eligible to receive a refund of that overpayment, provided that the licensee or former licensee:

(A) submits a complete written request for a refund to the Commission within four years of the latest date the regular license fees were due;

(B) does not have any other outstanding bingo liabilities to the State; and

(C) if applicable, files all necessary quarterly reports.

(4) Upon the receipt and review of a timely and sufficient refund request, the Commission may either deny the refund request or certify to the Comptroller of Public Accounts that a refund is warranted. Pursuant to Government Code §403.077, if the Commission certifies to the Comptroller of Public Accounts that a refund is warranted, the ultimate decision on whether to grant the refund will still be made by the Comptroller of Public Accounts.

(i) Transfer of Commercial License to Lease Bingo Premises.

(1) All gross rental income collected in connection with a license to lease bingo premises that has been transferred during the term of the license shall be used to recalculate the license fee.

(2) A license fee credit in connection with a license to lease bingo premises that was transferred during the term of the license shall be credited to the current license holder at the time of license renewal.

(3) A license fee balance due for a license to lease bingo premises that was transferred during the term of the license shall be the liability of the current license holder at the time of license renewal.

(j) Temporary Authorization to Conduct Bingo.

(1) The amount of gross receipts collected in connection with a temporary authorization is used to calculate the regular license class.

(2) An organization conducting bingo pursuant to a temporary authorization must comply with the same statutory and administrative rule requirements and quarterly return filing requirements as an organization which has a regular license to conduct bingo.

#### §402.408. Designation of Members.

(a) To designate an individual as a member for purposes of Texas Occupations Code §2001.411(c-1) and other law, a licensed authorized organization must submit to the Commission a completed Designated Member form prescribed by the Commission and signed by the bingo chairperson.

(b) A licensed authorized organization is responsible for all of the bingo related activities conducted by its organization's members and designated members.

(c) A designated member or a licensed authorized organization may notify the Commission that the designated member's status has changed and is no longer bona fide by submitting:

(1) a completed form prescribed by the Commission, or

(2) a written notification signed by the bingo chairperson that states that the designated member's status has changed and is no longer bona fide and provides the effective date.

(d) Removal of a designated member from all positions held for the organization is effective on the latter of the date received by the Commission or a date indicated.

(e) A designated member of a licensed authorized organization may access the Bingo Services Portal in order to renew and print licenses.

#### §402.420. Qualifications and Requirements for Conductor's License.

An applicant must provide with its application documentation demonstrating that it meets all qualifications and requirements for a license to conduct bingo based on the type of organization it is. The qualifications, requirements, and necessary documentation for different types of organizations are shown in the chart below.

Figure: 16 TAC §402.420

~~[Figure: 16 TAC §402.420]~~

#### §402.450. Request for Waiver.

(a) Definition. The following word or term, when used in this chapter, shall have the following meaning, unless the context clearly indicates otherwise: Detrimental charitable purpose waiver (waiver)--A determination by the Commission authorized under §2001.451(k) of the Act to exempt a licensed authorized organization from the requirements of §2001.451 or §2001.457 of the Act because compliance with the requirement(s) of these sections is detrimental to the organization's existing or planned charitable purposes.

(b) Detrimental Charitable Purpose Waiver.

(1) A licensed authorized organization may submit to the Commission an Application for Waiver to be exempt from the requirements that:

(A) bingo operations must result in net proceeds over the organization's license period; or

(B) a licensed authorized organization must disburse the required amount of net proceeds for charitable purposes for a specific calendar quarter.

(2) An application for a waiver must include the following:

(A) the reason for the request;

(B) an explanation of how compliance with the requirement is detrimental to the organization's existing or planned charitable purposes;

(C) the intended purpose of future charitable distributions;

(D) the specific calendar quarter or license year for which the waiver is being requested, as applicable; and

(E) either of the following:

(i) a credible business plan; or

(ii) if the request is due to force majeure as defined in §402.453 of this subchapter, documentation from outside sources supporting force majeure. Examples of acceptable documentation include newspaper articles, copies of local ordinance changes, police or fire department reports, notification of road construction, or photographs.

(3) A Credible Business Plan may, but is not required to include the following:

(A) the stated project goal of the organization as it applies to the application for waiver;

(B) a detailed description of the charitable activities of the organization for the four quarters immediately preceding the application;

(C) a detailed description of the charitable activities of the proposed charitable activities for the time period of the request;

(D) a detailed explanation of the reason for the waiver request; and

(E) a detailed strategy of how the organization plans to correct its financial difficulties to ensure the bingo operations result in positive net proceeds.

(c) The Commission may request additional information or documentation as needed to consider the application for a waiver.

(d) The licensed authorized organization or unit must provide all information or documentation requested by the Commission within 21 calendar days of notice from the Commission. Failure to provide information or documentation requested by the Commission within the time frame indicated may result in disapproval of the application.

(e) Criteria for Approval of Waiver Applications. The Commission may consider the following in the approval of waiver applications:

(1) the credible business plan or force majeure that necessitates the organization's not meeting the requirements of §2001.451 or §2001.457 of the Act;

(2) the amount of net proceeds from licensed authorized organization's or unit's bingo operations during the past two years; and

(3) the length of time the organization has conducted bingo and two year compliance history.

(f) Within 21 calendar days of receipt of the written application for waiver and all required attachments and documentation, the Commission will notify the organization or unit in writing of its decision to approve or disapprove the application for a waiver.

*§402.451. Operating Capital.*

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

(1) Average unit member operating capital--An amount equal to the allowable retained operating capital of the unit divided by the number of unit members.

(2) Bingo account--The bingo checking account, bingo savings account, and petty cash if bingo funds, of a licensed authorized organization or unit.

(3) Quarterly report--The Texas Bingo Quarterly Report.

(4) Retained operating capital limit--The maximum amount of funds that may be retained in the bingo account of a licensed authorized organization or unit, which is equal to the organization's or unit's actual quarterly average bingo expenses, excluding prizes paid, for the preceding license period but does not exceed \$50,000 per organization.

(b) The bingo account balance of a licensed authorized organization, reconciled to include outstanding checks and deposits in transit, on the last day of each calendar quarter may not exceed the total of:

(1) the organization's or unit's retained operating capital limit;

(2) prize fees held in the bingo account to be paid to the Commission and local governments, or to be retained under Bingo Enabling Act §2001.502(b)(2); and

(3) net proceeds from the conduct of bingo for the current quarter.

(c) Bingo account funds may be transferred between the bingo checking account, bingo savings account, and petty cash, where applicable. All funds from the bingo checking account, bingo savings account, and petty cash shall be included in the bingo account balance reported on the quarterly report on the last day of each calendar quarter, including funds in transit between the various accounts.

(d) Licensed Authorized Organization's Calculations.

(1) The retained operating capital limit for a licensed authorized organization with a one year license will be calculated based on the quarterly reports for the four (4) calendar quarters immediately preceding the license start date.

(2) The retained operating capital limit for a licensed authorized organization with a two year license will be calculated for each 12-month period of the license.

(3) The retained operating capital limit for a licensed authorized organization submitting the first renewal of its license to conduct bingo will be calculated based on the quarterly reports for the three (3) calendar quarters immediately preceding the license start date.

(4) The retained operating capital limit is effective for the four (4) calendar quarters beginning on the first day of the calendar quarter immediately following the license start date.

(e) Accounting Unit's Calculations.

(1) The retained operating capital limit for an accounting unit will be calculated based on the quarterly reports for the four (4) quarter period beginning October 1 through September 30 of each year.

(2) The retained operating capital limit for an accounting unit is effective from January 1 through December 31 of each year.

(f) A licensed authorized organization's or unit's most recent quarterly report information at the time of the calculation will be used to calculate its retained operating capital limit.

(g) Retained Operating Capital Limits.

(1) The retained operating capital in the bingo account of a licensed authorized organization may not exceed a total of \$50,000 for the first year of licensure.

(2) The retained operating capital in the bingo account of a newly formed unit may not exceed the total of the retained operating capital limits of all the licensed authorized organizations forming the unit.

(3) If a licensed authorized organization joins a unit, the retained operating capital in the unit's bingo account may be increased by an amount that is equal to the average unit member operating capital, not to exceed a total of \$50,000.

(4) If a licensed authorized organization withdraws from a unit and will no longer utilize unit accounting, its retained operating capital limit will be equal to the average unit member operating capital of the unit prior to withdrawal, not to exceed a total of \$50,000.

(5) Upon withdrawal of a unit member, the retained operating capital in the bingo account of a unit must be decreased by an amount that is equal to the average unit member operating capital by the last day of the calendar quarter immediately following the unit member's withdrawal date.

(h) Recalculation of Operating Capital.

(1) A licensed authorized organization or unit that files an original or amended quarterly report for a period used to calculate its retained operating capital limit may submit a written request to the Commission to re-calculate the limit.

(2) A request to re-calculate a retained operating capital limit must include:

(A) the reason for the request identifying the specific quarter that the original or amended quarterly report was filed; and

(B) the signature of the bingo chairperson if the request is submitted by a licensed authorized organization, the unit manager if

the unit is managed by a unit manager, or the designated agent if the unit is not managed by a unit manager.

(i) A licensed authorized organization or unit may apply for an increase in its retained operating capital limit.

(j) The failure of a licensed authorized organization or unit to receive notification from the Commission of its retained operating capital limit by the effective date does not relieve the organization or unit from complying with the retained operating capital limit.

(k) All net proceeds in excess of the retained operating capital limit must be disbursed in accordance with the Act and Rules.

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

Filed with the Office of the Secretary of State on August 10, 2020.

TRD-202003279

Bob Biard

General Counsel

Texas Lottery Commission

Earliest possible date of adoption: September 20, 2020

For further information, please call: (512) 344-5392



## SUBCHAPTER E. BOOKS AND RECORDS

### 16 TAC §§402.502, 402.503, 402.511

The amendments are proposed under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act; Texas Government Code §467.102, which authorizes the Commission to adopt rules for the laws under the Commission's jurisdiction.

This proposal is intended to implement Texas Occupations Code, Chapter 2001.

*§402.502. Charitable Use of Net Proceeds Recordkeeping.*

(a) An organization must maintain and upon request make available to a representative of the Commission or designee:

(1) a copy of the organization's organizing documents;

(2) other enabling documents, any amendments and any adopted bylaws which provide in writing the specific cause, deed or activity that is consistent with the organization's purposes and objectives for which bingo net proceeds will be used; and

(3) a copy of the applicant organization's four most recently filed Internal Revenue Service Form 990, if applicable.

(b) The Commission may request supplemental information from an organization in order to substantiate compliance with the Bingo Enabling Act, §2001.454.

(c) Record Keeping:

(1) In accordance with the Bingo Enabling Act, the licensed authorized organization must have documentation for all proceeds used for charitable purposes to substantiate the use of the funds for purposes consistent with the exempt purposes of the licensed authorized organization.

(2) All distributions for charitable purposes must be made from the bingo checking account. A distribution made from the bingo checking account into another account maintained by the organization

must be substantiated with documentation and used for a cause, deed, or activity dedicated to the charitable purposes of the organization consistent with the 26 U.S.C. §501 tax exemption of the organization or the purposes or objective for which the organization qualifies as an authorized organization.

(3) Accounting units must make distributions for charitable purposes from the unit bingo checking account to the unit member. The unit member must maintain sufficient documentation to verify the disbursed funds were used for its charitable purposes.

(4) A licensed authorized organization must maintain bank statements, canceled checks and deposits slips or images of them, and bank reconciliations for all accounts to which it deposits charitable distributions from the proceeds of bingo.

(5) A licensed authorized organization must maintain documentation for all charitable distributions made to individuals or other organizations. These may, but are not required to include:

(A) the complete name, address, phone number, and contact person for the individual or organization receiving the donation; and

(B) an invoice, receipt, thank you note, or other written acknowledgement of the distribution including the date and amount of the donation.

(6) A licensed authorized organization must maintain documentation for all charitable distributions used for its exempt purposes. Documentation may, but is not required to include [~~includes~~]:

(A) invoices, receipts, or other proof of payment for actual expenses incurred for these purposes; and

(B) calendars, floor plans, or other information used to pro-rate any expenses where only a portion of the expense is considered a legitimate exempt use of charitable distributions.

(7) A licensed authorized organization must maintain documentation for all charitable distributions as to how the use of the funds relates to the cause, deed, or activity dedicated to the charitable purposes of the organization consistent with the 26 U.S.C. §501 tax exemption of the organization or the purposes or objective for which the organization qualifies as an authorized organization.

(8) A licensed authorized organization must maintain minutes of any meeting where the use of bingo proceeds or other activities related to the conduct of bingo is discussed.

(9) An organization transferring funds to its bingo account in accordance with §2001.451 of the Act must maintain documentation showing that the transferred funds were not originally bingo proceeds.

(10) A licensed authorized organization must maintain for four years records to substantiate the use of net proceeds.

(11) Reimbursement or direct payment for member or employee travel expenses will only be considered as used for the charitable purposes of the organization if the following records are provided to the Commission upon request:

(A) the itinerary of a seminar, convention, or retreat showing that the purpose of the seminar, convention, or retreat was primarily to discuss the charitable functions and purposes consistent with the 26 U.S.C. §501 tax exemption of the organization or the purposes or objective for which the organization qualifies as an authorized organization; and

(B) the original or true and correct copies of receipts and cancelled checks showing the date and amount of the contribution for actual out-of-pocket reasonable or necessary expenses such as hotel,

airline tickets, meals, etc., and the corresponding request for payment or reimbursement maintained by the organization.

§402.503. *Bingo Gift Certificates.*

(a) A bingo gift certificate may be sold, issued, or redeemed for bingo paper, pull-tab bingo or card-minding devices provided that the licensed authorized organization or unit, as defined in Occupations Code, §2001.431(1), maintains adequate records relating to the gift certificate as provided in this section.

(b) A licensed authorized organization's cost of printing the bingo gift certificate is an allowable bingo expense and shall be paid out of the bingo checking account. In order to maintain adequate records relating to gift certificates, all gift certificates shall be pre-numbered and consecutively issued.

(c) A bingo gift certificate may not be awarded as a prize for bingo unless the value of the certificate is paid for by the licensed authorized organization and recorded as a bingo prize on the daily schedule of prizes for the bingo occasion.

(d) A bingo gift certificate may not be awarded as a door prize unless the value of the certificate is paid for before it is awarded as a door prize.

(e) Each bingo gift certificate shall be:

(1) imprinted with the name and address of the licensed location(s) where the gift certificate may be redeemed for bingo paper, pull-tab bingo or card-minding devices;

(2) imprinted with the monetary value of the certificate;

(3) imprinted with the name of the licensed authorized organization(s) authorized to accept the bingo gift certificate at the licensed location;

(4) imprinted with the expiration date or a blank space for the licensed authorized organization or unit to fill in an expiration date; and

(5) paid for by the customer in full at the time it is issued by the licensed authorized organization or unit.

(f) A licensed authorized organization may not accept a gift certificate in exchange for bingo paper, pull-tab bingo or card-minding devices if the licensed authorized organization is not licensed to conduct bingo at the licensed location(s) imprinted on the gift certificate.

(g) Reporting Requirements:

(1) Funds from the sale of the gift certificate shall be maintained separately from the bingo funds. Such funds are not considered bingo funds until the gift certificate is redeemed for a bingo card, pull-tab bingo, or a card-minding device.

(2) Funds remaining from an expired or unredeemed gift certificate shall be disbursed equally among the participating licensed authorized organizations and deposited into each of their respective general fund accounts.

(3) When a gift certificate is redeemed, the sale of bingo paper, card-minding device, or pull-tab bingo shall be reported for that occasion. The gift certificate, when redeemed, shall be exchanged for cash from the gift certificate funds and deposited into the bingo account by the end of the third business day after the bingo occasion for organizations as required by Occupations Code §2001.451, and by the end of the second business day after the bingo occasion for units as required by Occupations Code §2001.435.

(4) At the end of each month, the licensed authorized organizations collectively shall reconcile the gift certificates purchased,

sold, expired, redeemed, or remaining during the month to the cash on hand.

(h) Records Retention. The purchase invoice or receipt from the printing of a gift certificate and the reconciliation documents relating to the sale or redemption of gift certificates must be maintained and available for inspection by the Commission for a period of four years.

(i) Gift Certificate Log. A gift certificate log shall be maintained collectively by the participating licensed authorized organizations at the location(s) and shall include the following for each gift certificate:

(1) certificate number;

(2) certificate value;

(3) date of issue;

(4) expiration date;

(5) date of redemption; and

(6) if awarded as a bingo or door prize, the date of the bingo occasion and the date the prize is awarded.

(j) Electronic gift certificates. A licensed authorized organization may issue a bingo gift certificate electronically on a gift card or otherwise, subject to the same restrictions and requirements as paper gift certificates.

§402.511. *Required Inventory Records.*

(a) A licensed authorized organization or unit shall maintain a perpetual inventory of:

(1) disposable bingo cards described in subsection (d) of this section; and

(2) pull-tab bingo tickets described in subsection (e) of this section.

(b) Each perpetual inventory shall account for all sold and unsold disposable bingo cards and pull-tab bingo tickets, as well as inventory items designated for destruction.

(c) The licensed authorized organization may be held responsible for the gross receipts and prizes associated with missing or unaccounted for disposable bingo cards and pull-tab bingo tickets.

(d) The perpetual inventory of disposable bingo cards shall contain:

(1) organization's or unit's name and taxpayer number;

(2) serial and series number and the color of the paper or border (For UPS pad, use the top sheet for obtaining color, serial and series numbers.);

(3) number of faces (ON) and number of sheets (UP);

(4) number of sheets or UPS pads for each serial and series number remaining after each occasion;

(5) occasion date(s) the paper was used;

(6) number of sheets or packs sold, missing or damaged by date; and

(7) initials of person entering the information per occasion.

(e) The perpetual inventory of pull-tab bingo tickets shall contain:

(1) organization's or unit's name and taxpayer number;

(2) form number;

- (3) serial number;
- (4) number of tickets per deal;
- (5) number of tickets sold, missing, or damaged by occasion date;
- (6) number of pull-tab tickets remaining if the deal is closed; and
- (7) occasion date(s) the pull-tab tickets were sold.

(f) The Commission shall provide a form for maintaining perpetual inventory. A license authorized organization may, but is not required to use the form.

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

Filed with the Office of the Secretary of State on August 10, 2020.

TRD-202003280

Bob Biard

General Counsel

Texas Lottery Commission

Earliest possible date of adoption: September 20, 2020

For further information, please call: (512) 344-5392



## SUBCHAPTER F. PAYMENT OF TAXES, PRIZE FEES AND BONDS

### 16 TAC §402.601, §402.602

The amendments are proposed under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act; Texas Government Code §467.102, which authorizes the Commission to adopt rules for the laws under the Commission's jurisdiction.

This proposal is intended to implement Texas Occupations Code, Chapter 2001.

#### §402.601. *Interest on Delinquent Tax.*

##### (a) Interest on Delinquent Tax.

(1) The yearly interest rate on delinquent prize fees [~~or rental taxes~~] is variable and is the prime rate plus one percent, as published in The Wall Street Journal on the first day of each calendar year that is not a Saturday, Sunday, or legal holiday.

(2) Delinquent taxes draw interest beginning 60 days after the date the taxes are due.

##### (b) Interest on Refund or Credit.

(1) Except as provided by paragraphs (1) and (2) of subsection (a), interest is at the rate set out in subsection (a)(1), for the amount found to be erroneously paid by the licensee for prize fees [~~fee or rental tax~~] for a period, as determined by the Charitable Bingo Operations Division: [ ]

(A) beginning on the later of 60 days after the date of payment or the date the quarterly report is required to be filed with the Charitable Bingo Operations Division; and

(B) ending on either the date of allowance of credit on account of the Charitable Bingo Operations Division's decision or audit or a date not more than ten days before the date of the refund warrant, as determined by the Charitable Bingo Operations Division.

(2) A credit of \$100.00 or less entered by a licensed authorized organization or lessor on its quarterly report does not accrue interest. The credit will be preprinted on the quarterly report reflecting the amount of the credit to be taken from the current quarter. A credit taken by a licensed authorized organization or lessor on the quarterly report does not accrue interest.

(3) For a refund processed for a [~~tax or~~] fee due, the rate of interest is the rate set out in subsection (a)(1) of this section.

(4) A warrant for interest payments shall be drawn against the fund or account into which the overpaid prize fee [~~or rental tax~~] was deposited.

#### §402.602. *Waiver of Penalty, Settlement of Prize Fees, [~~Rental Tax,~~] Penalty and/or Interest.*

(a) The Charitable Bingo Operations Director, for good cause shown, may waive a penalty if a licensee holding a license to conduct bingo or license to lease bingo premises exercised reasonable diligence to comply with Occupations Code, §2001.504. The Charitable Bingo Operations Division will not consider a request for a penalty or interest waiver until the principal related to the specific request is paid in full. To be considered, a written request stating the reason(s) penalty should be waived must be sent to the Charitable Bingo Operations Division within 14 days of the date the quarterly report and prize fees [~~and rental taxes~~] were due.

(1) The Charitable Bingo Operations Division will inform the licensee in writing within three days of the Charitable Bingo Operations Division's decision regarding the penalty waiver request after considering:

(A) Whether the licensee is current in the filing of all reports;

(B) Whether the licensee is current in the payment of all [~~taxes or~~] prize fees due for the last eight consecutive quarters;

(C) Whether a penalty has been waived within the last eight consecutive quarters;

(D) Whether the licensee has a good record of timely filing and paying past returns; and

(E) Whether the licensee has taken the necessary steps to correct the problem for future reporting.

(2) If a licensee has had a penalty waived within the last eight consecutive quarters, the current request will be denied.

(b) If a prize fee [~~or rental tax~~] is owed for an inactive account, the Charitable Bingo Operations Division will not consider a request for a penalty or interest waiver until the principal is paid in full. The Division will notify the inactive account that a prize fee [~~or rental tax~~] is owed and provide the inactive account with any existing documents that support the delinquency determination. The Division may provide such notice and documentation to any officer, director, or business contact listed in the inactive account's most recent filing with the Commission.

(c) Settlement of [~~rental tax, gross receipts tax,~~] prize fees [~~fee~~], penalty or interest on an inactive account. The Commission may settle a claim for [~~rental tax, gross receipts tax,~~] prize fees [~~fee~~], penalty, or interest if the total cost of collection, as determined by the Commission, would exceed the total amount due.

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

Filed with the Office of the Secretary of State on August 10, 2020.

◆ ◆ ◆  
**SUBCHAPTER G. COMPLIANCE AND ENFORCEMENT**

**16 TAC §§402.700, 402.702, 402.703**

The amendments are proposed under Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act; Texas Government Code §467.102, which authorizes the Commission to adopt rules for the laws under the Commission's jurisdiction.

This proposal is intended to implement Texas Occupations Code, Chapter 2001.

*§402.700. Denials; Suspensions; Revocations; Hearings.*

(a) Denial of application. If the Director of the Charitable Bingo Operations Division determines that an applicant is not eligible for a license on statutory or regulatory grounds, or that the license should be denied on statutory or regulatory grounds which would justify temporary suspension or revocation of an existing license, he/she will notify the applicant in writing that the application has been denied and will state such grounds for the denial. If the applicant desires to contest the denial, the applicant must, within 30 days of the date of the notice of denial, make a written request for a hearing to contest the denial.

(b) Suspension and revocation.

(1) Grounds. The Commission may temporarily suspend or revoke a license or temporary authorization in accordance with the Bingo Enabling Act, §2001.355. If the Commission proposes to revoke or suspend a license it will notify the licensee in writing and will state the grounds for the proposed action.

(2) Temporary suspension. The Director may issue a temporary suspension based on evidence of the following violations: failure to pay prize fees, loss of non-profit status, or a conviction for a gambling-related offense or fraud. A temporary suspension is effective immediately. Upon notification of the temporary suspension, the Director will simultaneously serve a notice of a show cause hearing, to be held not later than the 14th day after the date the notice is served, at which the license holder must show cause why the license should not remain suspended. The notice will include any exhibits the Commission has at the time that it intends to rely on at the hearing. If the licensee fails to show cause why the license should not be temporarily suspended, the license will remain suspended pending a final hearing on the merits, notice of which will be provided within 30 days of the show cause hearing. [Grounds for temporary suspension of licenses, provisions for service of notice to licensees and show-cause hearings, and the time period for requesting final hearings on suspension or revocation of licenses, and other related matters are contained in the Bingo Enabling Act.]

(c) Hearings.

(1) All hearings will be conducted in accordance with the relevant portions of Title 16, Part 9, Chapter 401, Subchapter C.

(2) After a hearing on the alleged violation and upon finding that a violation did occur, the Commission may temporarily sus-

pend a license or temporary authorization for a period not to exceed one year or may revoke a license or temporary authorization. The period of a suspension begins on the date of the order invoking the suspension, or the date of the order overruling the motion for rehearing, if one was filed.

(3) In the event a licensee has requested an administrative hearing, and has made timely and sufficient application for renewal of its license, the licensee may be issued a temporary authorization to conduct bingo and continue to act pursuant to said authorization until the Commission issues a final decision, regardless of whether said license has expired during the hearing process.

(d) Reapplication. No person or organization whose license has been revoked or forfeited, or whose application has been denied for reasons which would justify a revocation of an existing license will be eligible to apply for another license earlier than one year from the date of forfeiture, revocation, or denial.

*§402.702. Disqualifying Convictions.*

(a) The Commission shall determine, consistent with the requirements of Chapters 53 and 2001, Occupations Code, whether criminal convictions affect the eligibility of an applicant for a new or renewal license or listing in the registry of approved bingo workers under the Bingo Enabling Act (BEA). The Director of the Charitable Bingo Operations Division (Director) shall have the authority to make such determinations pursuant to this section. The Commission will not apply Chapter 53, Occupations Code, to officers, directors, or shareholders of, or other individuals associated with, an applicant that is a non-individual business entity.

(b) If any of the following persons have been convicted of a gambling or gambling-related offense, or criminal fraud, the applicant for a license or a listing in the registry of approved bingo workers will not be eligible for a new or renewal license or registry listing, as applicable: the applicant; or for an applicant for a license, any person whose conviction of any such offense would render the applicant ineligible under the eligibility standards for the particular type of license (*i.e.*, BEA §2001.105(b) for authorized organizations, BEA §2001.154(a)(5) for commercial lessors, BEA §2001.202(9) for manufacturers, and BEA §2001.207(9) for distributors). Such a conviction (which shall not include deferred adjudications and/or nolo contendere pleas) shall be a permanent bar to the applicant obtaining a license or registry listing.

(1) The Commission deems any gambling or gambling-related offense to be any offense listed in Penal Code, Chapter 47, Gambling; the offense of Penal Code, §71.02(a)(2), Engaging in Organized Criminal Activity; or any offense committed, including in another state or Federal jurisdiction, involving substantially similar conduct as an offense cited in Penal Code Chapter 47 or §71.02(a)(2).

(2) The Commission deems any offense involving criminal fraud to be any offense listed in the following Penal Code Chapters and as described below, with the exception of Class C misdemeanors:

- (A) Penal Code, Chapter 32, Fraud;
- (B) Penal Code, Chapter 35, Insurance Fraud;
- (C) Penal Code, Chapter 35A, Medicaid Fraud; or

(D) Any offense committed, including in another state or Federal jurisdiction, involving substantially similar conduct as an applicable offense under these enumerated Penal Code, Chapters 32, 35, or 35A.

(c) For criminal convictions that do not fall under the categories addressed in subsection (b) of this section, the Commission may determine an applicant to be ineligible for a new or renewal license or a registry listing based on a criminal conviction for:



(1) An offense that directly relates to the duties and responsibilities of the licensed or registered activity;

(2) An offense under §3g, Article 42A.054 [~~42.12~~] of the Code of Criminal Procedure; or

(3) A sexually violent offense, as defined by Article 62.001 of the Code of Criminal Procedure.

(d) For offenses that do not fall under subsection (b) or (c) of this section, such as offenses for which a person pleaded nolo contendere and/or received deferred adjudication and court supervision, and except as provided in subsection (a) of this section, the Commission may apply the provisions of Chapter 53, Occupations Code, to determine whether or not the applicant is eligible for a new or renewal license, or registry listing, under the BEA. For ~~[Generally, for]~~ purposes of applying Chapter 53, the Commission may ~~[will]~~ consider an applicant's deferred adjudication for a gambling or gambling-related offense, or a criminal fraud offense, to be a conviction in accordance with §53.021(d), Occupations Code.

(e) Because the Commission has a duty to exercise strict control and close supervision over the conduct of Charitable Bingo to ensure that bingo is fairly conducted and the proceeds derived from bingo are used for an authorized purpose, and, because bingo games are largely cash-based operations providing opportunities for individuals to have access to cash and/or products that may be exchanged for cash, the Commission finds that prohibited acts under the BEA and convictions for offenses that call into question an applicant's honesty, integrity, or trustworthiness in handling funds or dealing with the public, directly relate to the duties and responsibilities of licensed and registered activities under the BEA. The Commission deems convictions (including deferred adjudications and/or nolo contendere pleas) for certain misdemeanor and felony offenses to directly relate to the fitness of a new or renewal applicant for a license or registry listing under the BEA. Such offenses include the following:

(1) Penal Code, Chapter 30, Burglary and Criminal Trespass, with the exception of:

(A) Penal Code, §30.05, Criminal Trespass; and

(B) Penal Code, §30.06, Trespass by Holder of License to Carry Concealed Handgun;

(2) Penal Code, Chapter 31, Theft, with the exception of:

(A) Penal Code, §31.07, Unauthorized Use of a Vehicle;

(B) Penal Code, §31.12, Theft of or Tampering with Multichannel Video or Information Services;

(C) Penal Code, §31.13, Manufacture, Distribution, or Advertisement of Multichannel Video or Information Services Device; and

(D) Penal Code, §31.14, Sale or Lease of Multichannel Video or Information Services Device;

(3) Penal Code, Chapter 33, Computer Crimes, with the exception of:

(A) Penal Code, §33.05, Tampering With Direct Recording Electronic Voting Machine; and

(B) Penal Code, §33.07, Online Impersonation;

(4) Penal Code, Chapter 34, Money Laundering;

(5) Penal Code, Chapter 36, Bribery and Corrupt Influence, with the exception of Penal Code, §36.07, Acceptance of Honorarium;

(6) Penal Code, Chapter 37, Perjury and Other Falsification;

(7) Penal Code, Chapter 71, Organized Crime; ~~and~~

(8) Penal Code, Chapter 22, Assaultive Offenses;

(9) Tex. Health and Safety Code, Chapter 481, Manufacture, Delivery, or Possession with Intent to Deliver Controlled Substances; and

(10) ~~[(8)]~~ Any offense committed, including in another state or Federal jurisdiction involving substantially similar conduct as an offense in the applicable sections of Penal Code, Chapters 22, 30, 31, 33, 34, 36, 37, 71, Tex. Health and Safety Code, Chapter 481, or the BEA.

(f) In determining whether a criminal conviction directly relates to the duties and responsibilities of the licensed or registered activity under the BEA, the following factors will be considered:

(1) The nature and seriousness of the crime;

(2) The relationship of the crime to the purposes for which the individual seeks to engage in the regulated conduct;

(3) The extent to which the regulated conduct might offer an opportunity to engage in further criminal activity of the same type as the previous conviction;

(4) The relationship of the conviction to the capacity required to perform the regulated conduct; and

(5) Any other factors appropriate under Chapters 53 or the BEA, including whether a history of multiple convictions or serious conviction(s) would cause an applicant to pose a threat to the safety of bingo participants or workers.

(g) Except for convictions involving gambling or gambling-related offenses, a conviction, deferred adjudication, or nolo contendere plea for a Class C misdemeanor, or traffic offenses, and similar offenses in other state or Federal jurisdictions with a similar range of punishment as a Class C misdemeanor, will not be considered to be a disqualifying offense for purposes of this section.

(h) If the Commission determines that an applicant has a criminal conviction directly related to the duties and responsibilities of the licensed occupation, the Commission shall consider the following in determining whether to take an action against the applicant:

(1) the extent and nature of the person's past criminal activity;

(2) the age of the person when the crime was committed;

(3) the amount of time that has elapsed since the person's last criminal activity;

(4) the conduct and work activity of the person before and after the criminal activity;

(5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release;

(6) evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision; and

(7) other evidence of the person's fitness, including letters of recommendation and veteran's status, including discharge status.

(i) Upon notification of the Commission's intent to deny a new or renewal application or registry listing, an applicant may provide documentation of mitigating factors that the applicant would like the Commission to consider regarding its application. Such documenta-

tion must be provided to the Commission no later than 20 days after the Commission provides notice to an applicant of a denial, unless the deadline is extended in writing or through e-mail by authorized Commission staff.

(j) Upon the Commission's determination that an applicant is not eligible for a new or renewal license or registry listing because of a disqualifying criminal conviction or other criminal offense, the Commission shall take action authorized by statute or Commission rule.

(k) A denial or suspension of a new or renewal application under this section may be contested by the applicant pursuant to §402.700 of this chapter.

(l) The Director shall issue guidelines relating to the practice of the Commission under Chapter 53, Occupations Code, and this section, and may issue amendments to the guidelines as the Director deems appropriate, consistent with §53.025.

§402.703. *Audit Policy.*

(a) Definitions.

(1) Audit--The formal examination of a licensee's accounts, records, and/or business activities by designated employees or representatives of the Commission.

(2) Audit fieldwork--Includes, but is not limited to, the physical inspection of bingo premises, the observation of a bingo game, the inquiry of management and staff, the review of financial accounts, records or business processes, the assessment of the adequacy of any internal controls, or any other activity necessary to meet audit objectives.

(3) Licensee--Includes any individual, partnership, corporation, group, or entity licensed under the Bingo Enabling Act and any group of licensed authorized organizations operating under a unit agreement.

(b) Audit Determination.

(1) The purpose of an audit is to determine whether a licensee is, has been, and/or will remain in compliance with the Bingo Enabling Act and the Charitable Bingo Administrative Rules.

(2) Those licensees who are most at risk of violating the Bingo Enabling Act or the Charitable Bingo Administrative Rules will be identified for audit based on risk factors established by the Commission. Risk factors may be based on, among other things, a licensee's gross receipts, gross rentals, bingo expenses, net proceeds, and/or charitable distributions. An audit must commence by the fourth anniversary of the date a licensee is identified for audit.

(3) Notwithstanding paragraph (2) of this subsection, the Commission may audit any licensee if the Commission reasonably believes the licensee may violate, or may have violated, the Bingo Enabling Act or the Charitable Bingo Administrative Rules.

(c) Notification.

(1) If a licensee is selected for an audit pursuant to subsection (b) of this section, a Commission auditor will so notify that licensee's bingo chairperson, director, business contact, officer, unit manager, or designated agent in writing. The written notification constitutes the beginning of the audit.

(2) The written notification will identify the time period to be audited and any records or other information that must be made available for Commission review. Various forms, including questionnaires and physical inventory requests, may be included with the written notification. Licensees must complete any forms in the manner, and in the time period, specified by the Commission.

(3) If the Commission does not receive a timely response to its initial request for records, it will provide the licensee with a second and final request to provide all records within ten (10) calendar days. The Commission will not examine any records that are sent after that deadline, and the licensee will be responsible for any audit findings involving the absence of those records.

(d) Entrance Conference.

(1) Within ten (10) calendar days of sending the written notification under subsection (c) of this section, an auditor will attempt to contact the selected licensee's bingo chairperson, director, business contact, officer, unit manager, or designated agent to schedule an audit entrance conference. Unless otherwise provided by the Commission, the audit entrance conference will be held within fourteen (14) calendar days from the auditor's contact with the licensee. The licensee may submit a written request to the Commission to delay the audit entrance conference. The written request must include the reasons for the requested delay. After reviewing a properly submitted written request to delay, the Commission may either approve or deny the request or notify the licensee that additional information is needed before a decision is made. If the Commission and licensee are unable to agree on the date, time, and place of the audit entrance conference, or if the Commission auditor is unable to contact the licensee's bingo chairperson, director, business contact, officer, unit manager, or designated agent, the auditor shall schedule the audit entrance conference and send the licensee written notice of that fact at least ten (10) calendar days prior to the scheduled audit entrance conference.

(2) The purpose of an audit entrance conference is to allow the auditor(s) to meet with the selected licensee's bingo chairperson, director, business contact, officer, unit manager, or designated agent to collect any records or other information identified in the written notification under subsection (c) of this section, to discuss the audit process, and to answer any questions the licensee may have regarding the audit. There is no standard timeline by which an audit will be completed, but an audit must be completed within one year [~~two years~~] from the date of the entrance conference unless the Director extends the time period and notifies the licensee of the extension.

(3) The Commission may request the attendance at the audit entrance conference of any person familiar with the licensee's operations. In addition to any attendees requested by the Commission, the licensee may allow any other individuals to attend the audit entrance conference.

(e) Audit Fieldwork. Any time after the conclusion of the audit entrance conference, the auditor(s) may initiate and conduct the audit fieldwork at the licensee's business office, bingo premises, bookkeeper's office, or accountant's office; or, a location designated by the auditor(s). When conducting audit fieldwork, the auditor(s), at their discretion, may use a detailed auditing procedure or a sample and projection auditing method. A sample and projection auditing method may include, but is not limited to, manual sampling techniques, computer-assisted audit techniques, analytical procedures, financial projections, and auditor recompilation from reliable independent sources.

(f) Exit Conference.

(1) Any time after the completion of the audit fieldwork, an auditor will attempt to contact the selected licensee's bingo chairperson, director, business contact, officer, unit manager, or designated agent to schedule an audit exit conference. If the auditor and licensee are unable to agree on the date, time, and place of the audit exit conference, or if the auditor is unable to contact the licensee's bingo chairperson, director, business contact, officer, unit manager, or designated agent, the auditor shall schedule the audit exit conference and send the

licensee written notice of that fact at least ten (10) calendar days prior to the scheduled audit exit conference.

(2) The purpose of an audit exit conference is to allow the auditor(s) to meet with the selected licensee's bingo chairperson, director, business contact, officer, unit manager, or designated agent to discuss the results of the audit and the draft audit report.

(3) The Commission may request the attendance at the audit exit conference of any person familiar with the licensee's operations. In addition to any attendees requested by the Commission, the licensee may allow any other individuals to attend the audit exit conference.

(g) Audit Report.

(1) Upon completion of the audit, the auditor(s) will prepare a draft audit report containing their findings and conclusions. A copy of the draft audit report will be provided to the licensee at the audit exit conference. At least three (3) business days before the audit exit conference, but only to the extent it is practicable, the Commission will also send a copy of the draft audit report to one e-mail address or facsimile number associated with the licensee. The licensee must notify the Commission of the designated e-mail address or facsimile number by the end of the audit entrance conference if the licensee is to receive a copy of the draft audit report prior to the audit exit conference.

(2) A licensee may, but is not required to, respond to the draft audit report by providing written comments and any supporting documentation to the auditor(s) within twenty (20) calendar days of receiving the draft audit report. Written comments should include a statement of agreement or disagreement with the draft audit report findings and, if applicable, a list of any corrective measures that will be taken to ensure compliance with the Bingo Enabling Act and Charitable Bingo Administrative Rules. Any properly submitted comments and supporting documents will be reviewed by the auditor(s) and placed in the final audit report. The auditor(s) may revise the draft audit report in response to any properly submitted comments or supporting documents.

(3) Any time after the twenty (20) calendar day deadline, the auditor(s) may issue the final audit report. A copy of the report will be provided to the licensee.

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

Filed with the Office of the Secretary of State on August 10, 2020.

TRD-202003282

Bob Biard

General Counsel

Texas Lottery Commission

Earliest possible date of adoption: September 20, 2020

For further information, please call: (512) 344-5392



## TITLE 19. EDUCATION

### PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

#### CHAPTER 1. AGENCY ADMINISTRATION SUBCHAPTER T. WORKFORCE EDUCATION COURSE MANUAL ADVISORY COMMITTEE

##### 19 TAC §1.223

The Texas Higher Education Coordinating Board proposes amendments to Texas Administrative Code (TAC), Title 19, Part 1, Chapter 1, Subchapter T, §1.223 concerning the duration for the Workforce Education Course Manual Advisory Committee. The proposed amendment would allow the committee to continue in existence until January 31, 2025. The Board will continue the committee in order to provide the Board with advice and recommendation(s) regarding content, structure, currency and presentation of the Workforce Education Course Manual (WECM) and its courses; recommendations regarding field engagement in processes, maintenance, and use of the WECM; and assistance in identifying new programs of study, developments within existing programs represented by courses in the manual, vertical and horizontal alignment of courses within programs, and obsolescence of programs of study and courses.

Dr. Stacey Silverman, Assistant Commissioner of Academic Quality and Workforce, has determined that for the first five years there will be no fiscal implications for state or local government as a result of amending the rule. There are no individuals or institutions required to comply with the rule and, therefore, no costs to individuals or institutions.

Dr. Stacey Silverman, Assistant Commissioner of Academic Quality and Workforce, has also determined that for the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be that the Workforce Education Course Manual Advisory Committee will continue to serve the Coordinating Board through January 31, 2025. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on small businesses, micro businesses, or rural communities.

#### Government Growth Impact Statement:

- (1) the rule will not create or eliminate a government program;
- (2) implementation of the rule will not require the creation or elimination of employee positions;
- (3) implementation of the rule will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rule will not require an increase or decrease in fees paid to the agency;
- (5) the rule will not create a new rule;
- (6) the rule will not limit or repeal an existing rule; and
- (7) the rule will not change the number of individuals subject to the rule; and
- (8) the rule will have no affect the state's economy.

Comments on the proposal may be submitted to Stacey Silverman, Assistant Commissioner, Academic Quality and Workforce, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas, 78711 or via email at [AQW@highered.texas.gov](mailto:AQW@highered.texas.gov). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, Chapter 61, Section 61.026, which provides the Coordinating Board with the authority to adopt rules regarding an advisory committee's terms of service and Texas Education Code Section 130.155 which authorizes the Board to adopt rules to administer Workforce Continuing Education.

The amendment affects Texas Education Code, Sections 61.051, 61.0664 and Texas Education Code Chapter 130, Subchapter M.

*§1.223. Duration.*

The committee shall be abolished no later than January 31, ~~2025~~, [2021] in accordance with Texas Government Code, §2110.008. It may be reestablished by the Board.

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

Filed with the Office of the Secretary of State on August 10, 2020.

TRD-202003284

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: September 20, 2020

For further information, please call: (512) 427-6206



CHAPTER 4. RULES APPLYING TO  
ALL PUBLIC INSTITUTIONS OF HIGHER  
EDUCATION IN TEXAS  
SUBCHAPTER S. APPROVAL FOR PARTIC-  
IPATION IN THE STATE AUTHORIZATION  
RECIPROCITY AGREEMENT (SARA) FOR  
PUBLIC INSTITUTIONS OF HIGHER EDUCA-  
TION

**19 TAC §4.314**

The Texas Higher Education Coordinating Board proposes amendments to Chapter 4, Rules Applying to All Public Institutions of Higher Education in Texas, Subchapter S, §4.314, concerning Approval for Participation in the State Authorization Reciprocity Agreement (SARA) for Public Institutions of Higher Education.

The amendments to §4.314 would change the appeal process for institutions that have been denied membership in SARA by the Coordinating Board. The current process allows institutions to appeal a Coordinating Board denial to the Southern Regional Education Board and the National Council for SARA (NC-SARA). New NC-SARA policy requires SARA member states to develop and implement an in-state appeal process, giving states the final authority to deny institutions for SARA membership. The new appeal process must be in place by January 1, 2021. The proposed amendments clarify that if the Board denies SARA membership to an institution, the institution may appeal to Texas' SARA signatory. This appeal will provide additional in-state due process before the institution takes an appeal to the Southern Regional Education Board consistent with NC-SARA's revised policy.

Dr. Stacey Silverman, Assistant Commissioner for Academic Quality and Workforce, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of amending these rules.

Dr. Silverman has also determined that for each year of the first five years the amendments are in effect, the public benefits an-

tipicated as a result of administering the section will be the clarification of Coordinating Board policy for institutions interested in applying for SARA or currently participating in SARA. These changes will ensure Texas remains in compliance with NC-SARA policy, allowing institutions to continue participation in SARA. There is no cost to persons or institutions required to comply with these rules. There is no impact on local employment, small businesses, micro businesses, or rural communities.

Government Growth Impact Statement:

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will not limit or repeal an existing rule; and
- (7) the rules will not change the number of individuals subject to the rule.
- (8) the rules will have no effect on the state's economy.

Comments on the proposal may be submitted by mail to Stacey Silverman, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas, 78711 or via email at [AQWComments@THECB.state.tx.us](mailto:AQWComments@THECB.state.tx.us). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, Section 61.05121, which provides the Coordinating Board with the authority to administer state participation in State Authorization Reciprocity Agreements.

The amendments affect the implementation of Texas Education Code, Section 61.05121.

*§4.314. Admission to SARA.*

All eligible institutions may apply to the Coordinating Board for admission to SARA under the signature of the institution's chief academic officer. Coordinating Board staff will review the application and make a determination to approve or deny the request to participate in SARA. Within the application, an institution shall make assurances that it:

- (1) Agrees to abide by the C-RAC Guidelines for the Evaluation of Distance Education.
- (2) Agrees to be responsible for the actions of any third-party providers used by the institution to engage in operations under SARA.
- (3) Agrees to notify the board of any negative changes to its accreditation status.
- (4) Agrees to provide data requested by the board.
- (5) Agrees to cooperate with the board in the investigation of any complaints arising from the students its serves in other states through SARA and to abide by investigating authority's resolution of any such complaint.
- (6) All complaints must follow the institution's customary resolution procedure prior to being referred to the Coordinating Board. Grade appeals and student conduct appeals will be resolved at the institutional level without further appeal through SARA.

(7) Agrees to notify all students in a course or program that customarily leads to professional licensure, or which a student could reasonably believe leads to such licensure, whether or not the course or program meets requirements for licensure in the state where the student resides. If an institution does not know whether the course or program meets licensure requirements in the student's state of residence, the institution may meet this SARA requirement by informing the student in writing and providing the student the contact information for the appropriate state licensing board(s). An email dedicated solely to this purpose and sent to the student's best known email address meets this requirement.

(8) Agrees, in cases where the institution cannot fully deliver the instruction for which a student has contracted, to provide a reasonable alternative for delivering the instruction or reasonable financial compensation for the education the student did not receive.

(9) Agrees to pay an annual fee to NC-SARA. This fee replaces any state fees that the institution would normally pay to other SARA member states. If an institution offers distance education to students in non-SARA participating states, it must pay required state fees.

(10) If the Coordinating Board's SARA Coordinator denies an institution's application for membership in SARA, a written reason for denial will be provided. The institution may reapply at any time, having corrected any deficiencies, or may appeal the denial within 30 calendar days to the Coordinating Board's SARA Signatory. SARA director of SREB. If the denial is upheld by SREB, the institution may appeal to NC-SARA. The Coordinating Board's SARA Signatory will review the appeal and render a final decision. If the SARA Signatory upholds the denial, the institution may appeal to the SREB to determine if the board has met the requirements of SARA, but the SREB cannot overturn the final decision made by the Coordinating Board's SARA Signatory.

(10) If institutional membership is denied, the board will provide a written reason for denial. The institution may reapply at any time, having corrected any deficiencies, or may appeal the denial to the SARA director of SREB. If the denial is upheld by SREB, the institution may appeal to NC-SARA.

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

Filed with the Office of the Secretary of State on August 10, 2020.

TRD-202003286

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: September 20, 2020

For further information, please call: (512) 427-6206



CHAPTER 7. DEGREE GRANTING  
COLLEGES AND UNIVERSITIES OTHER THAN  
TEXAS PUBLIC INSTITUTIONS  
SUBCHAPTER B. APPROVAL FOR PARTIC-  
IPATION IN THE STATE AUTHORIZATION  
RECIPROCITY AGREEMENT (SARA) FOR  
PRIVATE OR INDEPENDENT INSTITUTIONS

OF HIGHER EDUCATION AND PRIVATE POST-  
SECONDARY EDUCATIONAL INSTITUTIONS

19 TAC §7.54

The Texas Higher Education Coordinating Board proposes amendments to Chapter 7, Rules Applying to Degree Granting Colleges and Universities Other Than Texas Public Institutions, Subchapter B, Approval for Participation in the State Authorization Reciprocity Agreement (SARA) for Private or Independent Institutions of Higher Education and Private Postsecondary Educational Institutions. The amendments to §7.54 would change the appeal process for institutions that have been denied membership in SARA by the Coordinating Board. The current process allows institutions to appeal a Coordinating Board denial to the Southern Regional Education Board and the National Council for SARA (NC-SARA). New NC-SARA policy requires SARA member states to develop and implement an in-state appeal process, giving states the final authority to deny institutions SARA membership. The new appeal process must be in place by January 1, 2021.

Dr. Stacey Silverman, Assistant Commissioner for Academic Quality and Workforce, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of adding the new section.

Dr. Silverman has also determined that for each year of the first five years the amendments are in effect, the public benefits anticipated as a result of administering the section will be the clarification of Coordinating Board policy for institutions interested in applying for SARA or currently participating in SARA. These changes will ensure Texas remains in compliance with NC-SARA policy, allowing institutions to continue participation in SARA. There is no impact on local employment, small businesses, micro businesses, or rural communities.

Comments on the proposal may be submitted by mail to Stacey Silverman, Interim Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas, 78711 or via email at [AQWComments@THECB.state.tx.us](mailto:AQWComments@THECB.state.tx.us). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

Government Growth Impact Statement:

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will create a new rule;
- (6) the rules will not limit or repeal an existing rule;
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules will have no effect on the state's economy.

The amendments are proposed under the Texas Education Code, Section 61.05121, which provides the Coordinating Board with the authority to administer state participation in State Authorization Reciprocity Agreements.

The new section affects the implementation of Texas Education Code, Section 61.05121.

§7.54. *Admission to SARA.*

All eligible institutions may apply to the Coordinating Board for admission to SARA under the signature of the institution's chief academic officer. Coordinating Board staff will review the application and make a determination to approve or deny the request to participate [participate] in SARA. Within the application, an institution shall make assurances that it:

- (1) Agrees to abide by the C-RAC Guidelines for the Evaluation of Distance Education.
- (2) Agrees to be responsible for the actions of any third-party providers used by the institution to engage in operations under SARA.
- (3) Agrees to notify the board of any negative changes to its accreditation status.
- (4) Agrees to provide data requested by the board.
- (5) Agrees to cooperate with the board in the investigation of any complaints arising from the students it serves in other states through SARA and to abide by investigating authority's resolution of any such complaint.
- (6) All complaints must follow the institution's customary resolution procedure prior to being referred to the Coordinating Board. Grade appeals and student conduct appeals will be resolved at the institutional level without further appeal through SARA.
- (7) Agrees to notify all students in a course or program that customarily leads to professional licensure, or which a student could reasonably believe leads to such licensure, whether or not the course or program meets requirements for licensure in the state where the student resides. If an institution does not know whether the course or program meets licensure requirements in the student's state of residence, the institution may meet this SARA requirement by informing the student in writing and providing the student the contact information for the appropriate state licensing board(s). An email dedicated solely to this purpose and sent to the student's best known email address meets this requirement.
- (8) Agrees, in cases where the institution cannot fully deliver the instruction for which a student has contracted, to provide a reasonable alternative for delivering the instruction or reasonable financial compensation for the education the student did not receive.
- (9) Agrees to [If approved, the institution must] pay an annual fee to NC-SARA. This fee replaces any state fees that the institution would normally pay to other SARA member states. If an institution offers distance education to students in non-SARA participating states, it must pay required state fees.
- (10) If institutional membership is denied, the board will provide a written reason for denial. The institution may reapply at any time, having corrected any deficiencies, or may appeal the denial within 30 calendar days to the Coordinating Board's SARA signatory. [SARA director of SREB. If the denial is upheld by SREB, the institution may appeal to NC-SARA.] The Coordinating Board's SARA signatory will review the appeal and render a final decision. If the denial is upheld, the institution may appeal to the SREB to determine if the board has met the requirements of SARA, but the SREB cannot overturn the final decision made by the Coordinating Board's SARA signatory.

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

Filed with the Office of the Secretary of State on August 10, 2020.

TRD-202003287

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: September 20, 2020

For further information, please call: (512) 427-6206



## CHAPTER 22. STUDENT FINANCIAL AID PROGRAMS

### SUBCHAPTER A. GENERAL PROVISIONS

#### 19 TAC §22.11

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to 19 Texas Administrative Code Chapter 22, Subchapter A, §22.11(b) of Board rules, concerning General Provisions. Section 22.11(b) is amended to provide clarity on the flexibility institutions have regarding funding in the Texas College Work-Study and Work-Study Student Mentorship Programs. Section 22.11(b)(1) reflects the authority provided in General Appropriations Act, HB1, Article III, Section 18, 86th Texas Legislature. Section 22.11(b)(2) is proposed to provide institutions with guidance on transferring funds between the two programs funded by the Texas College Work-Study appropriation. The agency proposes a transfer limit in line with what financial aid practitioners are familiar with for Federal Work-Study and Federal Supplemental Educational Opportunity Grant Programs. Some instances of the word "award" throughout the amended rule have been replaced with either "grant" or "offer," depending on the meaning and use of the phrase, to reflect current financial aid terminology.

Dr. Charles W. Contéro-Puls, Deputy Assistant Commissioner for Student Financial Aid Programs, has determined that for each of the first five years the sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Contéro-Puls has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be a clearer understanding of the requirements of the program. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Government Growth Impact Statement:

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will clarify rule §22.11(b);
- (7) the rules will not increase or decrease the number of individuals subject to the rule; and

(8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Charles W. Contéro-Puls, Ed.D., Deputy Assistant Commissioner, Student Financial Aid Programs, P.O. Box 12788, Austin, Texas 78711, (512) 427-6365, Charles.Contero-Puls@HigherEd.Texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, Sections 56.071-56.079, which provides the Coordinating Board with the authority to adopt rules for the implementation and administration of the Texas College Work-Study Program.

The proposed amendments affect Texas Education Code, Sections 56.071-56.079.

*§22.11. Provisions Specific [specific] to the TEXAS Grant, TEOG, TEG, and Texas Work-Study Programs.*

(a) Funding. Funds offered [awarded] through this program may not exceed the amount of appropriations, gifts, grants and other funds that are available for this use (§§56.303(c) and 56.403(c)) Texas Education Code).

(b) Authority to Transfer Funds. [Institutions participating in a combination of the Toward Excellence, Access and Success Grant, Texas Educational Opportunity Grant, Tuition Equalization Grant, and Texas College Work-Study Programs, in accordance with instructions from the Board, may transfer current fiscal year funds up to the lesser of 10 percent or \$20,000 between these programs. This threshold applies to the program form which the funds are transferred. Such transfers must occur by July 1 of the current fiscal year.]

(1) Institutions participating in a combination of the Toward Excellence, Access and Success Grant, Texas Educational Opportunity Grant, Tuition Equalization Grant, and Texas College Work-Study Programs, in accordance with instructions from the Board, may transfer current fiscal year funds up to the lesser of 10 percent or \$20,000 between these programs. This threshold applies to the program from which the funds are transferred. Such transfers must occur by July 1 of the current fiscal year.

(2) Institutions participating in both the Texas College Work-Study Program and the Work-Study Student Mentorship Program, in accordance with instructions from the Board, may transfer current fiscal year funds up to 25 percent between the two programs. This threshold applies to the program from which the funds are transferred. Such transfers must occur by July 1 of the current fiscal year.

(c) Grant [Award] Uses. No state grant or work-study funding may be used for any purpose other than paying for any usual and customary cost of attendance incurred by the student related to enrollment at a participating institution of higher education for the academic year for which funding was offered [awarded].

(d) Over Awards. If, at a time after the grant [award] has been disbursed by the institution to the student, the student receives assistance that was not taken into account in the institution's estimate of the student's financial need, so that the resulting sum of assistance exceeds the student's financial need, the institution is not required to adjust the grant [award] under this program unless the sum of the excess resources is greater than \$300.

(e) Grant [Award] adjustments. If a student officially withdraws from enrollment, the institution shall follow its general institutional refund policy in determining the amount by which the financial aid is to be reduced. If the student withdraws or drops classes after the end of the institution's refund period, no refunds are due to the program. If for some other reason the amount of a student's disbursement

exceeds the amount the student is eligible to receive, the financial aid should be recalculated accordingly.

(f) Re-offering [Re-awarding] of funds. Funds made available from grant [award] adjustments may be re-offered [re-awarded] to other eligible students attending the institution. If funds cannot be re-offered [re-awarded], they should be returned to the Board in accordance with §22.2 of this subchapter (relating to Timely Distribution of Funds).

(g) Late Disbursements.

(1) A student may receive a disbursement after the end of his/her period of enrollment if the student:

(A) Owes funds to the institution for the period of enrollment for which the grant [award] is being made; or

(B) Received a student loan that is still outstanding for the period of enrollment.

(2) Funds that are disbursed after the end of the student's period of enrollment must be used to either pay the student's outstanding balance from his/her period of enrollment at the institution or to make a payment against an outstanding student loan received during that period of enrollment. Under no circumstances are funds to be released to the student.

(3) Documentation must be retained by the institution, proving the late-disbursed funds were used to make a payment against an outstanding balance at the institution from the relevant period of enrollment and/or to make a payment against an outstanding loan taken out for the period of enrollment.

(4) Unless granted an extension by the staff of the Coordinating Board, late disbursements must be processed prior to the end of the state fiscal year for which the funds were allocated to the institution.

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

Filed with the Office of the Secretary of State on August 10, 2020.

TRD-202003265

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: September 20, 2020

For further information, please call: (512) 427-6365

◆ ◆ ◆  
**SUBCHAPTER B. PROVISIONS FOR THE  
TUITION EQUALIZATION GRANT PROGRAM**

**19 TAC §22.28**

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to 19 Texas Administrative Code Chapter 22, Subchapter B, §22.28 of Board rules, concerning the Tuition Equalization Grant Program.

The removal of language from §22.28(c) is proposed to introduce greater flexibility for institutions in their efforts to address the needs of their student population and to eliminate an unnecessary level of complexity in the administration and understanding of the grant program.

Dr. Charles W. Contéro-Puls, Deputy Assistant Commissioner for Student Financial Aid Programs, has determined that for each

of the first five years the sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Contéro-Puls has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be a clearer understanding of the requirements of the program. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Government Growth Impact Statement:

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will limit rule §22.28;
- (7) the rules will not increase or decrease the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Charles W. Contéro-Puls, Ed.D., Deputy Assistant Commissioner, Student Financial Aid Programs, P.O. Box 12788, Austin, Texas 78711, (512) 427-6365, Charles.Contero-Puls@HigherEd.Texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, Sections 61.221-61.230, which provides the Coordinating Board with the authority to adopt rules for the implementation and administration of the Tuition Equalization Grant Program.

The proposed amendments affect Texas Education Code, Sections 61.221-61.230.

§22.28. *Award Amounts and Adjustments.*

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

[(e) **Prorated Awards.** If an eligible student is enrolled less than three-quarter-time in a semester, as measured on the census date, the student's award for that semester may not exceed 50% of the maximum award.]

(d) (No change.)

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

Filed with the Office of the Secretary of State on August 10, 2020.

TRD-202003266

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: September 20, 2020

For further information, please call: (512) 427-6365

◆        ◆        ◆

## SUBCHAPTER L. TOWARD EXCELLENCE, ACCESS, AND SUCCESS (TEXAS) GRANT PROGRAM

### 19 TAC §§22.225 - 22.231, 22.233, 22.234, 22.241

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Chapter 22, Subchapter L, §§22.225-22.231, 22.233, 22.234, and 22.241 of Board rules, concerning the Toward EXcellence, Access and Success Grant Program. Some instances of the word "award" throughout the amended rule have been replaced with either "grant" or "offer," depending on the meaning and use of the phrase, to reflect current financial aid terminology.

Section 22.225, concerning "Authority and Purpose," is amended to increase consistency in language within Chapter 22 and to clarify both the need-based nature of the program and the limitation to public institutions.

Section 22.226, concerning "Definitions," is amended to strike the terms that are not used in the subchapter, are defined in Subchapter A, §22.1, or are defined at the time they are used in the subchapter. Section 22.226(1) is amended to remove multiple terms with the same meaning in the subchapter. Section 22.226(2) and (3) are amended to remove the term "certificate," as the program is not available to individuals pursuing certificates, and to clarify the reference to programs of more than four years. Section 22.226(5), (7), and (12) are amended to clarify statutory references. Section 22.226(7) is added to clarify the term "public institution." The terms "institution" or "institution of higher education" have been replaced with "public institution" throughout the subchapter. Section 22.226(10) is added to provide clarity of the term "private institution" within the subchapter. Section 22.226(11) is added to clarify the word "program," as it is used in this subchapter. References throughout the document have been aligned with the defined terms.

Section 22.227(a), concerning "Eligible Institutions," is amended to clarify eligible institutions and to increase consistency in language within Chapter 22. Section 22.227(b) is amended to clarify the approval process. Section 22.227(c) replaces language that is duplicated in Subchapter A with a reference to the subchapter.

Section 22.228, concerning "Eligible Students," is amended to remove language that has expired or that has been moved to §22.230, regarding "Discontinuation of Eligibility or Non-Eligibility," or §22.233, concerning "Priorities in Grants to Students." Section 22.228(a)(6)(D) corrects references regarding students who are eligible to receive TEXAS Grant based on prior receipt of a Texas Educational Opportunity Grant. Section 22.228(b) is amended to remove redundant language and to add clarifying language to support summer grants. Section 22.228(c) removes language that has been moved to §22.233, concerning "Priorities in Grants to Students."

Section 22.229, concerning "Satisfactory Academic Progress," is amended to remove expired or unnecessary language, to add clarifying language to support summer grants and to align with defined terms.

Section 22.230, concerning "Discontinuation of Eligibility or Non-Eligibility," is amended to add language regarding discontinuation of eligibility or non-eligibility that was removed from other



sections. Language has been revised to support summer grants, to align with defined terms, and to remove unnecessary or duplicative language. Section 22.230(h) is amended to align the section with the statutory reference to "semester."

Section 22.231, concerning "Hardship Provisions," is amended to improve clarity by moving language to §22.229, concerning "Satisfactory Academic Progress" and §22.230, concerning "Discontinuation of Eligibility or Non-Eligibility," and as well as clarifying and aligning expectations with other subchapters. Section 22.231(c) is amended to extend the hardship to all eligibility pathways described in §22.228(a)(6).

Section 22.233, concerning "Priority in Awards to Students," is amended adding language from other sections of the subchapter to bring all program priorities under one section.

Section 22.234, concerning "Award Amounts," is amended by removing duplicative language, including language that exists in Subchapter A concerning "General Provisions." The section is also amended to add language that aligns the rule with statutory requirements and supports summer grants. The removal of §22.234(e) and (f) is proposed to introduce greater flexibility for institutions in their efforts to address the needs of their student population and to eliminate an unnecessary level of complexity in the administration and understanding of the grant program.

Section 22.241(b) is amended to correct a statutory reference.

Dr. Charles W. Contéro-Puls, Deputy Assistant Commissioner for Student Financial Aid Programs, has determined that for each of the first five years the sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Contéro-Puls has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be a clearer understanding of the requirements of the program. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Government Growth Impact Statement:

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will amend, clarify, and limit rules §§22.225-22.231, 22.233, 22.234, 22.236, and 22.241;
- (7) the rules will decrease the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Charles W. Contéro-Puls, Ed.D., Deputy Assistant Commissioner, Student Financial Aid Programs, P.O. Box 12788, Austin, Texas 78711, (512) 427-6365, Charles.Contero-Puls@HigherEd.Texas.gov.

Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under the Texas Education Code, Section 56.301-56.311, which provides the Coordinating Board with the authority to adopt rules for the administration of the Toward EXcellence, Access and Success Grant Program.

The amendment affects Texas Education Code, Section 56.301-56.311.

§22.225. *Authority and Purpose.*

(a) Authority. Authority for this subchapter is provided in the Texas Education Code, Chapter 56, Subchapter M, Toward EXcellence, Access and Success (TEXAS) Grant Program. This subchapter establishes [~~These rules establish~~] procedures to administer [~~the subchapter as prescribed in the~~] Texas Education Code, §§56.301 - 56.311.

(b) Purpose. The purpose of this program is to provide need-based grants of money to enable eligible [~~certain~~] students to attend eligible public institutions of higher education in this state.

§22.226. *Definitions.*

In addition to the words and terms defined in §22.1 of this Chapter, the [The] following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

- ~~{(1) Awarded—Offered to a student. }~~
- ~~{(2) Board—The Texas Higher Education Coordinating Board. }~~
- ~~{(3) Commissioner—The Commissioner of Higher Education, the Chief Executive Officer of the Board. }~~
- ~~{(4) Committee—The TEXAS Grant Oversight Committee, authorized through Texas Education Code, §56.311. }~~
- (1) [(5)] Continuation grant [~~or renewal award~~]~~--~~A TEXAS Grant ~~offered~~ [awarded] to a person who has previously received an initial year grant [award].
- ~~{(6) Cost of attendance—An institution's estimate of the expenses incurred by a typical financial aid student. It includes direct educational costs (tuition, fees, books, and supplies) as well as indirect costs (room and board, transportation, and personal expenses).}~~
- (2) [(7)] Degree [~~or certificate~~] program of four years or less--A baccalaureate degree [~~or certificate~~] program, other than a [~~in architecture, engineering or any other~~] program determined by the Board to require four years or less to complete.
- (3) [(8)] Degree [~~or certificate~~] program of more than four years--A baccalaureate degree [~~or certificate~~] program [~~in architecture, engineering or any other program~~] determined by the Board to require more than four years to complete.
- ~~{(9) Eligible institution—During the 2013-2014 academic year, all institutions of higher education are eligible to make initial and continuation awards. Beginning with awards for fall 2014, only medical or dental units and general academic teaching institutions other than the public state colleges may make initial and continuation awards. Other institutions of higher education, including public state institutions, may only make continuation awards and can make continuation awards only to otherwise eligible students who received TEXAS Grant awards prior to fall 2014.}~~
- (4) [(10)] Encumbered Funds - Funds ready for disbursement to the institution, based on the institution having submitted to the Board the required documentation to request funds.

{(11) Enrolled on at least a three-quarter basis--Enrolled for the equivalent of nine undergraduate semester credit hours in a regular semester. }

{(12) Entering undergraduate--A student enrolled in the first 30 semester credit hours or their equivalent, excluding hours taken during dual enrollment in high school and courses for which the student received credit through examination.}

{(13) Expected family contribution--The amount of discretionary income that should be available to a student from his or her resources and that of his or her family, as determined following the federal methodology. }

{(14) Financial Aid Advisory Committee--An advisory committee for the Board, authorized in Texas Education Code, §61.0776 and charged with providing the Board advice and recommendations regarding the development, implementation and evaluation of state financial aid programs for college students. }

{(15) Financial need--The cost of attendance at a particular public or private institution of higher education less the expected family contribution. The cost of attendance and family contribution are to be determined in accordance with Board guidelines. Federal and state veterans' educational and special combat pay benefits are not to be considered in determining a student's financial need. }

{(16) Foundation high school program--The curriculum specified in the Texas Education Code, §28.025, as it exists after the passage of House Bill 5 by the 83rd Legislature, Regular Session, and the rules promulgated thereunder by the State Board of Education.}

(5) [(47)] General Academic Teaching Institution--As the term is defined in Texas Education Code, §61.003(3) [§61.003].

{(18) Honorably discharged--Released from active duty military service with an Honorable Discharge, General Discharge under Honorable Conditions, or Honorable Separation or Release from Active Duty, as documented by the Certificate of Release or Discharge from Active Duty (DD214) issued by the Department of Defense.}

(6) [(49)] Initial year grant [award]--The TEXAS Grant offered [grant award made] in the student's first year in the TEXAS Grant Program, typically made up of a fall and spring disbursement.

{(20) Institution of Higher Education or Institution--Any public technical institute, public junior college, public senior college or university, medical or dental unit or other agency of higher education as defined] in Texas Education Code, §61.003(8).}

(7) [(21)] Medical or dental unit--As the term is defined in Texas Education Code, §61.003(5) [§61.003].

(8) Public Institution--As the term, institution of higher education, is defined in Texas Education Code, §61.003(8)

{(22) Period of enrollment--The term or terms within the current state fiscal year (September 1--August 31) for which the student was enrolled in an eligible institution and met all the eligibility requirements for an award through this program.}

(9) [(23)] Prior-prior year--For allocation purposes, the state fiscal year that began two years earlier than the fiscal year for which the allocation is being calculated.

{(24) Priority Model--The additional academic requirements for priority consideration for an initial year TEXAS grant award for persons who graduate from high school on or after May 1, 2013 and enroll in a general academic teaching institution in the 2013-2014 academic year or enroll in a medical or dental unit or general academic

teaching institution other than a state college in fall 2014 or later, as described in §22.228 of this title (relating to Eligible Students).}

(10) Private Institution--As the term, private or independent institution of higher education, is defined in Texas Education Code, §61.003(15).

(11) Program--The Toward EXcellence, Access and Success (TEXAS) Grant program.

{(25) Program Officer--The individual named by each participating institution's chief executive officer to serve as agent for the Board. The Program Officer has primary responsibility for all ministerial acts required by the program, including maintenance of all records and preparation and submission of reports reflecting program transactions. Unless otherwise indicated by the administration, the director of student financial aid shall serve as Program Officer.}

(12) [(26)] Public state college--As the term is defined in Texas Education Code, §61.003(16) [§61.003].

{(27) Recommended or advanced high school programs--The curriculum specified in the Texas Education Code, §28.025 as it existed as of January 1, 2013, and the rules promulgated thereunder by the State Board of Education.}

(13) [(28)] Required fees--A mandatory fee (required by statute) or discretionary fee (authorized by statute, imposed by the governing board of a public [an] institution) and that a public [an] institution charges to a student as a condition of enrollment at the public institution or in a specific course.

{(29) Resident of Texas--A resident of the State of Texas as determined in accordance with Chapter 21, Subchapter B, of this title (relating to Determination of Resident Status). Nonresident students who are eligible to pay resident tuition rates are not residents of Texas.}

(14) [(30)] Target grant [award] amount--An [award] amount set by the Coordinating Board, in consultation with public institutions participating in the TEXAS Grant Program, and used as the recommended average grant [award] amount for the TEXAS Grant Program for a biennium and in establishing renewal year allocations to participating public institutions as described in §22.236(a)(1) of this title (relating to Allocation and Reallocation of Funds).

(15) [(31)] Tuition--Statutory tuition, designated and/or Board-authorized tuition.

§22.227. *Eligible Institutions.*

(a) Eligibility.

(1) Institutions [Prior to fall 2014, all institutions of higher education are eligible to participate in the TEXAS Grant program. Beginning with awards for fall 2014, the only institutions] eligible to make initial year and continuation grants [awards] in the program are medical or [and] dental units and general academic teaching institutions, other than the public state colleges. Other public institutions [of higher education], including public state colleges, are only eligible to make continuation grants [awards], and can make continuation grants [awards] only to persons who initially received TEXAS Grants [grant awards] prior to fall 2014 through a public state college, community college, or technical college.

(2) No participating public institution may, on the grounds of race, color, national origin, gender, religion, age, or disability exclude an individual from participation in, or deny the benefits of the program described in this subchapter.

(3) Each participating public institution must follow the Civil Rights Act of 1964, Title VI (Public Law 88-353) in avoiding discrimination in admissions or employment.

(b) Approval.

(1) Agreement. Each eligible public institution must enter into an agreement with the Board, the terms of which shall be prescribed by the Commissioner or his/her designee, prior to being approved to participate in the program.

(2) Approval Deadline. An eligible public institution must enter into an agreement with the Board and indicate an intent to participate in the program [be approved] by April 1 in order for qualified students enrolled in that public institution to be eligible to receive grants in the following fiscal year.

(c) Responsibilities. Participating public institutions are required to abide by the General Provisions outlined in subchapter A of this Chapter.

[(1) Probation Notice. If the institution is placed on public probation by its accrediting agency, it must immediately advise the Board and grant recipients of this condition and maintain evidence in each student's file to demonstrate that the student was so informed. ]

[(2) Disbursements to Students. ]

[(A) Documentation. The institution must maintain records to prove the receipt of program funds by the student or the crediting of such funds to the student's school account. ]

[(B) Procedures in Case of Illegal Disbursements. If the Commissioner has reason for concern that an institution has disbursed funds for unauthorized purposes, the Board will notify the Program Officer and financial aid officer and offer an opportunity for a hearing pursuant to the procedures outlined in Chapter 1 of this title (relating to Agency Administration). Thereafter, if the Board determines that funds have been improperly disbursed, the institution shall become primarily responsible for restoring the funds to the Board. No further disbursements of grants or scholarships shall be permitted to students at that institution until the funds have been repaid.

[(3) Reporting Requirements/Deadlines. All institutions must meet Board reporting requirements in a timely fashion. Such reporting requirements shall include reports specific to allocation and reallocation of grant funds (including the Financial Aid Database Report) as well as progress and year-end reports of program activities. ]

[(4) Program Reviews. If selected for such by the Board, participating institutions must submit to program reviews of activities related to the TEXAS Grant Program.]

§22.228. Eligible Students.

[(a) All persons who receive an initial award through the TEXAS Grant Program while attending public community colleges, technical colleges or the Lamar Institute of Technology in the 2013-2014 academic year must: ]

[(1) be a resident of Texas; ]

[(2) show financial need; ]

[(3) have applied for any available financial aid assistance; ]

]

[(4) not have been granted a baccalaureate degree; ]

[(5) be a graduate of an accredited high school in this state not earlier than the 1998-1999 school year; ]

[(6) have completed the Recommended or Advanced High School Program, or if a graduate of a private high school, its equivalent, unless the student: ]

[(A) graduated from a public high school that has been certified by its district not to offer all the courses necessary to complete all parts of the Recommended or Advanced High School Program, and the student has completed all courses that the high school offered toward the completion of such a curriculum; or ]

[(B) was anticipated to graduate under the Recommended or Advanced High School Program or meet the academic requirements as outlined by subsection (b)(5) of this section when the award was made; or ]

[(C) has received an associate degree from an eligible institution no earlier than May 1, 2001; or ]

[(D) was anticipated to receive an associate degree from an eligible institution no earlier than the twelfth month prior to the month in which the student enrolled for fall 2013; ]

[(7) enroll in an undergraduate degree or certificate program at an eligible institution on at least a three-quarter time basis: ]

[(A) not later than the end of the 16th month after high school graduation, if an entering undergraduate student; or ]

[(B) not later than the 12th month after the month the student has received an associate degree; ]

[(8) have a statement on file with his or her institution that indicates the student is registered with the Selective Service System as required by federal law or is exempt from selective service registration under federal law; and ]

[(9) if awarded the grant on or after September 1, 2005, be enrolled in an institution of higher education. ]

[(b) To receive an initial TEXAS Grant award for the 2013-2014 academic year, a person graduating from high school on or after May 1, 2013 and enrolling in a general academic teaching institution must: ]

[(1) be a resident of Texas; ]

[(2) show financial need; ]

[(3) have applied for any available financial aid assistance; ]

]

[(4) not have been granted a baccalaureate degree; and ]

[(5) to receive top consideration for an award, meet the academic requirements prescribed by subparagraph (A) of this paragraph and meet the priority deadline set by the Board in compliance with Texas Education Code, §56.008. If funds remain after awards are made to all students meeting the criteria in subparagraph (A) of this paragraph and meet the priority deadline, remaining funds may be awarded to persons who meet the priority deadline and are otherwise eligible for awards. Once these awards are made, remaining funds may be awarded to otherwise eligible persons who did not meet the deadline: ]

[(A) graduate or be on track to graduate from a public or accredited private high school in Texas and complete or be on track to complete the Recommended High School Curriculum or its equivalent and on track to have accomplished any two or more of the following at the time the award was made: ]

[(i) graduation under the advanced high school program established under Texas Education Code, §28.025 or its equivalent, successful completion of the course requirements of the international baccalaureate diploma program, or earning of the equivalent of at least 12 semester credit hours of college credit in high school through courses described in Texas Education Code, §28.009(a)(1), (2), and (3); ]

*[(ii)]* satisfaction of the Texas Success Initiative (TSI) college readiness benchmarks prescribed by the Coordinating Board under Texas Education Code, §51.3062(f) on any assessment instrument designated by the Coordinating Board under Texas Education Code, §51.3062(e) or (e) or qualification for an exemption as described by Texas Education Code, §51.3062(p), (q), or (q-1); ]

*[(iii)]* graduation in the top one-third of the person's high school graduating class or graduation from high school with a grade point average of at least 3.0 on a four-point scale or the equivalent; or ]

*[(iv)]* completion for high school credit of at least one advanced mathematics course following the successful completion of an Algebra II course, as permitted by Texas Education Code, §28.025(b-3); or at least one advanced career and technical course, as permitted by Texas Education Code, §28.025(b-2); ]

*[(B)]* have received an associate degree or be on track to receive an associate's degree from a public or private institution of higher education at the time the award was made; or ]

*[(C)]* if sufficient money remains, meet the eligibility criteria described by subsection (a) of this section. ]

*[(6)]* Except as provided under §22.231 of this title (relating to Hardship Provisions), a person must also enroll in an undergraduate degree or certificate program at a general academic teaching institution on at least a three-quarter time basis as: ]

*[(A)]* an entering undergraduate student not later than the end of the 16th month after high school graduation; or ]

*[(B)]* an entering undergraduate student who entered military service not later than the first anniversary of the date of high school graduation and enrolled in a general academic teaching institution no later than 12 months after being honorably discharged from military service; or ]

*[(C)]* a continuing undergraduate not later than the end of the 12th month after the calendar month in which the student received an associate degree; and ]

*[(7)]* have a statement on file with his or her institution that indicates the student is registered with the Selective Service System as required by federal law or is exempt from selective service registration under federal law. ]

(a) *[(e)]* To qualify for an initial year grant [award for fall 2014 or later], a person who graduates from high school [on or after May 1, 2013] must:

- (1) be enrolled in a medical or dental unit or general academic teaching institution other than public state colleges;
- (2) be a resident of Texas;
- (3) meet financial need requirements established by the Board;
- (4) have applied for any available financial aid assistance;
- (5) meet applicable standards outlined in Subchapter A of this Chapter [not have been granted a baccalaureate degree]; and

*[(6)]* to receive top consideration for an award, meet the academic requirements prescribed by subparagraph (A) of this paragraph and meet the priority deadline set by the Board in compliance with Texas Education Code, §56.008. If funds remain after awards are made to all students meeting the criteria in subparagraph (A) of this paragraph and meet the priority deadline, remaining funds may be awarded to persons who meet the priority deadline and are otherwise eligible for

awards. Once these awards are made, remaining funds may be awarded to otherwise eligible persons who did not meet the priority deadline: ]

*[(A)]* graduate or be on track to graduate from a public or accredited private high school in Texas on or after May 1, 2013, and complete or be on track to complete the Foundation High School program or its equivalent as amended in keeping with Texas Education Code, §56.009. An otherwise eligible student graduating before September 1, 2020, must complete or be on track to complete the Foundation, recommended, or advanced High School program. The person must also be on track to have accomplished any two or more of the following at the time the award was made: ]

*[(i)]* successful completion of the course requirements of the recommended or advanced high school program established under Texas Education Code, §28.025 or its equivalent or the international baccalaureate diploma program, or earning of the equivalent of at least 12 semester credit hours of college credit in high school through courses described in Texas Education Code, §28.009(a)(1), (2), and (3); or if graduating prior to September 1, 2020, graduate under the Recommended or Advanced high school program; ]

*[(ii)]* satisfaction of the Texas Success Initiative (TSI) college readiness benchmarks prescribed by the Board under Texas Education Code, §51.3062(f) on any assessment instrument designated by the Board under Texas Education Code, §51.3062(e) or qualification for an exemption as described by Texas Education Code, §51.3062(p), (q), or (q-1); ]

*[(iii)]* graduation in the top one-third of the person's high school graduating class or graduation from high school with a grade point average of at least 3.0 on a four-point scale or the equivalent; or ]

*[(iv)]* completion for high school credit of at least one advanced mathematics course following the successful completion of an Algebra II course, or at least one advanced career and technical or technical applications course; ]

*[(B)]* have received an associate's degree or be on track to receive an associate's degree from a public or private institution of higher education at the time the award was made; or ]

*[(C)]* meet the eligibility criteria described in subsection (a) of this section. ]

(b) *[(7)]* Except as provided under §22.231 of this title (relating to Hardship Provisions), to receive an initial year grant [award in fall 2014 or later], an otherwise eligible person must [also] enroll in a baccalaureate degree program at an eligible public institution on at least a three-quarter time basis as:

(A) an entering undergraduate student not later than the end of the 16th month after the calendar month in which the person graduated from high school [graduation]; or

(B) an entering undergraduate student who entered military service not later than the first anniversary of the date of high school graduation and enrolled in an eligible public institution no later than 12 months after being released from active duty military service with an Honorable Discharge, General Discharge under Honorable Conditions, or Honorable Separation or Release from Active Duty, as documented by the Certificate of Release or Discharge from Active Duty (DD214) issued by the Department of Defense [honorably discharged from military service];

(C) a continuing undergraduate student not later than the end of the 12th month after the calendar month in which the student received an associate [associate's] degree; or

(D) a continuing [an entering] undergraduate student who has:

(i) previously attended a public institution [an institution of higher education];

(ii) received an initial Texas Educational Opportunity Grant under Subchapter M of this Chapter [P] for the 2014 fall semester or a subsequent semester [academic term];

(iii) completed at least 24 semester credit hours at any [Texas] public institution(s) or private institution(s) [institution or institutions of higher education];

(iv) earned an overall grade point average of at least 2.5 on a four-point scale or the equivalent on all course work previously attempted; and

(v) has never previously received a TEXAS Grant, [; and

{(8) have a statement on file with his or her institution that indicates the student is registered with the Selective Service System as required by federal law or is exempt from selective service registration under federal law.}

(b) [(4)] Continuation Grants [Awards]. To receive a continuation grant [award] through the TEXAS Grant Program, a student must:

(1) have previously received an initial year grant [award] through this program;

(2) show financial need in the semester(s) in which a TEXAS Grant is offered;

(3) be enrolled at least three-quarter time in the semester(s) in which a TEXAS Grant is offered unless granted a hardship waiver of this requirement under §22.231 of this title;

(4) [if he or she received an initial TEXAS Grant award prior to fall 2014,] be enrolled in a baccalaureate [an undergraduate degree or certificate] program at the [an] eligible public institution; [if he or she received an initial TEXAS Grant award in fall 2014 or later, be enrolled in a baccalaureate degree at a medical or dental unit or general academic teaching institution other than a state college;

{(5) not have been granted a baccalaureate degree; }

{(6) have a statement on file with his or her institution that indicates the student is registered with the selective service system as required by federal law or is exempt from selective service registration under federal law; and}

(5) [(7) if he or she received an initial TEXAS Grant award prior to fall 2014, make satisfactory academic progress towards an undergraduate degree or certificate, as defined in §22.229 of this title (relating to Satisfactory Academic Progress); if he or she received an initial TEXAS Grant award in fall 2014 or later,] make satisfactory academic progress towards a baccalaureate degree at the [an] eligible public institution, as defined in §22.229 of this title (relating to Satisfactory Academic Progress) [;]

(6) meet applicable standards outlined in Subchapter A of this Chapter; and

(7) [(8)] If a student's eligibility was based on the expectation that the student would complete a high school diploma or associate degree in time to meet the requirements for Program eligibility, [the Recommended or Advanced or Foundation High School Program, meet the priority model academic requirements as outlined in subsection (b)(5) or (c)(6) of this section, or acquire an associate's degree] and

the student failed to do so, then, in order to resume eligibility, such a student must:

(A) receive an associate [associate's] degree;

(B) meet all other qualifications for a TEXAS Grant;

(C) if required to do so by the institution through which the TEXAS Grant was made, repay the amount of the TEXAS Grant that was previously received; and

(D) enroll in a higher-level undergraduate degree program in an eligible public institution not later than the 12th month after the month the student received an associate [associate's] degree.

{(e) In determining initial student eligibility for TEXAS Grant awards pursuant to subsections (a), (b) and (c) of this section, priority shall be given to those students who have an expected family contribution that does not exceed the lesser of the limit set by the Board for the relevant fiscal year or 60 percent of the average statewide amount of tuition and fees for general academic teaching institutions for the relevant academic year.}

#### §22.229. Satisfactory Academic Progress.

(a) To qualify for a continuation grant [or renewal award] after the academic year in which a person receives an initial year grant [award], each recipient of the TEXAS Grant shall meet the academic progress requirements as indicated by the financial aid office of his or her institution.

(b) To receive a subsequent grant [award] after he or she receives a continuation grant [award]:

{(1) a recipient who was awarded an initial year TEXAS grant prior to September 1, 2005, shall, unless granted a hardship postponement in accordance with §22.231 of this title (relating to Hardship Provisions): }

{(A) complete at least 75 percent of the hours attempted in his or her most recent academic year, as determined by institutional policies; and }

{(B) maintain an overall grade point average of at least 2.5 on a four point scale or its equivalent, for all coursework attempted at public or private or independent institutions of higher education.}

{(2) To receive a subsequent award after he or she received a continuation award, a recipient [who was awarded an initial year award through the TEXAS Grant Program on or after September 1, 2005] shall, unless granted a hardship postponement in accordance with §22.231 of this title (relating to Hardship Provisions):

(1) [(A)] complete at least 24 semester credit hours in his or her most recent academic year; and [;]

(2) [(B)] maintain an overall grade point average of at least 2.5 on a four point scale or its equivalent, for all coursework attempted at public institutions and private institutions [an institution or private or independent institution].

(3) [(C)] An [A first-time] entering undergraduate [freshman] student enrolling in a participating public institution for the second or later [regular term or] semester in a given academic year meets the semester-credit-hour requirement outlined in paragraph (1) [subparagraph (A)] of this subsection [paragraph] for continuing in the program if he or she completes at least 12 semester credit hours or its equivalent during that [term or] semester.

(c) The calculation of a student's GPA is to be completed in accordance with the General Provisions outlined in Subchapter A of this Chapter.

(d) The completion rate calculations may be made in keeping with institutional policies.

[(e) A grant recipient who is below program grade point average requirements as of the end of a spring term may appeal his/her grade point average calculation if he/she has taken courses previously at one or more different institutions. In the case of such an appeal, the current institution (if presented with transcripts from the previous institutions); shall calculate an overall grade point average counting all classes and grade points previously earned. If the resulting grade point average exceeds the program's academic progress requirement, an otherwise eligible student may receive an award in the following fall term.]

§22.230. Discontinuation of Eligibility or Non-Eligibility.

(a) A student may not receive a TEXAS Grant after having already being granted a baccalaureate degree.

(b) A student may not receive a TEXAS Grant for a semester in which he or she is enrolled for fewer than six hours.

[(a) For recipients who received a TEXAS Grant prior to Fall 2005 or were awarded an initial year TEXAS Grant for the 2005-2006 academic year prior to September 1, 2005: ]

[(1) Unless granted a hardship postponement in accordance with §22.231 of this title (relating to Hardship Provisions); a student's eligibility for a TEXAS Grant ends six years from the start of the semester or term in which the student received his or her first disbursement of an initial TEXAS Grant award; if the student's eligibility for a TEXAS Grant was based on the completion of the Recommended or Advanced High School Program or its equivalent in high school: ]

[(2) Unless granted a hardship postponement in accordance with §22.231 of this title, a student's eligibility ends four years from the date of the semester or term in which the student received his or her first disbursement of an initial TEXAS Grant award if the student's eligibility was based on receiving an associate's degree. ]

[(b) For recipients who were awarded an initial year award through the TEXAS Grant program for the 2005-2006 academic year on or after September 1, 2005; and for recipients who were awarded such an initial year award for a subsequent academic year:]

(c) [(+) Unless granted a hardship postponement in accordance with §22.231 of this title (relating to Hardship Provisions), eligibility for a TEXAS Grant for a student whose eligibility for an initial year TEXAS Grant was not based on the receipt of an associate [associate's] degree ends:

(1) [(A) five years from the start of the semester [or term] in which the student received his or her first disbursement of an initial year TEXAS Grant [award], if the student is enrolled in a degree program of four years or less;

(2) [(B) six years from the start of the semester [or term] in which the student received his or her first disbursement of an initial year TEXAS Grant [award], if the student is enrolled in a degree program of more than four years.

(d) [(2) Unless granted a hardship postponement in accordance with §22.231 of this title, eligibility for a TEXAS Grant for a student whose eligibility was based on receiving an associate [associate's] degree ends:

(1) [(A) three years from the date of the semester [or term] in which the student received his or her first disbursement of an initial year TEXAS Grant [award] if the student is enrolled in a degree program of four [or fewer] years or less;

(2) [(B) four years from the date of the semester [or term] in which the student received his or her first disbursement of an initial

year TEXAS Grant [award] if the student is enrolled in a degree program of more than four years.

(e) [(e) A student's eligibility ends one year from the date of the semester [or term] in which the student received his or her first disbursement of an initial year TEXAS Grant [award], if the student's eligibility was based on the expectation that the student would complete the initial year grant [award] requirements as outlined in §22.228 of this title (relating to Eligible Students), but the student failed to do so. However, if such a student later receives an associate [associate's] degree and again qualifies for TEXAS Grants, he or she can receive an additional three years of eligibility if enrolled in a degree program [plan] of four years or less, or an additional four years if enrolled in a degree program [plan] of more [greater] than four years.

(f) [(d) A [student whose eligibility for a TEXAS Grant is not based on the receipt of an associate's degree may receive a TEXAS Grant for no more than 150 semester credit hours or the equivalent. Beginning with awards for the 2015-2016 academic year, such a] student's eligibility for a TEXAS Grant ends once he or she has attempted 150 semester credit hours or the equivalent unless the student is granted a hardship extension in accordance with §22.231(d) of this title [(relating to Hardship Provisions)]. [For this purpose, "attempted hours" is defined as every course in every semester for which a student has been registered as of the official Census Date, including but not limited to, repeated courses and courses the student drops and from which the student withdraws. For transfer students, transfer hours and hours for optional internship and cooperative education courses are included if they are accepted by the receiving institution towards the student's current program of study. The total number of hours paid for, at least in part, with TEXAS Grant funds may not exceed 150 semester credit hours or the equivalent.

[(e) A student eligible for a TEXAS Grant based on receiving an associate's degree may receive a TEXAS Grant for no more than 90 semester credit hours. Beginning with awards for the 2015-2016 academic year, such a student's eligibility for a TEXAS Grant ends once he or she has attempted 150 semester credit hours or the equivalent unless the student is granted a hardship extension in accordance with §22.231(d) of this title. For this purpose, "attempted hours" is defined as every course in every semester for which a student has been registered as of the official Census Date, including but not limited to, repeated courses and courses the student drops and from which the student withdraws. For transfer students, transfer hours and hours for optional internship and cooperative education courses are included if they are accepted by the receiving institution towards the student's current program of study. The total number of hours paid for, at least in part, with TEXAS Grant funds may not exceed 90 semester credit hours or the equivalent.]

(g) [(f) A person is not eligible to receive an initial year or continuation grant [TEXAS Grant] if the person has been convicted of a felony or an offense under Chapter 481, Health and Safety Code (Texas Controlled Substances Act), or under the law of any other jurisdiction involving a controlled substance as defined by Chapter 481, Health and Safety Code, unless the person has met the other applicable eligibility requirements under this subchapter and has:

(1) received a certificate of discharge by the Texas Department of Criminal Justice or a correctional facility or completed a period of probation ordered by a court, and at least two years have elapsed from the date of the receipt or completion; or

(2) been pardoned, had the record of the offense expunged from the person's record, or otherwise been released from the resulting ineligibility to receive a TEXAS Grant.

(h) [(g)] Other than as described in §22.231 of this title, if a person fails to meet any of the requirements for receiving a continuation grant [award] as outlined in §22.228(b) of this subchapter [subsection (b) of this section] after completion of any semester [year], the person may not receive a TEXAS Grant until he or she completes a semester [courses] while not receiving a TEXAS Grant and meets all the requirements as outlined in §22.228(b) of this subchapter [of subsection (b) of this section] as of the end of that semester [period of enrollment].

§22.231. Hardship Provisions.

(a) In [No student enrolled for fewer than six hours may receive a TEXAS Grant. However, in] the event of a hardship or for other good cause, the Program Officer at an eligible public institution may allow an otherwise eligible person to receive a TEXAS Grant under the following conditions:

(1) while enrolled in less than [for an equivalent of six to] nine semester credit hours;

(2) [or] if the student's grade point average [or completion rate or number of completed hours] falls below the satisfactory academic progress requirements of §22.229 of this title (relating to Satisfactory Academic Progress);

(3) if the student's completion rate falls below the satisfactory academic progress requirements of §22.229 of this subchapter;

(4) if the student's number of completed hours falls below the satisfactory academic progress requirements of §22.229 of this subchapter; or

(5) if the student requires an extension of the year limits found in §22.230 of this subchapter to complete his or her degree.

(b) Hardship or other good causes [Such conditions] are not limited to, but include:

(1) a showing of a severe illness or other debilitating condition that may affect the student's academic performance;

(2) an indication that the student is responsible for the care of a sick, injured, or needy person and that the student's provision of care may affect his or her academic performance; or

(3) the requirement of fewer than nine hours to complete one's degree plan.

[(b) The Program Officer may grant an extension of the year limits found in §22.230 of this title (relating to Discontinuation of Eligibility or Non-Eligibility) in the event of hardship. Documentation justifying the extension must be kept in the student's files, and the institution must identify students granted extensions and the length of their extensions to the Coordinating Board, so that it may appropriately monitor each student's period of eligibility.]

(c) The Program Officer may allow a student to receive his/her initial year grant [first award] after the time limits described in §22.228(a)(6) (relating to Eligible Students) [more than 16 months have passed since high school graduation] if the student and/or the student's family has suffered a hardship that would now make the student rank as one of the institution's neediest. [Documentation justifying the exception must be kept in the student's files.]

(d) The Program Officer may allow a student to receive a grant after attempting more hours than allowed under §22.230(f) [§22.230(d), (e), (f) or (g)] of this title (relating to Discontinuation of Eligibility or Non-Eligibility) in the event of hardship. However, the total number of hours paid for, at least in part, with TEXAS Grant funds may not exceed 150 semester credit hours or the equivalent [student may not use the grants to pay for more than the number

of hours listed in these subsections. Documentation justifying the extension must be kept in the student's files].

(e) Documentation justifying the eligibility granted through the hardship provisions outlined in this rule must be kept in the student's file. Institutions must identify to the Board those students granted eligibility through hardship provisions, so that the Board may appropriately monitor each student's period of eligibility.

(f) [(e)] Each participating public institution shall adopt a hardship policy under this section and have the policy available in writing in the financial aid office for public review upon request.

§22.233. Priority in Grants [Awards] to Students.

(a) If appropriations for the program are insufficient to allow grants to all eligible students, priority shall be given to those students demonstrating continuing TEXAS Grant eligibility pursuant to §22.228(b) of this subchapter (relating to Eligible Students).

(b) In determining student eligibility for a [who should receive an initial year] TEXAS Grant pursuant to §22.228(a) of this subchapter, [an institution shall give highest] priority shall be given to those students who demonstrate the greatest financial need at the time the offer [award] is made.

(c) In determining student eligibility for a TEXAS Grant pursuant to §22.228(a) of this subchapter, priority shall be given to those students who have an expected family contribution that does not exceed 60 percent of the average statewide amount of tuition and required fees for general academic teaching institutions for the relevant academic year.

(d) In determining initial student eligibility for a TEXAS Grant pursuant to §22.228(a) of this subchapter, priority shall be given to those students who graduate or are on track to graduate from a public or accredited private high school in Texas on or after May 1, 2013, and complete or are on track to complete the Foundation High School program, or its equivalent as amended in keeping with Texas Education Code, §56.009. The person must also be on track to have accomplished any two or more of the following at the time a TEXAS Grant was offered:

(1) successful completion of the course requirements of the international baccalaureate diploma program, or earning of the equivalent of at least 12 semester credit hours of college credit in high school through courses described in Texas Education Code, §28.009(a)(1), (2), and (3), or if graduating prior to September 1, 2020, graduate under the Recommended or Advanced high school curriculum specified in the Texas Education Code, §28.025 as it existed as of January 1, 2013, and the rules promulgated thereunder by the State Board of Education;

(2) satisfaction of the Texas Success Initiative (TSI) college readiness benchmarks prescribed by the Board under Texas Education Code, §51.3062(f) on any assessment instrument designated by the Board under Texas Education Code, §51.3062(c) or qualification for an exemption as described by Texas Education Code, §51.3062(p), (q), or (r-1);

(3) graduation in the top one-third of the person's high school graduating class or graduation from high school with a grade point average of at least 3.0 on a four-point scale or the equivalent; or

(4) completion for high school credit of at least one advanced mathematics course following the successful completion of an Algebra II course, or at least one advanced career and technical or technical applications course;

(e) If funds remain after TEXAS Grants are offered to all students meeting the criteria in subsection (d) of this section, remaining

funds may be offered to persons who are otherwise eligible for TEXAS Grants.

§22.234. *Grant [Award] Amounts [and Adjustments].*

[(a) Funding. Funds awarded through this program may not exceed the amount of appropriations, gifts, grants and other funds that are available for this use. ]

[(b) Award Amounts.]

(a) [(4)] The amount of a TEXAS Grant offered [awarded] through an eligible public institution may not be reduced by any gift aid for which the person receiving the grant is eligible, unless the total amount of a person's grant plus any aid other than loans received equals or exceeds the student's financial need [tuition and required fees].

(b) [(2)] The Board shall determine and announce the maximum amount of a TEXAS Grant not later than the final day of January [award] prior to the start of each fiscal year. The calculation of the maximum amount per semester will be based on the mandates contained in Texas Education Code, §56.307. However, no student's TEXAS Grant [award] shall be greater than the amount of the student's financial need.

(c) [(3)] An eligible public institution may not charge a person receiving a TEXAS Grant through that institution, an amount of tuition and required fees in excess of the amount of the TEXAS Grant received by the person in that semester unless it also provides the student sufficient aid other than loans to meet his or her full tuition and required fees for that semester. Nor may it deny admission to or enrollment in the institution based on a person's eligibility to receive or actual receipt of a TEXAS Grant.

(d) [(4)] The eligible public institution may require a student to forgo or repay the amount of an initial year grant [TEXAS Grant awarded to the student as described in §22.228(a)(6)(B) of this title (relating to Eligible Students)] if the student is determined to have failed to complete the necessary [Recommended or Advanced or Foundation] High School Program or Associate Degree [or its equivalent], upon which eligibility for the program was determined, as evidenced by the final high school or college transcript.

[(5) If the money available for TEXAS Grants is sufficient to provide grants to all eligible applicants in the amounts specified in paragraphs (1) - (3) of this subsection, the Board may use any excess money to award a grant in an amount not more than three times the amount that may be awarded under paragraphs (1) - (3) of this subsection; to a student who: ]

[(A) is enrolled in a program that fulfills the educational requirements for licensure or certification by the state in a health care profession that the Board, in consultation with the Texas Workforce Commission and the Statewide Health Coordinating Council, has identified as having a critical shortage in the number of license holders needed in this state; ]

[(B) has completed at least one-half of the work toward a degree or certificate that fulfills the educational requirement for licensure or certification; and ]

[(C) meets all the requirements to receive a grant award under §22.228 of this title. ]

[(6) No person enrolled for fewer than six semester credit hours may receive a TEXAS Grant. In addition, an award to an otherwise eligible student enrolled for less than a three quarter-time load due to hardship is to be prorated. The amount he/she can be awarded is equal to the semester's maximum award for the relevant type of institution, divided by twelve hours and multiplied by the actual number of hours for which the student enrolled.]

(e) Grant calculations and disbursements are to be completed in accordance with the General Provisions outlined in Subchapter A of this chapter.

[(e) Uses. A person receiving a TEXAS Grant may only use the money to pay any usual and customary cost of attendance at an institution of higher education incurred by the student.]

[(d) Over Awards. If, at a time after an award has been disbursed by the institution to the student, the student receives assistance that was not taken into account in the student's estimate of financial need, so that the resulting sum of assistance exceeds the student's financial need, the institution is not required to adjust the award under this program unless the sum of the excess resources is greater than \$300. ]

[(e) Prorated Awards. If the student's balance of eligible hours is less than the number of hours he or she is taking in a given term or semester, the student's award amount for that term or semester should be prorated using the following schedule: ]

[(1) If balance of hours = 12 or more hours - 100% of the maximum award; ]

[(2) If balance of hours = 9-11 hours - 100% of the maximum award;]

[(3) If balance of hours = 6-8 hours - 50% of the maximum award; and ]

[(4) If balance of hours = fewer than 6 hours and student is enrolled for at least 6 hours - 25% of the maximum award. ]

[(f) Prorated Awards ; beginning with Awards for the 2015-2016 Academic Year. If the student's balance of eligible attempted hours is less than the number of hours he or she is taking in a given term or semester, the student's award amount for that term or semester should be prorated. Beginning no later than Fiscal Year 2012, prorated amounts shall be calculated using the following schedule: ]

[(1) If balance of attempted hours = 12 or more hours - 100% of the maximum award;]

[(2) If balance of attempted hours = 9-11 hours - 100% of the maximum award; ]

[(3) If balance of attempted hours = 6-8 hours - 50% of the maximum award; and ]

[(4) If balance of attempted hours = fewer than 6 hours and student is enrolled for at least 6 hours - 25% of the maximum award.]

§22.241. *Tolling of Eligibility for Initial Year Grant [Award].*

(a) A person is eligible for consideration for an Initial Year [TEXAS Grant] award under this subsection if the person was eligible for an initial year grant [award] under §22.228 of this title (relating to Eligible Students) in an academic year for which the Texas Legislature failed to appropriate sufficient funds to make initial year grant [awards] to at least 10 percent of the eligible student population, and:

(1) has not received a TEXAS Grant [an award under this subchapter] in the past;

(2) has not received a baccalaureate degree; and

(3) meets the eligibility requirements for a continuation grant [award] as described in §22.228(d) of this title.

(b) A person who meets the requirements outlined in subsection (a) of this section:

(1) cannot be disqualified for a TEXAS Grant by changes in program requirements since the time he or she was originally eligible



or by the amount of time that has passed since he or she was originally eligible;

(2) is to receive highest priority in the selection of recipients if he or she met the priority model requirements of §22.233(d) [§22.228(b)(5) or (c)(6)] of this title (relating to Priority in Awards to Students), when originally determined to be eligible;

(3) may continue receiving grants [awards] as long as he or she meets the requirements for such continuation grants [awards]; and

(4) may not receive TEXAS Grants [awards] for prior academic years [terms].

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

Filed with the Office of the Secretary of State on August 10, 2020.

TRD-202003267

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: September 20, 2020

For further information, please call: (512) 427-6365



### 19 TAC §§22.232, 22.235, 22.238 - 22.240, 22.242

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of 19 Texas Administrative Code Chapter 22, Subchapter L, §§22.232, 22.235, 22.238 - 22.240, and 22.242 of Board rules, concerning the Toward EXcellence, Access and Success Grant Program.

Specifically, §22.232 is repealed as its contents have been integrated with other priorities in §22.233. Sections 22.235, 22.239 and 22.240 are repealed as they are duplicative of rules in Chapter 22, Subchapter A, General Provisions. Section 22.238 is repealed as the provision is not utilized, making the rule unnecessary. Section 22.242 is repealed as it is redundant.

Dr. Charles W. Contéro-Puls, Deputy Assistant Commissioner for Student Financial Aid Programs, has determined that for each of the first five years the sections are in effect, there will be no fiscal implications to state or local government as a result of repealing the rules.

Dr. Contéro-Puls has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be a clearer understanding of the requirements of the program. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment resulting from repeal of the rules.

Government Growth Impact Statement:

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

(5) the rules will not create a new rule;

(6) the rules will repeal §§22.232, 22.235, 22.238 - 22.240, and 22.242;

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

(8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Charles W. Contéro-Puls, Ed.D., Deputy Assistant Commissioner, Student Financial Aid Programs, P.O. Box 12788, Austin, Texas 78711, (512) 427-6365, Charles.Contero-Puls@HigherEd.Texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeal is proposed under the Texas Education Code, Sections 56.301 - 56.311 which provide the Coordinating Board with the authority to adopt rules for the administration of the Toward EXcellence, Access, and Success Grant Program.

The repeal affects Texas Education Code, Sections 56.301 - 56.311.

§22.232. *Priorities in Funding.*

§22.235. *Late Disbursements.*

§22.238. *Funds Provided through Gifts and Donations.*

§22.239. *Authority to Transfer Funds.*

§22.240. *Dissemination of Information and Rules.*

§22.242. *Reports to the TEXAS Grant Oversight Committee.*

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

Filed with the Office of the Secretary of State on August 10, 2020.

TRD-202003268

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: September 20, 2020

For further information, please call: (512) 427-6365



## SUBCHAPTER M. TEXAS EDUCATIONAL OPPORTUNITY GRANT PROGRAM

### 19 TAC §22.261

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to 19 Texas Administrative Code Chapter 22, Subchapter M, §22.261 of Board rules, concerning the Texas Educational Opportunity Grant Program.

The removal of language from §22.261(b)(3), (c), and (f) is proposed to introduce greater flexibility for institutions in their efforts to address the needs of their student population and to eliminate an unnecessary level of complexity in the administration and understanding of the grant program.

Dr. Charles W. Contéro-Puls, Deputy Assistant Commissioner for Student Financial Aid Programs, has determined that for each of the first five years the section is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Contéro-Puls has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be a clearer understanding of the requirements of the program. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Government Growth Impact Statement:

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will limit rule §22.261;
- (7) the rules will not increase or decrease the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Charles W. Contéro-Puls, Ed.D., Deputy Assistant Commissioner, Student Financial Aid Programs, P.O. Box 12788, Austin, Texas 78711, (512) 427-6365, Charles.Contero-Puls@HigherEd.Texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, Sections 56.401 - 56.4075, which provides the Coordinating Board with the authority to adopt rules for the implementation and administration of the Texas Educational Opportunity Grant Program.

The proposed amendments affect Texas Education Code, Sections 56.401 - 56.4075.

§22.261. *Grant Amounts and Adjustments.*

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

(1) The amount of a grant may not be reduced by any gift aid for which the person receiving the grant is eligible, unless the total amount of a person's grant plus any gift aid received exceeds the student's cost of attendance. However, no student's grant shall be greater than the amount of the student's financial need.

(2) The Board shall determine and announce the maximum grant amount in a given state fiscal year by January 31 of the prior fiscal year. The calculation of the maximum amount will be based on the average statewide amount of tuition and required fees at eligible institutions that an in-district resident student enrolled full-time in an associate degree or certificate program would be charged for that semester (Texas Education Code, §56.407). In determining the maximum grant amount, the average amount of tuition and required fees is determined by institution type (public junior colleges, public state colleges, and public technical institutes) for an in-district resident student enrolled full-time in an associate degree or certificate program, utilizing the most recent Integrated Fiscal Reporting System reports to project the value.

[(3) The value of an individual's grant in a given semester is to be based on the share of a full-time course load in which the student is enrolled as of the census date of the semester, in accordance with the following table:

[(A) 12 or more semester credit hours—100% of the semester's maximum grant for a full-time student;

[(B) at least 9 but fewer than 12 semester credit hours—75 percent of the semester's maximum grant for a full-time student;

[(C) at least 6 but less than 9 semester credit hours—50 percent of the semester's maximum grant for a full-time student; and

[(D) less than 6 semester credit hours—zero percent of the semester's maximum grant for a full-time student, unless approved for a grant under hardship conditions in accordance with subsection (e) of this section.

[(e) If an otherwise eligible student, due to hardship, enrolls for less than a half-time course load, the grant is to be prorated. The amount that can be awarded is equal to the semester's maximum grant for the relevant type of institution, divided by 12 and multiplied by the actual number of semester credit hours for which the student is enrolled.]

(c) [(4)] An approved institution may not charge a person receiving a grant through that institution an amount of tuition and required fees in excess of the grant received by the person. Nor may it deny admission to or enrollment in the institution based on a person's eligibility to receive or actual receipt of a grant. If an institution's tuition and fee charges exceed the grant, it may address the shortfall in one of two ways:

(1) it may use other available sources of financial aid, other than a loan or Pell grant to cover any difference in the amount of the grant and the student's actual amount of tuition and required fees at the institution; or

(2) it may waive the excess charges for the student. However, if a waiver is used, the institution may not report the recipient's tuition and fees in a way that would increase the general revenue appropriations to the institution.

(d) [(e)] Adjustments to grants and late disbursements are to be completed in accordance with Subchapter A of this chapter (relating to General Provisions).

[(f) Prorated Grants in Case of Low Balance of Eligible Semester Credit Hours or Attempted Semester Credit Hours. If the student's balance of eligible semester credit hours or attempted semester credit hours is less than the number of semester credit hours the student is taking in a given semester, the student's grant for that semester should be prorated using the following schedule:]

[(1) if balance of hours is 12 or more semester credit hours—100% of the semester's maximum grant for a full-time student;]

[(2) if balance of hours is at least 9 but fewer than 12 semester credit hours—75% the semester's maximum grant for a full-time student;]

[(3) if balance of hours is at least 6 but fewer than 9 semester credit hours—50% the semester's maximum grant for a full-time student; and]

[(4) if balance of hours is fewer than 6 semester credit hours—25% the semester's maximum grant for a full-time student.]

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

Filed with the Office of the Secretary of State on August 10, 2020.

TRD-202003269

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: September 20, 2020

For further information, please call: (512) 427-6365



## SUBCHAPTER Q. TEXAS B-ON-TIME LOAN PROGRAM

### 19 TAC §§22.329, 22.330, 22.339, 22.341

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to 19 Texas Administrative Code Chapter 22, Subchapter Q, §§22.329, 22.330, 22.339, and 22.341 of Board rules, concerning the Texas B-On-Time Loan Program. Section 22.329(a) is amended to update the legislative reference to reflect the specific citation of the Texas Education Code section regarding the authority for these provisions. Section 22.330, concerning "Definitions," is amended to strike the terms that are either not used in the subchapter or are already defined in Subchapter A, §22.1. Section 22.339(d) is amended to remove the word "written" to allow for verbal requests, which aligns the program with the agency's other loan programs. Section 22.341(c) is deleted to eliminate institutional holds on student records and registration for individuals who are delinquent on a Texas B-On-Time loan. These institutional holds create a barrier to student completion of a certificate or degree. Eliminating this barrier supports the agency's 60x30TX educated population and completion goals.

Dr. Charles W. Contéro-Puls, Deputy Assistant Commissioner for Student Financial Aid Programs, has determined that for each of the first five years the sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Contéro-Puls has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be a clearer understanding of the requirements of the program. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on small businesses, micro businesses, and rural communities.

#### Government Growth Impact Statement:

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will limit and clarify §§22.329, 22.330, 22.339, and 22.341;
- (7) the rules will decrease the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Charles W. Contéro-Puls, Ed.D., Deputy Assistant Commissioner, Student Financial Aid Programs, P.O. Box 12788, Austin, Texas 78711, (512) 427-6365, Charles.Contero-Puls@HigherEd.Texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, Section 56.0092, which provides the Coordinating Board with the authority to adopt rules for the administration of the Texas B-On-Time Loan Program.

The proposed amendment affects Texas Education Code, Section 56.0092.

#### §22.329. *Authority and Purpose.*

(a) Authority. Unless otherwise noted in a section, the authority for these provisions is provided by the Texas Education Code, §56.0092 [§§56.451 - 56.465].

(b) (No change.)

#### §22.330. *Definitions.*

In addition to the words and terms defined in §22.1 of this chapter, the [The] following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

[(1) Board--The Texas Higher Education Coordinating Board.]

[(2) Commissioner--The Commissioner of Higher Education.]

(1) [(3)] Degree in Architecture--The completion credential awarded to a student who has completed satisfactorily the curriculum that the Board has approved as a baccalaureate degree program identified as belonging to Category 04.0201 of the Texas CIP Codes.

(2) [(4)] Degree in Engineering--The completion credential awarded to a student who has completed satisfactorily the curriculum that the Board has approved as a baccalaureate degree program identified as belonging to Category 14 of the Texas CIP Codes.

(3) [(5)] Default--The failure of a borrower to make loan installment payments for a total of 180 days.

[(6) Recommended or Distinguished Achievement Program - Advanced High School Program--The high school curriculum recommended under Texas Education Code, §28.025(a).]

[(7) Resident of Texas--A resident of the State of Texas as determined in accordance with Subchapter B of this chapter (relating to Determination of Resident Status). Nonresident students eligible to pay resident tuition rates are not included unless they qualify as eligible nonresidents under §21.124(a)(1) of this title (relating to Initial Eligibility for Loans).]

(4) [(8)] Texas CIP Codes--Classification codes for degree programs, agreed upon by institutions and approved by the Board, based on curricular content belonging to categories within the federal Classification of Instructional Programs (CIP) published by the National Center for Educational Statistics. Texas CIP Codes are available at <http://www.thecb.state.tx.us/apps/ProgramInventory/>.

#### §22.339. *Repayment of Loans.*

(a) - (c) (No change.)

(d) The Commissioner may grant periods of forbearance in the form of postponed or reduced payments for unusual financial hardship if the Board receives a [written] request stating the circumstances that merit such consideration.

(e) - (g) (No change.)

§22.341. *Enforcement of Collection.*

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

[(e) All records of each student who is a borrower under this Subchapter shall be so identified in the Office of the Registrar at each eligible institution. The institution may not release an official certified copy of such records, nor may any student in this program re-register for classes in the institution, until the Texas B-On-Time program officer at the institution certifies to the registrar that the borrower's B-On-Time account is in good condition. The Commissioner must approve exceptions to this section in advance of the institution's release of an official certified copy of the records or of the borrower's re-registration.]

(c) [(d)] In accordance with state law, the Board will notify the Comptroller of Public Accounts when a borrower's account has become 90 days or more past due. Until the delinquency is cured, no state warrant other than a wage warrant will be released to the borrower. This prevents the delinquent borrower from receiving further warrants for state student financial aid.

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

Filed with the Office of the Secretary of State on August 10, 2020.

TRD-202003270

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: September 20, 2020

For further information, please call: (512) 427-6365



**19 TAC §§22.331 - 22.336, 22.342 - 22.344**

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of 19 Texas Administrative Code Chapter 22, Subchapter Q, §§22.331 - 22.336 and 22.342 - 22.344 of Board rules, concerning the Texas B-On-Time Loan Program. Per Texas Education Code §56.0092(c), the Coordinating Board may not offer B-On-Time loans after the summer 2020 semester. Therefore, §§22.331 - 22.336, 22.342 - 22.344 are repealed as these rules are no longer authorized.

Dr. Charles W. Contéro-Puls, Deputy Assistant Commissioner for Student Financial Aid Programs, has determined that for each of the first five years the sections are in effect, there will be no fiscal implications to state or local government as a result of repealing the rules.

Dr. Contéro-Puls has also determined that for each year of the first five years the sections are repealed, the public benefit anticipated as a result of repealing the rules will be a clearer understanding of the availability of the Coordinating Board's loan programs. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment resulting from repeal of the rules.

Government Growth Impact Statement:

(1) the rules will implement the elimination of a government program that was repealed by the legislature;

(2) implementation of the rules will not require the creation or elimination of employee positions;

(3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;

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

(5) the rules will not create a new rule;

(6) the rules will repeal §§22.331 - 22.336, 22.342 - 22.344;

(7) the rules will decrease the number of individuals subject to the rule; and

(8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Charles W. Contéro-Puls, Ed.D., Deputy Assistant Commissioner, Student Financial Aid Programs, P.O. Box 12788, Austin, Texas 78711, (512) 427-6365, Charles.Contero-Puls@HigherEd.Texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeals are proposed under the Texas Education Code, Section 56.0092, which provides the Coordinating Board with the authority to adopt rules for the administration of the Texas B-On-Time Loan Program.

The repeals affect Texas Education Code, Section 56.0092.

§22.331. *Institutions.*

§22.332. *Initial Eligibility for Loans.*

§22.333. *Continued Eligibility for Loans.*

§22.334. *Disbursement to Students.*

§22.335. *Hardship Provisions.*

§22.336. *Loan Amount.*

§22.342. *Allocation and Reallocation of Funds for Private or Independent Institutions of Higher Education.*

§22.343. *Program Support Activities.*

§22.344. *Allocation and Reallocation of Funds for Eligible Public Institutions of Higher Education.*

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

Filed with the Office of the Secretary of State on August 10, 2020.

TRD-202003273

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: September 20, 2020

For further information, please call: (512) 427-6365



**CHAPTER 23. EDUCATION LOAN  
REPAYMENT PROGRAMS**

**SUBCHAPTER C. THE PHYSICIAN**

**EDUCATION LOAN REPAYMENT PROGRAM**

**19 TAC §§23.65 - 23.67**

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to 19 Texas Administrative Code Chapter 23, Subchapter C, §§23.65-23.67 of Board rules, concerning the Physician Education Loan Repayment Program.

Amendments to several definitions are proposed in §23.65. The definition of full-time service is rounded to 32 hours, matching the standard in place for federal programs assisting health care providers practicing in shortage areas. The proposed amendment to the definition of Primary Care excludes hospitalists because the hospitals where they work are not considered primary care settings. The words "in an outpatient setting" is added for all primary care physicians except geriatricians and psychiatrists, whose services often must occur in facilities such as nursing homes and state hospitals.

An amendment to §23.66(3), regarding eligibility, is proposed to clarify that physicians in postgraduate training, including fellowship, are not eligible for participation in the program. Physicians in postgraduate training are not working in the same capacity as practicing physicians who have their own liability coverage, bill for their services, and practice without supervision in the specialty or subspecialty for which they have completed training. An amendment to §23.66(5) regarding the timing of the board certification requirement is proposed to make the statement clearer. Proposed for deletion is the statement in §23.66(5)(B) that the Department of State Health Services (DSHS) determines if there is a critical need for a specialty other than primary care in a primary care HPSA. There is no mechanism in place for the DSHS to evaluate the need in a primary care HPSA for specific subspecialties. However, a determination has been made that any physician who provides access to subspecialty care in a primary care HPSA for persons enrolled in Medicaid or CHIP, a basic program requirement, is serving the program's purpose.

Amendments to §23.67 regarding application ranking criteria are proposed to strengthen the priority given to applications from primary care physicians practicing in HPSAs. Currently, initial applications from subspecialists practicing in HPSAs are considered only after priority has been given to primary care physicians practicing in HPSAs. However, once enrolled in the program, renewal applications from subspecialists receive the same priority as renewal applications from primary care physicians. The proposed changes to this section require that subspecialists receive consideration each year only after priority is given to all applications from primary care physicians practicing in HPSAs. Additionally, an amendment to §23.67 adds the requirement that primary care physicians seeking to qualify for the program by meeting specified Medicaid service levels must have provided outpatient care in meeting those service levels. This tier of applicants is considered the last priority for funding.

Dr. Charles W. Contéro-Puls, Deputy Assistant Commissioner for Student Financial Aid Programs, has determined that for each of the first five years the sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Contéro-Puls has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be a clearer understanding of the requirements of the program. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Government Growth Impact Statement:

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will clarify rules §§23.65-23.67;
- (7) the rules will decrease the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Charles W. Contéro-Puls, Ed.D., Deputy Assistant Commissioner, Student Financial Aid Programs, P.O. Box 12788, Austin, Texas 78711, (512) 427-6365, Charles.Contero-Puls@HigherEd.Texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under the Texas Education Code, §§61.531 - 61.540, which provides the Coordinating Board with the authority to adopt rules for the administration of the Physician Education Loan Repayment Program.

The amendment affects Texas Education Code, §§61.531 - 61.540.

§23.65. *Definitions.*

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

- (1) - (4) (No change.)
- (5) Full-time Service--An average of at least 32 [32.5] hours of direct patient care per week during the service period at the practice site.
- (6) - (8) (No change.)
- (9) Primary Care Physician [~~Specialty~~]--Physicians practicing family [Family] medicine, family practice, general practice, obstetrics/gynecology, general internal medicine, general pediatrics, combined internal medicine and pediatrics (medicine-pediatrics) in an outpatient setting, psychiatry, or geriatrics[; ~~or hospitalists who practice in HPSAs~~]. With the exception of psychiatrists and geriatricians, physicians must provide services in an outpatient setting to be considered primary care.
- (10) - (15) (No change.)

§23.66. *Eligibility.*

- (a) To be eligible for the Board to reserve loan repayment funds, a physician must:
  - (1) ensure that the Board or its designee has received the completed application by the established deadline, which will be posted on the program web page;
  - (2) be a U.S. citizen or a Legal Permanent Resident and, at the time of application, hold a Full Physician License from the Texas Medical Board, with no restrictions;
  - (3) not be in postgraduate training, including fellowship;

(4) [(3)]not be currently fulfilling another obligation to provide medical services as part of a scholarship agreement, a student loan agreement, or another student loan repayment agreement;

(5) [(4)] at the time of the initial application [during the first, second, and third service period], if the physician has not earned and maintained board certification, be eligible to take the exam for board certification from:

(A) an American Specialty Board that is a member of the American Board of Medical Specialties or the Bureau of Osteopathic Specialists in a primary care specialty; or

(B) an American Specialty Board that is a member of the American Board of Medical Specialties or the Bureau of Osteopathic Specialists [in a specialty other than primary care if the DSHS determines there is a critical need for the applicant's specialty].

(6) [(5)] in the case of physicians qualifying on the basis of practice in a HPSA, agree to provide four consecutive service periods in a HPSA.

(b) To be eligible to receive loan repayment assistance, a physician must:

(1) have completed one, two, three, or four consecutive service periods in a:

(A) HPSA, serving persons who are:

(i) enrolled in Medicaid or CHIP or both;

(ii) uninsured; and

(iii) enrolled in Medicare, except in the case of pediatricians.

(B) secure correctional facility operated by or under contract with the Texas Juvenile Justice Department or its successor or in a secure correctional facility operated by or under contract with any division of the Texas Department of Criminal Justice or its successor, or

(C) location other than a HPSA, if the physician practices primary (outpatient) care and during the service period has provided health care services to a designated number of Medicaid or Texas Women's Health Program enrollees, established in the Board's Memorandum of Understanding with the Texas Health and Human Services Commission and posted on the program web page.

(2) for loan repayment based on the fourth service period, have earned certification from an American Specialty Board that is a member of the American Board of Medical Specialties or the Bureau of Osteopathic Specialists in a primary care specialty, or in a specialty other than primary care if the practice is located in a HPSA.

#### §23.67. Application Ranking Criteria.

(a) Application deadlines will be established throughout the fiscal year and will be posted on the program web page. Primary care physicians practicing in HPSAs whose initial applications have been approved are considered to be enrolled in the program. Applications from all other physicians are considered annually. If there are not sufficient funds to offer [award] loan repayment assistance for all eligible physicians whose applications are received by the stated deadline, applications shall be ranked according to the following criteria, in priority order:

(1) applications from physicians practicing in HPSAs, in the following priority order:

(A) renewal applications from primary care physicians[; with first priority assigned to those for primary care];

(B) applications from primary care physicians practicing in rural HPSAs;

(C) applications from primary care physicians practicing in non-rural areas whose HPSA scores reflect the highest degrees of shortage;

(2) renewal applications from non-primary care physicians practicing in HPSAs;

(3) initial applications from non-primary care physicians practicing in HPSAs;

(b) the first ten applications received each year from eligible physicians serving persons committed to a secure correctional facility operated by or under contract with the Texas Juvenile Justice Department or its successor or persons confined to a secure correctional facility operated by or under contract with any division of the Texas Department of Criminal Justice or its successor;

(c) applications from primary care physicians who have provided outpatient health care services to a designated number of Medicaid or Texas Women's Health Program enrollees, as established annually by methods outlined in the Board's Memorandum of Understanding with the Texas Health and Human Services Commission, in the following order of priority:

(1) renewal applications;

(2) applications from physicians practicing in a rural county;

(3) applications from geriatricians;

(4) applications from physicians having the greatest amount of student loan debt.

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

Filed with the Office of the Secretary of State on August 10, 2020.

TRD-202003274

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: September 20, 2020

For further information, please call: (512) 427-6365



## SUBCHAPTER H. PEACE OFFICER LOAN REPAYMENT ASSISTANCE PROGRAM

### 19 TAC §23.211, §23.214

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to 19 Texas Administrative Code Chapter 23, Subchapter H, §23.211 and §23.214 of Board rules, concerning the Peace Officer Loan Repayment Assistance Program (POLRAP). In keeping with legislative intent, these amendments will align the rules with the updated program design, which will allow peace officers to receive loan repayment based on the initial year of service as a peace officer provided after September 1, 2019, rather than requiring applicants to wait another year to qualify for an initial award.

Dr. Charles W. Contéro-Puls, Deputy Assistant Commissioner for Student Financial Aid Programs, has determined that for each of the first five years the sections are in effect, there will be no

fiscal implications to state or local government as a result of enforcing or administering the rules. General Appropriations Act, HB 1, 86th Texas Legislature, Article III appropriates funding for the administration and loan repayments required of the program.

Dr. Contéro-Puls has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be a clearer understanding of the requirements of the program. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on small businesses, micro businesses, and rural communities. The rules will not have an impact on local employment.

Government Growth Impact Statement:

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will clarify §23.211 and §23.214;
- (7) the rules will not increase or decrease the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Charles W. Contéro-Puls, Ed.D., Deputy Assistant Commissioner, Student Financial Aid Programs, P.O. Box 12788, Austin, Texas 78711, (512) 427-6365, Charles.Contero-Puls@HigherEd.Texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under Texas Education Code, Sections 61.9951 - 61.9959, which requires the Coordinating Board to establish and administer the Peace Officer Loan Repayment Assistance Program by rule.

The amendments affect Texas Education Code, Sections 61.9951 - 61.9959.

*§23.211. Initial Eligibility.*

To be eligible for the Board to [conditionally] approve an initial application for enrollment in the program and for [and enumber] loan repayment funds, a peace officer must:

- (1) have been [be] initially appointed [employed] as a peace officer on or after September 1, 2019;
- (2) submit to the Board by the published deadline an initial application for enrollment in the program that requires:
  - (A) - (B) (No change.)
  - (C) a transcript of the person's postsecondary course work demonstrating at least 60 semester credit hours, or the equivalent, earned at an eligible institution before the person's initial appointment [employment] as a peace officer;
  - (D) a statement of the total amount of principal, accrued interest, fees, and other charges due on unpaid eligible loans obtained for attendance at an eligible institution for a semester or other term that ended in the five years immediately preceding the person's initial appointment [employment] as a peace officer;

(E) (No change.)

(F) a statement that the individual agrees to continuous full-time employment as a peace officer in this state for four additional [five] consecutive years after the date of the initial application.

*§23.214. Eligible Lender and Eligible Education Loan.*

- (a) (No change.)
- (b) To be eligible for repayment, an education loan must:
  - (1) be evidenced by a promissory note for loans to pay for the cost of the individual's attendance at an eligible institution for a semester or other term that ended in the five years immediately preceding the person's initial appointment [employment] as a peace officer;
  - (2) - (5) (No change.)
- (c) (No change.)

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

Filed with the Office of the Secretary of State on August 10, 2020.

TRD-202003275

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: September 20, 2020

For further information, please call: (512) 427-6365



## PART 2. TEXAS EDUCATION AGENCY

### CHAPTER 61. SCHOOL DISTRICTS

#### SUBCHAPTER BB. COMMISSIONER'S

#### RULES ON REPORTING REQUIREMENTS

##### 19 TAC §61.1025

The Texas Education Agency (TEA) proposes an amendment to §61.1025, concerning Public Education Information Management System (PEIMS) data and reporting standards. The proposed amendment would implement changes made by House Bill (HB) 3, 86th Texas Legislature, 2019, by incorporating an additional reporting requirement about students who withdraw from or otherwise no longer attend public school.

**BACKGROUND INFORMATION AND JUSTIFICATION:** Section 61.1025 defines the data and reporting standards for the PEIMS established by Texas Education Code (TEC), §48.008 and §48.009, as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019.

The proposed amendment to §61.1025 would codify the requirement to include pregnancy as a reason a student withdraws from or otherwise no longer attends public school in the information reported by school districts for students who leave the Texas public school system. Currently, pregnancy is not available as a reporting reason for students who leave Texas public schools.

In addition, the proposed amendment would update references to align with HB 3, which transferred and redesignated TEC, §42.006, to TEC, §48.008 and §48.009.

**FISCAL IMPACT:** Jeff Cottrill, deputy commissioner for governance and accountability, has determined that for the first five-

year period the proposal is in effect there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

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

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

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

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

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

**PUBLIC BENEFIT AND COST TO PERSONS:** Mr. Cottrill has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be implementing HB 3, 86th Texas Legislature, 2019. There is no anticipated economic cost to persons who are required to comply with the proposal.

**DATA AND REPORTING IMPACT:** The proposal would have a data and reporting impact by adding a new code to an existing data collection. School districts are currently required to report a reason for a student leaving Texas public schools. Under the proposed amendment, a school district could use pregnancy as the reason a student withdraws from or otherwise no longer attends public school.

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

**PUBLIC COMMENTS:** The public comment period on the proposal begins August 21, 2020, and ends October 5, 2020. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on August 21, 2020. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About\\_TEA/Laws\\_and\\_Rules/Commissioner\\_Rules\\_\(TAC\)/Proposed\\_Commissioner\\_of\\_Education\\_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

**STATUTORY AUTHORITY.** The amendment is proposed under Texas Education Code (TEC), §48.008, as transferred, redesignated, and amended by House Bill (HB) 3, 86th Texas Legislature, 2019, which establishes the Public Education Information Management System (PEIMS), a system school districts shall use to report information to the agency; and TEC, §48.009, as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019, which specifies certain required reporting by school districts through PEIMS.

**CROSS REFERENCE TO STATUTE.** The amendment implements Texas Education Code, §48.008 and §48.009.

*§61.1025. Public Education Information Management System (PEIMS) Data and Reporting Standards.*

(a) Data submissions. The Public Education Information Management System (PEIMS) consists of all data submitted by school districts, charter schools, campuses, and other educational organizations and entities to the Texas Education Agency (TEA).

(b) Standards. Data standards, established by the commissioner of education under Texas Education Code (TEC), §48.008 [§42.006], shall be used by school districts and charter schools to submit information required for the legislature and the TEA to perform their legally authorized functions. Data standards shall be published annually in official TEA publications. These publications shall be widely disseminated and include:

(1) descriptions of the data collections and submission requirements;

(2) descriptions of data elements and the codes used to report them, which include pregnancy as a reason a student withdraws from or otherwise no longer attends public school;

(3) detailed responsibilities of school districts, education service centers, and the TEA in connection with the data submission processes, including each deadline for submission and resubmission; and

(4) descriptions of the data submission requirements, including submission record layout specifications and data edit specifications.

(c) External review process. The commissioner shall establish a policy advisory group that provides oversight of data collections and reporting standards policies. The policy advisory group membership shall be composed of representatives of school districts, charter schools, education service centers, state government, and educational associations. Subcommittees consisting of technical experts and representatives from user groups may be established by the commissioner to provide timely and impartial reviews of requested changes or additions to TEA data collections and reporting standards. The procedure for adding, deleting, or modifying data elements described in paragraphs (1)-(5) of this subsection provides consistency in updates to the data and reporting standards. The commissioner may approve changes to the data and reporting standards outside this process if necessary to expedite implementation of data collections and reporting.

(1) Prepare proposal. A written proposal is prepared to add, delete, or modify data elements. The proposal provides justification for the data collection, determination of data availability, and definitions of critical attributes and required analyses of requested data elements.

(2) Conduct research. Survey a sampling of districts to update and refine cost estimates, assess district burden, and determine any benefits from a pilot of the data collection.

(3) Solicit feedback. The subcommittee(s) established by the commissioner and other appropriate TEA committees review pro-



posals and make formal, written recommendations to the policy advisory group. The policy advisory group reviews proposals and committee recommendations and makes recommendations to the commissioner for approval, modification, or rejection of the proposed changes.

(4) Collect data. Data standards and software made available to districts online are updated annually, implementing changes to data submissions requirements.

(5) Reevaluate data requirements. All data elements are reviewed by the commissioner-appointed subcommittee(s) and policy advisory group on a three-year cycle as part of an ongoing sunset process. The sunset process is designed to ensure that data standards meet the requirements specified in TEC, §48.008(c)(1)-(3) [~~§42.006(e)(1)-(3)~~] and (d).

(d) Internal review process. The commissioner shall establish and determine the membership of a TEA committee that provides oversight of the TEA data collections and reporting policies. The commissioner shall also establish a TEA subcommittee that reviews data collections and reporting standards according to the requirements specified in TEC, §48.008(c)(1)-(3) [~~§42.006(e)(1)-(3)~~] and (d). The subcommittee is also responsible for maintaining data collections at the TEA. The procedure for adding, deleting, or modifying data elements described in subsection (c)(1)-(5) of this section provides consistency in updates to data and reporting standards. The commissioner may approve changes to data and reporting standards outside this process if necessary to expedite implementation.

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

Filed with the Office of the Secretary of State on August 10, 2020.

TRD-202003271

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: September 20, 2020

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



## CHAPTER 129. STUDENT ATTENDANCE SUBCHAPTER AA. COMMISSIONER'S RULES

### 19 TAC §129.1027

The Texas Education Agency (TEA) proposes an amendment to §129.1027, concerning the optional flexible school day program (OFSDP). The proposed amendment would reflect statutory recodification resulting from House Bill (HB) 3, 86th Texas Legislature, 2019, and align board meeting requirements with current practice.

**BACKGROUND INFORMATION AND JUSTIFICATION:** Texas Education Code (TEC), §29.0822, authorizes the commissioner of education to adopt rules for the administration of OFSDPs provided by school districts and open-enrollment charter schools for certain eligible students. Section 129.1027 specifies OFSDP general provisions, definitions, student eligibility, application requirements, attendance and funding criteria, program operation requirements, and review and evaluation provisions, as well as circumstances under which OFSDP authorization would be revoked or denied.

HB 3, 86th Texas Legislature, 2019, recodified TEC, Chapter 41, to Chapter 49 and Chapter 42 to Chapter 48. The proposed amendment would update statutory references to conform to the recodification. Additionally, statutory references to TEC, Chapter 39, would be updated to Chapter 39A where applicable.

The proposed amendment would also align board meeting requirements with current practice by removing the requirement for public input at board meetings.

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

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

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

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

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

**GOVERNMENT GROWTH IMPACT:** TEA staff prepared a Government Growth Impact Statement assessment for this rulemaking. During the first five years the proposed rulemaking would be in effect, it would limit an existing regulation by eliminating the need for public input at board meetings under the rule.

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

**PUBLIC BENEFIT AND COST TO PERSONS:** Mr. Lopez has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be referencing correct statutory citations and allowing a school board to approve its OFSDP program each year without having a public hearing. There is no anticipated economic cost to persons who are required to comply with the proposal.

**DATA AND REPORTING IMPACT:** The proposal would have no new data and reporting impact. School districts and open-enrollment charter schools would continue to follow current reporting requirements.

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

**PUBLIC COMMENTS:** The public comment period on the proposal begins August 21, 2020, and ends October 5, 2020. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on August 21, 2020. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About\\_TEA/Laws\\_and\\_Rules/Commissioner\\_Rules\\_\(TAC\)/Proposed\\_Commissioner\\_of\\_Education\\_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

**STATUTORY AUTHORITY.** The amendment is proposed under Texas Education Code (TEC), §29.081, which establishes criteria for community-based campus and internet online dropout recovery education programs; TEC, §29.0822, which authorizes an optional flexible school day program (OFSDP) to allow a student to enroll in a dropout recovery program in which courses are conducted online and creates an exception regarding the number of instructional hours required and the minimum number of minutes required for students enrolled in an online dropout recovery program; TEC, §29.0822(d), which authorizes the commissioner to adopt rules for the administration of an OFSDP; TEC, §39A.107, which requires the commissioner to approve a campus turnaround program only if the commissioner determines that the campus will satisfy all student performance standards required; and TEC, §48.004, as transferred, redesignated, and amended by House Bill 3, 86th Texas Legislature, 2019, which specifies that the commissioner shall adopt rules that are necessary to implement and administer the Foundation School Program.

**CROSS REFERENCE TO STATUTE.** The amendment implements Texas Education Code, §§29.081, 29.082, 39A.107, and 48.004.

*§129.1027. Optional Flexible School Day Program.*

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

(1) Campus--For the purposes of this section, a campus is an organization that provides instructional services to students, maintains a separate budget, and has an administrator whose primary duty is the full-time administration of the campus.

(2) Campus of innovative redesign--A campus with an approved campus turnaround plan in accordance with the requirements of Texas Education Code (TEC), §39A.107 [§39.107], that:

- (A) provides a rigorous and relevant academic program;
- (B) provides personal attention and guidance;
- (C) promotes high expectations for all students; and
- (D) addresses comprehensive schoolwide improvements that cover all aspects of a school's operations, including, but not limited to, curriculum and instruction changes, structural and managerial innovations, sustained professional development, financial commitment, and enhanced involvement of parents and the community.

(3) Community-based dropout recovery education program--For the purposes of this section, a community-based dropout recovery education program is a public or private program authorized under the TEC, §29.081(e), offered on a campus or through an internet online program that leads to a high school diploma and prepares the

student to enter the workforce as defined in TEC, §29.081(e-1) and (e-2).

(4) Instructional contact hours--Except for the purposes of subsection (b)(1)(B) of this section, instructional contact hours are the hours spent learning the curriculum under faculty and administrators with baccalaureate or advanced degrees. For the purposes of subsection (b)(1)(B) of this section, instructional contact hours are hours spent learning the curriculum under the direct supervision of an educator meeting the qualifications of the State Board for Educator Certification or the employing charter school.

(5) Optional Flexible School Day Program (OFSDP)--An OFSDP is a program authorized under the Texas Education Code (TEC), §29.0822, that is approved by the commissioner to provide flexible hours and days of attendance for eligible students, as defined in subsection (b) of this section.

(6) School district--For the purposes of this section, the definition of a school district includes an open-enrollment charter school.

(7) School district board of trustees--For the purposes of this section, the definition of a school district board of trustees includes a charter holder board.

(b) Student eligibility. A student is eligible to participate in an OFSDP if:

(1) the student:

(A) has dropped out of school or is at risk of dropping out of school, as defined by the TEC, §29.081;

(B) is attending a campus implementing an innovative redesign;

(C) is attending a community-based dropout recovery education program, as defined by the TEC, §29.081(e-1) and (e-2);

(D) is attending an approved early college high school program, as defined by the TEC, §29.908; or

(E) as a result of attendance requirements under the TEC, §25.092, will be denied credit for one or more classes in which the student has been enrolled; and

(2) either:

(A) the student and the student's parent, or person standing in parental relation to the student, agree in writing to the student's participation if the student is less than 18 years of age and not emancipated by marriage or court order; or

(B) the student agrees in writing to participate if the student is 18 years of age or older or has otherwise attained legal status as an adult by reason of marriage or court order.

(c) Application to operate an OFSDP. Any school district may apply for authorization to operate an OFSDP.

(1) The Texas Education Agency (TEA) shall make available to each eligible school district an application form for initial approval or renewal that must be completed and submitted annually to the TEA for approval.

(2) The board of trustees of a school district must approve the application. The board of trustees of a school district must include the OFSDP as an item on a regular agenda for a board meeting in compliance with subsection (h)(2) of this section [~~providing options for public input concerning the proposed application~~] before applying to operate an OFSDP.

(3) A school district must submit an application in accordance with instructions provided by the TEA.

(4) As part of the application process, a school district shall include the following information:

(A) implementation plan description;

(B) staff plans;

(C) schedules; and

(D) student attendance accounting security procedures and documentation.

(5) The school district must have submitted the required annual audit report for the immediate prior fiscal year to the TEA division responsible for financial audits. The annual audit must be determined by the TEA to be in compliance with applicable audit standards.

(6) The commissioner may consider academic and financial performance at a campus or a district when reviewing application qualifications.

(7) The TEA may defer or reject an application based on pending or final audit of data submitted, irregularities in assessment administration, accreditation status, accountability ratings, or interventions or sanctions under the TEC, Chapter 39A.

(8) The TEA may grant or reject an entire application or grant or reject any campus submitted on an application.

(9) The TEA will notify each applicant of its approval or nonapproval to operate an OFSDP.

(10) The school district must receive notice of approval to continue or begin participation in the program.

(d) Attendance. A school district must report student OFSDP attendance in a manner provided by the TEA in the Student Attendance Accounting Handbook adopted under §129.1025 of this title (relating to Adoption By Reference: Student Attendance Accounting Handbook). Funding for attendance in an OFSDP is proportionate to attendance in a full-time program meeting the requirements of the TEC, §25.081 and §25.082.

(e) Funding under the TEC, Chapters [41, 42, and] 46, 48, and 49. Attendance in an OFSDP that is not authorized or does not meet the requirements of the TEC, §29.0822, or this section is not eligible for state funding. For funding purposes, attendance for a student for a 12-consecutive-month school year cannot exceed the equivalent of one student in average daily attendance with perfect attendance.

(f) Extracurricular participation. A student enrolled in an OFSDP may participate in a competition or activity sanctioned by the University Interscholastic League (UIL) only if the student meets all UIL eligibility criteria.

(g) Conditions of program operation. A school district and campus operating an OFSDP must comply with all assurances in the program application. Approved OFSDPs will be required to submit annually one progress report on a form to be provided by the TEA and signed by the district superintendent or executive officer. The data in the progress reports must be disaggregated by ethnicity, age, gender, and socioeconomic status. Approved OFSDPs will submit data as stated in the assurances section of the program application.

(1) A school district with a campus operating an OFSDP must reapply annually to continue to operate an OFSDP to verify that student eligibility requirements specified in subsection (b) of this section are met.

(2) A student participating in an OFSDP must take all assessment instruments as defined by the TEC, §39.023, during the regularly scheduled administration periods.

(3) A school district operating an OFSDP must conduct audits every other year of the OFSDP student attendance processes, procedures, and data quality to maintain eligibility for the program. Audits may be conducted by an internal auditor, external auditor, or an authorized school district administrator responsible for student attendance accounting.

(4) The commissioner may consider academic performance and student attendance accounting documentation and procedures to continue district or campus eligibility for the OFSDP.

(h) School district annual performance review.

(1) Annually, each school district shall review its progress in relation to the performance indicators required by this subsection. Progress should be assessed based on information that is disaggregated with respect to race, ethnicity, gender, and socioeconomic status.

(A) A school district must include high school graduation as one of the performance indicators for students participating in the OFSDP.

(B) A school district operating an OFSDP for a campus will select and report student performance indicators appropriate to the population being served. The selected performance indicators must measure student achievement on an annual basis.

(2) At an open meeting of the board of trustees, a school district shall establish and review annual performance goals for the OFSDP related to performance indicators appropriate to the program, as established in paragraph (1) of this subsection and approved by the TEA.

(3) A school district shall ensure that decisions on the continuation of the OFSDP are based on state student assessment results and other student performance data.

(i) Evaluation of programs.

(1) The TEA shall evaluate the OFSDP based on performance indicators established in subsection (h) of this section.

(2) In addition to the evaluation on the indicators identified in subsection (h) of this section, a school district shall be evaluated based on student assessment administration and student attendance accounting processes and procedures.

(j) Revocation of or denial to renew authorization to operate an OFSDP.

(1) The commissioner may revoke authorization or deny renewal of an OFSDP based on the following factors:

(A) noncompliance with application assurances and/or the provisions of this section;

(B) failure to keep timely and accurate audit and attendance accounting records;

(C) failure to maintain student eligibility requirements specified in subsection (b) of this section if one of these designations was used as an eligibility criteria for OFSDP;

(D) lack of program success as evidenced by progress reports or program data; or

(E) failure to provide accurate, timely, and complete information as required by the TEA to evaluate the effectiveness of the OFSDP.

(2) A revocation or nonrenewal of an approved OFSDP takes effect for the semester immediately following the date on which the revocation or nonrenewal is issued unless another date is determined by the commissioner.

(3) An OFSDP is entitled to a ten-day notice of the proposed revocation or nonrenewal and an informal review by the commissioner's designee.

(4) A decision by the commissioner to revoke the authorization or deny renewal of an OFSDP is final and may not be appealed.

(5) The OFSDP is a state program subject to a special accreditation investigation under the TEC, Chapter 39A [39]. Student attendance accounting records are subject to audit under §129.21 of this title (relating to Requirements for Student Attendance Accounting for State Funding Purposes). The commissioner may impose interventions and sanctions on a school district under the TEC, Chapter 39A, for failure to comply with the OFSDP requirements of this section.

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

Filed with the Office of the Secretary of State on August 10, 2020.

TRD-202003272

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: September 20, 2020

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



## PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

### CHAPTER 229. ACCOUNTABILITY SYSTEM FOR EDUCATOR PREPARATION PROGRAMS

#### 19 TAC §229.1, §229.4

*(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 19 TAC §229.1(c) is not included in the print version of the Texas Register. The figure is available in the on-line version of the August 21, 2020, issue of the Texas Register.)*

The State Board for Educator Certification (SBEC) proposes amendments to §229.1 and §229.4, concerning accountability system for educator preparation programs. The proposed amendments to 19 Texas Administrative Code (TAC) Chapter 229 would provide for adjustments to the 2019-2020 Accountability System for Educator Preparation (ASEP) due to Governor Abbott's disaster declaration related to COVID-19; would include an accountability indicator for educator preparation programs (EPPs) based on the improvement in achievement of students taught by beginning teachers; would provide an index for the determination of EPP accreditation status; and would provide updates to the ASEP manual.

**BACKGROUND INFORMATION AND JUSTIFICATION:** EPPs are entrusted to prepare educators for success in the classroom. Texas Education Code (TEC), §21.0443, requires EPPs to adequately prepare candidates for certification. Similarly, TEC,

§21.031, requires the SBEC to ensure candidates for certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state. TEC, §21.045, also requires SBEC to establish standards to govern the continuing accountability of all EPPs. The SBEC rules in 19 TAC Chapter 229 establish the process used for issuing annual accreditation ratings for all EPPs to comply with these provisions of the TEC and to ensure the highest level of educator preparation, which is specified in the SBEC Mission Statement.

At the December 2018 SBEC meeting, Texas Education Agency (TEA) staff presented several topics and received direction from the SBEC to inform potential rule changes to Chapter 229 in the future. At that time, TEA staff informed the SBEC that staff would be working to explore opportunities for adjustments to the comprehensive accountability system to increase consistency and transparency. In addition to SBEC input and direction, TEA staff have worked with stakeholders to solicit feedback regarding potential options for the SBEC's consideration.

At the May 2020 SBEC meeting, TEA staff presented draft rule text and the SBEC directed staff to solicit additional stakeholder input on issues related to public comment received regarding the weighting of ASEP Indicator 1b, certification examination results for non-PPR exams, and the indexing system. Staff hosted a meeting with stakeholders on May 15 and gathered feedback on these issues.

Following is a description of the topics for the proposed amendments to 19 TAC Chapter 229. In addition to the detailed descriptions below, the proposed amendments would also remove outdated provisions related to the 2018-2019 academic year; would provide edits to the manual to address the 2019-2020 reporting year; would provide technical clean-up edits for clarification; and would provide relettering/renumbering to conform with the *Texas Register* style and formatting requirements.

*§229.1. General Provisions and Purpose of Accountability System for Educator Preparation Programs.*

*Update on Scope of ASEP Manual*

The proposed amendment to §229.1(c) would strike the reference to subsection (a) of §229.4 in favor of a broader reference to §229.4 as a whole to clarify that the relevant criteria, formulas, and calculations relevant to all of §229.4 are contained in Figure: 19 TAC §229.1(c).

*ASEP Manual*

The proposed changes to Figure: 19 TAC §229.1(c) would update the ASEP manual. Updates to the ASEP manual would provide transparency to the field as to the calculations used to determine accreditation statuses. These updates were developed in conference with the Data Working Group. The following is a chapter-by-chapter summary of the proposed changes to Figure: 19 TAC §229.1(c), the ASEP manual.

On the cover page and in the chapters, dates and years would be updated to align with the 2019-2020 reporting year. The table of contents would be updated to match the new page numbers and to be simplified for readability.

Chapter 1 would include a sentence in the About this Manual section describing the new content included in Chapter 9. The sections describing the Educator Preparation Advisory Committee and Educator Preparation Data Workgroup would be removed, as they are authorized by SBEC action, not by the ASEP manual.

Chapter 4 describes the calculations related to the appraisal of first-year teachers by administrators. A sentence noting the pilot year would be removed as it is not necessary for the purpose of the manual. In the Scoring Approach section, sentences describing the development of the scoring approach would be removed as they are not necessary for the purpose of the manual.

Chapter 5 describes the calculations related to the improvement in student achievement indicator. The existing placeholder text would be removed, and the description of how the indicator is calculated would be added. This would include an overview of the indicator, a description of the individuals included in the calculation, a description of the assessments included in the calculation, the scoring approach, special methodological considerations, and a worked example.

Chapter 6 describes the calculations related to the field supervision indicator. A sentence limiting the population would be removed as it is duplicative of rule text. The worked example would be updated to remove the observation date because it is not necessary for the example and to simplify future updates to the manual.

Chapter 7 describes the calculations related to new teacher satisfaction. A sentence noting the pilot year would be removed as it is not necessary for the purpose of the manual. Verb tense would be updated to agree with the pattern elsewhere in the manual.

Chapter 8 describes the calculations related to the EPP commendations. Language would be added to align with newly proposed 19 TAC §229.1(d).

New Chapter 9 would be added and would contain the calculations related to the ASEP Index system. This new chapter would include an overview of the ASEP Index system, a description of the calculation approach, a description of the weights, and a worked example.

At the May 1, 2020 meeting of the SBEC and in the May 15, 2020 stakeholder feedback session, there was discussion about the weighting of Indicator 1b, certification examination results for non-PPR exams. Weights within the ASEP Index have been developed based on stakeholder feedback over the past two years. There has been feedback from EPPs, including alternative certification programs and traditional undergraduate institutions, to adjust the weight of Indicator 1b. A plurality of feedback at the May 15, 2020 stakeholder meeting endorsed this recommendation, and subsequently the weight has been adjusted in the manual text. Additionally, at the May 1, 2020 meeting of the SBEC and feedback from stakeholders, there were concerns about the clarity of Chapter 5. The text was updated to better describe the individuals included and to use more consistent language throughout.

#### *Limitation on Eligibility for EPP Commendations*

The proposed amendment in §229.1(d) would clarify that EPPs that were under an active SBEC order or other TEA or SBEC sanction would be disqualified from receiving a commendation. This amendment would address comments received from the SBEC at the February 2020 meeting expressing concern that the SBEC sent mixed signals when it simultaneously commended a program that is sanctioned by the SBEC.

#### *§229.4. Determination of Accreditation Status.*

The proposed amendment to §229.4(a) would provide that the 2019-2020 academic year data for the performance indicators would be reported to EPPs but not be used for accountability

purposes. The governor declared a state of disaster on March 13, 2020, due to the COVID-19 pandemic that caused many campuses, facilities, and services to close during the disaster period and impacted the collection of relevant data and the opportunity for EPPs to meet these accountability measures. This amendment would prevent EPPs from being subject to accountability ratings based on data from the 2019-2020 academic year, which are partial and incomplete. The proposed changes would also include a technical edit to clarify that paragraphs (1)-(5) of §229.4(a) set out the indicators on which EPP accreditation statuses are based.

#### *Exception for Inclusion of Candidates Certified on the Governor's Disaster Waiver*

The proposed amendment in §229.4(a)(1)(B) would exempt candidates issued a probationary certificate without the appropriate certification exams under the governor's waiver from the calculation of the ASEP pass rates for the 2020-2021 academic year. This would keep EPPs from being held accountable for the test performance of individuals who have already completed the program long before they test, preventing EPPs from being able to require that the individuals have done sufficient preparation immediately prior to the examination to ensure success on the test.

#### *Technical and Clean-up Amendments*

Proposed amendments in §229.4(a)(2) and §229.4(a)(5) would delete outdated provisions designating the 2018-2019 academic year as report-only for data related to these indicators.

Proposed amendments to the definition of the performance standards in §229.4(a)(2), (3), (4)(B), and (5) would provide technical edits to clarify the performance standard for each of these indicators, combining the description of the methodology with the specific percentage required to pass into a single sentence to avoid confusion.

#### *ASEP Indicator Based on Student Growth*

A proposed amendment in §229.4(a)(3) would also update the rule text to implement the ASEP Indicator based on student growth. The relevant student-level calculations are completed as part of the Kindergarten-Grade 12 accountability ratings, and the relevant teacher and EPP calculations are described in Figure: 19 TAC §229.1(c). These amendments and methods would update the ASEP system to comply with the statutory mandate in TEC, §21.045(a)(3). Based on feedback from the SBEC and stakeholders, the wording in §229.4(a)(3) has been updated since the May 1, 2020 meeting to stipulate that this indicator will become actionable after two more years of data have become available. In combination with the 2018-2019 data, this would mean that a total of three years of data would be available to the SBEC and EPPs prior to this indicator becoming actionable.

This indicator, the related methodology, the related performance standard, and the related timeline for implementation were developed in conference with the Indicator 3 working group, an ad hoc stakeholder group consisting of representatives from EPPs, educator organizations, representatives from higher education, and other nonprofit groups. TEA also conferred with the Data Working Group in the development of the indicator.

#### *Determination of Accreditation Status*

The proposed amendment to §229.4(b) would clarify that for the 2020-2021 academic year, the recommended accreditation status would be the more favorable outcome of the index system

described in the proposed new §229.4(b)(1)(A)-(D) or the existing system, relettered to §229.4(b)(2)(A)-(D) for each EPP.

Proposed new §229.4(b)(1) would clarify that beginning in the 2020-2021 academic year, the relevant calculations for the ASEP Index system are contained in the ASEP manual, Figure: 19 TAC §229.1(c), and in compliance with SBEC rules and the TEC. This would provide transparency to the field and policymakers in how the accreditation statuses are assigned.

Proposed new §229.4(b)(1)(A)-(D) would prescribe the new system of the determination of accreditation status assignment. The proposed rule sets 80% of possible points as threshold score for Accredited-Probation status as suggested by stakeholders and in an effort to ensure that the index system created a similar number of programs on Accredited-Probation status to the number on Accredited-Probation status in the current system. The proposed rule sets 85% of possible points as the threshold score for Accredited-Warning status in response to stakeholder comment and to identify programs that are in danger of slipping into Accredited-Probation status in coming years without introducing additional challenges for programs that are effectively engaged in improvement. Specifically, the proposed amendments are as follows.

New §229.4(b)(1)(A) would assign an EPP a status of Accredited if they meet the standard of 85% of the possible points for the academic year in the ASEP Index system. New §229.4(b)(1)(B) would assign an EPP a status of Accredited-Not Rated prior to the accumulation of data necessary for determining a rating. New §229.4(b)(1)(C)(i) would assign an EPP a status of Accredited-Warning if they accumulate 80% or more but less than 85% of the possible points for the academic year in the ASEP Index system. New §229.4(b)(1)(C)(ii) would maintain the current provisions now reflected in proposed renumbered §229.4(b)(2)(C)(ii) that states an EPP may be assigned a status of Accredited-Warning for violations of rule, order, and/or statute. New §229.4(b)(1)(D)(i) would assign an EPP a status of Accredited-Probation if they accumulate less than 80% of the possible points for the year in the ASEP Index system. New §229.4(b)(1)(D)(ii) would maintain language of proposed renumbered §229.4(b)(2)(D)(ii) stating that an EPP may be assigned a status of Accredited-Probation for violations of rule, order, and/or statute.

Proposed amended and renumbered §229.4(b)(2) would retain the current accreditation status assignment provisions based on the performance standards described in §229.4(a) and in compliance with SBEC rules, orders, and/or TEC, Chapter 21. Per proposed §229.4(b), this method for the determination of accreditation statuses would be assessed in the 2020-2021 academic year, and the recommended accreditation status for the EPP would be the more favorable outcome of this method or the index method in proposed new §229.4(b)(1). The proposed amendment in §229.4(b)(1)-(4) would be renumbered to subsection (b)(2)(A)-(D) for technical formatting purposes.

The proposed amendment would also renumber §229.4(b)(5) to §229.4(b)(3) for technical formatting purposes.

Proposed new §229.4(b)(4) would provide an accreditation status of Not Rated: Declared State of Disaster for the 2019-2020 academic year for all EPPs. This status is based on the governor's declaration of disaster on March 13, 2020, due to COVID-19. This new status would limit the impact of test center closures, local educational agency (LEA) closures, and survey waivers on EPP accreditation statuses. The proposed new subsection

would also prescribe that the 2019-2020 Not Rated: Declared State of Disaster status shall not interrupt consecutively measured years or next most recent years and would not be included in any count of years related to the ASEP system. Additionally, the proposed new subsection would prescribe that the ASEP status that each EPP was assigned by the SBEC for the 2018-2019 academic year would be the operative accreditation status for purposes prescribed in 19 TAC Chapter 228, Requirements for Educator Preparation Programs.

**FISCAL IMPACT:** Ryan Franklin, associate commissioner for educator leadership and quality, has determined that for the first five-year period the proposal is in effect, there is no additional fiscal impact on state or local governments and there are no additional costs to entities required to comply with the proposal.

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

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

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

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

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

**PUBLIC BENEFIT AND COST TO PERSONS:** Mr. Franklin has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be an accountability system that informs the public of the quality of educator preparation provided by each SBEC-approved EPP. There is no anticipated cost to persons who are required to comply with the proposal.

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

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

**PUBLIC COMMENTS:** The public comment period on the proposal begins August 21, 2020 and ends September 21, 2020. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About\\_TEA/Laws\\_an](https://tea.texas.gov/About_TEA/Laws_an)

d\_Rules/SBEC\_Rules\_(TAC)/Proposed\_State\_Board\_for\_Educator\_Certification\_Rules/. The SBEC will take registered oral and written comments on the proposal at the October 9, 2020 meeting in accordance with the SBEC board operating policies and procedures. All requests for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the Department of Educator Leadership and Quality, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Mr. Ryan Franklin, associate commissioner for educator leadership and quality, not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on August 21, 2020.

STATUTORY AUTHORITY. The amendments are proposed under Texas Education Code (TEC), §21.041(a), which allows the State Board for Educator Certification (SBEC) to adopt rules as necessary for its own procedures; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(d), which states that the SBEC may adopt a fee for the approval and renewal of approval of an EPP, for the addition of a certificate or field of certification, and to provide for the administrative cost of appropriately ensuring the accountability of educator preparation programs (EPPs); TEC, §21.043(b) and (c), as amended by Senate Bill (SB) 1839, 85th Texas Legislature, Regular Session, 2017, which require SBEC to provide EPPs with data, as determined in coordination with stakeholders, based on information reported through the Public Education Information Management System (PEIMS) that enables an EPP to assess the impact of the program and revise the program as needed to improve; TEC, §21.0441(c) and (d), which require the SBEC to adopt rules setting certain admission requirements for EPPs; TEC, §21.0443, which states that the SBEC shall propose rules to establish standards to govern the approval or renewal of approval of EPPs and certification fields authorized to be offered by an EPP; to be eligible for approval or renewal of approval, an EPP must adequately prepare candidates for educator certification and meet the standards and requirements of the SBEC; the SBEC shall require that each EPP be reviewed for renewal of approval at least every five years; the SBEC shall adopt an evaluation process to be used in reviewing an EPP for renewal of approval; TEC, §21.045, as amended by SB 1839, 85th Texas Legislature, Regular Session, 2017, which states that the board shall propose rules establishing standards to govern the approval and continuing accountability of all EPPs; TEC, §21.0451, which states that the SBEC shall propose rules for the sanction of EPPs that do not meet accountability standards and shall annually review the accreditation status of each EPP; the costs of technical assistance required under TEC, 21.0451(a)(2)(A), or the costs associated with the appointment of a monitor under TEC, §21.0451(a)(2)(C), shall be paid by the sponsor of the EPP; and TEC, §21.0452, which states that to assist persons interested in obtaining teaching certification in selecting an EPP and assist school districts in making staffing decisions, the SBEC shall make certain specified information regarding educator programs in this state available to the public through the SBEC's Internet website.

CROSS REFERENCE TO STATUTE. The amendments implement TEC, §§21.041(a), (b)(1), and (d); 21.043(b) and (c), as amended by Senate Bill (SB) 1839, 85th Texas Legislature, Regular Session, 2017; 21.0441(c) and (d); 21.0443; 21.045, as amended by SB 1839, 85th Texas Legislature, Regular Session, 2017; 21.0451; and 21.0452.

*§229.1. General Provisions and Purpose of Accountability System for Educator Preparation Programs.*

(a) The State Board for Educator Certification (SBEC) is responsible for establishing standards to govern the continuing accountability of all educator preparation programs (EPPs). The rules adopted by the SBEC in this chapter govern the accreditation of each EPP that prepares individuals for educator certification. No candidate shall be recommended for any Texas educator certification class or category except by an EPP that has been approved by the SBEC pursuant to Chapter 228 of this title (relating to Requirements for Educator Preparation Programs) and is accredited as required by this chapter.

(b) The purpose of the accountability system for educator preparation is to assure that each EPP is held accountable for the readiness for certification of candidates completing the programs.

(c) The relevant criteria, formulas, calculations, and performance standards relevant to subsection (d) of this section and §229.4 [§229.4(a)] of this title (relating to Determination of Accreditation Status) are prescribed in the *Texas Accountability System for Educator Preparation (ASEP) Manual* provided as a figure [provided] in this subsection.

Figure: 19 TAC §229.1(c)

[Figure: 19 TAC §229.1(e)]

(d) An accredited EPP that is not under an active SBEC order or otherwise sanctioned by the SBEC may receive commendations for success in the following four dimensions [categories] identified by the SBEC and prescribed in the figure in subsection (c) of this section:

- (1) Rigorous and Robust Preparation;
- (2) Preparing the Educators Texas Needs;
- (3) Preparing Educators for Long-Term Success; and
- (4) Innovative Educator Preparation.

*§229.4. Determination of Accreditation Status.*

(a) Accountability performance indicators. The State Board for Educator Certification (SBEC) shall determine the accreditation status of an educator preparation program (EPP) at least annually, based on the following accountability performance indicators, disaggregated by demographic group and other requirements of this chapter and determined with the formulas and calculations included in the figure provided in §229.1(c) of this title (relating to General Provisions and Purpose of Accountability System for Educator Preparation Programs). Data will be used only if the following indicators were included in the accountability system for that academic year. [:] Except for the 2019-2020 academic year, when the data described in paragraphs (1)-(5) of this subsection will be reported to EPPs and will not be used to determine accreditation statuses, EPP accreditation statuses shall be based on:

(1) the EPP candidates' performance on examinations of pedagogy and professional responsibilities (PPR) and non-PPR standard certification examinations. The EPP candidates' performance on PPR and non-PPR examinations shall provide separate accountability performance indicators for EPPs.

(A) For both PPR and non-PPR examinations, the performance standard shall be calculated based on the percentage of individuals admitted after December 26, 2016, who passed an examination within the first two attempts. For purposes of determining the pass rate, an individual shall not be excluded because the individual has not been recommended for a standard certificate. The pass rate is based solely on the examinations approved by the EPP and required to obtain initial certification in the class or category for which the individual serves his

or her internship, clinical teaching, or practicum. Examinations not required for certification in that class or category, whether taken before or after admission to an EPP, are not included in the rate. The formula for calculation of pass rate is the number of individuals who have passed an examination on their first or second attempt, including any attempts after the candidate completed the EPP, divided by the number of individuals who passed an examination on their first attempt plus those who passed or failed on their second attempt.

(B) For the 2020-2021 academic year and following, the performance standard shall be the percent of individuals admitted after December 26, 2016, who passed an examination within the first two attempts, including those examinations attempted after the individual has completed the EPP or when the EPP has not recommended the individual for a standard certificate. The pass rate is based solely on the examinations approved by the EPP. Examinations taken before admission to the EPP or specific examinations taken for pilot purposes are not included in the pass rate. Completers who have been issued a probationary certificate under a waiver issued by the governor pursuant to the declaration of disaster on March 13, 2020, are not included in the pass rate for the 2020-2021 academic year.

(C) For examinations of PPR, the pass rate will be calculated as described in subparagraph (A) of this paragraph for the 2018-2019 and 2019-2020 academic years and subparagraph (B) of this paragraph beginning with the 2020-2021 academic year. The performance standard shall be a pass rate of 85%.

(D) For non-PPR examinations, the pass rate will be calculated as described in subparagraph (A) of this paragraph for the 2018-2019 and 2019-2020 academic years and subparagraph (B) of this paragraph beginning with the 2020-2021 academic year. The performance standard shall be a pass rate of 75%.

(2) the results of appraisals of first-year teachers by administrators, based on a survey in a form to be approved by the SBEC. The performance standard shall be 70% [the percentage] of first-year teachers from the [each] EPP who are appraised as "sufficiently prepared" or "well prepared." [The performance standard shall be 70%. The 2018-2019 academic year will be a reporting year only and will not be used to determine accreditation status;]

(3) the growth of students taught by beginning teachers as indicated by the STAAR Progress Measure, determined at the student level as described in Figure: 19 TAC §97.1001(b) of Part II of this title (relating to Accountability Rating System), and aggregated at the teacher level as described in Figure: 19 TAC §229.1(c) of this title (relating to General Provisions and Purpose of Accountability System for Educator Preparation Programs). The performance standard shall be 70% of beginning teachers from the EPP reaching the individual performance threshold. The first two academic years for which the Texas Education Agency (TEA) has data necessary to calculate this performance standard following the 2019-2020 academic year will be reporting years only and will not be used to determine accreditation status; [to the extent practicable, as valid data become available and performance standards are developed, the improvement in student achievement of students taught by beginning teachers;]

(4) the results of data collections establishing EPP compliance with SBEC requirements specified in §228.35(g) of this title (relating to Preparation Program Coursework and/or Training), regarding the frequency, duration, and quality of field supervision to candidates completing clinical teaching or an internship. The frequency and duration of field supervision shall provide one accountability performance indicator, and the quality of field supervision shall provide a separate accountability performance indicator.

(A) The performance standard as to the frequency, duration, and required documentation of field supervision shall be that the EPP meets the requirements of documentation of §228.35(g) of this title for 95% of the EPP's candidates.

(B) The performance standard for quality shall be 90% [the percentage] of candidates rating [who rate] the field supervision as "frequently" or "always or almost always" providing the components of structural guidance and ongoing support[- The performance standard shall be 90%]; and

(5) the results from a teacher satisfaction survey, in a form approved by the SBEC, of new teachers administered at the end of the first year of teaching under a standard certificate. The performance standard shall be 70% [the percentage] of teachers responding [who respond] that they were "sufficiently prepared" or "well prepared" by their EPP. [The performance standard shall be 70%. The 2018-2019 academic year will be a reporting year only and will not be used to determine accreditation status.]

(b) Accreditation status assignment. For the 2020-2021 academic year, the assigned accreditation status shall be the better result for the EPP from the system described in paragraph (1) of this subsection and paragraph (2) of this subsection [All approved EPPs shall be assigned an accreditation status based on the accountability performance standards described in subsection (a) of this section and in compliance with SBEC rules and/or TEC, Chapter 21].

(1) Beginning in the 2020-2021 academic year, all approved EPPs may be assigned an accreditation status based on their performance in the Accountability System for Educator Preparation Programs (ASEP) Index system, as described in Figure: 19 TAC §229.1(c) of this title.

(A) Accredited status. An EPP shall be assigned an Accredited status if the EPP has met the standard of 85% of the possible points in the ASEP Index system as described in Figure: 19 TAC §229.1(c) of this title and has been approved by the SBEC to prepare, train, and recommend candidates for certification.

(B) Accredited-Not Rated status. An EPP shall be assigned Accredited-Not Rated status upon initial approval to offer educator preparation, until the EPP can be assigned a status based on the ASEP Index system as described in Figure: 19 TAC §229.1(c) of this title. An EPP is fully accredited and may recommend candidates for certification while it is in Accredited-Not Rated status.

(C) Accredited-Warning status.

(i) An EPP shall be assigned Accredited-Warning status if the EPP accumulates 80% or greater but less than 85% of the possible points in the ASEP Index system as described in Figure: 19 TAC §229.1(c) of this title.

(ii) An EPP may be assigned Accredited-Warning status if the SBEC determines that the EPP has violated SBEC rules, orders, and/or Texas Education Code (TEC), Chapter 21.

(D) Accredited-Probation status.

(i) An EPP shall be assigned Accredited-Probation status if the EPP accumulates less than 80% of the possible points in the ASEP Index system as described in Figure: 19 TAC §229.1(c) of this title.

(ii) An EPP may be assigned Accredited-Probation status if the SBEC determines that the EPP has violated SBEC rules, orders, and/or TEC, Chapter 21.

(2) Through the 2020-2021 academic year, all approved EPPs may be assigned an accreditation status as follows.



(A) [(1)] Accredited status. An EPP shall be assigned an Accredited status if the EPP has met the accountability performance standards described in subsection (a) of this section and has been approved by the SBEC to prepare, train, and recommend candidates for certification.

(B) [(2)] Accredited-Not Rated status. An EPP shall be assigned Accredited-Not Rated status upon initial approval to offer educator preparation, until the EPP can be assigned a status based on the performance standards described in subsection (a) of this section. An EPP is fully accredited and may recommend candidates for certification while it is in Accredited-Not Rated status.

(C) [(3)] Accredited-Warning Status.

(i) [(A)] An EPP shall be assigned Accredited-Warning status if the EPP:

(I) [(+)] fails to meet the performance standards set by the SBEC for the overall performance of all its candidates on any of the indicators set forth in subsection (a) of this section in any one year;

(II) [(+)] fails to meet the performance standards in two demographic groups on an indicator set forth in subsection (a) of this section in any one year; or

(III) [(+)] fails to meet the performance standards for a demographic group on any of the indicators set forth in subsection (a) of this section for two consecutively measured years, regardless of whether the deficiency is in the same demographic group or standard.

(ii) [(B)] An EPP may be assigned Accredited-Warning status if the SBEC determines that the EPP has violated SBEC rules, orders, and/or TEC, Chapter 21.

(D) [(4)] Accredited-Probation status.

(i) [(A)] An EPP shall be assigned Accredited-Probation status if the EPP:

(I) [(+)] fails to meet the performance standards set by the SBEC for the overall performance of all its candidates on any of the indicators set forth in subsection (a) of this section for two consecutively measured years;

(II) [(+)] fails to meet the performance standards in three demographic groups on an indicator set forth in subsection (a) of this section in any one year; or

(III) [(+)] fails to meet the performance standards for a demographic group on any of the indicators set forth in subsection (a) of this section for three consecutively measured years, regardless of whether the deficiency is in the same demographic group or standard.

(ii) [(B)] An EPP may be assigned Accredited-Probation status if the SBEC determines that the EPP has violated SBEC rules, orders, and/or TEC, Chapter 21.

(3) [(5)] Not Accredited-Revoked status.

(A) An EPP shall be assigned Not Accredited-Revoked status and its approval to recommend candidates for educator certification revoked if it is assigned Accredited-Probation status for three consecutively measured years.

(B) An EPP may be assigned Not Accredited-Revoked status if the EPP has been on Accredited-Probation status for one year, and the SBEC determines that revoking the EPP's approval is

reasonably necessary to achieve the purposes of the TEC, §21.045 and §21.0451.

(C) An EPP may be assigned Not Accredited-Revoked status if the EPP fails to pay the required ASEP [Accountability System for Educator Preparation Programs (ASEP)] technology fee by the deadline set by TEA as prescribed in §229.9(7) of this title (relating to Fees for Educator Preparation Program Approval and Accountability).

(D) An assignment of Not Accredited-Revoked status and revocation of EPP approval to recommend candidates for educator certification is subject to the requirements of notice, record review, and appeal as described in this chapter.

(E) A revocation of an EPP approval shall be effective for a period of two years, after which a program may reapply for approval as a new EPP pursuant to Chapter 228 of this title (relating to Requirements for Educator Preparation Programs).

(F) Upon revocation of EPP approval, the EPP may not admit new candidates for educator certification but may complete the training of candidates already admitted by the EPP and recommend them for certification. If necessary, TEA staff and other EPPs shall cooperate to assist the previously admitted candidates of the revoked EPP to complete their training.

(4) Not Rated: Declared State of Disaster status.

(A) Due to the governor's declaration of disaster on March 13, 2020 in accordance with Texas Government Code, §418.014, all EPPs shall be assigned a status of Not Rated: Declared State of Disaster for the 2019-2020 academic year.

(B) The assignment of Not Rated: Declared State of Disaster shall not interrupt consecutively measured years or next most recent prior years as prescribed in this chapter. The assignment of Not Rated: Declared State of Disaster shall not be included in any count of years prescribed in this chapter.

(C) For the purposes of §228.10 of this title (relating to Approval Process), §228.17(c) of this title (relating to Change of Ownership and Name Change), and §228.20 of this title (relating to Governance of Educator Preparation Programs), the status the SBEC assigned an EPP for the 2018-2019 academic year shall be the operative accreditation status.

(c) Small group exception.

(1) For purposes of accreditation status determination, the performance of an EPP candidate group, aggregated or disaggregated by demographic group, shall be measured against performance standards described in this chapter in any one year in which the number of individuals in the group exceeds 10. The small group exception does not apply to compliance with the frequency and duration of field supervisor observations.

(2) For an EPP candidate group, aggregated or disaggregated by demographic group, where the group contains 10 or fewer individuals, the group's performance shall not be counted for purposes of accreditation status determination for that academic year based on only that year's group performance.

(3) If the current year's EPP candidate group, aggregated or disaggregated by demographic group, contained between one and 10 individuals, that group performance shall be combined with the next most recent prior year's group performance for which there was at least one individual, and if the two-year cumulated group contains more than 10 individuals, then the two-year cumulated group performance must be measured against the standards in the current year.

(4) If the two-year cumulated EPP candidate group, aggregated or disaggregated by demographic group, contains between one and 10 individuals, then the two-year cumulated group performance shall be combined with the next most recent group performance for which there was at least one individual. The three-year cumulated group performance must be measured against the standards in the current year, regardless of how small the cumulated number of group members may be.

(5) In any reporting year in which the EPP candidate group, aggregated or disaggregated by demographic group, does not meet the necessary number of individuals needed to measure against performance standards for that year, for all indicators, the accreditation status will continue from the prior year. Any sanction assigned as a result of an accredited-warned or accredited-probation status in a prior year will continue if that candidate group has not met performance standards since being assigned accredited-warned or accredited-probation status. The SBEC may modify the sanction as the SBEC deems necessary based on subsequent performance, even though that performance is not measured against performance standards for a rating.

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

Filed with the Office of the Secretary of State on August 10, 2020.

TRD-202003262

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Earliest possible date of adoption: September 20, 2020

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



## CHAPTER 231. REQUIREMENTS FOR PUBLIC SCHOOL PERSONNEL ASSIGNMENTS

The State Board for Educator Certification (SBEC) proposes amendments to §§231.3, 231.9, 231.15, 231.17, 231.19, 231.49, 231.51, 231.55, 231.61, 231.63, 231.65, 231.91, 231.93, 231.123, 231.125, 231.127, 231.129, 231.151, 231.153, 231.177, 231.191, 231.193, 231.195, 231.201, 231.203, 231.205, 231.207, 231.209, 231.211, 231.213, 231.215, 231.217, 231.219, 231.271, 231.283, 231.287, 231.289, 231.305, 231.331, 231.333, 231.335, 231.337, 231.339, 231.341, 231.361, 231.365, 231.392 - 231.395, 231.397, 231.421, 231.423, 231.425, 231.427, 231.445, 231.483, 231.487, 231.503, 231.521, 231.525, 231.541, 231.543, 231.545, 231.565, 231.567, 231.569, 231.573, 231.575, 231.577, 231.579, and 231.581; the repeal of §§231.251, 231.253, 231.255, 231.257, 231.259, 231.485, 231.591, 231.595, 231.611, 231.613, 231.615, 231.617, 231.619, 231.621, 231.623, 231.641, 231.643, and 231.645; and new §§231.485, 231.491, 231.585, 231.587, 231.589, 231.591, 231.593, 231.595, 231.631, 231.633, 231.651, 231.701, 231.703, 231.705, 231.707, 231.709, 231.711, 231.713, 231.751, 231.753, and 231.755, concerning requirements for public school personnel assignments. The proposed revisions to 19 Texas Administrative Code (TAC) Chapter 231, Subchapters B, C, D, E, F, and G, would implement the statutory requirements in House Bill (HB) 3, 86th Texas Legislature, 2019, that requires that all master teacher certificates be designated as "legacy" certificates and recognized for assignment purposes until they expire. The proposed revisions would also incorporate

courses approved by the State Board of Education (SBOE), would add certificate areas to the list of credentials appropriate for placement into an assignment, and would reorganize current provisions to improve readability and align citations.

**BACKGROUND INFORMATION AND JUSTIFICATION:** The SBEC rules in 19 TAC Chapter 231 establish the personnel assignments that correlate with appropriate certifications and are organized as follows: Subchapter A, Criteria for Assignment of Public School Personnel; Subchapter B, Prekindergarten-Grade 6 Assignments; Subchapter C, Grades 6-8 Assignments; Subchapter D, Electives, Disciplinary Courses, Local Credit Courses, and Innovative Courses, Grades 6-12 Assignments; Subchapter E, Grades 9-12 Assignments; Subchapter F, Special Education-Related Services Personnel Assignments; and Subchapter G, Paraprofessional Personnel, Administrators, and Other Instructional and Professional Support Assignments.

These subchapters provide guidance to school districts and educators by providing a listing of courses by grade level and subject area and by identifying the corresponding certificates and other requirements for placement of individuals into classroom and/or campus assignments. This information assists districts with hiring and personnel assignment decisions.

The following is an overview of proposed revisions to 19 TAC Chapter 231.

### *Subchapter B. Prekindergarten-Grade 6 Assignments*

#### *HB 3 Legacy Master Teacher Updates*

Proposed amendments to the following sections in Subchapter B would implement HB 3, 86th Texas Legislature, 2019, which requires all master teacher certificates be designated as "legacy" certificates and recognized for assignment purposes: §231.3(b)(15)-(17); §231.9(b)(11)-(13); §231.15(17)-(21); and §231.17(16).

#### *§231.19. Languages Other Than English, Grades 1-6.*

The proposed amendment in §231.19 would add Classical Languages and Discovering Languages and Cultures to align with the current list of SBOE-approved Languages Other Than English (LOTE) courses. The proposed amendment would provide clarity for district personnel to place educators with the appropriate credentials into classroom assignments. The list of certificates appropriate to teach these courses remains the same.

### *Subchapter C. Grades 6-8 Assignments*

#### *HB 3 Legacy Master Teacher Updates*

Proposed amendments to the following sections in Subchapter C would implement HB 3, which requires all master teacher certificates be designated as "legacy" certificates and recognized for assignment purposes: §231.49(19); §231.51(22); §231.61(14) and (15); §231.63(27); and §231.65(38) and (39).

#### *§231.55. Languages Other Than English, Grades 6-8.*

The proposed amendment in §231.55(a) would add Classical Languages and Discovering Languages and Cultures and delete Exploratory Languages and Cultural and Linguistic Topics for LOTE classrooms for Grades 6-8 to align with the current list of SBOE-approved LOTE courses. The proposed amendment would provide clarity for district personnel to place educators with the appropriate credentials into classroom assignments. The list of certificates appropriate to teach these courses remains the same.

*Subchapter D. Electives, Disciplinary Courses, Local Credit Courses, and Innovative Courses, Grades 6-12 Assignments*

Proposed amendments in Subchapter D would streamline rules to prevent redundancy and confusion with SBOE and commissioner of education rules regarding student course credit so that the SBEC rules pertain only to educator certificates and assignments and provide clarity for district personnel, as student course credit decisions are determined by SBOE or Texas Education Agency (TEA) and not the SBEC.

*§231.91. Reserve Officer Training Corps.*

The proposed amendment in §231.91(d) would delete the provision pertaining to student course credit for Reserve Officer Training Corps classes because student course credit is not within the jurisdiction of the SBEC. Student course credit decisions are determined by the SBOE or TEA, not the SBEC.

*§231.93. Athletics; Cheerleading; Drill Team; Marching Band.*

The proposed amendment in §231.93(b) would delete the provision pertaining to student course credit for Athletics, Cheerleading, Drill Team, and Marching Band classes because student course credit is not within the jurisdiction of the SBEC. The proposed amendment in §231.93(a) would also provide technical formatting clean-up.

*Subchapter E. Grades 9-12 Assignments*

*HB 3 Legacy Master Teacher Updates*

Proposed amendments in the following divisions and sections in Subchapter E would implement HB 3, which requires all master teacher certificates be designated as "legacy" certificates and recognized for assignment purposes: Division 1: §231.127(9) and §231.129(9); Division 4: §231.191(4), §231.193(4), and §231.195(4); Division 5: §231.201(9), §231.203(9), §231.205(7), §231.207(9), §231.209(9), §231.211(7), §231.213(7), §231.215(12), §231.217(12), §231.219(4); Division 9: §231.271(c)(3); Division 10: §231.283(a)(6) and §231.287(a)(4); Division 15: §231.392(10), §231.394(a)(4), §231.395(a)(4), and §231.397(a)(4); Division 17: §231.423(a)(8) and §231.425(a)(5); Division 18: §231.445(a)(8); Division 21: §231.503(a)(7); Division 22: §231.525(a)(2); Division 24: §231.565(a)(8), §231.569(a)(1), §231.573(a)(1), §231.575(a)(1), §231.577(a)(3), §231.579(a)(1), and §231.581(a)(1).

*Aligning with SBOE and Necessary Updates*

To reflect courses approved by the SBOE and make other necessary updates, the changes proposed in the specified divisions below would identify the appropriate certificates and/or training requirements for placement into various assignments.

*Division 1. English Language Arts and Reading, Grades 9-12 Assignments.*

*§231.123. English I and II for Speakers of Other Languages, Grades 9-12.*

The proposed amendment in §231.123(a) and (b) would add a new SBOE-approved course, English Language Development and Acquisition (ELDA) for Grades 9-12. The proposed amendment would provide clarity for district personnel to place educators with the appropriate credentials into classroom assignments. The list of certificates appropriate to teach these courses remains the same.

*§231.125. English as a Second Language, Grades 9-12.*

The proposed amendment in §231.125 would delete the course English Language Development and Acquisition (ELDA) for Grades 9-12, because it would be duplicative of the language that would be added by the proposed amendment to §231.123(a). The proposed amendment to §231.125 would streamline the rules to provide clarity for district personnel to place educators with the appropriate credentials into classroom assignments. The list of certificates appropriate to teach these courses remains the same.

*Division 2. Languages Other Than English, Grades 9-12 Assignments*

*§231.151. Languages Other Than English, Grades 9-12.*

The proposed amendment in §231.151 would add Levels I-VII for Languages Other than English; Classical Languages, Levels I-VII; Discovering Languages and Cultures; Seminars in Languages Other Than English; Seminar in Classical Languages; and Advanced Language for Career Exploration; and would delete Exploratory Languages and Cultural and Linguistic Topics for Grades 9-12 to align with the current list of SBOE-approved LOTE courses. The proposed amendment would provide clarity for district personnel to place educators with the appropriate credentials into classroom assignments. The list of certificates appropriate to teach these courses remains the same.

*§231.153. American Sign Language, Grades 9-12.*

The proposed amendment in §231.153(a) would add Levels I-IV for American Sign Language for Grades 9-12 to specify the specific SBOE-approved courses. The proposed amendment would provide clarity for district personnel to place educators with the appropriate credentials into classroom assignments. The list of certificates appropriate to teach these courses remains the same.

*Division 3. Social Studies, Grades 9-12 Assignments.*

*§231.177. Ethnic Studies: Mexican American Studies, Grades 9-12.*

The proposed amendment in §231.177 would change the section title to read, "Ethnic Studies, Grades 9-12," and would add the SBOE-approved course, Ethnic Studies: African American Studies, Grades 9-12, to the list of course offerings in the Ethnic Studies section and include the list of credentials appropriate to serve in this assignment. These proposed changes would provide for both ethnic studies courses, Mexican American Studies and African American Studies, to be taught by the same list of certificates appropriate to teach the courses.

*Division 8. Technology Applications, Grades 9-12 Assignments.*

Division 8 would be proposed for repeal, with current courses and appropriate certificates relocated to other sections in this chapter for clarity to the field.

*Division 9. Career Development, Grades 9-12 Assignments.*

*§231.271. Career Development, Grades 9-12.*

Section 231.271(a) would be reorganized to add new paragraph (1) to reflect current certificates for teaching career development for Grades 9-12 and would add new paragraph (2) that would provide holders of special education certificates an opportunity to teach career development courses, provided they complete the additional specified, TEA-approved career and technical education (CTE) training prior to teaching these courses. The

proposed amendment would ensure that students who receive special education services have opportunities to enroll in these courses taught by teachers who are highly trained to provide appropriate supports. The proposed amendment would also provide clarity for district personnel to place educators with the appropriate credentials into classroom assignments.

Section 231.271(b) would be reorganized to add new paragraph (1) to reflect current certificates for project-based research courses for Grades 9-12 and would add new paragraphs (2) and (3) that would provide technology certificates to teach project-based research courses. A proposed amendment would remove a reference to vocational or CTE certificates. The proposed amendment would provide clarity for district personnel to place educators with the appropriate credentials into classroom assignments.

Proposed new paragraphs (11)-(14) in §231.271(c) would add new certificates to teach the Applied Mathematics for Technical Professionals course for Grades 9-12. The proposed addition of "legacy" to paragraph (3) and the proposed amendment would provide clarity for district personnel to place educators with the appropriate credentials into classroom assignments.

*Division 10. Agriculture, Food, and Natural Resources, Grades 9-12 Assignments.*

§231.289. Agriculture Equipment Design and Fabrication; Agricultural Structures Design and Fabrication; Agricultural Mechanics and Metal Technologies; Agricultural Power Systems; Oil and Gas Production, Grades 9-12.

The proposed amendment in §231.289 would delete from the section title, "Oil and Gas Production," and would delete the SBOE-approved courses Oil and Gas Production I and Oil and Gas Production II from the list of course offerings, as they would be duplicative because they have been reorganized to other sections of this chapter. The list of certificates appropriate to teach these courses remains the same. The proposed amendment would provide clarity for district personnel to place educators with the appropriate credentials into classroom assignments.

*Division 11. Architecture and Construction, Grades 9-12 Assignments.*

§231.305. *Architectural Design, Grades 9-12.*

Proposed new §231.305(b)(9) and (10) would provide the appropriate certificates to teach architectural design courses for Grades 9-12. The additional certification areas would increase district flexibility in course offerings for students by expanding the list of certified educators with the knowledge and skills to successfully provide the necessary instruction and would also ensure that holders of any home economics and homemaking certificates can teach the full course sequence under the architectural design program of study. The proposed amendment would provide clarity for district personnel to place educators with the appropriate credentials into classroom assignments.

*Division 12. Arts, Audio Video Technology, and Communications, Grades 9-12 Assignments.*

§231.331. *Professional Communications, Grades 9-12.*

Proposed new §231.331(13) and (14) would add two technology applications certificates to teach the professional communications courses for Grades 9-12. The additional technology applications certification areas would allow certificate holders the opportunity to teach the entire sequence of courses in the program of study and would increase district flexibility in course of-

ferings for students by expanding the list of certified educators with the knowledge and skills to successfully provide the necessary instruction. The proposed amendment would provide clarity for district personnel to place educators with the appropriate credentials into classroom assignments.

§231.333. *Principles of Arts, Audio/Video Technology, and Communications, Grades 9-12.*

Proposed new §231.333(12) and (13) would provide the appropriate certificates to teach the Principles of Arts, Audio/Video Technology, and Communications courses for Grades 9-12. The additional certification areas would increase district flexibility in course offerings for students by expanding the list of certified educators with the knowledge and skills to successfully provide the necessary instruction and would also ensure that holders of Family and Consumer Sciences, Home Economics, and Home-making certificates can teach the full course sequence under the fashion design program of study. The proposed amendment would provide clarity for district personnel to place educators with the appropriate credentials into classroom assignments.

§231.335. *Animation, Grades 9-12.*

The proposed amendment in §231.335(a) would add two SBOE-approved courses, Digital Art and Animation and 3-D Modeling and Animation, for Grades 9-12, which the SBOE has moved to CTE. The proposed amendment would implement HB 963, 86th Texas Legislature, 2019, that required the SBOE to conduct a review of the Texas Essential Knowledge and Skills (TEKS) for CTE and technology application courses for Grades 9-12 and to consolidate courses and eliminate duplicative course, which resulted in moving these former technology application courses to CTE. The proposed amendment would also provide clarity for district personnel to place educators with the appropriate credentials into classroom assignments. The list of certificates appropriate to teach these courses remains the same.

§231.337. *Audio/Video Production; Graphic Design and Illustration, Grades 9-12.*

The proposed amendment in §231.337(a) would add three SBOE-approved courses, Web Game Development, Digital Design and Media Production, and Digital Communications in the 21st Century, for Grades 9-12, which the SBOE has moved to CTE for Grades 9-12. The proposed amendment would implement HB 963, 86th Texas Legislature, 2019, that required the SBOE to conduct a review of the TEKS for CTE and technology application courses for Grades 9-12 and to consolidate courses and eliminate duplicative course, which resulted in moving these former technology application courses to CTE. The proposed amendment would also provide clarity for district personnel to place educators with the appropriate credentials into classroom assignments. The list of certificates appropriate to teach these courses remains the same.

§231.339. *Photography, Grades 9-12.*

Proposed new §231.339(a)(7) and (8) and §231.339(b)(7) and (8) would add technology applications certificates to teach the photography courses for Grades 9-12. The additional technology applications certification areas would allow certificate holders the opportunity to teach the entire sequence of courses in the program of study and would increase district flexibility in course offerings for students by expanding the list of certified educators with the knowledge and skills to successfully provide the necessary instruction. The proposed amendment would provide clarity

for district personnel to place educators with the appropriate credentials into classroom assignments.

Section 231.339(a)(7)-(9) would be renumbered to §231.339(a)(9)-(11) for technical formatting purposes.

*§231.341. Printing and Imaging Technology, Grades 9-12.*

Proposed new §231.341(a)(4)-(8) and (b)(4)-(8) would provide the appropriate certificates to teach the printing and imaging technology courses for Grades 9-12. The additional certification areas of Technology Applications, Technology Education, Industrial Arts, and Industrial Technology would allow certificate holders the opportunity to teach the entire sequence of courses in the program of study and would increase district flexibility in course offerings for students by expanding the list of certified educators with the knowledge and skills to successfully provide the necessary instruction. The proposed amendment would provide clarity for district personnel to place educators with the appropriate credentials into classroom assignments.

*Division 13. Business Management and Administration, Grades 9-12 Assignments.*

*§231.361. Business Information Management; Business Law; and Touch System Data Entry, Grades 9-12.*

The proposed amendment in §231.361(a) would separate Business Information Management II, Business Law, and Touch System Data Entry from Business Information Management I to conform with changes to SBOE rules that have made Business Information Management I a pre-requisite for Health Informatics. Proposed new §231.361(a)(4)-(7) would provide the appropriate certificates to teach the Business Information Management I course for Grades 9-12. The proposed addition of the marketing certificates to the list of credentials appropriate for this assignment would acknowledge the overlapping knowledge and skills in occupations of business, marketing, and finance and would allow the Marketing certificate holder to also teach business management courses. Making the health science certificates eligible to teach Business Information Management I would facilitate an educator's ability to teach each course in the program of study. Health science certified teachers with industry experience in health informatics have the practical application and/or knowledge of how Business Information Management I knowledge and skills are implemented in the health informatics occupations, but would not necessarily possess the depth of knowledge to provide instruction to the other courses (Business Information Management II, Business Law, or Touch System Data Entry). Additionally, those courses are not included in the health informatics program of study. The proposed additional certification areas would increase district flexibility in course offerings for students by expanding the list of certified educators with the knowledge and skills to successfully provide the necessary instruction. The proposed amendment would provide clarity for district personnel to place educators with the appropriate credentials into classroom assignments.

The proposed amendment to §231.361 would add a new subsection (b) to delineate the appropriate certificates to teach Business Information Management II, Business Law, and Touch System Data Entry. The proposed new subsection would allow Marketing certificate holders to teach these courses; would acknowledge the overlapping knowledge and skills in occupations of business, marketing, and finance; and would allow the Marketing certificate holder to also teach business management courses.

Section 231.361(b) would be relettered to §231.361(c) for technical formatting purposes, and the cross reference in relettered subsection (c) would be changed to subsection (d) to provide the appropriate cross reference. Proposed new subsection (c)(4) and (5) would provide marketing certificates to teach the appropriate business management courses for Grades 9-12. The additional marketing certificates would align with the program of study course sequence and would increase district flexibility in course offerings for students by expanding the list of certified educators with the knowledge and skills to successfully provide the necessary instruction.

Section 231.361(c) would be relettered to §231.361(d) for technical formatting purposes.

*§231.365. Business English, Grades 9-12.*

Proposed new §231.365(a)(12) and (13) would provide the marketing certificates to teach the Business English course for Grades 9-12. Several occupations in business, marketing, and finance have overlapping required skills and knowledge. Due to the overlap, when developing programs of study, the SBOE decided to combine the three career clusters. In an effort to create equity between two certificates, Business Management and Marketing, the proposed amendment would add the Marketing certification for any course that allowed the Business Management certification provided the necessary content was covered in the postsecondary instruction. An individual with a Marketing certification possesses the requisite skills to teach Business English since the content necessary to have a solid foundation in business is included in the college coursework and would allow the Marketing certificate holder to teach all courses in the program of study.

*Division 15. Finance, Grade 9-12 Assignments.*

*§231.392. Money Matters, Grades 9-12.*

Proposed new §231.392(9)-(16) would provide the appropriate mathematics certificates to teach the Money Matters course for Grades 9-12. The content in the Money Matters course aligns with teacher content knowledge required for Mathematics certification. The proposed additional certification areas would increase district flexibility in course offerings for students by expanding the list of certified educators with the knowledge and skills to successfully provide the necessary instruction. The proposed amendment would provide clarity for district personnel to place educators with the appropriate credentials into classroom assignments.

*§231.393. Accounting I; Financial Analysis; Insurance Operations; and Securities and Investments, Grades 9-12.*

Proposed new §231.393(4) and (5) would provide the appropriate marketing certificates to teach Accounting I; Financial Analysis; Insurance Operations; and Securities and Investments courses for Grades 9-12. The proposed amendment would allow Marketing certificate holders to also teach these courses, as there is overlap in the required skills and knowledge for occupations in business, marketing, and finance. The addition of marketing certificates would increase district flexibility in course offerings for students by expanding the list of certified educators with the knowledge and skills to successfully provide the necessary instruction and would enable these educators to teach the entire program of study course sequence. The proposed amendment would provide clarity for district personnel to place educators with the appropriate credentials into classroom assignments.

**§231.394. *Statistics and Business Decision Making, Grades 9-12.***

Proposed new §231.394(a)(12) and (13) would provide the appropriate marketing certificates to teach the Statistics and Business Decision Making course for Grades 9-12. The proposed amendment would allow Marketing certificate holders to also teach these courses as there is overlap in the required skills and knowledge for occupations in business, marketing, and finance. The addition of the marketing certificates would increase district flexibility in course offerings for students by expanding the list of certified educators with the knowledge and skills to successfully provide the necessary instruction and would enable these educators to teach the entire program of study course sequence. The proposed addition of "legacy" to paragraph (4) and the proposed new paragraphs would provide clarity for district personnel to place educators with the appropriate credentials into classroom assignments.

**§231.395. *Financial Mathematics, Grades 9-12.***

Proposed new §231.395(a)(12) and (13) would provide the appropriate marketing certificates to teach the Financial Mathematics course for Grades 9-12. The proposed amendment would allow Marketing certificate holders to also teach these courses as there is overlap in the required skills and knowledge for occupations in business, marketing, and finance. The addition of marketing certificates would increase district flexibility in course offerings for students by expanding the list of certified educators with the knowledge and skills to successfully provide the necessary instruction and would enable these educators to teach the entire program of study course sequence. The proposed amendment, including the proposed addition of "legacy" to paragraph (4), would provide clarity for district personnel to place educators with the appropriate credentials into classroom assignments.

**§231.397. *Accounting II, Grades 9-12.***

Proposed new §231.397(a)(12) and (13) would provide the appropriate marketing certificates to teach the Accounting II course for Grades 9-12. The proposed amendment would allow Marketing certificate holders to also teach these courses as there is overlap in the required skills and knowledge for occupations in business, marketing, and finance. The addition of the marketing certificates would increase district flexibility in course offerings for students by expanding the list of certified educators with the knowledge and skills to successfully provide the necessary instruction and would enable these educators to teach the entire program of study course sequence. The proposed amendment, including the proposed addition of "legacy" to paragraph (4), would provide clarity for district personnel to place educators with the appropriate credentials into classroom assignments.

***Division 17. Health Science, Grades 9-12 Assignments.***

**§231.421. *Health Science, Grades 9-12.***

The proposed amendment in §231.421(a) would separate Medical Terminology from the other courses listed in subsection (a) and move it to new subsection (b). The proposed amendment would provide guidance on the appropriate certificates to teach Medical Terminology for Grades 9-12, which establishes a foundation for key terms that will be utilized throughout the four levels of courses within the healthcare diagnostics program of study. The SBOE expanded the list of certificates for this course to reflect the numerous science certificate holders that have the knowledge and skills necessary to effectively provide student instruction. The proposed amendment would provide clarity for

district personnel to place educators with the appropriate credentials into classroom assignments. The proposed amendment would include relettering for technical formatting purposes.

**§231.427. *Health Informatics, Grades 9-12.***

Proposed new §231.427(8) and (9) would provide the appropriate marketing certificates to teach the Health Informatics course for Grades 9-12. The additional Marketing certification areas would align with the addition of the Marketing certification areas in §231.361, Business Information Management I, as that course is a prerequisite to teach Health Informatics and establishes reciprocity in certificate requirements for assignments that cross subject areas. The proposed amendment would also increase district flexibility in course offerings for students by expanding the list of certified educators with the knowledge and skills to successfully provide the necessary instruction. The proposed amendment would provide clarity for district personnel to place educators with the appropriate credentials into classroom assignments.

***Division 20. Information Technology, Grades 9-12 Assignments.***

**§231.483. *Digital Media; Web Technologies, Grades 9-12.***

The proposed amendment in §231.483 would delete the section title, "Web Technologies," and would delete Web Technologies from the list of course offerings for Grades 9-12, as the course has been repealed by the SBOE. The proposed amendment would implement HB 963, 86th Texas Legislature, 2019, that required the SBOE to conduct a review of the TEKS for CTE and technology application courses for Grades 9-12 and to consolidate courses and eliminate duplicative course, which resulted in this course being deemed duplicative and repealed by the SBOE in favor of the technology applications courses. The list of certificates appropriate to teach these courses remains the same. The proposed amendment would provide clarity for district personnel to place educators with the appropriate credentials into classroom assignments.

**§231.485. *Web Communications, Web Design, Grades 9-12.***

Proposed new §231.485, Web Communications, Web Design, Grades 9-12, would replace §231.485, Computer Programming, proposed for repeal, to align with the SBOE review of CTE and technology applications courses required by HB 963, 86th Texas Legislature, 2019. This proposed change would reflect the move of these courses into CTE as a result of the HB 963 review. The proposed changes would also provide the appropriate courses and certificates to teach those courses in line with other CTE courses and would provide clarity for district personnel to place educators with the appropriate credentials into classroom assignments.

**§231.487. *Computer Maintenance, Grades 9-12.***

Proposed new §231.487(7) and (8) would provide the appropriate technology applications certificates to teach the Computer Maintenance course for Grades 9-12. The additional technology applications certificates would align with certificate requirements to teach Computer Technician and Practicum in Computer Technician courses and would increase district flexibility in course offerings for students by expanding the list of certified educators with the knowledge and skills to successfully provide the necessary instruction. The proposed amendment would provide clarity for district personnel to place educators with the appropriate credentials into classroom assignments.

§231.491. *Independent Study in Evolving/Emerging Technologies, Independent Study in Technology Applications, Grades 9-12.*

Proposed new §231.491 would provide the SBOE-approved courses, Independent Study in Evolving/Emerging Technologies and Independent Study in Technology Applications, for Grades 9-12 with the appropriate certificates to teach those courses. The ability to allow any CTE or vocational certificate holder to teach these courses would increase district flexibility in course offerings for students by expanding the list of certified educators with the knowledge and skills to successfully provide the necessary instruction. The proposed amendment would provide clarity for district personnel to place educators with the appropriate credentials into classroom assignments.

*Division 22. Manufacturing, Grades 9-12 Assignments.*

§231.521. *Manufacturing, Grades 9-12.*

Proposed new §231.521(b)(9)-(11) would provide the appropriate agriculture certificates to teach the Manufacturing course for Grades 9-12. Teachers with an agriculture certificate can teach the courses preceding and required for the practicum in Manufacturing course so the proposed change would enable the teachers with an agriculture certificate to teach the entire series of courses in a program of study. The proposed amendment would increase district flexibility in course offerings for students by expanding the list of certified educators with the knowledge and skills to successfully provide the necessary instruction. The proposed amendment would provide clarity for district personnel to place educators with the appropriate credentials into classroom assignments.

*Division 23. Marketing, Grades 9-12 Assignments.*

§231.541. *Marketing, Grades 9-12.*

Proposed new §231.541(a)(4)-(7) and §231.541(b)(4)-(7) would provide the appropriate business certificates to teach the Marketing course for Grades 9-12. The additional certificate areas would increase district flexibility in course offerings for students by expanding the list of certified educators with the knowledge and skills to successfully provide the necessary instruction. The proposed amendment would provide clarity for district personnel to place educators with the appropriate credentials into classroom assignments.

§231.543. *Advertising, Grades 9-12.*

Proposed new §231.543(7)-(9) would provide the appropriate business certificates to teach the Advertising course for Grades 9-12. The additional certificate areas would increase district flexibility in course offerings for students by expanding the list of certified educators with the knowledge and skills to successfully provide the necessary instruction. The proposed amendment would provide clarity for district personnel to place educators with the appropriate credentials into classroom assignments.

§231.545. *Fashion Marketing, Grades 9-12.*

Proposed new §231.545(6)-(9) would provide the appropriate business certificates to teach the Fashion Marketing course for Grades 9-12. The additional certificate areas would increase district flexibility in course offerings for students by expanding the list of certified educators with the knowledge and skills to successfully provide the necessary instruction. The proposed amendment would provide clarity for district personnel to place educators with the appropriate credentials into classroom assignments.

*Division 24. Science, Technology, Engineering, and Mathematics, Grades 9-12 Assignments.*

§231.567. *Engineering Design and Presentation, Grades 9-12.*

Proposed new §231.567(b)(1)-(7) would provide the appropriate certificates to teach the Engineering Design and Presentation courses for Grades 9-12. Teachers with an agriculture certification can teach Levels I-III engineering courses in Science, Technology, Engineering, and Mathematics (STEM), so the proposed change would enable the teachers with an agriculture certification to also teach the advanced course option for the engineering program of study. The proposed amendment would increase district flexibility in course offerings for students by expanding the list of certified educators with the knowledge and skills to successfully provide the necessary instruction. The proposed amendment would provide clarity for district personnel to place educators with the appropriate credentials into classroom assignments and would include renumbering paragraphs (1)-(9) to paragraphs (8)-(16) for technical formatting purposes.

*Further Alignment with the SBOE's Implementation of Legislative Changes*

The remaining amendments to Division 24 would include proposed new §231.591 and proposed new §§231.585, 231.587, 231.589, 231.593, and 231.595 (relocated from Division 8) that would implement HB 963, 86th Texas Legislature, 2019, which required the SBOE to conduct a review of the TEKS for CTE and technology application courses for Grades 9-12 and to consolidate courses and eliminate duplicative courses. The review the SBOE conducted would result in proposed changes to SBEC rules to relocate courses from Division 8, relating to Technology Applications, to Division 24, Science, Technology, Engineering, and Mathematics, to reflect that the SBOE has reclassified those courses as CTE and to repeal Division 8 to prevent duplication. Any resulting additional certification areas would increase district flexibility in course offerings for students by expanding the list of certified educators with the knowledge and skills to successfully provide the necessary instruction. The proposed new sections would also provide clarity for district personnel to place educators with the appropriate credentials into classroom assignments.

§231.585. *Computer Science, Grades 9-12.*

Proposed new §231.585 would relocate the current provisions in §231.251 that are proposed for repeal in Division 8 into Division 24 to reflect that the SBOE has reclassified the Computer Science course as a CTE course. There would be no changes to the list of certificates appropriate to teach these courses.

§231.587. *Fundamentals of Computer Science, Advanced Placement Computer Science Principles, Grades 9-12.*

Proposed new §231.587 would relocate the current provisions in §231.257 that are proposed for repeal in Division 8 into Division 24 to reflect that the SBOE has reclassified the Fundamentals of Computer Science or Advanced Placement Computer Science Principles course as a CTE course. The new section would also add trade and industrial education certifications as permissible to teach the course for Grades 9-12.

§231.589. *Game Programming and Design, Grades 9-12.*

Proposed new §231.589 would maintain the current provisions in §231.257 that are proposed for repeal for the Game Programming and Design course for Grades 9-12, while moving it into Division 24 to reflect that the SBOE has reclassified the course as

a CTE course. The new section would also add trade and industrial education certifications as permissible to teach the course.

*§231.591. Mobile Applications Development, Grades 9-12.*

Proposed new §231.591 would add the SBOE-approved course Mobile Applications Development for Grades 9-12 and the appropriate certificates to teach that course into Division 24 to reflect that the SBOE has reclassified it as a CTE course. The course was previously referenced in §231.257, which is proposed for repeal.

*§231.593. Cybersecurity, Grades 9-12.*

Proposed new §231.593 would maintain the current provisions in §231.259 regarding Cybersecurity courses for Grades 9-12, while moving it into Division 24 to reflect that the SBOE has reclassified it as a CTE course. There would be no changes to the list of certificates appropriate to teach these courses.

*§231.595. Discrete Mathematics for Computer Science, Grades 9-12.*

Proposed new §231.595 would maintain the current provisions in §231.255 regarding Discrete Mathematics for Computer Science for Grades 9-12, while moving it into Division 24 to reflect that the SBOE has reclassified it as a CTE course. The new section would also add trade and industrial education certifications as permissible to teach the course.

*Division 25. Transportation, Distribution, and Logistics, Grades 9-12 Assignments.*

The SBEC proposes a repeal and replacement for Division 25, Transportation, Distribution, and Logistics, Grades 9-12, that would address expansion of course numbers in the previous division and correct the numbering for this division. The course information for Division 25 has been renumbered for technical formatting purposes to provide enough room to include current provisions as well as add additional courses approved by the SBOE along with corresponding certificates.

*Division 26. Energy, Grades 9-12 Assignments.*

Proposed new Division 26 would add the new Energy cluster to align with curriculum changes and would provide clarity on SBOE-approved courses and the appropriate certificates to teach those courses.

*§231.651. Energy and Natural Resources, Grades 9-12.*

Proposed new §231.651 would add seven new SBOE-approved courses, Oil and Gas Production I-IV; Introduction to Process Technology; Foundations of Energy; or Petrochemical Safety, Health, and Environment, for Grades 9-12 and would provide guidance on the assignment to teach the courses. TEA staff in Educator Certification, Curriculum, and Career and Technical Education worked together closely to discuss proposed rule changes. TEA staff identified certificates appropriate to teach courses based on alignment of knowledge and skills assessed on examinations for certificate issuance to the certificate holder's ability to successfully instruct students in the TEKS for a specified subject area and course offering.

*Subchapter F. Special Education-Related Services Personnel Assignments*

The proposed revisions to Subchapter F would address the need to expand course numbering in previous subchapters of the rules. The proposed revisions would include the current rules, renumbered to allow for additional rules in 19 TAC Chapter

231. This proposal reflects the reorganization of Subchapter F by proposing for repeal §§231.611, 231.613, 231.615, 231.617, 231.619, 231.621, and 231.623, renumbered as proposed new §§231.701, 231.703, 231.705, 231.707, 231.709, 231.711, and 231.713. The content of the rules remains the same.

*Subchapter G. Paraprofessional Personnel, Administrators, and Other Instructional and Professional Support Assignments*

The proposed revisions to Subchapter G would address the need to expand course numbering in previous subchapters of the rules. The proposed revisions would include the current rules, renumbered to allow for additional rules in 19 TAC Chapter 231. This proposal reflects the reorganization of Subchapter G by proposing for repeal §§231.641, 231.643, and 231.645, renumbered as proposed new §§231.751, 231.753, and 231.755. The content of the rules remains the same.

**FISCAL IMPACT:** Ryan Franklin, associate commissioner for educator leadership and quality, has determined that for the first five-year period the proposal is in effect, there is no additional fiscal impact on state or local governments and there are no additional costs to entities required to comply with the proposal.

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

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

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

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

**GOVERNMENT GROWTH IMPACT:** TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would create new regulations, would repeal existing regulations, and would expand existing regulations by incorporating courses approved, reconfigured, or redesigned by the SBOE and by adding certification areas to the list of credentials appropriate for placement into an assignment. The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not limit an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

**PUBLIC BENEFIT AND COST TO PERSONS:** Mr. Franklin has determined that for each year of the first five years the proposal is in effect, the public benefit of the proposal would be clear guidance for districts on appropriate credentials for placement of individuals into classroom, administrative, and support personnel assignments. The TEA has determined there is no anticipated cost to persons required to comply with the proposal.



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

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

PUBLIC COMMENTS: The public comment period on the proposal begins August 21, 2020 and ends September 21, 2020. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About\\_TEA/Laws\\_and\\_Rules/SBEC\\_Rules\\_\(TAC\)/Proposed\\_State\\_Board\\_for\\_Educator\\_Certification\\_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/SBEC_Rules_(TAC)/Proposed_State_Board_for_Educator_Certification_Rules/). The SBEC will take registered oral and written comments on the proposal at the October 9, 2020 meeting in accordance with the SBEC board operating policies and procedures. All requests for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the Department of Educator Leadership and Quality, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Mr. Ryan Franklin, associate commissioner for educator leadership and quality, not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on August 21, 2020.

## SUBCHAPTER B. PREKINDERGARTEN- GRADE 6 ASSIGNMENTS

### 19 TAC §§231.3, 231.9, 231.15, 231.17, 231.19

STATUTORY AUTHORITY. The amendments implement Texas Education Code (TEC), §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, as amended by House Bill 3, 86th Texas Legislature, 2019, which required the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The amendments are proposed under TEC, §§21.031(a), 21.041(b)(1) and (2), and 21.064, as amended by HB 3, 86th Texas Legislature, 2019.

#### §231.3. *General Education, Prekindergarten.*

(a) All-level certification in art, health education, music, physical education, speech communication and theatre arts, or theatre may be assigned to teach in the certified area(s) in Prekindergarten-Grade 12.

(b) An assignment for General Education, Prekindergarten, is allowed with one of the following certificates.

- (1) Bilingual Generalist: Early Childhood-Grade 4.
- (2) Bilingual Generalist: Early Childhood-Grade 6.
- (3) Core Subjects: Early Childhood-Grade 6.
- (4) Early Childhood Education (Prekindergarten and Kindergarten).
- (5) Elementary--General.

(A) Teachers assigned prior to the 1991-1992 school year are required to complete a minimum of 90 clock-hours of in-service training (may be advanced academic training) or six semester credit hours in early childhood education, inclusive of but not limited to child development or language acquisition, by September 1, 1993, to be eligible for assignment.

(B) Initial assignments beginning with the 1991-1992 school year require the early childhood education delivery system or endorsement.

(6) Elementary--General (Grades 1-6).

(A) Teachers assigned prior to the 1991-1992 school year are required to complete a minimum of 90 clock-hours of in-service training (may be advanced academic training) or six semester credit hours in early childhood education, inclusive of but not limited to child development or language acquisition, by September 1, 1993, to be eligible for assignment.

(B) Initial assignments beginning with the 1991-1992 school year require the early childhood education delivery system or endorsement.

(7) Elementary--General (Grades 1-8).

(A) Teachers assigned prior to the 1991-1992 school year are required to complete a minimum of 90 clock-hours of in-service training (may be advanced academic training) or six semester credit hours in early childhood education, inclusive of but not limited to child development or language acquisition, by September 1, 1993, to be eligible for assignment.

(B) Initial assignments beginning with the 1991-1992 school year require the early childhood education delivery system or endorsement.

(8) Elementary Early Childhood Education (Prekindergarten-Grade 6).

(9) Elementary Self-Contained (Grades 1-8).

(A) Teachers assigned prior to the 1991-1992 school year are required to complete a minimum of 90 clock-hours of in-service training (may be advanced academic training) or six semester credit hours in early childhood education, inclusive of but not limited to child development or language acquisition, by September 1, 1993, to be eligible for assignment.

(B) Initial assignments beginning with the 1991-1992 school year require the early childhood education delivery system or endorsement.

(10) English as a Second Language Generalist: Early Childhood-Grade 4.

(11) English as a Second Language Generalist: Early Childhood-Grade 6.

(12) Generalist: Early Childhood-Grade 4.

(13) Generalist: Early Childhood-Grade 6.

(14) Kindergarten.

(15) Legacy Master Mathematics Teacher (Early Childhood-Grade 4) (Mathematics only).

(16) Legacy Master Reading Teacher (Early Childhood-Grade 12) (Reading only).

(17) Legacy Master Science Teacher (Early Childhood-Grade 4) (Science only).

- (18) Prekindergarten-Grade 5.
- (19) Prekindergarten-Grade 6.
- (20) Teacher of Young Children--General.

§231.9. *General Education, Kindergarten.*

(a) All-level certification in art, health education, music, physical education, speech communication and theatre arts, or theatre may be assigned to teach in the certified area(s) in Prekindergarten-Grade 12.

(b) An assignment for General Education, Kindergarten, is allowed with one of the following certificates.

- (1) Bilingual Generalist: Early Childhood-Grade 4.
- (2) Bilingual Generalist: Early Childhood-Grade 6.
- (3) Core Subjects: Early Childhood-Grade 6.
- (4) Early Childhood Education (Prekindergarten and Kindergarten).
- (5) Elementary Early Childhood Education (Prekindergarten-Grade 6).
- (6) English as a Second Language Generalist: Early Childhood-Grade 4.
- (7) English as a Second Language Generalist: Early Childhood-Grade 6.
- (8) Generalist: Early Childhood-Grade 4.
- (9) Generalist: Early Childhood-Grade 6.
- (10) Kindergarten.
- (11) Legacy Master Mathematics Teacher (Early Childhood-Grade 4) (Mathematics only).
- (12) Legacy Master Reading Teacher (Early Childhood-Grade 12) (Reading only).
- (13) Legacy Master Science Teacher (Early Childhood-Grade 4) (Science only).
- (14) Prekindergarten-Grade 5--General.
- (15) Prekindergarten-Grade 6--General.
- (16) Teacher of Young Children--General.

§231.15. *Elementary, Grades 1-6.*

An assignment for Elementary, Grades 1-6, is allowed with one of the following certificates.

- (1) Bilingual Generalist: Early Childhood-Grade 4 (Grades 1-4 only).
- (2) Bilingual Generalist: Early Childhood-Grade 6.
- (3) Bilingual Generalist: Grades 4-8 (Grades 4-6 only).
- (4) Core Subjects: Early Childhood-Grade 6.
- (5) Core Subjects: Grades 4-8 (Grades 4-6 only).
- (6) Elementary--General.
- (7) Elementary--General (Grades 1-6).
- (8) Elementary--General (Grades 1-8).
- (9) Elementary Early Childhood Education (Prekindergarten-Grade 6).
- (10) Elementary Self-Contained (Grades 1-8).

(11) English as a Second Language Generalist: Early Childhood-Grade 4 (Grades 1-4 only).

(12) English as a Second Language Generalist: Early Childhood-Grade 6.

(13) English as a Second Language Generalist: Grades 4-8 (Grades 4-6 only).

(14) Generalist: Early Childhood-Grade 4 (Grades 1-4 only).

(15) Generalist: Early Childhood-Grade 6.

(16) Generalist: Grades 4-8 (Grades 4-6 only).

(17) Legacy Master Mathematics Teacher (Early Childhood-Grade 4) (Mathematics in Grades 1-4 only).

(18) Legacy Master Mathematics Teacher (Grades 4-8) (Mathematics in Grades 4-6 only).

(19) Legacy Master Reading Teacher (Early Childhood-Grade 12) (Reading in Grades 1-6 only).

(20) Legacy Master Science Teacher (Early Childhood-Grade 4) (Science in Grades 1-4 only).

(21) Legacy Master Science Teacher (Grades 4-8) (Science in Grades 4-6 only).

(22) Prekindergarten-Grade 5--General (Grades 1-5 only).

(23) Prekindergarten-Grade 6--General.

(24) Teacher of Young Children--General (Grades 1-3 only).

§231.17. *Reading, Grades 1-6.*

An assignment for Reading, Grades 1-6, is allowed with one of the following certificates.

(1) A teacher certificate that matches the subject and grade level of the assignment (Prekindergarten-Grade 6).

(2) An elementary teacher certificate appropriate for Grades 1-6 assignment.

(3) Bilingual Generalist: Early Childhood-Grade 4 (Grades 1-4 only).

(4) Bilingual Generalist: Early Childhood-Grade 6.

(5) Bilingual Generalist: Grades 4-8 (Grades 4-6 only).

(6) Core Subjects: Early Childhood-Grade 6.

(7) Core Subjects: Grades 4-8 (Grades 4-6 only).

(8) English as a Second Language Generalist: Early Childhood-Grade 4 (Grades 1-4 only).

(9) English as a Second Language Generalist: Early Childhood-Grade 6.

(10) English as a Second Language Generalist: Grades 4-8 (Grades 4-6 only).

(11) English Language Arts and Reading: Grades 4-8 (Grades 4-6 only).

(12) English Language Arts and Reading/Social Studies: Grades 4-8 (Grades 4-6 only).

(13) Generalist: Early Childhood-Grade 4 (Grades 1-4 only).

(14) Generalist: Early Childhood-Grade 6.

- (15) Generalist: Grades 4-8 (Grades 4-6 only).
- (16) Legacy Master Reading Teacher (Early Childhood-Grade-12).
- (17) Reading Specialist.
- (18) Reading Specialist (Early Childhood-Grade 12).

§231.19. *Languages Other Than English, Grades 1-6.*  
 An assignment for Languages Other Than English, Classical Languages, or Discovering Languages and Cultures, Grades 1-6, is allowed with one of the following certificates.

- (1) A teacher certificate that matches the subject and grade level of the assignment (Grades 1-6).
- (2) A Languages Other Than English certificate in the appropriate language (Early Childhood-Grade 12).
- (3) A secondary teacher certificate with a teaching field in the language of assignment plus six semester credit hours of elementary education.

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

Filed with the Office of the Secretary of State on August 10, 2020.  
 TRD-202003231  
 Cristina De La Fuente-Valadez  
 Director, Rulemaking  
 State Board for Educator Certification  
 Earliest possible date of adoption: September 20, 2020  
 For further information, please call: (512) 475-1497



## SUBCHAPTER C. GRADES 6-8 ASSIGNMENTS

### 19 TAC §§231.49, 231.51, 231.55, 231.61, 231.63, 231.65

STATUTORY AUTHORITY. The amendments implement Texas Education Code (TEC), §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, as amended by House Bill 3, 86th Texas Legislature, 2019, which required the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The amendments are proposed under TEC, §§21.031(a), 21.041(b)(1) and (2), and 21.064, as amended by HB 3, 86th Texas Legislature, 2019.

§231.49. *Reading (At or Above Grade Level), Grades 6-8.*  
 An assignment in a departmentalized classroom for Reading (at or above grade level), Grades 6-8, for a holder of a valid elementary, secondary, or all-level certificate is allowed with one of the following certificates.

- (1) Bilingual Generalist: Early Childhood-Grade 6 (Grade 6 only).
- (2) Bilingual Generalist: Grades 4-8.
- (3) Core Subjects: Early Childhood-Grade 6 (Grade 6 only).
- (4) Core Subjects: Grades 4-8.
- (5) Elementary English (Grades 1-8). This assignment requires verifiable preparation in teaching of reading such as in-service, seminar, or college course in reading. Initial assignments beginning with the 1990-1991 school year require nine semester credit hours of upper-division coursework in reading with at least one course in diagnostic reading techniques.
- (6) Elementary Reading (Grades 1-8).
- (7) Elementary teacher certificate plus 18 semester credit hours in English and nine semester credit hours of upper-division coursework in reading with at least one course in diagnostic reading techniques.
- (8) English as a Second Language Generalist: Early Childhood-Grade 6 (Grade 6 only).
- (9) English as a Second Language Generalist: Grades 4-8.
- (10) English Language Arts and Reading: Grades 4-8.
- (11) English Language Arts and Reading: Grades 7-12 (Grades 7 and 8 only).
- (12) English Language Arts and Reading: Grades 8-12 (Grade 8 only).
- (13) English Language Arts and Reading/Social Studies: Grades 4-8.
- (14) Generalist: Early Childhood-Grade 6 (Grade 6 only).
- (15) Generalist: Grades 4-8.
- (16) Junior High School or High School--English.
- (17) Junior High School or High School--English Language Arts, Composite. This assignment includes at least six semester credit hours of reading. Initial assignments beginning with the 2003-2004 school year require nine semester credit hours of upper-division coursework in reading with at least one course in diagnostic reading techniques.
- (18) Junior High School or High School--Reading.
- (19) Legacy Master Reading Teacher (Early Childhood-Grade 12).
- (20) Reading Specialist.
- (21) Reading Specialist (Early Childhood-Grade 12).
- (22) Secondary English (Grades 6-8). This assignment requires verifiable preparation in teaching of reading such as in-service, seminar, or college course in reading. Initial assignments beginning with the 1990-1991 school year require nine semester credit hours of upper-division coursework in reading with at least one course in diagnostic reading techniques.
- (23) Secondary English Language Arts, Composite (Grades 6-8). This assignment includes at least six semester credit hours of reading. Initial assignments beginning with the 2003-2004 school year require nine semester credit hours of upper-division coursework in reading with at least one course in diagnostic reading techniques.

(24) Secondary Reading (Grades 6-8).

(25) Secondary English (Grades 6-12). This assignment requires verifiable preparation in teaching of reading such as in-service, seminar, or college course in reading. Initial assignments beginning with the 1990-1991 school year require nine semester credit hours of upper-division coursework in reading with at least one course in diagnostic reading techniques.

(26) Secondary English Language Arts, Composite (Grades 6-12). This assignment includes at least six semester credit hours of reading. Initial assignments beginning with the 2003-2004 school year require nine semester credit hours of upper-division coursework in reading with at least one course in diagnostic reading techniques.

(27) Secondary Reading (Grades 6-12).

(28) Secondary or all-level teacher certificate plus 18 semester credit hours in English and nine semester credit hours of upper-division coursework in reading with at least one course in diagnostic reading techniques.

§231.51. *Reading Improvement (One Year or More Below Grade Level), Grades 6-8.*

An assignment in a departmentalized classroom for Reading Improvement (one year or more below grade level), Grades 6-8, for a holder of a valid elementary, secondary, or all-level certificate is allowed with one of the following certificates.

(1) Bilingual Generalist: Early Childhood-Grade 6 (Grade 6 only).

(2) Bilingual Generalist: Grades 4-8.

(3) Core Subjects: Early Childhood-Grade 6 (Grade 6 only).

(4) Core Subjects: Grades 4-8.

(5) Elementary English (Grades 1-8). This assignment requires verifiable preparation in teaching of reading such as in-service, seminar, or college course in reading. Initial assignments beginning with the 1990-1991 school year require nine semester credit hours of upper-division coursework in reading with at least one course in diagnostic reading techniques.

(6) Elementary Reading (Grades 1-8).

(7) Elementary teacher certificate plus 18 semester credit hours in English and nine semester credit hours of upper-division coursework in reading with at least one course in diagnostic reading techniques.

(8) English as a Second Language Generalist: Early Childhood-Grade 6 (Grade 6 only).

(9) English as a Second Language Generalist: Grades 4-8.

(10) English Language Arts and Reading: Grades 4-8.

(11) English Language Arts and Reading: Grades 7-12 (Grades 7 and 8 only).

(12) English Language Arts and Reading: Grades 8-12 (Grade 8 only).

(13) English Language Arts and Reading/Social Studies: Grades 4-8.

(14) Generalist: Early Childhood-Grade 6 (Grade 6 only).

(15) Generalist: Grades 4-8.

(16) Grades 6-12 or Grades 6-8--English. This assignment requires verifiable preparation in the teaching of reading such as in-service, seminar, or college course in reading. Initial assignments beginning with the 1990-1991 school year require nine semester credit hours of upper-division coursework in reading with at least one course in diagnostic reading techniques.

(17) Grades 6-12 or Grades 6-8--English Language Arts, Composite. This assignment includes at least six semester credit hours of reading. Initial assignments beginning with the 2003-2004 school year require nine semester credit hours of upper-division coursework in reading with at least one course in diagnostic reading techniques.

(18) Grades 6-12 or Grades 6-8--Reading.

(19) Junior High School or High School--English. This assignment requires verifiable preparation in the teaching of reading such as in-service, seminar, or college course in reading. Initial assignments beginning with the 1990-1991 school year require nine semester credit hours of upper-division coursework in reading with at least one course in diagnostic reading techniques.

(20) Junior High School or High School--English Language Arts, Composite. This assignment includes at least six semester credit hours of reading. Initial assignments beginning with the 2003-2004 school year require nine semester credit hours of upper-division coursework in reading with at least one course in diagnostic reading techniques.

(21) Junior High School or High School--Reading.

(22) Legacy Master Reading Teacher (Early Childhood-Grade 12).

(23) Reading Specialist.

(24) Reading Specialist (Early Childhood-Grade 12).

(25) Secondary English (Grades 6-12). This assignment requires verifiable preparation in the teaching of reading such as in-service, seminar, or college course in reading. Initial assignments beginning with the 1990-1991 school year require nine semester credit hours of upper-division coursework in reading with at least one course in diagnostic reading techniques.

(26) Secondary English Language Arts, Composite (Grades 6-12). This assignment includes at least six semester credit hours of reading. Initial assignments beginning with the 2003-2004 school year require nine semester credit hours of upper-division coursework in reading with at least one course in diagnostic reading techniques.

(27) Secondary Reading (Grades 6-12).

(28) Teacher certificate plus 9 semester credit hours of upper-division coursework in reading with at least one course in diagnostic reading techniques.

§231.55. *Languages Other Than English, Grades 6-8.*

(a) An assignment in a departmentalized classroom for Languages Other Than English, Classical Languages, or Discovering Languages and Cultures [Exploratory Languages, or Cultural and Linguistic Topics], Grades 6-8, for a holder of a valid elementary, secondary, or all-level certificate is allowed with one of the following certificates.

(1) Elementary teacher certificate in the appropriate language of assignment.

(2) Elementary teacher certificate plus 18 semester credit hours in language of assignment.

(3) Languages Other Than English certificate in the appropriate language (Early Childhood-Grade 12).

(4) Secondary or all-level teacher certificate plus 18 semester credit hours in language of assignment.

(5) Secondary teacher certificate in the appropriate language of assignment.

(b) An assignment in a departmentalized classroom for American Sign Language, Grades 6-8, for a holder of a valid secondary or all-level certificate is allowed with one of the following certificates.

(1) American Sign Language.

(2) American Sign Language: Early Childhood-Grade 12.

(c) The Texas Assessment of Sign Communication-American Sign Language (TASC-ASL) is required for an American Sign Language assignment.

§231.61. *Mathematics, Grades 6-8.*

An assignment in a departmentalized classroom for Mathematics, Grades 6-8, for a holder of a valid elementary, secondary, or all-level certificate is allowed with one of the following certificates.

(1) Bilingual Generalist: Early Childhood-Grade 6 (Grade 6 only).

(2) Bilingual Generalist: Grades 4-8.

(3) Core Subjects: Early Childhood-Grade 6 (Grade 6 only).

(4) Core Subjects: Grades 4-8.

(5) Elementary Mathematics (Grades 1-8). A teacher holding an Elementary Mathematics (Grades 1-8) certificate may teach Algebra I at the middle school level for high school graduation credit.

(6) Elementary teacher certificate plus 18 semester credit hours in mathematics.

(7) English as a Second Language Generalist: Early Childhood-Grade 6 (Grade 6 only).

(8) English as a Second Language Generalist: Grades 4-8.

(9) Generalist: Early Childhood-Grade 6 (Grade 6 only).

(10) Generalist: Grades 4-8.

(11) Grades 6-12 or Grades 6-8--Mathematics.

(12) Junior High School or High School--Mathematics.

(13) Junior High School or High School--Mathematical Science, Composite.

(14) Legacy Master Mathematics Teacher (Grades 4-8).

(15) Legacy Master Mathematics Teacher (Grades 8-12) (Grade 8 only).

(16) Mathematics: Grades 4-8. A teacher holding a Mathematics: Grades 4-8 certificate may teach Algebra I at the middle school level for high school graduation credit.

(17) Mathematics: Grades 7-12 (Grades 7 and 8 only).

(18) Mathematics: Grades 8-12 (Grade 8 only).

(19) Mathematics/Physical Science/Engineering: Grades 6-12.

(20) Mathematics/Physical Science/Engineering: Grades 8-12 (Grade 8 only).

(21) Mathematics/Science: Grades 4-8.

(22) Physics/Mathematics: Grades 7-12 (Grades 7 and 8 only).

(23) Physics/Mathematics: Grades 8-12 (Grade 8 only).

(24) Secondary Mathematics (Grades 6-12).

(25) Secondary or all-level teacher certificate plus 18 semester credit hours in mathematics.

§231.63. *Science, Grade 6.*

An assignment in a departmentalized classroom for Science, Grade 6, for a holder of a valid elementary, secondary, or all-level certificate is allowed with one of the following certificates.

(1) Any elementary teacher certificate appropriate for Grade 6.

(2) Bilingual Generalist: Early Childhood-Grade 6.

(3) Bilingual Generalist: Grades 4-8.

(4) Core Subjects: Early Childhood-Grade 6.

(5) Core Subjects: Grades 4-8.

(6) English as a Second Language Generalist: Early Childhood-Grade 6.

(7) English as a Second Language Generalist: Grades 4-8.

(8) Generalist: Early Childhood-Grade 6.

(9) Generalist: Grades 4-8.

(10) Grades 6-12 or Grades 6-8--Biology.

(11) Grades 6-12 or Grades 6-8--Chemistry.

(12) Grades 6-12 or Grades 6-8--Earth Science.

(13) Grades 6-12 or Grades 6-8--Life/Earth Science.

(14) Grades 6-12 or Grades 6-8--Physical Science.

(15) Grades 6-12 or Grades 6-8--Physics.

(16) Grades 6-12 or Grades 6-8--Science.

(17) Grades 6-12 or Grades 6-8--Science, Composite.

(18) Junior High School or High School--Biology.

(19) Junior High School or High School--Chemistry.

(20) Junior High School or High School--Earth Science.

(21) Junior High School or High School--Life/Earth Science.

(22) Junior High School or High School--Life/Earth Middle-School Science.

(23) Junior High School or High School--Physical Science.

(24) Junior High School or High School--Physics.

(25) Junior High School or High School--Science.

(26) Junior High School or High School--Science, Composite.

(27) Legacy Master Science Teacher (Grades 4-8).

(28) Mathematics/Science: Grades 4-8.

(29) Science: Grades 4-8.

(30) Secondary Biology (Grades 6-12).

- (31) Secondary Chemistry (Grades 6-12).
- (32) Secondary Earth Science (Grades 6-12).
- (33) Secondary Life/Earth Science (Grades 6-12).
- (34) Secondary Physical Science (Grades 6-12).
- (35) Secondary Physics (Grades 6-12).
- (36) Secondary Science (Grades 6-12).
- (37) Secondary Science, Composite (Grades 6-12).
- (38) Secondary or all-level teacher certificate plus 18 semester credit hours in any combination of sciences.

§231.65. *Science, Grades 7 and 8.*

An assignment in a departmentalized classroom for Science, Grades 7 and 8, is allowed with one of the following certificates.

- (1) Bilingual Generalist: Grades 4-8.
- (2) Chemistry: Grades 7-12.
- (3) Chemistry: Grades 8-12 (Grade 8 only).
- (4) Core Subjects: Grades 4-8.
- (5) Elementary Biology.
- (6) Elementary Chemistry.
- (7) Elementary Earth Science.
- (8) Elementary Life/Earth Middle-School Science.
- (9) Elementary Physical Science.
- (10) Elementary Physics.
- (11) Elementary Biology (Grades 1-8).
- (12) Elementary Chemistry (Grades 1-8).
- (13) Elementary Earth Science (Grades 1-8).
- (14) Elementary Life/Earth Middle-School Science (Grades 1-8).
- (15) Elementary Physical Science (Grades 1-8).
- (16) Elementary Physics (Grades 1-8).
- (17) Elementary teacher certificate plus 18 semester credit hours in any combination of sciences.
- (18) English as a Second Language Generalist: Grades 4-8.
- (19) Generalist: Grades 4-8.
- (20) Grades 6-12 or Grades 6-8--Biology.
- (21) Grades 6-12 or Grades 6-8--Chemistry.
- (22) Grades 6-12 or Grades 6-8--Earth Science.
- (23) Grades 6-12 or Grades 6-8--Life/Earth Middle-School Science.
- (24) Grades 6-12 or Grades 6-8--Physical Science.
- (25) Grades 6-12 or Grades 6-8--Physics.
- (26) Grades 6-12 or Grades 6-8--Science.
- (27) Grades 6-12 or Grades 6-8--Science, Composite.
- (28) Junior High School or High School--Biology.
- (29) Junior High School or High School--Chemistry.

- (30) Junior High School or High School--Earth Science.
- (31) Junior High School or High School--Life/Earth Middle-School Science.
- (32) Junior High School or High School--Physical Science.
- (33) Junior High School or High School--Physics.
- (34) Junior High School or High School--Science.
- (35) Junior High School or High School--Science, Composite.
- (36) Life Science: Grades 7-12.
- (37) Life Science: Grades 8-12 (Grade 8 only).
- (38) Legacy Master Science Teacher (Grades 4-8).
- (39) Legacy Master Science Teacher (Grades 8-12) (Grade 8 only).
- (40) Mathematics/Physical Science/Engineering: Grades 6-12.
- (41) Mathematics/Physical Science/Engineering: Grades 8-12 (Grade 8 only).
- (42) Mathematics/Science: Grades 4-8.
- (43) Physical Science: Grades 6-12.
- (44) Physical Science: Grades 8-12 (Grade 8 only).
- (45) Physics/Mathematics: Grades 7-12.
- (46) Physics/Mathematics: Grades 8-12 (Grade 8 only).
- (47) Science: Grades 4-8.
- (48) Science: Grades 7-12.
- (49) Science: Grades 8-12 (Grade 8 only).
- (50) Secondary Biology (Grades 6-12).
- (51) Secondary Chemistry (Grades 6-12).
- (52) Secondary Earth Science (Grades 6-12).
- (53) Secondary Life/Earth Science (Grades 6-12).
- (54) Secondary Physical Science (Grades 6-12).
- (55) Secondary Physics (Grades 6-12).
- (56) Secondary Science (Grades 6-12).
- (57) Secondary Science, Composite (Grades 6-12).
- (58) Secondary or all-level teacher certificate plus 18 semester credit hours in any combination of sciences.

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

Filed with the Office of the Secretary of State on August 10, 2020.

TRD-202003232

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Earliest possible date of adoption: September 20, 2020

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



SUBCHAPTER D. ELECTIVES,  
DISCIPLINARY COURSES, LOCAL CREDIT  
COURSES, AND INNOVATIVE COURSES,  
GRADES 6-12 ASSIGNMENTS

19 TAC §231.91, §231.93

STATUTORY AUTHORITY. The amendments implement Texas Education Code (TEC), §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, as amended by House Bill 3, 86th Texas Legislature, 2019, which required the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The amendments are proposed under TEC, §§21.031(a), 21.041(b)(1) and (2), and 21.064, as amended by HB 3, 86th Texas Legislature, 2019.

§231.91. *Reserve Officer Training Corps.*

(a) An assignment for Reserve Officer Training Corps (ROTC), Grades 6-12, is allowed with one of the following credentials.

(1) Junior Reserve Officer Training Corps: Grades 6-12 certificate.

(2) Emergency permit for Reserve Officer Training Corps (ROTC), Grades 6-12.

(b) An emergency permit for ROTC may not be renewed, but must be reissued every year as specified in §230.77(g)(4) of this title (relating to Specific Requirements for Initial Emergency Permits).

(c) School districts must apply and pay for reissuance of a new ROTC instructor emergency permit each year the instructor serves.

~~[(d) ROTC may be used for Physical Education substitution credit.]~~

§231.93. *Athletics, ~~]~~ Cheerleading, ~~]~~ Drill Team, ~~]~~ Marching Band.*

~~[(a)]~~ An assignment for Athletics, Cheerleading, Drill Team, and Marching Band is allowed with a valid certificate that matches the grade level of the assignment.

~~[(b) Athletics, Cheerleading, Drill Team, and Marching Band may be used for Physical Education substitution credit.]~~

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

Filed with the Office of the Secretary of State on August 10, 2020.

TRD-202003233

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Earliest possible date of adoption: September 20, 2020

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

◆ ◆ ◆  
SUBCHAPTER E. GRADES 9 - 12  
ASSIGNMENTS

DIVISION 1. ENGLISH LANGUAGE ARTS  
AND READING, GRADES 9-12 ASSIGNMENTS

19 TAC §§231.123, 231.125, 231.127, 231.129

STATUTORY AUTHORITY. The amendments implement Texas Education Code (TEC), §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, as amended by House Bill 3, 86th Texas Legislature, 2019, which required the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The amendments are proposed under TEC, §§21.031(a), 21.041(b)(1) and (2), and 21.064, as amended by HB 3, 86th Texas Legislature, 2019.

§231.123. *English I and II for Speakers of Other Languages, Grades 9-12.*

(a) An assignment for English I and II for Speakers of Other Languages, Grades 9-12, and English Language Development and Acquisition (ELDA), Grades 9-12, is allowed with one of the following certificates plus a valid English as a Second Language or bilingual education certificate, supplemental certificate, or endorsement listed in subsection (b) of this section.

(1) English Language Arts and Reading: Grades 7-12.

(2) English Language Arts and Reading: Grades 8-12.

(3) Grades 6-12 or Grades 9-12--English.

(4) Grades 6-12 or Grades 9-12--English Language Arts, Composite.

(5) Junior High School (Grades 9-10 only) or High School--English.

(6) Junior High School (Grades 9-10 only) or High School--English Language Arts, Composite.

(7) Secondary English (Grades 6-12).

(8) Secondary English Language Arts, Composite (Grades 6-12).

(b) An assignment for English I and II for Speakers of Other Languages, Grades 9-12, and English Language Development and Acquisition (ELDA), Grades 9-12, is allowed with one of the following English as a Second Language or bilingual education certificate, supplemental certificate, or endorsement plus a valid certificate listed in subsection (a) of this section.

(1) Bilingual Education Supplemental.

(2) Bilingual Education Supplemental (Early Childhood-Grade 4).

- (3) Bilingual Education Supplemental (Grades 4-8).
- (4) Bilingual Endorsement.
- (5) Bilingual/English as a Second Language Endorsement.
- (6) English as a Second Language Endorsement.
- (7) English as a Second Language Supplemental.
- (8) Junior High School (Grades 9-10 only) or High School-Bilingual/English as a Second Language.
- (9) Prekindergarten-Grade 12--Bilingual/English as a Second Language.
- (10) Prekindergarten-Grade 12--English as a Second Language.
- (11) Secondary Bilingual/English as a Second Language (Grades 6-12).

(c) At the discretion of the employing school district, persons assigned to teach English for Speakers of Other Languages (ESOL) I or ESOL II prior to June 21, 2009, may continue in the assignment without holding an English, English Language Arts Composite, or English Language Arts and Reading certificate. If a person is reassigned and later returns to teach in an ESOL I or ESOL II assignment, current rules will apply.

§231.125. *English as a Second Language, Grades 9-12.*

An assignment for English as a Second Language, Grades 9-12, [and English Language Development and Acquisition (ELDA), Grades 9-12,] is allowed with a valid classroom teaching certificate appropriate for the grade level and subject areas taught plus one of the following certificates.

- (1) Bilingual Education Supplemental.
- (2) Bilingual Education Supplemental (Early Childhood-Grade 4).
- (3) Bilingual Education Supplemental (Grades 4-8).
- (4) Bilingual Endorsement.
- (5) Bilingual/English as a Second Language Endorsement.
- (6) English as a Second Language Endorsement.
- (7) English as a Second Language Supplemental.
- (8) Junior High School (Grades 9-10 only) or High School-Bilingual/English as a Second Language.
- (9) Prekindergarten-Grade 12--Bilingual/English as a Second Language.
- (10) Prekindergarten-Grade 12--English as a Second Language.
- (11) Secondary Bilingual/English as a Second Language (Grades 6-12).

§231.127. *Reading I, II, and III, Grades 9-12.*

An assignment for Reading I, II, and III, Grades 9-12, is allowed with one of the following certificates.

- (1) English Language Arts and Reading: Grades 7-12.
- (2) English Language Arts and Reading: Grades 8-12.
- (3) Grades 6-12 or Grades 9-12--English. This assignment requires verifiable preparation in the teaching of reading such as in-service, seminar, or college course in reading. Initial assignments beginning with the 1990-1991 school year require nine semester credit hours

of upper-division coursework in reading with at least one course in diagnostic reading techniques.

(4) Grades 6-12 or Grades 9-12--English Language Arts, Composite. This assignment includes at least six semester credit hours in reading. Initial assignments beginning with the 2003-2004 school year require nine semester credit hours of upper-division coursework in reading with at least one course in diagnostic reading techniques.

(5) Grades 6-12 or Grades 9-12--Reading.

(6) Junior High School (Grades 9-10 only) or High School-English. This assignment requires verifiable preparation in the teaching of reading such as in-service, seminar, or college course in reading. Initial assignments beginning with the 1990-1991 school year require nine semester credit hours of upper-division coursework in reading with at least one course in diagnostic reading techniques.

(7) Junior High School (Grades 9-10 only) or High School-English Language Arts, Composite. This assignment includes at least six semester credit hours in reading. Initial assignments beginning with the 2003-2004 school year require nine semester credit hours of upper-division coursework in reading with at least one course in diagnostic reading techniques.

(8) Junior High School (Grades 9-10 only) or High School-Reading.

(9) Legacy Master Reading Teacher (Early Childhood-Grade 12).

(10) Reading Specialist.

(11) Reading Specialist (Early Childhood-Grade 12).

(12) Secondary English (Grades 6-12). This assignment requires verifiable preparation in the teaching of reading such as in-service, seminar, or college course in reading. Initial assignments beginning with the 1990-1991 school year require nine semester credit hours of upper-division coursework in reading with at least one course in diagnostic reading techniques.

(13) Secondary English Language Arts, Composite (Grades 6-12). This assignment includes at least six semester credit hours in reading. Initial assignments beginning with the 2003-2004 school year require nine semester credit hours of upper-division coursework in reading with at least one course in diagnostic reading techniques.

(14) Secondary Reading (Grades 6-12).

(15) Secondary or all-level teacher certificate plus nine semester credit hours of upper-division coursework in reading with at least one course in diagnostic reading techniques. Initial assignments beginning with the 1990-1991 school year require a teaching field in English plus nine semester credit hours of upper-division coursework in reading with at least one course in diagnostic reading techniques.

§231.129. *College Readiness and Study Skills, Grades 9-12.*

An assignment for College Readiness and Study Skills, Grades 9-12, is allowed with one of the following certificates.

(1) English Language Arts and Reading: Grades 7-12.

(2) English Language Arts and Reading: Grades 8-12.

(3) Grades 6-12 or Grades 9-12--English. This assignment requires verifiable preparation in the teaching of reading such as in-service, seminar, or college course in reading. Initial assignments beginning with the 1990-1991 school year require nine semester credit hours of upper-division coursework in reading with at least one course in diagnostic reading techniques.



(4) Grades 6-12 or Grades 9-12--English Language Arts, Composite. This assignment includes at least six semester credit hours in reading. Initial assignments beginning with the 2003-2004 school year require nine semester credit hours of upper-division coursework in reading with at least one course in diagnostic reading techniques.

(5) Grades 6-12 or Grades 9-12--Reading.

(6) Junior High School (Grades 9-10 only) or High School--English. This assignment requires verifiable preparation in the teaching of reading such as in-service, seminar, or college course in reading. Initial assignments beginning with the 1990-1991 school year require nine semester credit hours of upper-division coursework in reading with at least one course in diagnostic reading techniques.

(7) Junior High School (Grades 9-10 only) or High School--English Language Arts, Composite. This assignment includes at least six semester credit hours in reading. Initial assignments beginning with the 2003-2004 school year require nine semester credit hours of upper-division coursework in reading with at least one course in diagnostic reading techniques.

(8) Junior High School (Grades 9-10 only) or High School--Reading.

(9) Legacy Master Reading Teacher (Early Childhood-Grade 12).

(10) Reading Specialist.

(11) Reading Specialist (Early Childhood-Grade 12).

(12) Secondary English (Grades 6-12). This assignment requires verifiable preparation in the teaching of reading such as in-service, seminar, or college course in reading. Initial assignments beginning with the 1990-1991 school year require nine semester credit hours of upper-division coursework in reading with at least one course in diagnostic reading techniques.

(13) Secondary English Language Arts, Composite (Grades 6-12). This assignment includes at least six semester credit hours in reading. Initial assignments beginning with the 2003-2004 school year require nine semester credit hours of upper-division coursework in reading with at least one course in diagnostic reading techniques.

(14) Secondary Reading (Grades 6-12).

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

Filed with the Office of the Secretary of State on August 10, 2020.

TRD-202003234

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Earliest possible date of adoption: September 20, 2020

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



## DIVISION 2. LANGUAGES OTHER THAN ENGLISH, GRADES 9-12 ASSIGNMENTS

### 19 TAC §231.151, §231.153

STATUTORY AUTHORITY. The amendments implement Texas Education Code (TEC), §21.031(a), which states that the SBEC

shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B: TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, as amended by House Bill 3, 86th Texas Legislature, 2019, which required the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The amendments are proposed under TEC, §§21.031(a), 21.041(b)(1) and (2), and 21.064, as amended by HB 3, 86th Texas Legislature, 2019

§231.151. *Languages Other Than English, Grades 9-12.*

An assignment for Languages Other Than English, Levels I-VII; Classical Languages, Levels I-VII; Discovering Languages and Cultures; Seminars in Languages Other Than English; Seminar in Classical Languages; Advanced Language for Career Exploration; [Exploratory Languages, Cultural and Linguistic Topics,] or Special Topics in Language and Culture, Grades 9-12, is allowed with one of the following certificates.

(1) Languages Other Than English certificate in the appropriate language (Early Childhood-Grade 12).

(2) Secondary teacher certificate in the appropriate language of assignment.

§231.153. *American Sign Language, Grades 9-12.*

(a) An assignment for American Sign Language, Levels I-IV, Grades 9-12, is allowed with one of the following certificates.

(1) American Sign Language.

(2) American Sign Language: Early Childhood-Grade 12.

(b) The Texas Assessment of Sign Communication--American Sign Language (TASC-ASL) is required for an American Sign Language assignment.

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

Filed with the Office of the Secretary of State on August 10, 2020.

TRD-202003236

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Earliest possible date of adoption: September 20, 2020

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



## DIVISION 3. SOCIAL STUDIES, GRADES 9-12 ASSIGNMENTS

### 19 TAC §231.177

STATUTORY AUTHORITY. The amendment implements Texas Education Code (TEC), §21.031(a), which states that the SBEC

shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B: TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates: and TEC, §21.064, as amended by House Bill 3, 86th Texas Legislature, 2019, which required the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The amendment is proposed under TEC, §§21.031(a), 21.041(b)(1) and (2), and 21.064, as amended by HB 3, 86th Texas Legislature, 2019.

§231.177. *Ethnic Studies* [= *Mexican American Studies*], Grades 9-12.

An assignment for Ethnic Studies: Mexican American Studies or Ethnic Studies: African American Studies, Grades 9-12, is allowed with one of the following certificates.

- (1) Grades 6-12 or Grades 9-12--History.
- (2) Grades 6-12 or Grades 9-12--Social Studies.
- (3) Grades 6-12 or Grades 9-12--Social Studies, Composite.
- (4) History: Grades 7-12.
- (5) History: Grades 8-12.
- (6) Junior High School (Grades 9-10 only) or High School--History.
- (7) Junior High School (Grades 9-10 only) or High School--Social Science, Composite.
- (8) Secondary History (Grades 6-12).
- (9) Secondary Social Studies (Grades 6-12).
- (10) Secondary Social Studies, Composite (Grades 6-12).
- (11) Social Studies: Grades 7-12.
- (12) Social Studies: Grades 8-12.

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

Filed with the Office of the Secretary of State on August 10, 2020.

TRD-202003237

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Earliest possible date of adoption: September 20, 2020

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



## DIVISION 4. MATHEMATICS, GRADES 9-12 ASSIGNMENTS

19 TAC §§231.191, 231.193, 231.195

STATUTORY AUTHORITY. The amendments implement Texas Education Code (TEC), §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B: TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates: and TEC, §21.064, as amended by House Bill 3, 86th Texas Legislature, 2019, which required the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The amendments are proposed under TEC, §§21.031(a), 21.041(b)(1) and (2), and 21.064, as amended by HB 3, 86th Texas Legislature, 2019.

§231.191. *Mathematics, Grades 9-12.*

An assignment for Mathematics, Grades 9-12, is allowed with one of the following certificates.

- (1) Grades 6-12 or Grades 9-12--Mathematics.
- (2) Junior High School (Grades 9-10 only) or High School--Mathematics.
- (3) Junior High School (Grades 9-10 only) or High School--Mathematical Science, Composite.
- (4) Legacy Master Mathematics Teacher (Grades 8-12).
- (5) Mathematics: Grades 7-12.
- (6) Mathematics: Grades 8-12.
- (7) Mathematics/Physical Science/Engineering: Grades 6-12.
- (8) Mathematics/Physical Science/Engineering: Grades 8-12.
- (9) Physics/Mathematics: Grades 7-12.
- (10) Physics/Mathematics: Grades 8-12.
- (11) Secondary Mathematics (Grades 6-12).

§231.193. *Algebraic Reasoning, Grades 9-12.*

An assignment for Algebraic Reasoning, Grades 9-12, is allowed with one of the following certificates.

- (1) Grades 6-12 or Grades 9-12--Mathematics.
- (2) Junior High School (Grades 9-10 only) or High School--Mathematics.
- (3) Junior High School (Grades 9-10 only) or High School--Mathematical Science, Composite.
- (4) Legacy Master Mathematics Teacher (Grades 8-12).
- (5) Mathematics: Grades 7-12.
- (6) Mathematics: Grades 8-12.
- (7) Mathematics/Physical Science/Engineering: Grades 6-12.
- (8) Mathematics/Physical Science/Engineering: Grades 8-12.
- (9) Physics/Mathematics: Grades 7-12.

- (10) Physics/Mathematics: Grades 8-12.
- (11) Secondary Mathematics (Grades 6-12).

§231.195. *Statistics, Grades 9-12.*

An assignment for Statistics, Grades 9-12, is allowed with one of the following certificates.

- (1) Grades 6-12 or Grades 9-12--Mathematics.
- (2) Junior High School (Grades 9-10 only) or High School--Mathematics.
- (3) Junior High School (Grades 9-10 only) or High School--Mathematical Science, Composite.
- (4) Legacy Master Mathematics Teacher (Grades 8-12).
- (5) Mathematics: Grades 7-12.
- (6) Mathematics: Grades 8-12.
- (7) Mathematics/Physical Science/Engineering: Grades 6-12.
- (8) Mathematics/Physical Science/Engineering: Grades 8-12.
- (9) Physics/Mathematics: Grades 7-12.
- (10) Physics/Mathematics: Grades 8-12.
- (11) Secondary Mathematics (Grades 6-12).

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

Filed with the Office of the Secretary of State on August 10, 2020.

TRD-202003238

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Earliest possible date of adoption: September 20, 2020

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



## DIVISION 5. SCIENCE, GRADES 9-12 ASSIGNMENTS

### 19 TAC §§231.201, 231.203, 231.205, 231.207, 231.209, 231.211, 231.213, 231.215, 231.217, 231.219

STATUTORY AUTHORITY. The amendments implement Texas Education Code (TEC), §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, as amended by House Bill 3, 86th Texas Legislature, 2019, which required the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The amendments are proposed under TEC, §§21.031(a), 21.041(b)(1) and (2), and 21.064, as amended by HB 3, 86th Texas Legislature, 2019.

§231.201. *Biology, Grades 9-12.*

An assignment for Biology, Grades 9-12, is allowed with one of the following certificates.

- (1) Grades 6-12 or Grades 9-12--Biology.
- (2) Grades 6-12 or Grades 9-12--Science.
- (3) Grades 6-12 or Grades 9-12--Science, Composite.
- (4) Junior High School (Grades 9-10 only) or High School--Biology.
- (5) Junior High School (Grades 9-10 only) or High School--Science.
- (6) Junior High School (Grades 9-10 only) or High School--Science, Composite.
- (7) Life Science: Grades 7-12.
- (8) Life Science: Grades 8-12.
- (9) Legacy Master Science Teacher (Grades 8-12).
- (10) Science: Grades 7-12.
- (11) Science: Grades 8-12.
- (12) Secondary Biology (Grades 6-12).
- (13) Secondary Science (Grades 6-12).
- (14) Secondary Science, Composite (Grades 6-12).

§231.203. *Chemistry, Grades 9-12.*

An assignment for Chemistry, Grades 9-12, is allowed with one of the following certificates.

- (1) Chemistry: Grades 7-12.
- (2) Chemistry: Grades 8-12.
- (3) Grades 6-12 or Grades 9-12--Chemistry.
- (4) Grades 6-12 or Grades 9-12--Science.
- (5) Grades 6-12 or Grades 9-12--Science, Composite.
- (6) Junior High School (Grades 9-10 only) or High School--Chemistry.
- (7) Junior High School (Grades 9-10 only) or High School--Science.
- (8) Junior High School (Grades 9-10 only) or High School--Science, Composite.
- (9) Legacy Master Science Teacher (Grades 8-12).
- (10) Mathematics/Physical Science/Engineering: Grades 6-12.
- (11) Mathematics/Physical Science/Engineering: Grades 8-12.
- (12) Physical Science: Grades 6-12.
- (13) Physical Science: Grades 8-12.
- (14) Science: Grades 7-12.
- (15) Science: Grades 8-12.
- (16) Secondary Chemistry (Grades 6-12).
- (17) Secondary Science (Grades 6-12).

(18) Secondary Science, Composite (Grades 6-12).

§231.205. *Physics, Grades 9-12.*

An assignment for Physics, Grades 9-12, is allowed with one of the following certificates.

- (1) Grades 6-12 or Grades 9-12--Physics.
- (2) Grades 6-12 or Grades 9-12--Science.
- (3) Grades 6-12 or Grades 9-12--Science, Composite.
- (4) Junior High School (Grades 9-10 only) or High School--Physics.
- (5) Junior High School (Grades 9-10 only) or High School--Science.
- (6) Junior High School (Grades 9-10 only) or High School--Science, Composite.
- (7) Legacy Master Science Teacher (Grades 8-12).
- (8) Mathematics/Physical Science/Engineering: Grades 6-12.
- (9) Mathematics/Physical Science/Engineering: Grades 8-12.
- (10) Physical Science: Grades 6-12.
- (11) Physical Science: Grades 8-12.
- (12) Physics/Mathematics: Grades 7-12.
- (13) Physics/Mathematics: Grades 8-12.
- (14) Science: Grades 7-12.
- (15) Science: Grades 8-12.
- (16) Secondary Physics (Grades 6-12).
- (17) Secondary Science (Grades 6-12).
- (18) Secondary Science, Composite (Grades 6-12).

§231.207. *Integrated Physics and Chemistry, Grades 9-12.*

An assignment for Integrated Physics and Chemistry, Grades 9-12, is allowed with one of the following certificates.

- (1) Grades 6-12 or Grades 9-12--Physical Science.
- (2) Grades 6-12 or Grades 9-12--Science.
- (3) Grades 6-12 or Grades 9-12--Science, Composite.
- (4) Junior High School (Grades 9-10 only) or High School--Chemistry, if issued prior to September 1, 1976.
- (5) Junior High School (Grades 9-10 only) or High School--Physical Science.
- (6) Junior High School (Grades 9-10 only) or High School--Physics, if issued prior to September 1, 1976.
- (7) Junior High School (Grades 9-10 only) or High School--Science.
- (8) Junior High School (Grades 9-10 only) or High School--Science, Composite.
- (9) Legacy Master Science Teacher (Grades 8-12).
- (10) Mathematics/Physical Science/Engineering: Grades 6-12.
- (11) Mathematics/Physical Science/Engineering: Grades 8-12.

(12) Physical Science: Grades 6-12.

(13) Physical Science: Grades 8-12.

(14) Science: Grades 7-12.

(15) Science: Grades 8-12.

(16) Secondary Physical Science (Grades 6-12).

(17) Secondary Science (Grades 6-12).

(18) Secondary Science, Composite (Grades 6-12).

(19) Secondary or All-Level classroom teaching certificate dated between September 1, 1966, and September 1, 1976, plus 24 semester credit hours in a combination of sciences completed prior to September 1, 1976.

§231.209. *Principles of Technology, Grades 9-12.*

(a) An assignment for Principles of Technology, Grades 9-12, is allowed with one of the following certificates.

- (1) Grades 6-12 or Grades 9-12--Industrial Arts.
- (2) Grades 6-12 or Grades 9-12--Industrial Technology.
- (3) Grades 6-12 or Grades 9-12--Physics.
- (4) Grades 6-12 or Grades 9-12--Science.
- (5) Grades 6-12 or Grades 9-12--Science, Composite.
- (6) Junior High School (Grades 9-10 only) or High School--Industrial Arts.
- (7) Junior High School (Grades 9-10 only) or High School--Physics.
- (8) Junior High School (Grades 9-10 only) or High School--Science, Composite.
- (9) Legacy Master Science Teacher (Grades 8-12).
- (10) Mathematics/Physical Science/Engineering: Grades 6-12.
- (11) Mathematics/Physical Science/Engineering: Grades 8-12.
- (12) Physical Science: Grades 6-12.
- (13) Physical Science: Grades 8-12.
- (14) Physics/Mathematics: Grades 7-12.
- (15) Physics/Mathematics: Grades 8-12.
- (16) Science: Grades 7-12.
- (17) Science: Grades 8-12.
- (18) Secondary Industrial Arts (Grades 6-12).
- (19) Secondary Industrial Technology (Grades 6-12).
- (20) Secondary Physics (Grades 6-12).
- (21) Secondary Science (Grades 6-12).
- (22) Secondary Science, Composite (Grades 6-12).
- (23) Technology Education: Grades 6-12.

(b) An assignment for Principles of Technology, Grades 9-12, may also be taught with a vocational agriculture certificate or a trades and industry certificate with verifiable physics applications experience in business and industry, if assigned prior to the 1998-1999 school year. Six semester credit hours of college physics, chemistry, or electric-

ity/electronics may be substituted for the business and industry experience.

§231.211. *Astronomy, Grades 9-12.*

An assignment for Astronomy, Grades 9-12, is allowed with one of the following certificates.

- (1) Grades 6-12 or Grades 9-12--Earth Science.
- (2) Grades 6-12 or Grades 9-12--Science.
- (3) Grades 6-12 or Grades 9-12--Science, Composite.
- (4) Junior High School (Grades 9-10 only) or High School--Earth Science.
- (5) Junior High School (Grades 9-10 only) or High School--Science.
- (6) Junior High School (Grades 9-10 only) or High School--Science, Composite.
- (7) Legacy Master Science Teacher (Grades 8-12).
- (8) Mathematics/Physical Science/Engineering: Grades 6-12.
- (9) Mathematics/Physical Science/Engineering: Grades 8-12.
- (10) Physical Science: Grades 6-12.
- (11) Physical Science: Grades 8-12.
- (12) Physics/Mathematics: Grades 7-12.
- (13) Physics/Mathematics: Grades 8-12.
- (14) Science: Grades 7-12.
- (15) Science: Grades 8-12.
- (16) Secondary Earth Science (Grades 6-12).
- (17) Secondary Physics (Grades 6-12).
- (18) Secondary Science (Grades 6-12).
- (19) Secondary Science, Composite (Grades 6-12).

§231.213. *Earth and Space Science, Grades 9-12.*

An assignment for Earth and Space Science, Grades 9-12, is allowed with one of the following certificates.

- (1) Grades 6-12 or Grades 9-12--Earth Science.
- (2) Grades 6-12 or Grades 9-12--Science.
- (3) Grades 6-12 or Grades 9-12--Science, Composite.
- (4) Junior High School (Grades 9-10 only) or High School--Earth Science.
- (5) Junior High School (Grades 9-10 only) or High School--Science.
- (6) Junior High School (Grades 9-10 only) or High School--Science, Composite.
- (7) Legacy Master Science Teacher (Grades 8-12).
- (8) Mathematics/Physical Science/Engineering: Grades 6-12.
- (9) Mathematics/Physical Science/Engineering: Grades 8-12.
- (10) Physical Science: Grades 6-12.
- (11) Physical Science: Grades 8-12.

- (12) Science: Grades 7-12.
- (13) Science: Grades 8-12.
- (14) Secondary Earth Science (Grades 6-12).
- (15) Secondary Science (Grades 6-12).
- (16) Secondary Science, Composite (Grades 6-12).

§231.215. *Environmental Systems, Environmental Science, and Aquatic Science, Grades 9-12.*

(a) An assignment for Environmental Systems, Advanced Placement (AP) Environmental Science, International Baccalaureate (IB) Environmental Systems, or Aquatic Science, Grades 9-12, is allowed with one of the following certificates.

- (1) Chemistry: Grades 7-12.
- (2) Chemistry: Grades 8-12.
- (3) Grades 6-12 or Grades 9-12--Biology.
- (4) Grades 6-12 or Grades 9-12--Earth Science.
- (5) Grades 6-12 or Grades 9-12--Science.
- (6) Grades 6-12 or Grades 9-12--Science, Composite.
- (7) Junior High School (Grades 9-10 only) or High School--Biology.
- (8) Junior High School (Grades 9-10 only) or High School--Earth Science.
- (9) Junior High School (Grades 9-10 only) or High School--Science.
- (10) Junior High School (Grades 9-10 only) or High School--Science, Composite.
- (11) Life Science: Grades 7-12 or Grades 8-12.
- (12) Legacy Master Science Teacher (Grades 8-12).
- (13) Science: Grades 7-12.
- (14) Science: Grades 8-12.
- (15) Secondary Biology (Grades 6-12).
- (16) Secondary Earth Science (Grades 6-12).
- (17) Secondary Science (Grades 6-12).
- (18) Secondary Science, Composite (Grades 6-12).

(b) An assignment for Environmental Systems, AP Environmental Science, or IB Environmental Systems, Grades 9-12, is allowed with a valid secondary or all-level teacher certificate plus 24 semester credit hours in science, including at least 12 semester credit hours in environmental science and/or ecology if assigned prior to the 1989-1990 school year or any science teaching certificate with 12 semester credit hours in environmental science and/or ecology.

§231.217. *Anatomy and Physiology, Medical Microbiology, and Pathophysiology, Grades 9-12.*

An assignment for Anatomy and Physiology, Medical Microbiology, or Pathophysiology, Grades 9-12, is allowed with one of the following certificates.

- (1) Grades 6-12 or Grades 9-12--Biology.
- (2) Grades 6-12 or Grades 9-12--Science.
- (3) Grades 6-12 or Grades 9-12--Science, Composite.
- (4) Health Science: Grades 6-12.

- (5) Health Science Technology.
- (6) Health Science Technology Education: Grades 8-12.
- (7) Junior High School (Grades 9-10 only) or High School-Biology.
- (8) Junior High School (Grades 9-10 only) or High School-Science.
- (9) Junior High School (Grades 9-10 only) or High School-Science, Composite.
- (10) Life Science: Grades 7-12.
- (11) Life Science: Grades 8-12.
- (12) Legacy Master Science Teacher (Grades 8-12).
- (13) Science: Grades 7-12.
- (14) Science: Grades 8-12.
- (15) Secondary Biology (Grades 6-12).
- (16) Secondary Science (Grades 6-12).
- (17) Secondary Science, Composite (Grades 6-12).
- (18) Vocational Handicapped Health.
- (19) Vocational Health Occupations.
- (20) Vocational Health Occupations/Cooperative Training.
- (21) Vocational Health Occupations/Pre-employment Lab.

**§231.219. Scientific Research and Design, Grades 9-12.**

An assignment for Scientific Research and Design, Grades 9-12, is allowed with one of the following certificates.

- (1) Any vocational or career and technical education certificate specified in §233.13 of this title (relating to Career and Technical Education (Certificates not requiring experience and preparation in a skill area)) or §233.14 of this title (relating to Career and Technical Education (Certificates requiring experience and preparation in a skill area)) with a bachelor's degree and 18 semester credit hours in any combination of sciences.
- (2) Any science certificate valid for Grades 6-12, Grades 7-12, or Grades 8-12.
- (3) Any secondary science teaching field.
- (4) Legacy Master Science Teacher (Grades 8-12).

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

Filed with the Office of the Secretary of State on August 10, 2020.  
 TRD-202003239  
 Cristina De La Fuente-Valadez  
 Director, Rulemaking  
 State Board for Educator Certification  
 Earliest possible date of adoption: September 20, 2020  
 For further information, please call: (512) 475-1497

**DIVISION 8. TECHNOLOGY APPLICATIONS, GRADES 9-12 ASSIGNMENTS**

**19 TAC §§231.251, 231.253, 231.255, 231.257, 231.259**

**STATUTORY AUTHORITY.** The repeals implement Texas Education Code (TEC), §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B: TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates: and TEC, §21.064, as amended by House Bill (HB) 3, 86th Texas Legislature, 2019, which required the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

**CROSS REFERENCE TO STATUTE.** The repeals are proposed under TEC, §§21.031(a), 21.041(b)(1) and (2), and 21.064, as amended by HB 3, 86th Texas Legislature, 2019.

§231.251. *Computer Science, Grades 9-12.*

§231.253. *Technology Applications, Grades 9-12.*

§231.255. *Discrete Mathematics for Computer Science, Grades 9-12.*

§231.257. *Fundamentals of Computer Science; Advanced Placement Computer Science Principles; Game Programming and Design or Mobile Application Development, Grades 9-12.*

§231.259. *Cybersecurity, Grades 9-12.*

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

Filed with the Office of the Secretary of State on August 10, 2020.  
 TRD-202003258  
 Cristina De La Fuente-Valadez  
 Director, Rulemaking  
 State Board for Educator Certification  
 Earliest possible date of adoption: September 20, 2020  
 For further information, please call: (512) 475-1497

**DIVISION 9. CAREER DEVELOPMENT, GRADES 9-12 ASSIGNMENTS**

**19 TAC §231.271**

**STATUTORY AUTHORITY.** The amendment implements Texas Education Code (TEC), §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B: TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates: and TEC, §21.064, as amended by House Bill 3, 86th Texas Legislature, 2019, which required the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of

"legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The amendment is proposed under TEC, §§21.031(a), 21.041(b)(1) and (2), and 21.064, as amended by HB 3, 86th Texas Legislature, 2019.

§231.271. *Career Development, Grades 9-12.*

(a) Subject to the requirements in subsection (e) of this section, an assignment for Career Preparation I, Career Preparation II, or Extended Career Preparation, Grades 9-12, is allowed with one of the following certificates. [any vocational or career and technical education (CTE) classroom teaching certificate specified in §233.13 of this title (relating to Career and Technical Education (Certificates not requiring experience and preparation in a skill area)) or §233.14 of this title (relating to Career and Technical Education (Certificates requiring experience and preparation in a skill area))]

(1) Any vocational or career and technical education (CTE) classroom teaching certificate specified in §233.13 of this title (relating to Career and Technical Education (Certificates not requiring experience and preparation in a skill area)) or §233.14 of this title (relating to Career and Technical Education (Certificates requiring experience and preparation in a skill area)).

(2) Any special education certificate so long as, beginning with the 2020-2021 school year, the special education-certified teacher assigned to teach this course shall complete Texas Education Agency-approved training found at tea.texas.gov/cte prior to teaching this course.

(b) An assignment for Project-Based Research, Grades 9-12, is allowed with one of the following certificates. [any vocational or CTE classroom teaching certificate specified in §233.13 of this title or §233.14 of this title.]

(1) Any vocational or CTE classroom teaching certificate specified in §233.13 of this title or §233.14 of this title.

(2) Technology Applications: Early Childhood-Grade 12.

(3) Technology Applications: Grades 8-12.

(c) An assignment for Applied Mathematics for Technical Professionals, Grades 9-12, is allowed with one of the following certificates. [:]

(1) Any vocational or CTE classroom teaching certificate specified in §233.13 of this title or §233.14 of this title. This assignment requires a bachelor's degree.

(2) Grades 6-12 or Grades 9-12 Mathematics.

(3) Legacy Master Mathematics Teacher (Grades 8-12).

(4) Mathematics: Grades 7-12.

(5) Mathematics: Grades 8-12.

6-12. (6) Mathematics/Physical Science/Engineering: Grades

8-12. (7) Mathematics/Physical Science/Engineering: Grades

(8) Physics/Mathematics: Grades 7-12.

(9) Physics/Mathematics: Grades 8-12.

(10) Secondary Mathematics (Grades 6-12).

(11) Computer Science: Grades 8-12.

(12) Grades 6-12 or Grades 9-12--Computer Information Systems.

(13) Junior High School (Grades 9-10 only) or High School--Computer Information Systems.

(14) Secondary Computer Information Systems (Grades 6-12).

(d) All teachers assigned to Applied Mathematics for Technical Professionals shall participate in Texas Education Agency-approved training prior to teaching this course effective with the 2019-2020 school year. Specific details about the required training can be found at tea.texas.gov/cte.

(e) The school district is responsible for ensuring that each teacher assigned to Career Preparation I, Career Preparation II, or Extended Career Preparation, Grades 9-12, has completed appropriate training in state and federal requirements regarding work-based learning and safety.

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

Filed with the Office of the Secretary of State on August 10, 2020.

TRD-202003240

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Earliest possible date of adoption: September 20, 2020

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

◆ ◆ ◆  
DIVISION 10. AGRICULTURE, FOOD,  
AND NATURAL RESOURCES, GRADES 9-12  
ASSIGNMENTS

**19 TAC §§231.283, 231.287, 231.289**

STATUTORY AUTHORITY. The amendments implement Texas Education Code (TEC), §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B: TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, as amended by House Bill 3, 86th Texas Legislature, 2019, which required the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The amendments are proposed under TEC, §§21.031(a), 21.041(b)(1) and (2), and 21.064, as amended by HB 3, 86th Texas Legislature, 2019.

§231.283. *Advanced Animal Science and Advanced Plant and Soil Science, Grades 9-12.*

(a) Subject to the requirements in subsection (b) of this section, an assignment for Advanced Animal Science or Advanced Plant and Soil Science, Grades 9-12, is allowed with one of the following certificates.

- 6-12.
- (1) Agriculture, Food, and Natural Resources: Grades 6-12.
  - (2) Agricultural Science and Technology: Grades 6-12.
  - (3) Any vocational agriculture certificate.
  - (4) Life Science: Grades 7-12.
  - (5) Life Science: Grades 8-12.
  - (6) Legacy Master Science Teacher (Grades 8-12).
  - (7) Science: Grades 7-12.
  - (8) Science: Grades 8-12.
  - (9) Secondary Biology (Grades 6-12).
  - (10) Secondary Science, Composite (Grades 6-12).

(b) All teachers assigned to these courses shall participate in Texas Education Agency-approved training prior to teaching these courses effective with the 2019-2020 school year. Specific details about the required training can be found at [tea.texas.gov/cte](http://tea.texas.gov/cte).

§231.287. *Mathematical Applications in Agriculture, Food, and Natural Resources, Grades 9-12.*

(a) Subject to the requirements in subsection (b) of this section, an assignment for Mathematical Applications in Agriculture, Food, and Natural Resources, Grades 9-12, is allowed with one of the following certificates.

- 6-12.
- (1) Agriculture, Food, and Natural Resources: Grades 6-12.
  - (2) Agricultural Science and Technology: Grades 6-12.
  - (3) Any vocational agriculture certificate.
  - (4) Legacy Master Mathematics Teacher (Grades 8-12).
  - (5) Mathematics: Grades 7-12.
  - (6) Mathematics: Grades 8-12.
- 6-12.
- (7) Mathematics/Physical Science/Engineering: Grades 6-12.
  - (8) Mathematics/Physical Science/Engineering: Grades 8-12.
  - (9) Physics/Mathematics: Grades 7-12.
  - (10) Physics/Mathematics: Grades 8-12.
  - (11) Secondary Mathematics (Grades 6-12).

(b) All teachers assigned to this course shall participate in Texas Education Agency-approved training prior to teaching this course effective with the 2019-2020 school year. Specific details about the required training can be found at [tea.texas.gov/cte](http://tea.texas.gov/cte).

§231.289. *Agricultural Equipment Design and Fabrication; Agricultural Structures Design and Fabrication; Agricultural Mechanics and Metal Technologies; Agricultural Power Systems [; Oil and Gas Production], Grades 9-12.*

An assignment for Agricultural Equipment Design and Fabrication, Agricultural Structures Design and Fabrication, Agricultural Mechanics and Metal Technologies, or Agricultural Power Systems, [Oil and Gas Production I, or Oil and Gas Production II,] Grades 9-12, is allowed with one of the following certificates.

- 6-12.
- (1) Agriculture, Food, and Natural Resources: Grades 6-12.
  - (2) Agricultural Science and Technology: Grades 6-12.

(3) Any vocational agriculture certificate.

(4) Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.

(5) Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.

(6) Vocational Trades and Industry. This assignment requires appropriate work approval.

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

Filed with the Office of the Secretary of State on August 10, 2020.

TRD-202003241

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Earliest possible date of adoption: September 20, 2020

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



## DIVISION 11. ARCHITECTURE AND CONSTRUCTION, GRADES 9-12 ASSIGNMENTS

### 19 TAC §231.305

STATUTORY AUTHORITY. The amendment implements Texas Education Code (TEC), §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B: TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, as amended by House Bill 3, 86th Texas Legislature, 2019, which required the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The amendment is proposed under TEC, §§21.031(a), 21.041(b)(1) and (2), and 21.064, as amended by HB 3, 86th Texas Legislature, 2019.

§231.305. *Architectural Design, Grades 9-12.*

(a) An assignment for Architectural Design I or Architectural Design II, Grades 9-12, is allowed with one of the following certificates.

- 6-12.
- (1) Mathematics/Physical Science/Engineering: Grades 6-12.
  - (2) Mathematics/Physical Science/Engineering: Grades 8-12.
  - (3) Secondary Industrial Arts (Grades 6-12).
  - (4) Secondary Industrial Technology (Grades 6-12).
  - (5) Technology Education: Grades 6-12.



(6) Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.

(7) Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.

(8) Vocational Trades and Industry. This assignment requires appropriate work approval.

(b) Subject to the requirements in subsection (c) of this section, an assignment for Practicum in Architectural Design or Extended Practicum in Architectural Design, Grades 9-12, is allowed with one of the following certificates.

(1) Mathematics/Physical Science/Engineering: Grades 6-12.

(2) Mathematics/Physical Science/Engineering: Grades 8-12.

(3) Secondary Industrial Arts (Grades 6-12).

(4) Secondary Industrial Technology (Grades 6-12).

(5) Technology Education: Grades 6-12.

(6) Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.

(7) Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.

(8) Vocational Trades and Industry. This assignment requires appropriate work approval.

(9) Any home economics or homemaking certificate.

(10) Family and Consumer Sciences, Composite: Grades 6-12.

(c) The school district is responsible for ensuring that each teacher assigned to Practicum in Architectural Design or Extended Practicum in Architectural Design, Grades 9-12, has completed appropriate training in state and federal requirements regarding work-based learning and safety.

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

Filed with the Office of the Secretary of State on August 10, 2020.

TRD-202003242

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Earliest possible date of adoption: September 20, 2020

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



## DIVISION 12. ARTS, AUDIO/VIDEO TECHNOLOGY, AND COMMUNICATIONS, GRADES 9-12 ASSIGNMENTS

**19 TAC §§231.331, 231.333, 231.335, 231.337, 231.339, 231.341**

STATUTORY AUTHORITY. The amendments implement Texas Education Code (TEC), §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school ed-

ucators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B: TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates: and TEC, §21.064, as amended by House Bill 3, 86th Texas Legislature, 2019, which required the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The amendments are proposed under TEC, §§21.031(a), 21.041(b)(1) and (2), and 21.064, as amended by HB 3, 86th Texas Legislature, 2019.

§231.331. *Professional Communications, Grades 9-12.*

An assignment for Professional Communications, Grades 9-12, is allowed with one of the following certificates.

(1) All-Level Speech and Drama.

(2) All-Level Speech Communications/Theatre Arts (Prekindergarten-Grade 12).

(3) Grades 6-12 or Grades 9-12--Speech Communications.

(4) Junior High School (Grades 9-10 only) or High School--Speech.

(5) Junior High School (Grades 9-10 only) or High School--Speech and Drama.

(6) Junior High School (Grades 9-10 only) or High School--English Language Arts, Composite.

(7) Any vocational or career and technical education classroom teaching certificate specified in §233.13 of this title (relating to Career and Technical Education (Certificates not requiring experience and preparation in a skill area)) or §233.14 of this title (relating to Career and Technical Education (Certificates requiring experience and preparation in a skill area)). The school district is responsible for ensuring that each teacher assigned to Professional Communications, Grades 9-12, has completed appropriate education and/or training in effective communication strategies and demonstrates proficiency in oral and written communication.

(8) Secondary English Language Arts, Composite (Grades 6-12).

(9) Secondary Speech (Grades 6-12).

(10) Secondary Speech Communications (Grades 6-12).

(11) Speech: Grades 7-12.

(12) Speech: Grades 8-12.

(13) Technology Applications: Early Childhood-Grade 12.

(14) Technology Applications: Grades 8-12.

§231.333. *Principles of Arts, Audio/Video Technology, and Communications, Grades 9-12.*

An assignment for Principles of Arts, Audio/Video Technology, and Communications, Grades 9-12, is allowed with one of the following certificates.

(1) Any business or office education certificate.

(2) Business and Finance: Grades 6-12.

(3) Business Education: Grades 6-12.

- (4) Secondary Industrial Arts (Grades 6-12).
- (5) Secondary Industrial Technology (Grades 6-12).
- (6) Technology Applications: Early Childhood-Grade 12.
- (7) Technology Applications: Grades 8-12.
- (8) Technology Education: Grades 6-12.
- (9) Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.

(10) Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.

(11) Vocational Trades and Industry. This assignment requires appropriate work approval.

(12) Any home economics or homemaking certificate.

(13) Family and Consumer Sciences, Composite: Grades 6-12.

§231.335. *Animation, Grades 9-12.*

(a) An assignment for Animation I, Animation I Lab, Animation II, or Animation II Lab, Digital Art and Animation, 3-D Modeling and Animation, Grades 9-12, is allowed with one of the following certificates.

- (1) Any business or office education certificate.
- (2) Business and Finance: Grades 6-12.
- (3) Business Education: Grades 6-12.
- (4) Secondary Industrial Arts (Grades 6-12).
- (5) Secondary Industrial Technology (Grades 6-12).
- (6) Technology Applications: Early Childhood-Grade 12.
- (7) Technology Applications: Grades 8-12.
- (8) Technology Education: Grades 6-12.
- (9) Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.

(10) Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.

(11) Vocational Trades and Industry. This assignment requires appropriate work approval.

(b) Subject to the requirements in subsection (c) of this section, an assignment for Practicum in Animation or Extended Practicum in Animation, Grades 9-12, is allowed with one of the following certificates.

- (1) Any business or office education certificate.
- (2) Business and Finance: Grades 6-12.
- (3) Business Education: Grades 6-12.
- (4) Secondary Industrial Arts (Grades 6-12).
- (5) Secondary Industrial Technology (Grades 6-12).
- (6) Technology Applications: Early Childhood-Grade 12.
- (7) Technology Applications: Grades 8-12.
- (8) Technology Education: Grades 6-12.
- (9) Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.

(10) Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.

(11) Vocational Trades and Industry. This assignment requires appropriate work approval.

(c) The school district is responsible for ensuring that each teacher assigned to Practicum in Animation or Extended Practicum in Animation, Grades 9-12, has completed appropriate training in state and federal requirements regarding work-based learning and safety.

§231.337. *Audio/Video Production; Graphic Design and Illustration, Grades 9-12.*

(a) An assignment for Audio/Video Production I; Audio/Video Production I Lab; Audio/Video Production II; Audio/Video Production II Lab; Digital Audio Technology I; Digital Audio Technology II; Graphic Design and Illustration I; Graphic Design and Illustration I Lab; Graphic Design and Illustration II; Graphic Design and Illustration II Lab; [ø] Video Game Design[;]; Web Game Development; Digital Design and Media Production; or Digital Communications in the 21st Century, Grades 9-12, is allowed with one of the following certificates.

- (1) Secondary Industrial Arts (Grades 6-12).
- (2) Secondary Industrial Technology (Grades 6-12).
- (3) Technology Applications: Early Childhood-Grade 12.
- (4) Technology Applications: Grades 8-12.
- (5) Technology Education: Grades 6-12.

(6) Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.

(7) Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.

(8) Vocational Trades and Industry. This assignment requires appropriate work approval.

(b) Subject to the requirements in subsection (c) of this section, an assignment for Practicum in Audio/Video Production, Practicum in Graphic Design and Illustration, Extended Practicum in Audio/Video Production, or Extended Practicum in Graphic Design and Illustration, Grades 9-12, is allowed with one of the following certificates.

- (1) Secondary Industrial Arts (Grades 6-12).
- (2) Secondary Industrial Technology (Grades 6-12).
- (3) Technology Applications: Early Childhood-Grade 12.
- (4) Technology Applications: Grades 8-12.
- (5) Technology Education: Grades 6-12.

(6) Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.

(7) Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.

(8) Vocational Trades and Industry. This assignment requires appropriate work approval.

(c) The school district is responsible for ensuring that each teacher assigned to Practicum in Audio/Video Production, Practicum in Graphic Design and Illustration, Extended Practicum in Audio/Video Production, or Extended Practicum in Graphic Design and Illustration, Grades 9-12, has completed appropriate training in state and federal requirements regarding work-based learning and safety.

§231.339. *Photography, Grades 9-12.*

(a) An assignment for Commercial Photography I, Commercial Photography I Lab, Commercial Photography II, or Commercial Photography II Lab, Grades 9-12, is allowed with one of the following certificates.

- (1) Art (Early Childhood-Grade 12).
- (2) Art: Junior High School (Grades 9-10 only), High School, Secondary.
- (3) Art (Grades 6-12, Grades 9-12, or All-Level).
- (4) Secondary Industrial Arts (Grades 6-12).
- (5) Secondary Industrial Technology (Grades 6-12).
- (6) Technology Education: Grades 6-12.
- (7) Technology Applications: Early Childhood-Grade 12.
- (8) Technology Applications: Grades 8-12.
- (9) [~~7~~] Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.
- (10) [~~8~~] Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.
- (11) [~~9~~] Vocational Trades and Industry. This assignment requires appropriate work approval.

(b) Subject to the requirements in subsection (c) of this section, an assignment for Practicum in Commercial Photography or Extended Practicum in Commercial Photography, Grades 9-12, is allowed with one of the following certificates.

- (1) Secondary Industrial Arts (Grades 6-12).
- (2) Secondary Industrial Technology (Grades 6-12).
- (3) Technology Education: Grades 6-12.
- (4) Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.
- (5) Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.
- (6) Vocational Trades and Industry. This assignment requires appropriate work approval.
- (7) Technology Applications: Early Childhood-Grade 12.
- (8) Technology Applications: Grades 8-12.

(c) The school district is responsible for ensuring that each teacher assigned to Practicum in Commercial Photography or Extended Practicum in Commercial Photography, Grades 9-12, has completed appropriate training in state and federal requirements regarding work-based learning and safety.

§231.341. *Printing and Imaging Technology, Grades 9-12.*

(a) An assignment for Printing and Imaging Technology I, Printing and Imaging Technology I Lab, Printing and Imaging Technology II, or Printing and Imaging Technology II Lab, Grades 9-12, is allowed with one of the following certificates.

- (1) Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.
- (2) Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.
- (3) Vocational Trades and Industry. This assignment requires appropriate work approval.
- (4) Technology Applications: Early Childhood-Grade 12.

(5) Technology Applications: Grades 8-12.

(6) Technology Education: Grades 6-12.

(7) Secondary Industrial Arts: Grades 8-12.

(8) Secondary Industrial Technology: Grades 6-12.

(b) Subject to the requirements in subsection (c) of this section, an assignment for Practicum in Printing and Imaging Technology or Extended Practicum in Printing and Imaging Technology, Grades 9-12, is allowed with one of the following certificates.

- (1) Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.
- (2) Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.
- (3) Vocational Trades and Industry. This assignment requires appropriate work approval.
- (4) Technology Applications: Early Childhood-Grade 12.
- (5) Technology Applications: Grades 8-12.
- (6) Technology Education: Grades 6-12.
- (7) Secondary Industrial Arts: Grades 8-12.
- (8) Secondary Industrial Technology: Grades 6-12.

(c) The school district is responsible for ensuring that each teacher assigned to Practicum in Printing and Imaging Technology or Extended Practicum in Printing and Imaging Technology, Grades 9-12, has completed appropriate training in state and federal requirements regarding work-based learning and safety.

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

Filed with the Office of the Secretary of State on August 10, 2020.

TRD-202003244

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Earliest possible date of adoption: September 20, 2020

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



## DIVISION 13. BUSINESS MANAGEMENT AND ADMINISTRATION, GRADES 9-12 ASSIGNMENTS

### 19 TAC §231.361, §231.365

STATUTORY AUTHORITY. The amendments implement Texas Education Code (TEC), §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B: TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, as amended by House Bill 3, 86th Texas Legislature, 2019, which required the SBEC to stop the issuance and renewal of master teacher

certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

**CROSS REFERENCE TO STATUTE.** The amendments are proposed under TEC, §§21.031(a), 21.041(b)(1) and (2), and 21.064, as amended by HB 3, 86th Texas Legislature, 2019.

§231.361. *Business Information Management; Business Law; and Touch System Data Entry, Grades 9-12.*

(a) An assignment for Business Information Management I [~~and II, Business Law, or Touch System Data Entry~~], Grades 9-12, is allowed with one of the following certificates.

- (1) Any business or office education certificate.
- (2) Business and Finance: Grades 6-12.
- (3) Business Education: Grades 6-12.
- (4) Marketing: Grades 6-12.
- (5) Marketing Education: Grades 8-12.
- (6) Health Science Technology Education: Grades 8-12.

This assignment requires appropriate work approval.

(7) Health Science Education: Grades 6-12. This assignment requires appropriate work approval.

(b) An assignment for Business Information Management II, Business Law, or Touch System Data Entry, Grades 9-12, is allowed with one of the following certificates.

- (1) Any business or office education certificate.
- (2) Business and Finance: Grades 6-12.
- (3) Business Education: Grades 6-12.
- (4) Marketing: Grades 6-12.
- (5) Marketing Education: Grades 8-12.

(c) [(b)] Subject to the requirements in subsection (d) [(e)] of this section, an assignment for Practicum in Business Management or Extended Practicum in Business Management, Grades 9-12, is allowed with one of the following certificates.

- (1) Any business or office education certificate.
- (2) Business and Finance: Grades 6-12.
- (3) Business Education: Grades 6-12.
- (4) Marketing: Grades 6-12.
- (5) Marketing Education: Grades 8-12.

(d) [(e)] The school district is responsible for ensuring that each teacher assigned to Practicum in Business Management or Extended Practicum in Business Management, Grades 9-12, has completed appropriate training in state and federal requirements regarding work-based learning and safety.

§231.365. *Business English, Grades 9-12.*

(a) An assignment for Business English, Grades 9-12, is allowed with one of the following certificates.

- (1) Any business or office education certificate.
- (2) Business and Finance: Grades 6-12.
- (3) Business Education: Grades 6-12.
- (4) English Language Arts and Reading: Grades 7-12.
- (5) English Language Arts and Reading: Grades 8-12.

(6) Grades 6-12 or Grades 9-12--English.

(7) Grades 6-12 or Grades 9-12--English Language Arts, Composite.

(8) Junior High School (Grades 9-10 only) or High School--English.

(9) Junior High School (Grades 9-10 only) or High School--English Language Arts, Composite.

(10) Secondary English (Grades 6-12).

(11) Secondary English Language Arts, Composite (Grades 6-12).

(12) Marketing: Grades 6-12.

(13) Marketing Education: Grades 8-12.

(b) All teachers assigned to this course shall participate in Texas Education Agency-approved training prior to teaching this course effective with the 2019-2020 school year. Specific details about the required training can be found at [tea.texas.gov/cte](http://tea.texas.gov/cte).

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

Filed with the Office of the Secretary of State on August 10, 2020.

TRD-202003245

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Earliest possible date of adoption: September 20, 2020

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



## DIVISION 15. FINANCE, GRADES 9-12 ASSIGNMENTS

### 19 TAC §§231.392 - 231.395, 231.397

**STATUTORY AUTHORITY.** The amendments implement Texas Education Code (TEC), §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B: TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, as amended by House Bill 3, 86th Texas Legislature, 2019, which required the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

**CROSS REFERENCE TO STATUTE.** The amendments are proposed under TEC, §§21.031(a), 21.041(b)(1) and (2), and 21.064, as amended by HB 3, 86th Texas Legislature, 2019.

§231.392. *Money Matters, Grades 9-12.*

An assignment for Money Matters, Grades 9-12, is allowed with one of the following certificates.

- (1) Any business or office education certificate.

- (2) Any homemaking or home economics certificate.
- (3) Any marketing or distributive education certificate.
- (4) Business and Finance: Grades 6-12.
- (5) Business Education: Grades 6-12.
- (6) Family and Consumer Sciences, Composite: Grades 6-12.
- (7) Marketing: Grades 6-12.
- (8) Marketing Education: Grades 8-12.
- (9) Grades 6-12 or Grades 9-12 Mathematics.
- (10) Legacy Master Mathematics Teacher.
- (11) Mathematics: Grades 7-12.
- (12) Mathematics: Grades 8-12.
- (13) Mathematics/Physical Science/Engineering: Grades 6-12.
- (14) Mathematics/Physical Science/Engineering: Grades 8-12.
- (15) Physics/Mathematics: Grades 7-12.
- (16) Physics/Mathematics: Grades 8-12.

§231.393. *Accounting I; Financial Analysis; Insurance Operations; and Securities and Investments, Grades 9-12.*

An assignment for Accounting I; Financial Analysis; Insurance Operations; and Securities and Investments, Grades 9-12, is allowed with one of the following certificates.

- (1) Any business or office education certificate.
- (2) Business and Finance: Grades 6-12.
- (3) Business Education: Grades 6-12.
- (4) Marketing: Grades 6-12.
- (5) Marketing Education: Grades 8-12.

§231.394. *Statistics and Business Decision Making, Grades 9-12.*

(a) Subject to the requirements in subsection (b) of this section, an assignment for Statistics and Business Decision Making, Grades 9-12, is allowed with one of the following certificates.

- (1) Any business or office education certificate.
- (2) Business and Finance: Grades 6-12.
- (3) Business Education: Grades 6-12.
- (4) Legacy Master Mathematics Teacher (Grades 8-12).
- (5) Mathematics: Grades 7-12.
- (6) Mathematics: Grades 8-12.
- (7) Mathematics/Physical Science/Engineering: Grades 6-12.
- (8) Mathematics/Physical Science/Engineering: Grades 8-12.
- (9) Physics/Mathematics: Grades 7-12.
- (10) Physics/Mathematics: Grades 8-12.
- (11) Secondary Mathematics (Grades 6-12).
- (12) Marketing: Grades 6-12.
- (13) Marketing Education: Grades 8-12.

(b) All teachers assigned to this course shall participate in Texas Education Agency-approved training prior to teaching this course effective with the 2019-2020 school year. Specific details about the required training can be found at [tea.texas.gov/cte](http://tea.texas.gov/cte).

§231.395. *Financial Mathematics, Grades 9-12.*

(a) An assignment for Financial Mathematics, Grades 9-12, is allowed with one of the following certificates.

- (1) Any business or office education certificate.
- (2) Business and Finance: Grades 6-12.
- (3) Business Education: Grades 6-12.
- (4) Legacy Master Mathematics Teacher (Grades 8-12).
- (5) Mathematics: Grades 7-12.
- (6) Mathematics: Grades 8-12.
- (7) Mathematics/Physical Science/Engineering: Grades 6-12.
- (8) Mathematics/Physical Science/Engineering: Grades 8-12.
- (9) Physics/Mathematics: Grades 7-12.
- (10) Physics/Mathematics: Grades 8-12.
- (11) Secondary Mathematics (Grades 6-12).
- (12) Marketing: Grades 6-12.
- (13) Marketing Education: Grades 8-12.

(b) All teachers assigned to this course shall participate in Texas Education Agency-approved training prior to teaching this course effective with the 2019-2020 school year. Specific details about the required training can be found at [tea.texas.gov/cte](http://tea.texas.gov/cte).

§231.397. *Accounting II, Grades 9-12.*

(a) Subject to the requirements in subsection (b) of this section, an assignment for Accounting II, Grades 9-12, is allowed with one of the following certificates.

- (1) Any business or office education certificate.
- (2) Business and Finance: Grades 6-12.
- (3) Business Education: Grades 6-12.
- (4) Legacy Master Mathematics Teacher (Grades 8-12).
- (5) Mathematics: Grades 7-12.
- (6) Mathematics: Grades 8-12.
- (7) Mathematics/Physical Science/Engineering: Grades 6-12.
- (8) Mathematics/Physical Science/Engineering: Grades 8-12.
- (9) Physics/Mathematics: Grades 7-12.
- (10) Physics/Mathematics: Grades 8-12.
- (11) Secondary Mathematics (Grades 6-12).
- (12) Marketing: Grades 6-12.
- (13) Marketing Education: Grades 8-12.

(b) All teachers assigned to this course shall participate in Texas Education Agency-approved training prior to teaching this course effective with the 2019-2020 school year. Specific details about the required training can be found at [tea.texas.gov/cte](http://tea.texas.gov/cte).

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

Filed with the Office of the Secretary of State on August 10, 2020.

TRD-202003246

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Earliest possible date of adoption: September 20, 2020

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



## DIVISION 17. HEALTH SCIENCE, GRADES 9-12 ASSIGNMENTS

### 19 TAC §§231.421, 231.423, 231.425, 231.427

**STATUTORY AUTHORITY.** The amendments implement Texas Education Code (TEC), §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, as amended by House Bill 3, 86th Texas Legislature, 2019, which required the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

**CROSS REFERENCE TO STATUTE.** The amendments are proposed under TEC, §§21.031(a), 21.041(b)(1) and (2), and 21.064, as amended by HB 3, 86th Texas Legislature, 2019.

#### §231.421. *Health Science, Grades 9-12.*

(a) An assignment for Health Science Theory, Health Science Clinical, ~~Medical Terminology,~~ Pharmacology, Principles of Health Science, or World Health Research, Grades 9-12, is allowed with one of the following certificates.

- (1) Health Science: Grades 6-12.
- (2) Health Science Technology Education: Grades 8-12.
- (3) Vocational Health Occupations.
- (4) Vocational Health Science Technology.

(b) An assignment for Medical Terminology, Grades 9-12, is allowed with one of the following certificates.

- (1) Secondary Biology (Grades 6-12).
- (2) Secondary Science (Grades 6-12).
- (3) Secondary Science, Composite (Grades 6-12).
- (4) Health Science: Grades 6-12.
- (5) Health Science Technology Education: Grades 8-12.
- (6) Life Science: Grades 7-12.
- (7) Life Science: Grades 8-12.
- (8) Legacy Master Science Teacher (Grades 8-12).

(9) Science: Grades 7-12.

(10) Science: Grades 8-12.

(11) Vocational Health Occupations.

(12) Vocational Health Science Technology.

(c) ~~[(b)]~~ Subject to the requirements in subsection (d) ~~[(e)]~~ of this section, an assignment for Practicum in Health Science or Extended Practicum in Health Science, Grades 9-12, is allowed with one of the following certificates.

- (1) Health Science: Grades 6-12.
- (2) Health Science Technology Education: Grades 8-12.
- (3) Vocational Health Occupations.
- (4) Vocational Health Science Technology.

(d) ~~[(e)]~~ The school district is responsible for ensuring that each teacher assigned to Practicum in Health Science or Extended Practicum in Health Science, Grades 9-12, has completed appropriate training in state and federal requirements regarding work-based learning and safety.

#### §231.423. *Anatomy and Physiology, Medical Microbiology, and Pathophysiology, Grades 9-12.*

(a) An assignment for Anatomy and Physiology, Medical Microbiology, or Pathophysiology, Grades 9-12, is allowed with one of the following certificates.

- (1) Secondary Biology (Grades 6-12).
- (2) Secondary Science (Grades 6-12).
- (3) Secondary Science, Composite (Grades 6-12).
- (4) Health Science: Grades 6-12. This assignment requires a bachelor's degree.
- (5) Health Science Technology Education: Grades 8-12. This assignment requires a bachelor's degree.
- (6) Life Science: Grades 7-12.
- (7) Life Science: Grades 8-12.
- (8) Legacy Master Science Teacher (Grades 8-12).
- (9) Science: Grades 7-12.
- (10) Science: Grades 8-12.
- (11) Vocational Health Occupations. This assignment requires a bachelor's degree.
- (12) Vocational Health Science Technology. This assignment requires a bachelor's degree.

(b) All teachers assigned to this course shall participate in Texas Education Agency-approved training prior to teaching this course effective with the 2019-2020 school year. Specific details about the required training can be found at [tea.texas.gov/cte](http://tea.texas.gov/cte).

#### §231.425. *Mathematics for Medical Professionals, Grades 9-12.*

(a) An assignment for Mathematics for Medical Professionals, Grades 9-12, is allowed with one of the following certificates.

- (1) Health Science: Grades 6-12. This assignment requires a bachelor's degree.
- (2) Health Science Technology Education: Grades 8-12. This assignment requires a bachelor's degree.
- (3) Vocational Health Occupations. This assignment requires a bachelor's degree.

(4) Vocational Health Science Technology. This assignment requires a bachelor's degree.

(5) Legacy Master Mathematics Teacher (Grades 8-12).

(6) Mathematics: Grades 7-12.

(7) Mathematics: Grades 8-12.

(8) Mathematics/Physical Science/Engineering: Grades 6-12.

(9) Mathematics/Physical Science/Engineering: Grades 8-12.

(10) Physics/Mathematics: Grades 7-12.

(11) Physics/Mathematics: Grades 8-12.

(12) Secondary Mathematics.

(b) All teachers assigned to this course shall participate in Texas Education Agency-approved training prior to teaching this course effective with the 2019-2020 school year. Specific details about the required training can be found at [tea.texas.gov/cte](http://tea.texas.gov/cte).

§231.427. *Health Informatics, Grades 9-12.*

An assignment for Health Informatics, Grades 9-12, is allowed with one of the following certificates.

(1) Health Science: Grades 6-12.

(2) Health Science Technology Education: Grades 8-12.

(3) Vocational Health Occupations.

(4) Vocational Health Science Technology.

(5) Any business or office education certificate.

(6) Business and Finance: Grades 6-12.

(7) Business Education: Grades 6-12.

(8) Marketing: Grades 6-12.

(9) Marketing Education: Grades 8-12.

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

Filed with the Office of the Secretary of State on August 10, 2020.

TRD-202003247

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Earliest possible date of adoption: September 20, 2020

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



## DIVISION 18. HOSPITALITY AND TOURISM, GRADES 9-12 ASSIGNMENTS

### 19 TAC §231.445

STATUTORY AUTHORITY. The amendment implements Texas Education Code (TEC), §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in

a manner consistent with the TEC, Chapter 21, Subchapter B: TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, as amended by House Bill 3, 86th Texas Legislature, 2019, which required the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The amendment is proposed under TEC, §§21.031(a), 21.041(b)(1) and (2), and 21.064, as amended by HB 3, 86th Texas Legislature, 2019.

§231.445. *Food Science, Grades 9-12.*

(a) Subject to the requirements in subsection (b) of this section, an assignment for Food Science, Grades 9-12, is allowed with one of the following certificates.

(1) Any home economics or homemaking certificate.

(2) Chemistry: Grades 7-12.

(3) Chemistry: Grades 8-12.

(4) Family and Consumer Sciences, Composite: Grades 6-12.

(5) Hospitality, Nutrition, and Food Sciences: Grades 8-12.

(6) Life Science: Grades 7-12.

(7) Life Science: Grades 8-12.

(8) Legacy Master Science Teacher (Grades 8-12).

(9) Science: Grades 7-12.

(10) Science: Grades 8-12.

(11) Secondary Biology (Grades 6-12).

(12) Secondary Chemistry (Grades 6-12).

(13) Secondary Science (Grades 6-12).

(14) Secondary Science, Composite (Grades 6-12).

(b) All teachers assigned to this course shall participate in Texas Education Agency-approved training prior to teaching this course effective with the 2019-2020 school year. Specific details about the required training can be found at [tea.texas.gov/cte](http://tea.texas.gov/cte).

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

Filed with the Office of the Secretary of State on August 10, 2020.

TRD-202003248

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Earliest possible date of adoption: September 20, 2020

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



## DIVISION 20. INFORMATION TECHNOLOGY, GRADES 9-12 ASSIGNMENTS

### 19 TAC §§231.483, 231.485, 231.487, 231.491

STATUTORY AUTHORITY. The amendments and new sections implement Texas Education Code (TEC), §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B: TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates: and TEC, §21.064, as amended by House Bill 3, 86th Texas Legislature, 2019, which required the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The amendments and new sections are proposed under TEC, §§21.031(a), 21.041(b)(1) and (2), and 21.064, as amended by HB 3, 86th Texas Legislature, 2019.

§231.483. Digital Media [; Web Technologies], Grades 9-12.

An assignment for Digital Media [or Web Technologies], Grades 9-12, is allowed with one of the following certificates.

- (1) Any business or office education certificate.
- (2) Business and Finance: Grades 6-12.
- (3) Business Education: Grades 6-12.
- (4) Secondary Industrial Arts (Grades 6-12).
- (5) Secondary Industrial Technology (Grades 6-12).
- (6) Technology Education: Grades 6-12.
- (7) Technology Applications: Early Childhood-Grade 12.
- (8) Technology Applications: Grades 8-12.
- (9) Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.
- (10) Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.
- (11) Vocational Trades and Industry. This assignment requires appropriate work approval.

§231.485. Web Communications, Web Design, Grades 9-12.

An assignment for Web Communications or Web Design, Grades 9-12, is allowed with one of the following certificates.

- (1) Secondary Industrial Arts (Grades 6-12).
- (2) Secondary Industrial Technology (Grades 6-12).
- (3) Technology Applications: Early Childhood-Grade 12.
- (4) Technology Applications: Grades 8-12.
- (5) Technology Education: Grades 6-12.
- (6) Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.
- (7) Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.
- (8) Vocational Trades and Industry. This assignment requires appropriate work approval.
- (9) Any business or office education certificate.

(10) Business and Finance: Grades 6-12.

(11) Business Education: Grades 6-12.

§231.487. Computer Maintenance, Grades 9-12.

An assignment for Computer Maintenance or Computer Maintenance Lab, Grades 9-12, is allowed with one of the following certificates.

- (1) Secondary Industrial Arts (Grades 6-12).
- (2) Secondary Industrial Technology (Grades 6-12).
- (3) Technology Education: Grades 6-12.
- (4) Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.
- (5) Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.
- (6) Vocational Trades and Industry. This assignment requires appropriate work approval.
- (7) Technology Applications: Early Childhood-Grade 12.
- (8) Technology Applications: Grades 8-12.

§231.491. Independent Study in Evolving/Emerging Technologies, Independent Study in Technology Applications, Grades 9-12.

An assignment for Independent Study in Evolving/Emerging Technologies, Independent Study in Technology Applications, Grades 9-12, is allowed with any vocational or Career and Technical Education classroom teaching certificate specified in §233.13 of this title (relating to Career and Technical Education (Certificates not requiring experience and preparation in a skill area)) or §233.14 of this title (relating to Career and Technical Education (Certificates requiring experience and preparation in a skill area)).

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

Filed with the Office of the Secretary of State on August 10, 2020.

TRD-202003249

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Earliest possible date of adoption: September 20, 2020

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



**19 TAC §231.485**

STATUTORY AUTHORITY. The repeal implements Texas Education Code (TEC), §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B: TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates: and TEC, §21.064, as amended by House Bill (HB) 3, 86th Texas Legislature, 2019, which required the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.



CROSS REFERENCE TO STATUTE. The repeal is proposed under TEC, §§21.031(a), 21.041(b)(1) and (2), and 21.064, as amended by HB 3, 86th Texas Legislature, 2019.

§231.485. *Computer Programming, Grades 9- 12.*

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

Filed with the Office of the Secretary of State on August 10, 2020.

TRD-202003250

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Earliest possible date of adoption: September 20, 2020

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



## DIVISION 21. LAW, PUBLIC SAFETY, CORRECTIONS, AND SECURITY, GRADES 9-12 ASSIGNMENTS

### 19 TAC §231.503

STATUTORY AUTHORITY. The amendment implements Texas Education Code (TEC), §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, as amended by House Bill 3, 86th Texas Legislature, 2019, which required the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The amendment is proposed under TEC, §§21.031(a), 21.041(b)(1) and (2), and 21.064, as amended by HB 3, 86th Texas Legislature, 2019.

§231.503. *Forensic Science, Grades 9-12.*

(a) Subject to the requirements in subsection (b) of this section, an assignment for Forensic Science, Grades 9-12, is allowed with one of the following certificates.

- (1) Chemistry: Grades 7-12.
- (2) Chemistry: Grades 8-12.
- (3) Health Science: Grades 6-12. This assignment requires a bachelor's degree.
- (4) Health Science Technology Education: Grades 8-12. This assignment requires a bachelor's degree.
- (5) Life Science: Grades 7-12.
- (6) Life Science: Grades 8-12.
- (7) Legacy Master Science Teacher (Grades 8-12).
- (8) Science: Grades 7-12.
- (9) Science: Grades 8-12.

- (10) Secondary Biology (Grades 6-12).
- (11) Secondary Chemistry (Grades 6-12).
- (12) Secondary Science (Grades 6-12).
- (13) Secondary Science, Composite (Grades 6-12).
- (14) Trade and Industrial Education: Grades 6-12. This assignment requires a bachelor's degree and appropriate work approval.
- (15) Trade and Industrial Education: Grades 8-12. This assignment requires a bachelor's degree and appropriate work approval.
- (16) Vocational Health Occupations. This assignment requires a bachelor's degree.
- (17) Vocational Health Science Technology. This assignment requires a bachelor's degree.
- (18) Vocational Trades and Industry. This assignment requires a bachelor's degree and appropriate work approval.

(b) All teachers assigned to this course shall participate in Texas Education Agency-approved training prior to teaching this course effective with the 2019-2020 school year. Specific details about the required training can be found at [tea.texas.gov/cte](http://tea.texas.gov/cte).

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

Filed with the Office of the Secretary of State on August 10, 2020.

TRD-202003251

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Earliest possible date of adoption: September 20, 2020

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



## DIVISION 22. MANUFACTURING, GRADES 9-12 ASSIGNMENTS

### 19 TAC §231.521, §231.525

STATUTORY AUTHORITY. The amendments implement Texas Education Code (TEC), §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, as amended by House Bill 3, 86th Texas Legislature, 2019, which required the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The amendments are proposed under TEC, §§21.031(a), 21.041(b)(1) and (2), and 21.064, as amended by HB 3, 86th Texas Legislature, 2019.

§231.521. *Manufacturing, Grades 9-12.*

(a) An assignment for Diversified Manufacturing I, Diversified Manufacturing II, Manufacturing Engineering Technology I, Metal Fabrication and Machining I, Metal Fabrication and Machining II, Precision Metal Manufacturing I, Precision Metal Manufacturing II, Precision Metal Manufacturing II Lab, Principles of Manufacturing, Grades 9-12, is allowed using one of the following certificates.

- 6-12. (1) Mathematics/Physical Science/Engineering: Grades 6-12.
- 8-12. (2) Mathematics/Physical Science/Engineering: Grades 8-12.
- (3) Secondary Industrial Arts (Grades 6-12).
- (4) Secondary Industrial Technology (Grades 6-12).
- (5) Technology Education: Grades 6-12.
- (6) Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.
- (7) Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.
- (8) Vocational Trades and Industry. This assignment requires appropriate work approval.

(b) Subject to the requirements in subsection (c) of this section, an assignment for Practicum in Manufacturing or Extended Practicum in Manufacturing, Grades 9-12, is allowed with one of the following certificates.

- 6-12. (1) Mathematics/Physical Science/Engineering: Grades 6-12.
- 8-12. (2) Mathematics/Physical Science/Engineering: Grades 8-12.
- (3) Secondary Industrial Arts (Grades 6-12).
- (4) Secondary Industrial Technology (Grades 6-12).
- (5) Technology Education: Grades 6-12.
- (6) Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.
- (7) Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.
- (8) Vocational Trades and Industry. This assignment requires appropriate work approval.
- 6-12. (9) Agriculture, Food, and Natural Resources: Grades 6-12.
- (10) Agricultural Science and Technology: Grades 6-12.
- (11) Any vocational agriculture certificate.

(c) The school district is responsible for ensuring that each teacher assigned to Practicum in Manufacturing or Extended Practicum in Manufacturing, Grades 9-12, has completed appropriate training in state and federal requirements regarding work-based learning and safety.

§231.525. *Manufacturing Engineering Technology II, Grades 9-12.*

(a) An assignment for Manufacturing Engineering Technology II, Grades 9-12, is allowed with one of the following certificates.

- (1) Grades 6-12 or Grades 9-12 Mathematics.
- (2) Legacy Master Mathematics Teacher (Grades 8-12).
- (3) Mathematics: Grades 7-12.

- (4) Mathematics: Grades 8-12.
- 6-12. (5) Mathematics/Physical Science/Engineering: Grades 6-12.
- 8-12. (6) Mathematics/Physical Science/Engineering: Grades 8-12.
- (7) Physics/Mathematics: Grades 7-12.
- (8) Physics/Mathematics: Grades 8-12.
- (9) Secondary Industrial Arts (Grades 6-12).
- (10) Secondary Industrial Arts Technology (Grades 6-12).
- (11) Secondary Mathematics.
- (12) Technology Education: Grades 6-12.
- (13) Trade and Industrial Education: Grades 6-12. This assignment requires a bachelor's degree and appropriate work approval.
- (14) Trade and Industrial Education: Grades 8-12. This assignment requires a bachelor's degree and appropriate work approval.
- (15) Vocational Trades and Industry. This assignment requires a bachelor's degree and appropriate work approval.

(b) All teachers assigned to this course shall participate in Texas Education Agency-approved training prior to teaching the course effective with the 2019-2020 school year. Specific details about the required training can be found at [tea.texas.gov/cte](http://tea.texas.gov/cte).

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

Filed with the Office of the Secretary of State on August 10, 2020.

TRD-202003252

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Earliest possible date of adoption: September 20, 2020

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



## DIVISION 23. MARKETING, GRADES 9-12 ASSIGNMENTS

### 19 TAC §§231.541, 231.543, 231.545

STATUTORY AUTHORITY. The amendments implement Texas Education Code (TEC), §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B: TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, as amended by House Bill 3, 86th Texas Legislature, 2019, which required the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The amendments are proposed under TEC, §§21.031(a), 21.041(b)(1) and (2), and 21.064, as amended by HB 3, 86th Texas Legislature, 2019.

§231.541. *Marketing, Grades 9-12.*

(a) An assignment for Social Media Marketing or Sports and Entertainment Marketing, Grades 9-12, is allowed with one of the following certificates.

- (1) Any marketing or distributive education certificate.
- (2) Marketing: Grades 6-12.
- (3) Marketing Education: Grades 8-12.
- (4) Any business or office education certificate.
- (5) Any marketing or distributive education certificate.
- (6) Business and Finance: Grades 6-12.
- (7) Business Education: Grades 6-12.

(b) Subject to the requirements in subsection (c) of this section, an assignment for Advanced Marketing, Practicum in Marketing, or Extended Practicum in Marketing, Grades 9-12, is allowed with one of the following certificates.

- (1) Any marketing or distributive education certificate.
- (2) Marketing: Grades 6-12.
- (3) Marketing Education: Grades 8-12.
- (4) Any business or office education certificate.
- (5) Any marketing or distributive education certificate.
- (6) Business and Finance: Grades 6-12.
- (7) Business Education: Grades 6-12.

(c) The school district is responsible for ensuring that each teacher assigned to Advanced Marketing, Practicum in Marketing, or Extended Practicum in Marketing, Grades 9-12, has completed appropriate training in state and federal requirements regarding work-based learning and safety.

§231.543. *Advertising, Grades 9-12.*

An assignment for Advertising, Grades 9-12, is allowed with one of the following certificates.

- (1) Any marketing or distributive education certificate.
- (2) Marketing: Grades 6-12.
- (3) Marketing Education: Grades 8-12.
- (4) Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.
- (5) Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.
- (6) Vocational Trades and Industry. This assignment requires appropriate work approval.
- (7) Any business or office education certificate.
- (8) Business and Finance: Grades 6-12.
- (9) Business Education: Grades 6-12.

§231.545. *Fashion Marketing, Grades 9-12.*

An assignment for Fashion Marketing, Grades 9-12, is allowed with one of the following certificates.

- (1) Any home economics or homemaking certificate.
- (2) Any marketing or distributive education certificate.
- (3) Family and Consumer Sciences, Composite: Grades 6-12.
- (4) Marketing: Grades 6-12.
- (5) Marketing Education: Grades 8-12.
- (6) Any business or office education certificate.
- (7) Any marketing or distributive education certificate.
- (8) Business and Finance: Grades 6-12.
- (9) Business Education: Grades 6-12.

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

Filed with the Office of the Secretary of State on August 10, 2020.

TRD-202003253

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Earliest possible date of adoption: September 20, 2020

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



## DIVISION 24. SCIENCE, TECHNOLOGY, ENGINEERING, AND MATHEMATICS, GRADES 9-12 ASSIGNMENTS

**19 TAC §§231.565, 231.567, 231.569, 231.573, 231.575,  
231.577, 231.579, 231.581, 231.585, 231.587, 231.589,  
231.591, 231.593, 231.595**

STATUTORY AUTHORITY. The amendments and new sections implement Texas Education Code (TEC), §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B: TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates: and TEC, §21.064, as amended by House Bill 3, 86th Texas Legislature, 2019, which required the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The amendments and new sections are proposed under TEC, §§21.031(a), 21.041(b)(1) and (2), and 21.064, as amended by HB 3, 86th Texas Legislature, 2019.

§231.565. *Biotechnology I; Biotechnology II, Grades 9-12.*

(a) Subject to the requirements in subsection (b) of this section, an assignment for Biotechnology I or Biotechnology II, Grades 9-12, is allowed with one of the following certificates.

- (1) Agriculture, Food, and Natural Resources: Grades 6-12.
- (2) Agricultural Science and Technology: Grades 6-12.
- (3) Any vocational agriculture certificate.
- (4) Health Science: Grades 6-12. This assignment requires a bachelor's degree.
- (5) Health Science Technology Education: Grades 8-12. This assignment requires a bachelor's degree.
- (6) Life Science: Grades 7-12.
- (7) Life Science: Grades 8-12.
- (8) Legacy Master Science Teacher (Grades 8-12).
- (9) Science: Grades 7-12.
- (10) Science: Grades 8-12.
- (11) Science, Technology, Engineering, and Mathematics: Grades 6-12.
- (12) Secondary Biology (Grades 6-12).
- (13) Secondary Science (Grades 6-12).
- (14) Secondary Science, Composite (Grades 6-12).
- (15) Vocational Health Occupations. This assignment requires a bachelor's degree.
- (16) Vocational Health Science Technology. This assignment requires a bachelor's degree.

(b) All teachers assigned to this course shall participate in Texas Education Agency-approved training prior to teaching this course effective with the 2019-2020 school year. Specific details about the required training can be found at [tea.texas.gov/cte](http://tea.texas.gov/cte).

*§231.567. Engineering Design and Presentation, Grades 9-12.*

(a) An assignment for Engineering Design and Presentation I or Engineering Design and Presentation II, Grades 9-12, is allowed with one of the following certificates.

- (1) Mathematics/Physical Science/Engineering: Grades 6-12.
- (2) Mathematics/Physical Science/Engineering: Grades 8-12.
- (3) Science, Technology, Engineering, and Mathematics: Grades 6-12.
- (4) Secondary Industrial Arts (Grades 6-12).
- (5) Secondary Industrial Technology (Grades 6-12).
- (6) Technology Education: Grades 6-12.
- (7) Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.
- (8) Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.
- (9) Vocational Trades and Industry. This assignment requires appropriate work approval.

(b) Subject to the requirements in subsection (c) of this section, an assignment for Practicum in Science, Technology, Engineering, and Mathematics or Extended Practicum in Science, Technology, Engineering, and Mathematics, Grades 9-12, is allowed with one of the following certificates.

- (1) Agriculture, Food, and Natural Resources: Grades 6-12.
- (2) Agricultural Science and Technology: Grades 6-12.
- (3) Any vocational agriculture certificate.
- (4) Health Science: Grades 6-12. This assignment requires a bachelor's degree.
- (5) Health Science Technology Education: Grades 8-12. This assignment requires a bachelor's degree.
- (6) Life Science: Grades 7-12.
- (7) Life Science: Grades 8-12.
- (8) [(+)] Mathematics/Physical Science/Engineering: Grades 6-12.
- (9) [(2)] Mathematics/Physical Science/Engineering: Grades 8-12.
- (10) [(3)] Science, Technology, Engineering, and Mathematics: Grades 6-12.
- (11) [(4)] Secondary Industrial Arts (Grades 6-12).
- (12) [(5)] Secondary Industrial Technology (Grades 6-12).
- (13) [(6)] Technology Education: Grades 6-12.
- (14) [(7)] Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.
- (15) [(8)] Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.
- (16) [(9)] Vocational Trades and Industry. This assignment requires appropriate work approval.

(c) The school district is responsible for ensuring that each teacher assigned to Practicum in Science, Technology, Engineering, and Mathematics or Extended Practicum in Science, Technology, Engineering, and Mathematics, Grades 9-12, has completed appropriate training in state and federal requirements regarding work-based learning and safety.

*§231.569. Engineering Mathematics; Robotics II, Grades 9-12.*

(a) Subject to the requirements in subsection (b) of this section, an assignment for Engineering Mathematics or Robotics II, Grades 9-12, is allowed with one of the following certificates.

- (1) Legacy Master Mathematics Teacher (Grades 8-12).
- (2) Mathematics: Grades 7-12.
- (3) Mathematics: Grades 8-12.
- (4) Mathematics/Physical Science/Engineering: Grades 6-12.
- (5) Mathematics/Physical Science/Engineering: Grades 8-12.
- (6) Physics/Mathematics: Grades 7-12.
- (7) Physics/Mathematics: Grades 8-12.
- (8) Science, Technology, Engineering, and Mathematics: Grades 6-12.
- (9) Secondary Mathematics (Grades 6-12).
- (10) Secondary Industrial Arts (Grades 6-12).
- (11) Secondary Industrial Technology (Grades 6-12).
- (12) Technology Education: Grades 6-12.

(b) All teachers assigned to this course shall participate in Texas Education Agency-approved training prior to teaching this course effective with the 2019-2020 school year. Specific details about the required training can be found at [tea.texas.gov/cte](http://tea.texas.gov/cte).

§231.573. *Principles of Technology, Grades 9-12.*

(a) Subject to the requirements in subsection (b) of this section, an assignment for Principles of Technology, Grades 9-12, is allowed with one of the following certificates.

- (1) Legacy Master Science Teacher (Grades 8-12).
- (2) Mathematics/Physical Science/Engineering: Grades 6-12.
- (3) Mathematics/Physical Science/Engineering: Grades 8-12.
- (4) Physical Science: Grades 6-12.
- (5) Physical Science: Grades 8-12.
- (6) Physics/Mathematics: Grades 7-12.
- (7) Physics/Mathematics: Grades 8-12.
- (8) Science: Grades 7-12.
- (9) Science: Grades 8-12.
- (10) Science, Technology, Engineering, and Mathematics: Grades 6-12.
- (11) Secondary Industrial Arts (Grades 6-12).
- (12) Secondary Industrial Technology (Grades 6-12).
- (13) Secondary Physics (Grades 6-12).
- (14) Secondary Science, Composite (Grades 6-12).
- (15) Technology Education: Grades 6-12.

(b) An assignment for Principles of Technology, Grades 9-12, may also be taught with a vocational agriculture certificate or a trades and industry certificate with verifiable physics applications experience in business and industry, if assigned prior to the 1998-1999 school year. Six semester credit hours of college physics, chemistry, or electricity/electronics may be substituted for the business and industry experience. All teachers assigned to these courses shall participate in Texas Education Agency-approved training prior to teaching these courses effective with the 2019-2020 school year. Specific details about the required training can be found at [tea.texas.gov/cte](http://tea.texas.gov/cte).

§231.575. *Engineering Design and Problem Solving, Grades 9-12.*

(a) Subject to the requirements in subsection (b) of this section, an assignment for Engineering Design and Problem Solving, Grades 9-12, is allowed with one of the following certificates.

- (1) Legacy Master Science Teacher (Grades 8-12).
- (2) Mathematics/Physical Science/Engineering: Grades 6-12.
- (3) Mathematics/Physical Science/Engineering: Grades 8-12.
- (4) Physical Science: Grades 6-12.
- (5) Physical Science: Grades 8-12.
- (6) Physics/Mathematics: Grades 7-12.
- (7) Physics/Mathematics: Grades 8-12.
- (8) Science: Grades 7-12.
- (9) Science: Grades 8-12.

(10) Science, Technology, Engineering, and Mathematics: Grades 6-12.

- (11) Secondary Industrial Arts (Grades 6-12).
- (12) Secondary Industrial Technology (Grades 6-12).
- (13) Secondary Physics (Grades 6-12).
- (14) Secondary Science (Grades 6-12).
- (15) Secondary Science, Composite (Grades 6-12).
- (16) Technology Education: Grades 6-12.

(b) All teachers assigned to this course shall participate in Texas Education Agency-approved training prior to teaching this course effective with the 2019-2020 school year. Specific details about the required training can be found at [tea.texas.gov/cte](http://tea.texas.gov/cte).

§231.577. *Scientific Research and Design, Grades 9-12.*

(a) Subject to the requirements in subsection (b) of this section, an assignment for Scientific Research and Design, Grades 9-12, is allowed with one of the following certificates.

- (1) Any vocational or career and technical education classroom teaching certificate with a bachelor's degree and 18 semester credit hours in any combination of sciences.
- (2) Any science certificate valid for the grade level of the assignment.
- (3) Legacy Master Science Teacher (Grades 8-12).
- (4) Science, Technology, Engineering, and Mathematics: Grades 6-12.

(b) All teachers assigned to this course shall participate in Texas Education Agency-approved training prior to teaching this course effective with the 2019-2020 school year. Specific details about the required training can be found at [tea.texas.gov/cte](http://tea.texas.gov/cte).

§231.579. *Engineering Science, Grades 9-12.*

(a) Subject to the requirements in subsection (b) of this section, an assignment for Engineering Science, Grades 9-12, is allowed with one of the following certificates.

- (1) Legacy Master Science Teacher (Grades 8-12).
- (2) Mathematics/Physical Science/Engineering: Grades 6-12.
- (3) Mathematics/Physical Science/Engineering: Grades 8-12.
- (4) Physical Science: Grades 6-12.
- (5) Physical Science: Grades 8-12.
- (6) Physics/Mathematics: Grades 7-12.
- (7) Physics/Mathematics: Grades 8-12.
- (8) Science: Grades 7-12.
- (9) Science: Grades 8-12.
- (10) Science, Technology, Engineering, and Mathematics: Grades 6-12.
- (11) Secondary Industrial Arts (Grades 6-12).
- (12) Secondary Industrial Technology (Grades 6-12).
- (13) Secondary Physics (Grades 6-12).
- (14) Secondary Science (Grades 6-12).
- (15) Secondary Science, Composite (Grades 6-12).

(16) Technology Education: Grades 6-12.

(b) All teachers assigned to Engineering Science shall participate in Texas Education Agency-approved training prior to teaching this course effective with the 2019-2020 school year. Specific details about the required training can be found at [tea.texas.gov/cte](http://tea.texas.gov/cte).

§231.581. *Digital Electronics, Grades 9-12.*

(a) Subject to the requirements in subsection (b) of this section, an assignment for Digital Electronics, Grades 9-12, is allowed with one of the following certificates.

- (1) Legacy Master Mathematics Teacher (Grades 8-12).
- (2) Mathematics/Physical Science/Engineering: Grades 6-12.
- (3) Mathematics/Physical Science/Engineering: Grades 8-12.
- (4) Physics/Mathematics: Grades 7-12.
- (5) Physics/Mathematics: Grades 8-12.
- (6) Science, Technology, Engineering, and Mathematics: Grades 6-12.
- (7) Secondary Industrial Arts (Grades 6-12).
- (8) Secondary Industrial Technology (Grades 6-12).
- (9) Secondary Mathematics (Grades 6-12).
- (10) Technology Education: Grades 6-12.

(b) All teachers assigned to Digital Electronics shall participate in Texas Education Agency-approved training prior to teaching this course effective with the 2019-2020 school year. Specific details about the required training can be found at [tea.texas.gov/cte](http://tea.texas.gov/cte).

§231.585. *Computer Science, Grades 9-12.*

An assignment for Computer Science I, II, and III; or Digital Forensics, Grades 9-12, is allowed with one of the following certificates.

- (1) Computer Science: Grades 8-12.
- (2) Grades 6-12 or Grades 9-12--Computer Information Systems.
- (3) Junior High School (Grades 9-10 only) or High School-Computer Information Systems.
- (4) Secondary Computer Information Systems (Grades 6-12).

§231.587. *Fundamentals of Computer Science, Advanced Placement Computer Science Principles, Grades 9-12.*

An assignment for Fundamentals of Computer Science or Advanced Placement Computer Science Principles, Grades 9-12, is allowed with one of the following certificates.

- (1) Computer Science: Grades 8-12.
- (2) Grades 6-12 or Grades 9-12--Computer Information Systems.
- (3) Junior High School (Grades 9-10 only) or High School-Computer Information Systems.
- (4) Secondary Computer Information Systems (Grades 6-12).
- (5) Technology Applications: Early Childhood-Grade 12.
- (6) Technology Applications: Grades 8-12.

(7) Trade and Industrial Education: Grades 6-12. This assignment requires a bachelor's degree and appropriate work approval.

(8) Trade and Industrial Education: Grades 8-12. This assignment requires a bachelor's degree and appropriate work approval.

§231.589. *Game Programming and Design, Grades 9-12.*

An assignment for Game Programming and Design, Grades 9-12, is allowed with one of the following certificates.

- (1) Computer Science: Grades 8-12.
- (2) Grades 6-12 or Grades 9-12--Computer Information Systems.
- (3) Junior High School (Grades 9-10 only) or High School-Computer Information Systems.
- (4) Secondary Computer Information Systems (Grades 6-12).
- (5) Secondary Industrial Arts (Grades 6-12).
- (6) Secondary Industrial Technology (Grades 6-12).
- (7) Technology Applications: Early Childhood-Grade 12.
- (8) Technology Applications: Grades 8-12.
- (9) Technology Education: Grades 6-12.
- (10) Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.

(11) Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.

(12) Vocational Trades and Industry. This assignment requires appropriate work approval.

§231.591. *Mobile Applications Development, Grades 9-12.*

An assignment for Mobile Applications Development, Grades 9-12, is allowed with one of the following certificates.

- (1) Computer Science: Grades 8-12.
- (2) Grades 6-12 or Grades 9-12--Computer Information Systems.
- (3) Junior High School (Grades 9-10 only) or High School-Computer Information Systems.
- (4) Secondary Computer Information Systems (Grades 6-12).
- (5) Technology Applications: Early Childhood-Grade 12.
- (6) Technology Applications: Grades 8-12.
- (7) Trade and Industrial Education: Grades 6-12. This assignment requires a bachelor's degree and appropriate work approval.
- (8) Trade and Industrial Education: Grades 8-12. This assignment requires a bachelor's degree and appropriate work approval.
- (9) Any business or office education certificate.
- (10) Business and Finance: Grades 6-12.
- (11) Business Education: Grades 6-12.
- (12) Marketing: Grades 6-12.
- (13) Marketing Education: Grades 8-12.

§231.593. *Cybersecurity, Grades 9-12.*

An assignment for Foundations of Cybersecurity, Grades 9-12, and Cybersecurity Capstone is allowed with one of the following certificates.

- (1) Computer Science: Grades 8-12.
  - (2) Grades 6-12 or Grades 9-12--Computer Information Systems.
  - (3) Junior High School (Grades 9-10 only) or High School--Computer Information Systems.
  - (4) Secondary Computer Information Systems (Grades 6-12).
  - (5) Technology Applications: Early Childhood-Grade 12.
  - (6) Technology Applications: Grades 8-12.
  - (7) Technology Education: Grades 6-12.
  - (8) Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.
  - (9) Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.
  - (10) Vocational Trades and Industry. This assignment requires appropriate work approval.
- §231.595. Discrete Mathematics for Computer Science, Grades 9-12.

An assignment for Discrete Mathematics for Computer Science, Grades 9-12, is allowed with one of the following certificates.

- (1) Computer Science: Grades 8-12.
- (2) Grades 6-12 or Grades 9-12--Computer Information Systems.
- (3) Junior High School (Grades 9-10 only) or High School--Computer Information Systems.
- (4) Legacy Master Mathematics Teacher (Grades 8-12).
- (5) Mathematics: Grades 7-12.
- (6) Mathematics: Grades 8-12.
- (7) Mathematics/Physical Science/Engineering: Grades 6-12.
- (8) Mathematics/Physical Science/Engineering: Grades 8-12.
- (9) Physics/Mathematics: Grades 7-12.
- (10) Physics/Mathematics: Grades 8-12.
- (11) Secondary Computer Information Systems (Grades 6-12).

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

Filed with the Office of the Secretary of State on August 10, 2020.  
 TRD-202003254  
 Cristina De La Fuente-Valadez  
 Director, Rulemaking  
 State Board for Educator Certification  
 Earliest possible date of adoption: September 20, 2020  
 For further information, please call: (512) 475-1497



## DIVISION 25. TRANSPORTATION, DISTRIBUTION, AND LOGISTICS, GRADES 9-12 ASSIGNMENTS

### 19 TAC §231.591, §231.595

STATUTORY AUTHORITY. The repeals implement Texas Education Code (TEC), §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B: TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates: and TEC, §21.064, as amended by House Bill (HB) 3, 86th Texas Legislature, 2019, which required the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The repeals are proposed under TEC, §§21.031(a), 21.041(b)(1) and (2), and 21.064, as amended by HB 3, 86th Texas Legislature, 2019.

*§231.591. Transportation, Distribution, and Logistics, Grades 9-12.*

*§231.595. Small Engine Technology, Grades 9-12.*

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

Filed with the Office of the Secretary of State on August 10, 2020.  
 TRD-202003256  
 Cristina De La Fuente-Valadez  
 Director, Rulemaking  
 State Board for Educator Certification  
 Earliest possible date of adoption: September 20, 2020  
 For further information, please call: (512) 475-1497



### 19 TAC §231.631, §231.633

STATUTORY AUTHORITY. The new sections implement Texas Education Code (TEC), §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B: TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates: and TEC, §21.064, as amended by House Bill 3, 86th Texas Legislature, 2019, which required the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The new sections are proposed under TEC, §§21.031(a), 21.041(b)(1) and (2), and 21.064, as amended by HB 3, 86th Texas Legislature, 2019.

§231.631. Transportation, Distribution, and Logistics, Grades 9-12.

(a) An assignment for Energy and Power of Transportation Systems; Aircraft Airframe Technology; Aircraft Powerplant Technology; Automotive Basics; Automotive Technology I: Maintenance and Light Repair; Automotive Technology II: Automotive Service; Advanced Transportation Systems Laboratory; Basic Collision Repair and Refinishing; Collision Repair; Paint and Refinishing; Diesel Equipment Technology I; Diesel Equipment Technology II; Distribution and Logistics; Introduction to Aircraft Technology; Principles of Distribution and Logistics; Principles of Transportation Systems; Introduction to Transportation Technology; or Management of Transportation Systems, Grades 9-12, is allowed with one of the following certificates.

(1) Technology Education: Grades 6-12.

(2) Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.

(3) Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.

(4) Vocational Trades and Industry. This assignment requires appropriate work approval.

(b) Subject to the requirements in subsection (c) of this section, an assignment for Practicum in Transportation Systems, Extended Practicum in Transportation Systems, Practicum in Distribution and Logistics, or Extended Practicum in Distribution and Logistics, Grades 9-12, is allowed with one of the following certificates.

(1) Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.

(2) Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.

(3) Vocational Trades and Industry. This assignment requires appropriate work approval.

(c) The school district is responsible for ensuring that each teacher assigned to Practicum in Transportation Systems, Extended Practicum in Transportation Systems, Practicum in Distribution and Logistics, or Extended Practicum in Distribution and Logistics, Grades 9-12, has completed appropriate training in state and federal requirements regarding work-based learning and safety.

§231.633. Small Engine Technology, Grades 9-12.

An assignment for Small Engine Technology I or Small Engine Technology II, Grades 9-12, is allowed with one of the following certificates.

(1) Agriculture, Food, and Natural Resources: Grades 6-12.

(2) Agricultural Science and Technology: Grades 6-12.

(3) Any vocational agriculture certificate.

(4) Secondary Industrial Arts (Grades 6-12).

(5) Secondary Industrial Technology (Grades 6-12).

(6) Technology Education: Grades 6-12.

(7) Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.

(8) Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.

(9) Vocational Trades and Industry. This assignment requires appropriate work approval.

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

Filed with the Office of the Secretary of State on August 10, 2020.

TRD-202003255

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Earliest possible date of adoption: September 20, 2020

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



**DIVISION 26. ENERGY, GRADES 9-12  
ASSIGNMENTS**

**19 TAC §231.651**

**STATUTORY AUTHORITY.** The new section implements Texas Education Code (TEC), §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B: TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, as amended by House Bill 3, 86th Texas Legislature, 2019, which required the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

**CROSS REFERENCE TO STATUTE.** The new section is proposed under TEC, §§21.031(a), 21.041(b)(1) and (2), and 21.064, as amended by HB 3, 86th Texas Legislature, 2019.

§231.651. Energy and Natural Resources, Grades 9-12.

An assignment for Oil and Gas Production I; Oil and Gas Production II; Oil and Gas Production III; Oil and Gas Production IV; Introduction to Process Technology; Foundations of Energy; or Petrochemical Safety, Health, and Environment, Grades 9-12, is allowed with one of the following certificates.

(1) Agriculture, Food, and Natural Resources: Grades 6-12.

(2) Agricultural Science and Technology: Grades 6-12.

(3) Any vocational agriculture certificate.

(4) Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.

(5) Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.

(6) Vocational Trades and Industry. This assignment requires appropriate work approval.

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

Filed with the Office of the Secretary of State on August 10, 2020.



TRD-202003257  
Cristina De La Fuente-Valadez  
Director, Rulemaking  
State Board for Educator Certification  
Earliest possible date of adoption: September 20, 2020  
For further information, please call: (512) 475-1497



## SUBCHAPTER F. SPECIAL EDUCATION-RELATED SERVICES PERSONNEL ASSIGNMENTS

### 19 TAC §§231.611, 231.613, 231.615, 231.617, 231.619, 231.621, 231.623

STATUTORY AUTHORITY. The repeals implement Texas Education Code (TEC), §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B: TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates: and TEC, §21.064, as amended by House Bill (HB) 3, 86th Texas Legislature, 2019, which required the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The repeals are proposed under TEC, §§21.031(a), 21.041(b)(1) and (2), and 21.064, as amended by HB 3, 86th Texas Legislature, 2019.

§231.611. *Special Education Teacher.*

§231.613. *Teacher of Adaptive Physical Education.*

§231.615. *Full-Time Teacher of Orthopedically Impaired or Other Health Impaired in a Hospital Class or Home-Based Instruction.*

§231.617. *Teacher of Students with Visual Impairments.*

§231.619. *Teacher of Students with Auditory Impairments.*

§231.621. *Teacher of Gifted and Talented Students.*

§231.623. *Special Education Counseling Services; Educational Diagnostician; Speech Therapy Services; and Vocational Adjustment Coordinator.*

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

Filed with the Office of the Secretary of State on August 10, 2020.

TRD-202003260  
Cristina De La Fuente-Valadez  
Director, Rulemaking  
State Board for Educator Certification  
Earliest possible date of adoption: September 20, 2020  
For further information, please call: (512) 475-1497



### 19 TAC §§231.701, 231.703, 231.705, 231.707, 231.709, 231.711, 231.713

STATUTORY AUTHORITY. The new sections implement Texas Education Code (TEC), §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B: TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates: and TEC, §21.064, as amended by House Bill 3, 86th Texas Legislature, 2019, which required the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The new sections are proposed under TEC, §§21.031(a), 21.041(b)(1) and (2), and 21.064, as amended by HB 3, 86th Texas Legislature, 2019.

§231.701. *Special Education Teacher.*

(a) Subject to the requirements in subsection (c) of this section, an assignment for Special Education Teacher is allowed with one of the following certificates. If an individual is providing content instruction in a special education classroom setting, a valid certificate that matches the subject and grade level of the assignment is also required, or the individual must demonstrate competency through the state's 2010 and 2011 high objective uniform State standard of evaluation for elementary and secondary special education teachers.

(1) Blind School (Texas State School for the Blind and Visually Impaired only).

(2) Deaf and Severely Hard of Hearing.

(3) Deaf School (Texas State School for the Deaf only).

(4) Deaf-Blind.

(5) Deficient Vision.

(6) Early Childhood Education for Handicapped Children (Infants-Grade 6 only).

(7) Elementary Generic Special Education.

(8) Emotionally Disturbed.

(9) Generic Special Education.

(10) Hearing Impaired.

(11) High School--Generic Special Education.

(12) Language and/or Learning Disabilities.

(13) Mentally Retarded.

(14) Physically Handicapped.

(15) School Speech-Language Pathologist.

(16) Secondary Generic Special Education (Grades 6-12) (Grades 6-12 only).

(17) Severely and Profoundly Handicapped.

(18) Severely Emotionally Disturbed and Autistic.

(19) Special Education Supplemental (Valid at grade level and subject area of the base certificate).

(20) Special Education: Early Childhood-Grade 12.

(21) Speech and Hearing Therapy.

(22) Speech and Language Therapy.

(23) Teacher of Students with Visual Impairments Supplemental: Early Childhood-Grade 12.

(24) Teacher of the Deaf and Hard of Hearing: Early Childhood-Grade 12.

(25) Visually Handicapped.

(b) The certificates specified in subsection (a) of this section are appropriate for a special education assignment in Prekindergarten-Grade 12 except where otherwise noted.

(c) The employing school district should make every effort to secure educators trained in the specialized skills and knowledge needed to serve the special needs of the children. If a staff member does not have the skills and knowledge needed for the assignment, the school district is responsible for making provisions for the person to acquire the necessary skills and knowledge.

§231.703. Teacher of Adaptive Physical Education.

(a) An assignment for Teacher of Adaptive Physical Education is allowed with one of the following certificates.

(1) All-Level Health and Physical Education.

(2) All-Level Physical Education.

(3) Elementary Physical Education (Grades 1-8) (Grades 1-8 only).

(4) Grades 6-8--Physical Education (Grades 6-8 only).

(5) Physical Education: Early Childhood-Grade 12.

(6) Secondary Physical Education (Grades 6-12) (Grades 6-12 only).

(7) Special education certificate as specified in §231.701 of this title (relating to Special Education Teacher). This assignment requires necessary skills and knowledge in adaptive physical education. Evidence of necessary skills and knowledge in adaptive physical education must be documented through in-service records, seminar attendance records, or transcripts of college courses.

(b) Other licensed professionals may be eligible to provide adaptive physical education services to students with disabilities under the scope of practice of the specific license held.

§231.705. Full-Time Teacher of Orthopedically Impaired or Other Health Impaired in a Hospital Class or Home-Based Instruction.

An assignment for Full-Time Teacher of Orthopedically Impaired or Other Health Impaired in a Hospital Class or Home-Based Instruction is allowed with one of the following certificates.

(1) Special education certificate as specified in §231.701 of this title (relating to Special Education Teacher).

(2) Teacher certificate. This assignment requires a three-semester credit hour survey course in special education and three semester credit hour course related to teaching students who are physically impaired or health impaired.

§231.707. Teacher of Students with Visual Impairments.

(a) An assignment for Teacher of Students with Visual Impairments is allowed with one of the following certificates.

(1) Deficient Vision.

(2) Visually Handicapped.

(3) Teacher of Students with Visual Impairments Supplemental: Early Childhood-Grade 12.

(b) A teacher in an assignment for Teacher of Students with Visual Impairments must be available to students with visual impairments.

§231.709. Teacher of Students with Auditory Impairments.

(a) An assignment for Teacher of Students with Auditory Impairments is allowed with one of the following certificates.

(1) Deaf and Severely Hard of Hearing.

(2) Hearing Impaired.

(3) Teacher of the Deaf and Hard of Hearing: Early Childhood-Grade 12.

(b) A teacher in an assignment for Teacher of Students with Auditory Impairments must be available to students with auditory impairments.

(c) A teacher in an assignment for Teacher of Students with Auditory Impairments is not required to pass the Texas Assessment of Sign Communication (TASC) or the Texas Assessment of Sign Communication-American Sign Language (TASC-ASL) in order to be assigned to a classroom in which another communication method is used predominately. If this teacher completes certification requirements through a State Board for Educator Certification-approved educator preparation program in Texas, the program must have assessed proficiency in the communication method and verified it to be at an appropriate level.

§231.711. Teacher of Gifted and Talented Students.

(a) An assignment for Teacher of Gifted and Talented Students is allowed with one of the following.

(1) A teacher certificate that matches the subject and grade level of the assignment.

(2) Gifted and Talented Endorsement (Not required for assignment).

(3) Gifted and Talented Supplemental (Not required for assignment).

(b) In addition to the requirements specified in this subchapter, individuals assigned to a gifted and talented program must comply with the provisions of Chapter 89, Subchapter A, of this title (relating to Gifted/Talented Education).

§231.713. Special Education Counseling Services; Educational Diagnostician; Speech Therapy Services; and Vocational Adjustment Coordinator.

(a) Special Education Counseling Services.

(1) An assignment for Special Education Counseling Services is allowed with one of the following certificates.

(A) Counselor.

(B) School Counselor (Early Childhood-Grade 12).

(C) Special Education Counselor.

(D) Special Education Visiting Teacher.

(E) Vocational Counselor.

(2) Individuals certified or licensed to practice in other professions may be eligible to provide counseling services for students with disabilities under the scope of practice of the specific license held.

(b) Educational Diagnostician.

(1) An assignment for Educational Diagnostician is allowed with an Educational Diagnostician certificate.

(2) Individuals certified or licensed to practice in other professions may be eligible to provide evaluative services for students with disabilities under the scope of practice of the specific license held.

(c) Speech Therapy Services.

(1) An assignment for Speech Therapy Services is allowed with one of the following certificates.

(A) School Speech-Language Pathologist.

(B) Speech and Hearing Therapy.

(C) Speech and Language Therapy.

(2) Individuals licensed by the State Board of Examiners for Speech-Language Pathology and Audiology also may provide speech therapy services to eligible students under the scope of practice of the specific license held.

(d) Vocational Adjustment Coordinator.

(1) An assignment for Vocational Adjustment Coordinator is allowed with a Special Education certificate. This assignment requires 60 clock-hours of training appropriate for the assignment.

(2) A teacher in an assignment for Vocational Adjustment Coordinator will have three years from the date of assignment to complete the required training.

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

Filed with the Office of the Secretary of State on August 10, 2020.

TRD-202003259

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Earliest possible date of adoption: September 20, 2020

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



## SUBCHAPTER G. PARAPROFESSIONAL PERSONNEL, ADMINISTRATORS, AND OTHER INSTRUCTIONAL AND PROFESSIONAL SUPPORT ASSIGNMENTS

### 19 TAC §§231.641, 231.643, 231.645

STATUTORY AUTHORITY. The repeals implement Texas Education Code (TEC), §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B: TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, as amended by House Bill (HB) 3, 86th Texas Legislature, 2019, which required the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The repeals are proposed under TEC, §§21.031(a), 21.041(b)(1) and (2), and 21.064, as amended by HB 3, 86th Texas Legislature, 2019.

§231.641. Educational Aide.

§231.643. Administrators and Other Instructional and Professional Support Personnel.

§231.645. Professional Support Personnel Requiring Other Professional License.

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

Filed with the Office of the Secretary of State on August 11, 2020.

TRD-202003301

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Earliest possible date of adoption: September 20, 2020

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



### 19 TAC §§231.751, 231.753, 231.755

STATUTORY AUTHORITY. The new sections implement Texas Education Code (TEC), §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B: TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, as amended by House Bill 3, 86th Texas Legislature, 2019, which required the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The new sections are proposed under TEC, §§21.031(a), 21.041(b)(1) and (2), and 21.064, as amended by HB 3, 86th Texas Legislature, 2019.

§231.751. Educational Aide.

(a) Educational Aide I.

(1) An assignment for Educational Aide I is allowed with one of the following certificates.

(A) Educational Aide I.

(B) Educational Aide II.

(C) Educational Aide III.

(D) Valid Texas classroom teacher certificate.

(2) The role description for an Educational Aide I is codified in §230.61(1) of this title (relating to Role Descriptions).

(b) Educational Aide II.

(1) An assignment for Educational Aide II is allowed with one of the following certificates.

- (A) Educational Aide II.
- (B) Educational Aide III.
- (C) Valid Texas classroom teacher certificate.

(2) The role description for an Educational Aide II is codified in §230.61(2) of this title.

- (c) Educational Aide III.

(1) An assignment for Educational Aide III is allowed with one of the following certificates.

- (A) Educational Aide III.
- (B) Valid Texas classroom teacher certificate.

(2) The role description of an Educational Aide III is codified in §230.61(3) of this title.

§231.753. Administrators and Other Instructional and Professional Support Personnel.

- (a) Administrators.

(1) An assignment for Superintendent is allowed with one of the following certificates.

- (A) Administrator.
- (B) Superintendent.

(2) An assignment for Principal is allowed with one of the following certificates.

- (A) Administrator.
- (B) Mid-Management Administrator.
- (C) Principal.
- (D) Superintendent.

(3) An assignment for Assistant Principal is allowed with one of the following certificates.

- (A) Administrator.
- (B) Assistant Principal.
- (C) Mid-Management Administrator.
- (D) Principal.
- (E) Superintendent.

(b) School Counselor. An assignment for School Counselor is allowed with one of the following certificates.

- (1) Counselor.
- (2) School Counselor (Early Childhood-Grade 12).
- (3) Special Education Counselor.
- (4) Vocational Counselor.

(c) Librarian. An assignment for Librarian is allowed with one of the following certificates.

- (1) Learning Resources Endorsement.
- (2) Learning Resources Specialist.
- (3) Librarian.
- (4) School Librarian (Early Childhood-Grade 12).

(d) Athletic Director. An assignment for Athletic Director is allowed with a valid Texas classroom teacher certificate.

§231.755. Professional Support Personnel Requiring Other Professional License.

A person may not be employed by a school district to perform services within the following professions unless the person holds the appropriate credential or license from the appropriate state agency for that profession. Educator certification is not required for a school district assignment to provide services that are within the scope of that profession.

- (1) Associate School Psychologist.
- (2) Audiologist.
- (3) Licensed Professional Counselor.

(4) Marriage and Family Therapist. As long as a person was employed by a school district before September 1, 2011, to perform marriage and family therapy, as defined by the Texas Occupations Code (TOC), §502.002, and remains employed by the same school district, the person is not required to hold a license as a marriage and family therapist to perform marriage and family therapy with that school district.

- (5) Nurse.
- (6) Occupational Therapist.
- (7) Physical Therapist.
- (8) Physician.
- (9) School Psychologist.
- (10) Social Worker.

(11) Speech-Language Pathologist. An assignment to provide Speech Therapy Services is allowed with a certificate authorized by the TOC, §401.05

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

Filed with the Office of the Secretary of State on August 11, 2020.

TRD-202003300

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Earliest possible date of adoption: September 20, 2020

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



CHAPTER 239. STUDENT SERVICES  
CERTIFICATES  
SUBCHAPTER E. LEGACY MASTER  
TEACHER CERTIFICATE

**19 TAC §239.101, §239.103**

The State Board for Educator Certification (SBEC) proposes new §239.101 and §239.103, concerning the legacy master teacher certificate. The proposed new 19 TAC Chapter 239, Subchapter E, would provide for the requirements and validity period for Legacy Master Teacher certificate holders.

BACKGROUND INFORMATION AND JUSTIFICATION: House Bill (HB) 3, 86th Texas Legislature, 2019, required the SBEC to repeal 19 TAC Chapter 239, Student Services Certificates, Subchapter E, Master Teacher Certificate, in October 2019 to imple-

ment the requirements that SBEC no longer issue or renew master teacher certificates. HB 3 also specified that master teacher certificates will be designated as "legacy" certificates and recognized for assignment purposes until they expire.

The affected certificates were the Master Reading Teacher, Master Mathematics Teacher, Master Technology Teacher, and Master Science Teacher. There are 4,997 Legacy Master Teacher certificate holders. These certificates were only issued after an individual had obtained an initial certification in a particular teaching category.

As a result, the SBEC and Texas Education Agency (TEA) staff received written and oral public comments from educators, school districts, professional organizations, and teacher organizations requesting options to address the current master teacher population and the employing school districts. The feedback received reflects the following concerns from various stakeholders: current educators who hold master teacher certificates obtained after preparing and paying for the additional certificate will no longer have a credential that reflects this certificate; current educators who are assigned to courses with their master teacher certificates may lose those positions; and employing school districts that currently staff their courses with master teacher certificate holders may have personnel issues.

At the February 21, 2020 SBEC meeting, the SBEC received a letter from Chairman Dan Huberty, House Committee on Public Education, Texas House of Representatives, explaining that the intent of the legislation was not to prevent the current educators who hold a master teacher certificate from continuing educating students with those certificates and requested that the SBEC use its rulemaking authority to provide an avenue for those educators to continue serving students and school districts in those roles.

Additionally, at the February 21, 2020 SBEC meeting, the SBEC directed TEA staff to solicit stakeholder feedback and to bring the SBEC options for consideration at the May 1, 2020 meeting.

On April 15, 2020, TEA staff conducted a stakeholder meeting to explore options to allow Legacy Master Teacher certificate holders to continue serving in assignments and to utilize their skills in service to students and the profession.

At the May 1, 2020 SBEC meeting, the SBEC considered options and directed staff to initiate rulemaking that would designate all Legacy Master Teacher certificates as valid with no expiration date. The benefits to this option would be that it addresses Chairman Huberty's clarification as well as stakeholders' request for remedy; allows all current certificate holders to continue teaching uninterrupted; does not cause additional cost and time to implement; and does not affect continuing professional education (CPE) hours.

If the SBEC approves the proposed new rules, they will take effect December 27, 2020. Therefore, there are Legacy Master Teacher certificate holders who have had or will have their certificates expire prior to the effective date of these rules. If the SBEC approves the proposed new rules, TEA staff will contact those educators to inform them that once the new rules are effective, their Legacy Master Teacher certificates will be converted back to a status of valid. TEA staff will provide guidance and options in communicating with current and prospective school districts to help ensure minimal disruption to personnel decisions regarding the impacted assignments.

TEC, §21.041, provides the SBEC full authority to specify the classes of educator certificates to be issued, the period for which

each class of educator certificate is valid, and the requirements for the issuance and renewal of an educator certificate. The following is a description of the proposed new rules that reflect the SBEC's charge to draft rule text with the option to establish the status of the Legacy Master Teacher certificate holders to valid with no renewal requirements.

#### *§239.101. General Provisions for Legacy Master Teacher Certificates.*

Proposed new §239.101 would provide the general requirements for all Legacy Master Teacher certificate holders. The new section would allow all individuals who held a valid or inactive master teacher certification on August 31, 2019, to be issued a Legacy Master Teacher certification with no expiration date. Additionally, under the new section, Legacy Master Teacher certificates would not be subject to renewal or CPE requirements. The new section would clarify that other standard certificates held by the certificate holder would still be subject to current renewal and CPE requirements. This would allow all current Legacy Master Teacher certificate holders to continue teaching with these certificates while complying with HB 3, which disallowed Legacy Master Teacher certificates from being renewed.

#### *§239.103. Definitions.*

Proposed new §239.103 would provide definitions for the terms valid, inactive, and expired that mirror the language used in the glossary of terms for the official record of educator certification maintained on the TEA website. This would provide clarification and alignment with §230.91(d), which specifies that the representation of an individual's certificate status as maintained on the TEA website is considered to be the official record of educator certification. The electronic representation of the certificate satisfies TEC, §21.053(a), which requires individuals to present their certificate prior to employment by a school district. A definition for master teacher certificate would also be provided as reference for the four master teacher certificates that fell under this category.

**FISCAL IMPACT:** Ryan Franklin, associate commissioner for educator leadership and quality, has determined that for the first five-year period the proposal is in effect, there is no additional fiscal impact on state or local governments, and there are no additional costs to entities required to comply with the proposal.

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

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

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

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

**GOVERNMENT GROWTH IMPACT:** TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking

would be in effect, it would create a government program, create a new regulation, and increase the number of individuals subject to the rule's applicability by allowing current and expired Legacy Master Teacher certificate holders to hold a valid SBEC certificate by designating those certificates as valid without the need to renew. As a result of HB 3, the SBEC repealed an existing regulation by repealing the master teacher certificates effective December 22, 2019. The new Chapter 239, Subchapter E, provides for those certified with those certificates to have them continue or be reinstated if they expired.

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

**PUBLIC BENEFIT AND COST TO PERSONS:** Mr. Franklin has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be the ability for educators to continue utilizing the master teacher certificate obtained and for school districts to continue staffing those assignments. The TEA staff has determined that there is no anticipated cost to persons who are required to comply with the proposal.

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

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

**PUBLIC COMMENTS:** The public comment period on the proposal begins August 21, 2020 and ends September 21, 2020. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About\\_TEALaws\\_and\\_Rules/SBEC\\_Rules\\_\(TAC\)/Proposed\\_State\\_Board\\_for\\_Educator\\_Certification\\_Rules/](https://tea.texas.gov/About_TEALaws_and_Rules/SBEC_Rules_(TAC)/Proposed_State_Board_for_Educator_Certification_Rules/). The SBEC will take registered oral and written comments on the proposal at the October 9, 2020 meeting in accordance with the SBEC board operating policies and procedures. All requests for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the Department of Educator Leadership and Quality, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Mr. Ryan Franklin, associate commissioner for educator leadership and quality, not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on August 21, 2020.

**STATUTORY AUTHORITY.** The new rules are proposed under Texas Education Code (TEC), §21.031, which authorizes the SBEC to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators, and states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; TEC, §21.041(b)(1)-(4), which require the State Board for Educator Certification (SBEC) to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; which specify the classes

of educator certificates to be issued, including emergency certificates; specify the period for which each class of educator certificate is valid; and which specify the requirements for the issuance and renewal of an educator certificate; and TEC, §21.064(a), as amended by HB 3, 86th Texas Legislature, 2019, which required the SBEC to stop the issuance and renewal of master teacher certificates effective September 1, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

**CROSS REFERENCE TO STATUTE.** The new rules implement Texas Education Code, §§21.031, 21.041(b)(1)-(4), and 21.064(a), as amended by House Bill (HB) 3, 86th Texas Legislature, 2019.

§239.101. General Provisions for Legacy Master Teacher Certificates.

(a) A Legacy Master Teacher certificate will be issued to individuals who held valid or inactive master teacher certificates on August 31, 2019.

(b) Legacy Master Teacher certificates do not expire and are not subject to renewal requirements.

(c) Any suspension of or condition on an educator's master teacher certificate in accordance with Chapter 249 of this title (relating to Disciplinary Proceedings, Sanctions, and Contested Cases) will apply to the educator's Legacy Master Teacher certificate upon issuance.

(d) All other standard certificates held by the Legacy Master Teacher certificate holders are subject to renewal and continual professional education requirements as prescribed by Chapter 232 of this title (relating to General Certification Provisions).

(e) A legacy master teacher may serve as a mentor to other teachers in the subject area of his or her Legacy Master Teacher certification.

(f) A legacy master teacher may teach in assignments as specified in Chapter 231 of this title (relating to Requirements for Public School Personnel Assignments).

§239.103. Definitions.

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

(1) Expired--An expired credential is no longer valid because it was issued for a specific term, and the ending date has passed.

(2) Inactive--An inactive certificate does not currently entitle the certificate holder to work as a professional educator in a Texas public school. A certificate is placed on inactive status when one or more of the following conditions exists, and the certificate is returned to valid status once an educator satisfies the condition or conditions that caused the certificate to be placed on inactive status:

(A) the holder's standard certificate has not been renewed;

(B) the certificate holder has not completed fingerprinting as required by the Texas Education Code, §22.0831; or

(C) the certificate holder has fees pending.

(3) Master teacher certificate--a Master Reading Teacher, Master Mathematics Teacher, Master Science Teacher, or Master Technology Teacher certificate issued by the State Board for Educator Certification that, effective September 1, 2019, was no longer issued or renewed.

(4) Valid--A valid certificate qualifies the holder for employment as an educator in a Texas public school, is not expired or inactive, and is not subject to an active suspension, surrender, cancellation, or revocation.

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

Filed with the Office of the Secretary of State on August 10, 2020.

TRD-202003261

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Earliest possible date of adoption: September 20, 2020

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



## **TITLE 22. EXAMINING BOARDS**

### **PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS**

#### **CHAPTER 131. ORGANIZATION AND ADMINISTRATION**

The Texas Board of Professional Engineers and Land Surveyors (Board) proposes the repeal of 22 Texas Administrative Code, Chapter 131, specifically §131.33 and §131.49 regarding the organization and administration of the agency.

#### **EXPLANATION OF AND JUSTIFICATION FOR THE RULES**

The rules under 22 Texas Administrative Code Chapter 131 implement Texas Occupations Code, Chapter 1001, the Texas Engineering Practice Act.

The proposed repealed rules implement necessary changes as required by House Bill (HB) 1523, 86th Legislature, Regular Session (2019), related to the merger of operations of the Texas Board of Professional Engineers and the Texas Board of Professional Land Surveying into the Texas Board of Professional Engineers and Land Surveyors (TBPELS).

As required by HB 1523, the operations of the two agencies have been merged into one and the associated rules regarding operations of the agency have been merged into Chapter 131 per the guidance of the Secretary of State. During the review of the rules for the merger, certain sections were determined to not be appropriate rules, redundant, or consolidated with another rule.

#### **SECTION-BY-SECTION SUMMARY**

The proposed rules repeal §131.33. The rule review determined that this section does not meet the definition of a rule. Section 131.33 describes the Board's career ladder policy. Under §2001.003(6)(c) of the Government Code (Administrative Procedure Act), a rule does not include a statement regarding only the internal management or organization of a state agency and not affecting private rights or procedures. Accordingly, the career ladder program will be part of the Board's Human Resources policy and not set out in a rule.

The proposed rules repeal §131.49. During the rule review, this rule was determined to be unnecessary and not required by the Texas Open Meetings Act, Government Code Chapter 551.

#### **FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT**

Dr. Lance Kinney, Ph.D., P.E., Executive Director for the Board, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rule. Dr. Kinney has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rule.

#### **LOCAL EMPLOYMENT IMPACT STATEMENT**

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

#### **PUBLIC BENEFITS**

Dr. Kinney has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be the clarification of agency rules regarding operations of the Texas Board of Professional Engineers and Land Surveyors.

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

Dr. Kinney has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules.

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

There will be no adverse effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. Since the agency has determined that the proposed rules will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

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

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Government Code §2001.0045.

#### **GOVERNMENT GROWTH IMPACT STATEMENT**

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

1. The proposed repeals do not create or eliminate a government program.
2. Implementation of the proposed repeals do not require the creation of new employee positions or the elimination of existing employee positions.

3. Implementation of the proposed repeals do not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed repeals do not require an increase or decrease in fees paid to the agency.
5. The proposed repeals do not create a new regulation.
6. The proposed repeals do not expand, limit, or repeal a regulation as these provisions are covered elsewhere in policy or statute.
7. The proposed repeals do not increase the number of individuals subject to the rule's applicability.
8. The proposed repeals do not positively or adversely affect this state's economy.

#### TAKINGS IMPACT ASSESSMENT

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

#### ENVIRONMENTAL RULE ANALYSIS

The Board has determined that the proposed repeals are not brought with the specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Board asserts the proposed repeals are not a "major environmental rule," as defined by Government Code §2001.0225. As a result, the Board asserts preparation of an environmental impact analysis, as provided by §2001.0225, is not required.

#### PUBLIC COMMENTS

Any comments or request for a public hearing may be submitted, no later than 30 days after the publication of this notice, to Lance Kinney, Ph.D., P.E., Executive Director, Texas Board of Professional Engineers, 1917 S. Interstate 35, Austin, Texas 78741, faxed to his attention at (512) 440-0417 or sent by email to [rules@engineers.texas.gov](mailto:rules@engineers.texas.gov).

### SUBCHAPTER B. ORGANIZATION OF THE BOARD STAFF

#### 22 TAC §131.33

##### STATUTORY AUTHORITY

The repeal is proposed pursuant to Texas Occupations Code §§1001.101 and 1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state.

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

§131.33. *Career Ladder.*

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

Filed with the Office of the Secretary of State on August 4, 2020.

TRD-202003157

Lance Kinney  
Executive Director  
Texas Board of Professional Engineers and Land Surveyors  
Earliest possible date of adoption: September 20, 2020  
For further information, please call: (512) 440-3080



### SUBCHAPTER C. MEETINGS

#### 22 TAC §131.49

##### STATUTORY AUTHORITY

The repeal is proposed pursuant to Texas Occupations Code §§1001.101 and 1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state.

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

§131.49. *Rules of Order.*

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

Filed with the Office of the Secretary of State on August 4, 2020.

TRD-202003158

Lance Kinney  
Executive Director  
Texas Board of Professional Engineers and Land Surveyors  
Earliest possible date of adoption: September 20, 2020  
For further information, please call: (512) 440-3080



## PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

### CHAPTER 329. LICENSING PROCEDURE

#### 22 TAC §329.5

The Texas Board of Physical Therapy Examiners proposes amending 22 Texas Administrative Code (TAC) §329.5, Licensing Procedures for Foreign-Trained Applicants.

The amendment is proposed to update the Test of English as a Foreign Language (TOEFL) minimum standards accepted by the board as proof of English language proficiency for a foreign-trained licensure applicant. The amendment eliminates outdated scores and adds the most recent TOEFL scores adopted by the Federation of State Boards of Physical Therapy (FSBPT).

##### Fiscal Note

Ralph A. Harper, Executive Director of the Executive Council of Physical Therapy & Occupational Therapy Examiners (ECP-TOTE), has determined that for the first five-year period these amendments are in effect there would be no increase or loss of revenue to the state. No fiscal implication to units of local government is anticipated as a result of enforcing or administering the rules.

##### Public Benefits and Costs



Mr. Harper has also determined that for the first five-year period these amendments are in effect the public benefit will be continued assurance that foreign-trained applicants meet minimum standards of licensure requirements, and that there will be no additional economic cost for individuals required to comply with these rules.

#### Local Employment Economic Impact Statement

The amendments are not anticipated to impact a local economy, so a local employment economic impact statement is not required.

#### Small and Micro-Businesses and Rural Communities Impact

Mr. Harper has determined that there will be no costs or adverse economic effects to small or micro-businesses or rural communities; therefore, an economic impact statement or regulatory flexibility analysis is not required.

#### Government Growth Impact Statement

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

- (1) The proposed rule amendments will neither create nor eliminate a government program.
- (2) The proposed rule amendments will neither create new employee positions nor eliminate existing employee positions.
- (3) The proposed rule amendments will neither increase nor decrease future legislative appropriations to the agency.
- (4) The proposed rule amendments will neither require an increase nor a decrease in fees paid to the agency.
- (5) The proposed rule amendment revises an existing regulation with updated English language proficiency standards as a condition for issuance of a license to a foreign-trained applicant.
- (6) The proposed rule amendments will neither repeal nor limit an existing regulation.
- (7) The proposed rule amendments will neither increase nor decrease the number of individuals subject to the rule's applicability.
- (8) The proposed rule amendments will neither positively nor adversely affect this state's economy.

#### Takings Impact Assessment

The proposed rule amendments will not impact private real property as defined by Tex. Gov't Code §2007.003, so a takings impact assessment under Tex. Gov't Code §2001.043 is not required.

#### Requirement for Rule Increasing Costs to Regulated Persons

Tex. Gov't Code §2001.0045, Requirement for Rule Increasing Costs to Regulated Persons, does not apply to this proposed rule amendment.

#### Public Comment

Comments on the proposed amendments may be submitted to Karen Gordon, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: karen@ptot.texas.gov. Comments must

be received no later than 30 days from the date this proposed amendment is published in the *Texas Register*.

#### Statutory Authority

The amended sections are proposed under Texas Occupation Code §453.102, which authorizes the Board to adopt rules necessary to implement chapter 453. Additionally, the amendments to §341.1, §341.6, and §341.8 are proposed under Texas Occupation Code § 453.254, which authorizes the Board to require license holders to complete continuing competence activities specified by the Board.

#### Cross-reference to Statute

The proposed amendment implements provisions in Sec. 453.204, Occupations Code that pertains to licensure requirements of foreign-trained applicants. No other statutes, articles, or codes are affected by these amendments.

#### §329.5. *Licensing Procedures for Foreign-Trained Applicants.*

A foreign-trained applicant must complete the license application process as set out in §329.1 of this title (relating to General Licensure Requirements and Procedures). In addition, the applicant must submit the following:

(1) (No change.)

(2) Proof of English language proficiency. A foreign-trained applicant must demonstrate the ability to communicate in English by making the minimum score accepted by the board on the Test of English as a Foreign Language (TOEFL) [TOEFL tests] administered by the Educational Testing Service (ETS).

(A) (No change.)

(B) (B) Minimum acceptable TOEFL iBT (internet-based test) scores are as follows: Reading = 22, Writing = 22, Speaking = 24, and Listening = 21.

~~[(i) Paper-based TOEFL tests (pbt) - TOEFL (reading/comprehension) 580; TWE (writing/essay) 5.0; TSE (speaking) 50;]~~

~~[(ii) Computer-based TOEFL tests (cbt) - TOEFL (reading/comprehension) 237; TWE (writing/essay) 5.0; TSE (speaking) 50;]~~

~~[(iii) Internet-based (ibt) - Writing 24; Speaking 26; Reading Comprehension 21; Listening Comprehension 18.]~~

(C) (No change.)

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

Filed with the Office of the Secretary of State on August 7, 2020.

TRD-202003199

Ralph A. Harper  
Executive Director

Texas Board of Physical Therapy Examiners  
Earliest possible date of adoption: September 20, 2020

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



## CHAPTER 344. ADMINISTRATIVE FINES AND PENALTIES

### 22 TAC §344.1

The Texas Board of Physical Therapy Examiners proposes amending 22 Texas Administrative Code (TAC) §344.1 regarding changes to the Schedule of Sanctions graphic.

The amendment is proposed to update the Schedule of Sanctions graphic by removing the sanctions for not registering a physical therapy facility and practicing in an unregistered physical therapy facility pursuant to the repeal of physical therapy facility registration and annual renewal pursuant to SB 317 during the 85th Legislative Session; and to add a range of fines that can be imposed per violation to each category of disciplinary action.

#### **Fiscal Note**

Ralph A. Harper, Executive Director of the Executive Council of Physical Therapy & Occupational Therapy Examiners, has determined that for the first five-year period these amendments are in effect there would be no increase or loss of revenue to the state as the addition of recouping investigation costs for the revocation or surrender of a license would occur infrequently. No fiscal implication to units of local government is anticipated as a result of enforcing or administering the rules.

#### **Public Benefits and Costs**

Mr. Harper has also determined that for the first five-year period these amendments are in effect there will be no impact on the public, neither beneficially nor economically.

#### **Local Employment Economic Impact Statement**

The amendments are not anticipated to impact a local economy, so a local employment economic impact statement is not required.

#### **Small and Micro-Businesses and Rural Communities Impact**

Mr. Harper has determined that there will be no costs or adverse economic effects to small or micro-businesses or rural communities; therefore, an economic impact statement or regulatory flexibility analysis is not required.

#### **Government Growth Impact Statement**

During the first five-year period these amendments are in effect, the impact on government growth is as follows: the proposed amendment will neither create nor eliminate a government program; will neither create new employee positions nor eliminate existing employee positions; will neither increase nor decrease future legislative appropriations to the agency; will neither require an increase nor a decrease in fees paid to the agency; does not create a new regulation; expands on an existing regulation by updating a graphic associated with an existing rule; will not increase the number of licensees subject to the rule's applicability; and will neither positively or adversely affect the state's economy.

#### **Takings Impact Assessment**

The proposed rule amendments will not impact private real property as defined by Tex. Gov't Code §2007.003, so a takings impact assessment under Tex. Gov't Code §2001.043 is not required.

#### **Requirement for Rule Increasing Costs to Regulated Persons**

Tex. Gov't Code §2001.0045, Requirement for Rule Increasing Costs to Regulated Persons, does not apply to this proposed rule because the recouping of investigative costs for the maximum disciplinary action for revocation or surrender of a license occurs

infrequently and is necessary to protect the health, safety, and welfare of the residents of this state.

#### **Public Comment**

Comments on the proposed amendments may be submitted to Karen Gordon, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: karen@ptot.texas.gov. Comments must be received no later than 30 days from the date this proposed amendment is published in the *Texas Register*.

#### **Statutory Authority**

The amendment is proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

#### **Cross-reference to Statute**

The proposed amendment implements provisions in Sec. 453.352, Texas Occupations Code.

§344.1. *Administrative Fines and Penalties.*

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

(c) The Board shall utilize the following Schedule of Sanctions in all disciplinary matters.

Figure: 22 TAC §344.1(c)

[Figure: 22 TAC §344.1(e)]

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

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

Filed with the Office of the Secretary of State on August 7, 2020.

TRD-202003198

Ralph A. Harper

Executive Director

Texas Board of Physical Therapy Examiners

Earliest possible date of adoption: September 20, 2020

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



## **TITLE 28. INSURANCE**

### **PART 1. TEXAS DEPARTMENT OF INSURANCE**

#### **CHAPTER 7. CORPORATE AND FINANCIAL REGULATION**

##### **SUBCHAPTER A. EXAMINATION AND FINANCIAL ANALYSIS**

###### **28 TAC §7.88, §7.89**

The Texas Department of Insurance proposes to amend 28 TAC §7.88, concerning independent annual audits of insurer and Health Maintenance Organization (HMO) financial statements and insurer and HMO internal control over financial reporting. TDI also proposes new 28 TAC §7.89, concerning annual corporate governance disclosures. Amendments to §7.88 update the section to include requirements for audit committees and the

internal audit function for large insurers and HMOs to align with best practices and changes to the Model Audit Rule (MAR) of the National Association of Insurance Commissioners (NAIC). New §7.89 implements House Bill 3306, 86th Legislature, Regular Session (2019), which is codified in Insurance Code Chapter 831 and requires rules describing the corporate governance disclosures an insurer or HMO is required to make each year.

EXPLANATION. The proposed amendments to §7.88 require certain large insurers and HMOs to establish an internal audit function that is independent and reports on corporate governance and internal controls to the audit committee of the board of directors.

Under Insurance Code Chapter 823, Subchapter B, insurers and HMOs are required to provide an annual registration statement on executive staff's implementation and maintenance of corporate governance and internal control procedures and the board's oversight of corporate governance and internal controls. In order to have oversight, a board of directors should have a direct line of communication from an independent internal source at regular intervals. Best practices show this is achieved by establishing an internal audit function that reports to the audit committee of the board of directors.

The proposed amendments to §7.88 will improve TDI's oversight of the financial condition of insurers and HMOs and incorporate best practices by requiring large insurers and HMOs to establish an internal audit function to ensure appropriate corporate governance and internal controls. The internal audit function will provide independent and objective assurance to an insurer's or HMO's audit committee and management regarding their governance, risk management, and internal controls.

The proposed amendments to §7.88 are necessary for TDI to maintain its NAIC accreditation. TDI notes that these amendments are consistent with existing stock exchange requirements, international standards, and industry best practices observed by large insurers or HMOs.

New §7.89 is necessary to implement HB 3306, which requires the Commissioner to adopt rules relating to an insurer's or HMO's corporate governance annual disclosure (CGAD) requirements. A recent analysis in the insurance industry compared existing corporate governance statutory requirements, regulatory initiatives, and review practices of regulators and the insurance industry. The analysis identified a need to collect additional information related to corporate governance practices. To address this need, the Legislature passed HB 3306. The NAIC also acted to address this need, by developing the CGAD Model Act and the CGAD Model Regulation. The provisions of HB 3306 and proposed new §7.89 are based on the NAIC CGAD Model Act and NAIC CGAD Model Regulation, and they are necessary for TDI to maintain its NAIC accreditation.

HB 3306 requires an insurer or HMO or a group of insurers or HMOs to provide confidential corporate disclosures relating to their corporate governance practices to the Commissioner of their lead state if the insurer or HMO is a member of an insurance group or their domestic regulator each year by June 1. An insurer or HMO that is a member of an insurance group must submit the CGAD to the Commissioner of the lead state for the insurance group, under the laws of the lead state, as determined by the procedures adopted by the NAIC.

Neither HB 3306 nor proposed new §7.89 prescribe new governance standards, but rather require an insurer or HMO to report on existing practices. Given the different structures of U.S. in-

surers and HMOs, they are afforded discretion over the format of the filing and the level of the company responsible for the filing. The levels may be the ultimate controlling parent level, an intermediate holding company level or the individual legal entity level, depending on how the insurer or insurance group has structured its system of corporate governance. However, an insurer or HMO should consider which level of the company determines the insurer or HMO or insurance or HMO groups' risk appetite.

At a minimum, the disclosure is required to address: (1) the insurer's or HMO's corporate governance framework and structure; (2) the policies and practices of its board of directors and significant committees; (3) the policies and practices directing senior management; and (4) the processes by which the board of directors, its committees, and senior management ensure an appropriate level of oversight to the critical risk areas impacting the insurer's or HMO's business activities.

To simplify the reporting process, the CGAD disclosure requirements allow reference to existing documents and filings and provide guidance for filing changes from the prior year. Any insurer or HMO that fails, without cause, to timely file the CGAD under Insurance Code Chapter 831 as required may be subject to a penalty. Most insurers and HMOs already summarize and describe their corporate governance practices to various stakeholders on a regular basis, so the compliance costs with this requirement will not be significant.

HB 3306 states that the CGAD requirement does not apply before June 1, 2020. TDI is not expecting insurers or HMOs to file until the following year. TDI expects to receive initial filings on or before June 1, 2021. The electronic filing address is provided on TDI's website at [www.tdi.texas.gov](http://www.tdi.texas.gov).

Section 7.88. Independent Audits of Insurer and HMO Financial Statements and Insurer and HMO Internal Control over Financial Reporting. Amendments to §7.88 are made to subsections that are affected by the proposed internal audit function requirements. The internal audit function requirements are proposed as new subsection (l), which means that current subsection (l) and all subsections following it are redesignated as appropriate.

Proposed §7.88(b) is amended to include a new paragraph (4), which states that the internal audit committee requirements under §7.88(l) are applicable beginning January 1, 2021.

Proposed §7.88(c)(3) is amended to add the words "the internal audit function of an insurer or HMO or group of insurers or HMOs" and "external" to the definition of audit committee.

Proposed §7.88(d)(4), (e)(2), (g), and (k)(3) are amended to revise citations to a redesignated subsection and a redesignated paragraph. The references to subsection (m) in subsections (e)(2) and (g) are changed to reference subsection (n), the reference to subsection (m)(1) in subsection (e)(2) is changed to reference subsection (n)(1), and the reference to paragraph (9) in subsection (k)(3) is changed to reference paragraph (10).

Proposed §7.88(k)(3)(B) is amended to revise a citation to a chapter name and to revise a citation to a rule section that have changed. The title of Chapter 8 is updated to "Hazardous Condition" and the reference to §11.810 is changed to §11.811.

Proposed 7.88(k)(4) is amended to reflect renumbering of the paragraphs that follow new paragraph (7). Under the proposal, the waiver discussed in §7.88(k)(4) will apply to paragraphs (1), (2), (5), (6), and (8) - (13) instead of (1), (2), (5) - (12), as under the current rule.

Proposed §7.88(k)(7) is new language added to clarify responsibilities of an insurer's or HMO's or group of insurers' or HMOs' audit committee. This amendment is included because the audit committee is responsible for overseeing the insurer's, HMO's or group of insurers' or HMOs' internal audit function. In order to meaningfully carry out this function, certain authority and adequate resources must be made available to the persons doing the work. This paragraph also clarifies that this requirement for the audit committee applies only if the premium thresholds in proposed §7.88(l) apply to the insurer or HMO.

Because a new paragraph (7) is added, the paragraphs that follow it are renumbered as appropriate. In addition, because of the renumbering of the paragraphs in subsection (k), the reference to paragraph (10) in proposed subsection (k)(8) is updated to reference paragraph (11) and the reference to paragraph (11) in proposed subsection (k)(13) is updated to reference paragraph (12).

Section 7.88(l) is proposed as a new subsection to §7.88, and the subsections that follow it are redesignated as appropriate. Proposed §7.88(l) describes the requirements for the internal audit function, which applies to an insurer or HMO or group of insurers or HMOs when proposed §7.88(k)(7)'s requirements for audit committees are applicable.

Proposed §7.88(l)(1) describes exemptions that limit the requirement for an insurer or HMO to comply with the internal audit function requirements of the subsection. Under §7.88(l)(1), an insurer or HMO is exempt if it has annual direct written and unaffiliated assumed premium, including international direct and assumed premium but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than \$500 million, and the insurer or HMO is a member of a group that has annual direct written and unaffiliated assumed premium including international direct and assumed premium, but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than \$1 billion.

Section 7.88(l)(2) describes the required characteristics for the internal audit function. The internal audit function must provide independent, objective, and reasonable assurance to the audit committee and insurer management about the insurer's governance, risk management, and internal controls. The assurance is provided by doing general and specific audits, reviews, and tests, and by employing other techniques deemed necessary to protect assets, evaluate control effectiveness and efficiency, and evaluate compliance with policies and regulations.

Section 7.88(l)(3) requires that an internal audit function be organizationally independent, in order to ensure that internal auditors remain objective. Being independent means that internal audit makes the final decision on audit matters and that there is an individual appointed to head the internal audit function who has direct and unrestricted access to the board of directors. Internal audit can report to more than just the board without compromising organizational independence.

Section 7.88(l)(4) describes how often and what the head of the internal audit function must report to the audit committee. It states that reporting must happen regularly, and it specifies that this must be no less than once a year. The report must include detail about the audit plan, factors that may adversely impact the internal audit function's independence or effectiveness, material findings from completed audits and the appropriateness of cor-

rective actions implemented by management as a result of audit findings.

Section 7.88(l)(5) provides that if an insurer or HMO is a member of an insurance holding company system or included in a group of insurers or HMOs, the internal audit function requirements may be satisfied at the ultimate controlling parent level, an intermediate holding company level, or the individual legal entity level.

Proposed §7.88(n)(2) updates the reference to a TAC section to change it from §11.810 to §11.811.

Proposed §7.88(o)(2) and (o)(3) are amended to revise citations to reflect redesignated subsections. The reference to subsection (m) in subsection (o)(2) is changed to subsection (n), and the reference to (m)(1) in subsection (o)(3) is changed to (n)(1).

Proposed §7.88(o)(4) is new. It states that if an insurer or HMO or a group of insurers or HMOs no longer meets the exemption from the internal audit requirement in §7.88(l)(1), the insurer or HMO or group of insurers or HMOs has one year after the year the threshold is exceeded to comply with the requirements of proposed §7.88(l).

Non-substantive amendments are also made to the existing rule text to conform it to current TDI rule drafting style. These amendments include:

- capitalizing the word "Commissioner" where it appears in lowercase in subsections (b)(1); (d)(1) - (4); (f); (h); (h)(1), (2), (4), (4)(l), (6), (10); (j)(1); (k)(3), (4), (10), and (11); redesignated (m)(2)(A); and redesignated (n)(1) and (2);

- correcting unnecessary capitalization in the catchlines for subsections (d) - (k) and redesignated (m) - (p);

- replacing the words "shall be" with "is" in subsection (b)(2);

- replacing the word "shall" with "must" in subsections (f)(5); (e)(1); (h)(1) and (12); (j)(1); (k)(2); (5); and (6); (k)(12); and redesignated (n)(1) and (7);

- replacing the word "shall" with "will" in subsections (h) and (h)(11);

- replacing the word "shall" with "may" in subsection (h)(3);

- removing superfluous instances of the word "the" before citations to specific subchapters or sections of the Insurance Code in subsections (a)(3); (b)(1); (c)(1), (2), (4), (5), and (14); (d)(1) and (3) - (5); (e)(1)(C); (g); (h); (h)(11)(B) and (C); (i); (j)(1); (k)(2), (3)(A) and (B), and (12); redesignated (m)(1)(A) and (B) and (2); redesignated (n)(1), (2), (4), and (9); and redesignated (o)(2); and

- changing to word "chapter" to "title" and inserting the word "to" in a reference to another section of Title 28 of the Texas Administrative Code.

Proposed New §7.89. Corporate Governance Annual Disclosure. Proposed new §7.89 describes the requirements for submitting the CGAD.

Proposed new §7.89(a) states the purpose of the section, which is to implement Insurance Code Chapter 831 by providing the procedures for filing and the content of the corporate governance annual disclosures.

Proposed §7.89(b) provides definitions for the section. It states the definitions in Insurance Code §831.0002 apply to §7.89 and provides additional definitions. Insurance Code §831.0002(3)

includes HMOs in the definition of "insurer," so when the term "insurer" is used in proposed §7.89 it includes an HMO, and it is unnecessary to expressly repeat that definition in §7.89.

Section 7.89(b)(1) defines "board" as the insurer's board of directors. Section 7.89(b)(2) defines "CGAD" as the corporate governance annual disclosure. Section 7.89(b)(3) defines "Senior Management" as any corporate officer reporting information to the board of directors at regular intervals or providing this information to shareholders or regulators. It notes that the term includes, but is not limited to, the chief executive officer (CEO), chief financial officer (CFO), chief operations officer, chief procurement officer, chief legal officer, chief information officer, chief technology officer, chief revenue officer, chief visionary officer, or any other senior level executive. Section 7.89(b)(4) defines "TDI" as the Texas Department of Insurance.

Proposed new §7.89(c) describes the CGAD's filing procedures. Section 7.89(c)(1) states that an insurer required to file the CGAD must do so no later than June 1 of each calendar year.

Section 7.89(c)(2) identifies who may sign the CGAD, and it provides that the signature attests that the corporate governance practices were implemented and that the CGAD was provided to the appropriate board of directors and committee.

Section 7.89(c)(3) describes how to submit the CGAD. The CGAD must be sent in an electronic format acceptable to TDI. The electronic filing address is provided on TDI's website at [www.tdi.texas.gov](http://www.tdi.texas.gov).

Section 7.89(c)(4) describes the format of CGAD. Section 7.89(c)(4) states the insurer or the insurance group has discretion over the format of the information described in §7.89 and can choose the most relevant information as long as it allows TDI to understand the corporate governance structure, policies, and practices used by the insurer or insurance group.

Section 7.89(c)(5) describes that the level the insurer should report depends on how it has structured its corporate governance. Section 7.89(c)(5)(A) states the insurer or insurance group has the choice to report at the controlling parent level, an intermediate holding company level, or the individual legal entity level. Section 7.89(c)(5)(B) encourages that the CGAD disclosures be made at the level at which the insurer's or insurance group's risk appetite is determined, or at which the earnings, capital, liquidity, operations, and reputation of the insurer are overseen collectively and at which the supervision of those factors are coordinated and exercised, or the level at which legal liability for failure of general corporate governance duties would be placed. Section 7.89(c)(5)(C) requires the insurer or insurance group to indicate which of the three criteria under §7.89(c)(5)(B) was used to determine the level of reporting and explain any subsequent changes in level of reporting.

Section 7.89(c)(6) provides details if the CGAD is completed at the insurance group level. Section 7.89(c)(6) states that if the CGAD is completed at the insurance group level, then it must be filed with the lead state of the group as determined by the procedures outlined in the most recent financial analysis handbook adopted by the NAIC. It further describes that if completed on the insurance group level, a copy of the CGAD must also be provided upon request to the chief regulatory official of any state in which the insurance group has a domestic insurer.

Section 7.89(c)(7) describes what should be filed in the annual filing if there were changes to the CGAD or if there were no changes. Section 7.89(c)(7) states that after the initial filing, the

insurer must file an amended CGAD if there were changes. The amended CGAD must identify where the changes were made. If there were no changes, the insurer must submit a letter signed by the person described under §7.89(c)(2) and stating that there were no changes since the last CGAD submission. The letter must also identify that CGAD's date.

Proposed new §7.89(d) describes the content of the CGAD. It states that the CGAD should be as descriptive as possible and include attachments and examples that are used in the governance process. The CGAD should provide information that shows the strengths of the framework and controls. The insurer or insurance group may reference other filings that were previously submitted to TDI instead of resubmitting similar information.

Proposed new §7.89(e) describes what the insurer's or insurance group's corporate governance framework and structure should consider, at a minimum. Section 7.89(e)(1) states the framework and structure should consider the board and board committees that are responsible for overseeing the insurer or insurance group and the levels that the oversight of the insurer or insurance group occurs. The level may be at the ultimate controlling parent level, an intermediate holding company level or the individual legal entity level, depending on how the insurer or insurance group has structured its system of corporate governance. The insurer or insurance group must also describe and discuss the rationale for the current board size and structure. Section 7.89(e)(2) states the framework and structure should also consider the duties of the board and each of its significant committees and how they are governed under the bylaws, charters, and informal mandates, as well as, how the board's leadership is structured. It should also include a discussion of the roles of chief executive officer and chairman of the board.

Proposed new §7.89(f) describes the factors that the insurer or insurance group should consider when compiling the CGAD. The insurer or insurance group must describe the policies and practices of the most senior governing entity and its significant committees, including, but not limited to, a discussion of the factors described in §7.89(f)(1) - (5).

Section 7.89(f)(1) requires a description of how the qualifications, expertise, and experience of each board member meet the needs of the insurer or insurance group.

Section 7.89(f)(2) requires a description of how independence is maintained on the board and its significant committees.

Section 7.89(f)(3) requires a report of the number of meetings held by the board and its significant committees over the past year, as well as information on director attendance.

Section 7.89(f)(4) requires a description of how the insurer or insurance group identifies, nominates, and elects members to the board and its committees. The discussion should include, but is not limited to, the factors proposed in §7.89(f)(4)(A) - (D). Section 7.89(f)(4)(A) requires the description include whether a nomination committee is in place to identify and select individuals for consideration. Section 7.89(f)(4)(B) requires the discussion include whether term limits are placed on directors. Section 7.89(f)(4)(C) requires the discussion include how the election and reelection processes function. Section 7.89(f)(4)(D) requires the discussion include whether a board diversity policy is in place and, if so, how it functions.

Section 7.89(f)(5) requires that the description include the processes in place for the board to evaluate its performance and the

performance of its committees, as well as any recent measures taken to improve performance. This description should include any board or committee training programs that have been put in place.

Proposed new 7.89(g) requires an insurer or insurer group to address additional factors related to the policies and practices used to direct senior management. The factors must include those described in §7.89(g)(1) - (4).

Section 7.89(g)(1) requires a description of any processes or practices to determine whether officers and key persons in control functions have the appropriate background, experience, and integrity to fulfill their prospective roles, such as suitability standards. The description of the processes or practices must include those listed in §7.89(g)(1)(A) - (B). Section 7.89(g)(1)(A) - (B) address the specific positions for which suitability standards have been developed and a description of the standards employed, and any changes in an officer's or key person's suitability as outlined by the insurer's or insurance group's standards and procedures to monitor and evaluate such changes.

Section 7.89(g)(2) requires the discussion include the insurer's or insurance group's code of business conduct and ethics. Section 7.89(g)(2)(A) - (B) provides examples of what the discussion could consider. Section 7.89(g)(2)(A) suggests the discussion of which considers compliance with laws, rules, and regulations, and §7.89(g)(2)(B) suggests that it include proactive reporting of any illegal or unethical behavior.

Section 7.89(g)(3) requires the discussion include the insurer's or insurance group's processes for performance evaluation, compensation, and corrective action to ensure effective senior management throughout the organization. This description must include a description of the general objectives of significant compensation programs and what the programs are designed to reward. The description must also include enough detail to allow the director to understand how the organization ensures that compensation programs do not encourage and reward excessive risk taking.

Section 7.89(g)(3)(A) - (F) provides examples of elements to discuss under §7.89(g)(3). Section 7.89(g)(3)(A) references the board's role in overseeing management compensation programs and practices. Section 7.89(g)(3)(B) references the various elements of compensation awarded in the insurer's or insurance group's compensation programs and how the insurer or insurance group determines and calculates the amount of each element of compensation paid. Section 7.89(g)(3)(C) references how compensation programs are related to both company and individual performance over time. Section 7.89(g)(3)(D) references whether compensation programs include risk adjustments and how those adjustments are incorporated into the programs for employees at different levels. Section 7.89(g)(3)(E) references "clawback provisions" built into the programs to recover awards or payments if the performance measures on which they are based are restated or otherwise adjusted. Section 7.89(g)(3)(F) references any other factors relevant in understanding how the insurer or insurance group monitors its compensation policies to determine whether its risk management objectives are met by incentivizing its employees.

Section 7.89(g)(4) requires the discussion include the insurer's or insurance group's plans for CEO and senior management succession.

Proposed new §7.89(h) requires the insurer or insurance group to describe the processes by which the board, its committees,

and senior management ensure an appropriate amount of oversight to the critical risk areas impacting the insurer's business activities. Section 7.89(h)(1) - (3) lists the details that must be addressed in the insurer or insurance group's description of oversight.

Section 7.89(h)(1) requires a description of how oversight and management responsibilities are delegated between the board, its committees, and senior management.

Section 7.89(h)(2) requires a description of how the board is kept informed of the insurer's strategic plans, the associated risks, and steps that senior management is taking to monitor and manage those risks.

Section 7.89(h)(3) requires a description how reporting responsibilities are organized for each critical risk area that allows the board to understand the frequency at which information on each critical risk area is reported to and reviewed by senior management and the board. Subparagraphs (A) - (H) provide that the description may include risk management processes, actuarial function, investment decision-making processes, reinsurance decision-making processes, business strategy/finance decision-making processes, compliance function, financial reporting/internal auditing, and market conduct decision-making processes.

Proposed new §7.89(i) discusses the severability of §7.89. It states that if a determination that any portion of §7.89 or its application to any person or circumstance is held invalid, it does not affect other portions of §7.89 or its applications that can be given effect without the invalid portion or application.

NAIC. This proposal includes provisions related to NAIC rules, regulations, directives, or standards; and under Insurance Code §36.004, TDI must consider whether authority exists to enforce or adopt it. In addition, under Insurance Code §36.007, an agreement that infringes on the authority of this state to regulate the business of insurance in this state has no effect unless the agreement is approved by the Texas Legislature.

TDI has determined that neither Insurance Code §36.004 nor §36.007 prohibit the proposed rules under §7.88 or §7.89. The proposed amendments to §7.88 are required for TDI to maintain its accreditation and do not implement an interstate, national, or international agreement. Proposed new §7.89 is expressly authorized by statute, is required to maintain accreditation, and does not implement an interstate, national, or international agreement.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Jamie Walker, deputy commissioner of the Financial Regulation Division, has determined that during each year of the first five years the proposed amendments and new sections are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the sections, other than that imposed by the statute. This determination was made because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Ms. Walker does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amended and new sections are in effect, Ms. Walker expects that administering and enforcing the proposed amendments to §7.88 and proposed new §7.89 will

have the public benefits of ensuring that TDI's rules comply with best practices for insurers and HMOs and provide TDI with the ability to better regulate their solvency.

Ms. Walker expects that the proposed amendments to §7.88 will not increase the cost of compliance to regulated persons because there is a cost saving for insurers and HMOs to have an internal audit function. Internal controls help ensure that financial statements give a true and fair view and help to reduce the risk of misstatement associated with the loss or misappropriation of assets. A business cannot prepare financial statements or prevent or detect the theft of assets if it fails to control its accounting records.

An internal control function ensures that information is timely and accurate, which is essential to an insurer's or HMO's decision-making. An internal audit function's value can be derived from saving money, monitoring compliance to avoid fines, increasing productivity, and protecting the insurer's or HMO's reputation.

Under Insurance Code Section 401.004 and 28 TAC Section 7.88, insurers and HMOs must have an independent public accountant (auditor) perform an annual audit that contains certain information about internal controls. Insurers and HMOs with an effective set of internal controls validated by an internal audit function provide the auditor greater assurance regarding the reliability of the financial reporting, the effectiveness and efficiency of operations, and compliance with applicable laws and regulations.

When preparing an insurer's audit plan, auditors (a) test controls, (b) consider board engagement, and (c) evaluate its governance framework. If there is not an effective internal audit function, independent auditors are required to expand their audit plan to do more testing of controls and substantive work, increasing the direct cost of the audit and pulling the insurer's or HMO's staff away from performing routine job duties.

The costs associated with having an internal audit function under the proposed amendments to §7.88 will reduce the external independent audit costs also required under §7.88 and will help the insurers or HMOs run a more efficient operation. The actual dollar amount of savings, however, will vary. An insurer or HMO may choose to use staff who are currently employed to perform the function and others may choose to hire new full- or part-time employees or may choose to use contractors. The costs will also vary depending on how often internal audit does testing. The dollar cost of an annual audit by an independent auditor will also vary because it depends on who the insurer or HMO chooses to hire and the size and complexity of the insurer or HMO, but the overall cost of the audit will be less because there will be less audit procedures required if there is an internal audit function established and reporting to the audit committee of the board of directors. The reduction in independent audit costs and the greater efficacy an internal audit function provides exceed the costs associated with proposed §7.88.

Currently, the forty insurers or HMOs that would be subject to the proposed amendments to §7.88 already have an internal audit function in place. If the insurers' or HMOs' internal audit function is not currently reporting to the audit committee of the board of directors, the amendments to §7.88 will require them to do so at least annually. The financial benefit of having an engaged and informed audit committee on the board of directors will exceed the cost associated with requiring the internal control function to report directly to the audit committee. The rule does not prohibit

dual reporting to senior management and the audit committee if independence is maintained.

Proposed new §7.89 may increase the cost of compliance with Insurance Code Chapter 831. Insurance Code §831.0008 requires the CGAD to contain material information necessary to permit the Commissioner to gain an understanding of the insurer's or insurance group's corporate governance structure, policies, and practices, consistent with rules adopted by the Commissioner. The actual dollar amount to comply with the requirements in §7.89 will vary. Section 7.89 gives the insurer or insurance group discretion over the format of the filing and over the level responsible for the filing. The level responsible for the filing may be the ultimate controlling parent level, intermediate holding company level or the individual legal entity level, depending on how the insurer or insurance group has structured its system of corporate governance. It will also depend on the complexity of the insurer's or insurance group's structure. The structure impacts the number of employees it will take to create the disclosures, ensure that the corporate governance practices are implemented, analyze if any changes occur from year to year, and file the CGAD. The structure will also impact the amount of time the insurer's or insurance group's chief executive officer or corporate secretary will need to review the CGAD and to attest that the corporate governance practices have been implemented.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** TDI has determined that the proposed amendments and new section will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities. This is because the amendments to §7.88 and new §7.89 apply only to insurers or HMOs that do not qualify as small or micro-businesses, and the amendments and new section do not apply to any rural communities. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

**EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045.** TDI has determined that the proposed amendments to §7.88 do not impose a cost on regulated persons under Government Code §2001.0045. As discussed under the public benefit and cost note, TDI has determined that the proposed amendments to §7.88(l) decrease the overall costs on regulated persons. Government Code §2001.0045(c)(2)(B) states that Government Code §2001.0045 does not apply to a rule that is amended to decrease the regulated persons' cost for compliance with the rule.

TDI has determined that proposed new §7.89 may impose a cost on regulated persons. However, an examination of costs under Government Code §2001.0045 is not required because proposed new §7.89 implements Insurance Code Chapter 831, as added by HB 3306, and Insurance Code §831.0014(b) provides that Government Code §2001.0045 does not apply to a rule adopted under Insurance Code Chapter 831.

**GOVERNMENT GROWTH IMPACT STATEMENT.** TDI has determined that for each year of the first five years that the proposed amendments and new section are in effect the proposed rules:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;

--will not require an increase or decrease in future legislative appropriations to the agency;

--will not require an increase or decrease in fees paid to the agency;

--will create a new regulation;

--will expand, limit, or repeal an existing regulation;

--will increase or decrease the number of individuals subject to the rule's applicability; and

--will not positively or adversely affect the Texas economy.

**TAKINGS IMPACT ASSESSMENT.** TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

**REQUEST FOR PUBLIC COMMENT.** TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m. Central time on September 21, 2020. Send your comments to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

To request a public hearing on the proposal, submit a request before the end of the comment period, and separate from any comments, to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. The request for public hearing must be separate from any comments and received by the department no later than 5:00 p.m., central time, on September 21, 2020. If TDI holds a public hearing, TDI will consider written and oral comments presented at the hearing.

**STATUTORY AUTHORITY.** TDI proposes amendments to §7.88 under Insurance Code §36.001 and §36.004(c) and new §7.89 under Insurance Code §§36.001, 36.004(c), 831.0008(c) and 831.0014(a).

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

Insurance Code §36.004(c) provides that the Commissioner may adopt a rule to require compliance with a rule, regulation, directive, or standard adopted by the National Association of Insurance Commissioners if the rule is technical or non-substantive in nature or necessary to preserve TDI's NAIC accreditation and before the adoption of the rule, the Commissioner provides the standing committees of the senate and house of representatives with primary jurisdiction over TDI with written notice of the Commissioner's intent to adopt the rule.

Insurance Code §831.0008(c) provides that corporate governance annual disclosures must be prepared consistent with rules adopted by the Commissioner.

Insurance Code §831.0014(a) provides that the Commissioner shall adopt rules as necessary to enforce Insurance Code Chapter 831.

**CROSS-REFERENCE TO STATUTE.** Amendments to §7.88 affect Insurance Code Chapter 401, Subchapter B and Insurance

Code Chapter 843, Subchapter B. New §7.89 affects Insurance Code §§831.0003 - 831.0014.

§7.88. *Independent Audits of Insurer and HMO Financial Statements and Insurer and HMO Internal Control over Financial Reporting.*

(a) Purpose. The purpose of this section is to improve the Texas Department of Insurance's surveillance of the financial condition of insurers and HMOs by:

(1) specifying the requirements of an annual audit by an accountant of the financial statements reporting the financial condition and the results of operations of each insurer or HMO;

(2) requiring communication of internal control related matters noted in an audit;

(3) requiring an insurer or HMO that is required to file an annual audited financial report under [the] Insurance Code Chapter 401, Subchapter A, to have an audit committee; and

(4) requiring certain insurer or HMO management to report on internal control over financial reporting.

(b) Applicability.

(1) Except as otherwise specified in this section and in [the] Insurance Code Chapter 401, Subchapter A, this section applies to insurers and HMOs and takes effect beginning with the annual reporting period ending December 31, 2010, which period is reflected in reports and communications required to be filed with the Commissioner [commissioner] during calendar year 2011, and continues in effect each year thereafter.

(2) Subsection (h)(1) of this section, relating to lead audit partner limitation, is [shall be] in effect for audits of the year beginning January 1, 2010, which audits are reflected in reports and communications required to be filed with the Commissioner [commissioner] during calendar year 2011, and continues in effect each year thereafter.

(3) Subsection (k) of this section, relating to audit committee requirements, takes effect on September 1, 2010.

(4) Subsection (l) of this section, relating to internal audit committee requirements, is applicable beginning January 1, 2021.

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

(1) Accountant--An independent certified public accountant or accounting firm that meets the requirements of [the] Insurance Code §401.011.

(2) Affiliate--Has the meaning assigned by [the] Insurance Code §823.003.

(3) Audit committee--A committee established by the board of directors of an entity for the purpose of overseeing the accounting and financial reporting processes of an insurer or HMO or group of insurers or HMOs, the internal audit function of an insurer or HMO or group of insurers or HMOs, and external audits of financial statements of the insurer or HMO or group of insurers or HMOs. At the election of the controlling person, the audit committee of an entity that controls a group of insurers or HMOs may be the audit committee for one or more of the controlled insurers or HMOs solely for the purposes of this section. If an audit committee is not designated by the insurer or HMO, the insurer's or HMO's entire board of directors constitutes the audit committee.

(4) Audited financial report--The annual audit report required by [the] Insurance Code Chapter 401, Subchapter A.



(5) Group of insurers or HMOs--Those authorized insurers or HMOs included in the reporting requirements of [the] Insurance Code Chapter 823, or a set of insurers or HMOs as identified by management, for the purpose of assessing the effectiveness of internal control over financial reporting.

(6) Health maintenance organization (HMO)--A health maintenance organization authorized to engage in business in this state.

(7) Insurer--An insurer authorized to engage in business in this state, including:

- (A) a life, health, or accident insurance company;
- (B) a fire and marine insurance company;
- (C) a general casualty company;
- (D) a title insurance company;
- (E) a fraternal benefit society;
- (F) a mutual life insurance company;
- (G) a local mutual aid association;
- (H) a statewide mutual assessment company;
- (I) a mutual insurance company other than a mutual life insurance company;
- (J) a farm mutual insurance company;
- (K) a county mutual insurance company;
- (L) a Lloyd's plan;
- (M) a reciprocal or interinsurance exchange;
- (N) a group hospital service corporation;
- (O) a stipulated premium company; and
- (P) a nonprofit legal services corporation.

(8) Internal control over financial reporting--A process implemented by an entity's board of directors, management, and other personnel designed to provide reasonable assurance regarding the reliability of the entity's financial statements. The term includes policies and procedures that:

(A) relate to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets;

(B) provide reasonable assurance that:

(i) transactions are recorded as necessary to permit preparation of the financial statements; and

(ii) receipts and expenditures are made only in accordance with authorizations of management and directors; and

(C) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of assets that could have a material effect on the financial statements.

(9) Management--The management of an insurer or HMO or group of insurers or HMOs subject to this section.

(10) SEC--The United States Securities and Exchange Commission.

(11) Section 404--Section 404, Sarbanes-Oxley Act of 2002 (15 U.S.C. §7262), and rules adopted under that section.

(12) Section 404 report--Management's report on internal control over financial reporting as determined by the SEC and the related attestation report of an accountant.

(13) SOX-compliant entity--An entity that is required to comply with or voluntarily complies with:

(A) the preapproval requirements provided by 15 U.S.C. §78j-1(i);

(B) the audit committee independence requirements provided by 15 U.S.C. §78j-1(m)(3); and

(C) the internal control over financial reporting requirements provided by 15 U.S.C. §7262(b) and Item 308, SEC Regulation S-K.

(14) Subsidiary--Has the meaning assigned by [the] Insurance Code §823.003.

(d) Filing and extensions [Extensions] for filing [Filing] of audited financial report [Audited Financial Report].

(1) Except as provided in paragraphs (2), (3), and (4) of this subsection, an insurer or HMO that is required to have an annual audit performed by an accountant and to file an audited financial report with the Commissioner [e~~o~~missioner] under [the] Insurance Code Chapter 401, Subchapter A, shall file the audited financial report with the Commissioner [e~~o~~missioner] on or before June 1 for the preceding calendar year.

(2) Except as provided in paragraphs (3) and (4) of this subsection, an insurer or HMO that, along with any affiliated insurers or HMOs, is licensed in and does business only in Texas shall file the audited financial report with the Commissioner [e~~o~~missioner] on or before June 30 for the preceding calendar year. This paragraph does not apply to an insurer or HMO that is a member of a group comprised of one or more insurers or HMOs authorized and actually doing the business of insurance in another state that requires that an audited financial report be filed on or before June 1 for the preceding calendar year.

(3) In accordance with [the] Insurance Code §401.004(b), the Commissioner [e~~o~~missioner] may require an insurer or HMO to file an audited financial report on a date that precedes the June 1 deadline in paragraph (1) of this subsection or the June 30 deadline in paragraph (2) of this subsection. The Commissioner [e~~o~~missioner] must notify the insurer or HMO of the filing date not later than the 90th day before that date.

(4) The Commissioner [e~~o~~missioner] may grant an extension of the filing date in accordance with [the] Insurance Code §401.004(c). An extension granted under [the] Insurance Code §401.004(c), relating to the filing date for an audited financial report, also applies to the filing of management's report on internal control over financial reporting required under subsection (n) [~~m~~] of this section.

(5) An insurer or HMO required to file an annual audited financial report under [the] Insurance Code Chapter 401, Subchapter A, and this section must [shall] designate a group of individuals to serve as its audit committee. The audit committee of an entity that controls an insurer or HMO may, at the election of the controlling person, be the insurer's or HMO's audit committee for purposes of this section.

(e) Exemption for certain foreign [Certain Foreign] or alien insurers [Alien Insurers] or HMOs.

(1) A foreign or alien insurer or HMO exempt under [the] Insurance Code §401.007(a) must [shall] file with the commissioner a copy of:

(A) the audited financial report and the accountant's letter of qualifications filed with the insurer's or HMO's state of domicile at the same time these documents are filed with the state of domicile;

(B) the communication of internal control-related matters noted in the audit that is substantially similar to the communication required under subsection (j) of this section, not later than the 60th day after the date the copy of the audited financial report and accountant's letter of qualifications are filed with the commissioner; and

(C) any notification of adverse financial conditions report filed with the other state, in accordance with the filing date prescribed by [the] Insurance Code §401.017.

(2) A foreign or alien insurer or HMO required to file management's report of internal control over financial reporting in another state is exempt from filing the report in this state under subsection (n)(1) [(m)(1)] of this section if the other state has substantially similar reporting requirements and the report is filed with the commissioner in that state in the time specified.

(f) Requirements for financial statements [Financial Statements] in audited financial report [Audited Financial Report]. The financial statements included in the audited financial report must be prepared in a form and use language and groupings substantially the same as the relevant sections of the annual statement of the insurer or HMO filed with the Commissioner [eommissioner]. The financial statements must be comparative, including amounts on December 31 of the current year and amounts as of the immediately preceding December 31, except for the first year in which an insurer or HMO is required to file the report.

(g) Scope of audit [Audit] and report [Report] of accountant [Accountant]. An accountant must audit the financial reports provided by an insurer or HMO for purposes of an audit conducted under [the] Insurance Code Chapter 401, Subchapter A. In addition to complying with the requirements of the Insurance Code §401.010, the accountant shall obtain an understanding of internal control sufficient to plan the audit, in accordance with "Consideration of Internal Control in a Financial Statement Audit," AU Section 319, Professional Standards of the American Institute of Certified Public Accountants. To the extent required by AU Section 319, for those insurers or HMOs required to file a management's report of internal control over financial reporting under subsection (n) [(m)] of this section, the accountant shall consider the most recently available report in planning and performing the audit of the statutory financial statements. In this subsection, "consider" has the meaning assigned by Statement on Auditing Standards No. 102, "Defining Professional Requirements in Statements on Auditing Standards," or a successor document.

(h) Qualifications and independence [Independence] of accountant; acceptance [Accountant; Acceptance] of audited financial report [Audited Financial Report]. Except as provided by [the] Insurance Code §401.011(b) and (d), and paragraphs (1), (3), (4), (5), and (10) of this subsection, the Commissioner will [eommissioner shall] accept an audited financial report from an independent certified public accountant or accounting firm that is a member in good standing of the American Institute of Certified Public Accountants; is in good standing with all states in which the accountant or firm is licensed to practice, as applicable; and conforms to the American Institute of Certified Public Accountants Code of Professional Conduct and to the rules of professional conduct and other rules of the Texas State Board of Public Accountancy or a similar code.

(1) A lead partner or other person responsible for rendering an audited financial report for an insurer or HMO may not act in that capacity for more than five consecutive years and may not, during the five-year period after that fifth year, render an audited financial

report for the insurer or HMO or for a subsidiary or affiliate of the insurer or HMO that is engaged in the business of insurance. On application made at least 30 days before the end of the calendar year, the Commissioner [eommissioner] may determine that the limitation provided by this paragraph does not apply to an accountant for a particular insurer or HMO if the insurer or HMO demonstrates to the satisfaction of the Commissioner [eommissioner] that the limitation's application to the insurer or HMO would be unfair because of unusual circumstances. In making the determination, the Commissioner [eommissioner] may consider:

(A) the number of partners or individuals the accountant employs, the expertise of the partners or individuals the accountant employs, or the number of the accountant's insurance clients;

(B) the premium volume of the insurer or HMO; and

(C) the number of jurisdictions in which the insurer or HMO engages in business.

(2) On filing its annual statement, an insurer or HMO for which the Commissioner [eommissioner] has approved an exemption under paragraph (1) of this subsection must [shall] file the approval with the states in which it is doing business or is authorized to do business and with the National Association of Insurance Commissioners. If a state other than this state accepts electronic filing with the National Association of Insurance Commissioners, the insurer or HMO must [shall] file the approval in an electronic format acceptable to the National Association of Insurance Commissioners.

(3) In providing services, the accountant may [shall] not:

(A) function in the role of management, audit the accountant's own work, or serve in an advocacy role for the insurer or HMO; or

(B) directly or indirectly enter into an agreement of indemnity or release from liability regarding the audit of the insurer or HMO.

(4) The Commissioner [eommissioner] may not recognize as qualified or independent an accountant, or accept an annual audited financial report that was prepared wholly or partly by an accountant, who provides an insurer or HMO at the time of the audit:

(A) bookkeeping or other services related to the accounting records or financial statements of the insurer or HMO;

(B) services related to financial information systems design and implementation;

(C) appraisal or valuation services, fairness opinions, or contribution-in-kind reports;

(D) actuarially oriented advisory services involving the determination of amounts recorded in the financial statements;

(E) internal audit outsourcing services;

(F) management or human resources services;

(G) broker or dealer, investment adviser, or investment banking services;

(H) legal services or other expert services unrelated to the audit; or

(I) any other service that the Commissioner [eommissioner] determines to be inappropriate.

(5) Notwithstanding paragraph (4)(D) of this subsection, an accountant may assist an insurer or HMO in understanding the methods, assumptions, and inputs used in the determination of amounts

recorded in the financial statement if it is reasonable to believe that the advisory service will not be the subject of audit procedures during an audit of the insurer's or HMO's financial statements. An accountant's actuary may also issue an actuarial opinion or certification on an insurer's or HMO's reserves if:

(A) the accountant or the accountant's actuary has not performed management functions or made any management decisions;

(B) the insurer or HMO has competent personnel, or engages a third-party actuary, to estimate the reserves for which management takes responsibility; and

(C) the accountant's actuary tests the reasonableness of the reserves after the insurer's or HMO's management has determined the amount of the reserves.

(6) An insurer or HMO that has direct written and assumed premiums of less than \$100 million in any calendar year may request an exemption from the requirements of paragraph (4) of this subsection by filing with the Commissioner [~~commissioner~~] a written statement explaining why the insurer or HMO should be exempt. The Commissioner [~~commissioner~~] may grant the exemption if the Commissioner [~~commissioner~~] finds that compliance with paragraph (4) of this subsection would impose an undue financial or organizational hardship on the insurer or HMO.

(7) An accountant who performs an audit may perform non-audit services, including tax services, that are not described in paragraph (4) of this subsection or that do not conflict with paragraph (3) of this subsection, only if the activity is approved in advance by the audit committee in accordance with paragraph (8) of this subsection.

(8) The audit committee must approve in advance all auditing services and non-audit services that an accountant provides to the insurer or HMO. The prior approval requirement is waived with respect to non-audit services if the insurer or HMO is a SOX-compliant entity or a direct or indirect wholly owned subsidiary of a SOX-compliant entity or:

(A) the aggregate amount of all non-audit services provided to the insurer or HMO is not more than five percent of the total amount of fees paid by the insurer or HMO to its accountant during the fiscal year in which the non-audit services are provided;

(B) the services were not recognized by the insurer or HMO at the time of the engagement to be non-audit services; and

(C) the services are promptly brought to the attention of the audit committee and approved before the completion of the audit by the audit committee or by one or more members of the audit committee who are the members of the board of directors to whom the audit committee has delegated authority to grant approvals.

(9) The audit committee may delegate to one or more designated members of the audit committee the authority to grant the prior approval required by paragraph (7) of this subsection. The decisions of any member to whom this authority is delegated shall be presented to the full audit committee at each of its scheduled meetings.

(10) The Commissioner [~~commissioner~~] may not recognize an accountant as qualified or independent for a particular insurer or HMO if a member of the board, the president, chief executive officer, controller, chief financial officer, chief accounting officer, or any individual serving in an equivalent position for the insurer or HMO, was employed by the accountant and participated in the audit of that insurer or HMO during the one-year period preceding the date on which the most current statutory opinion is due. This paragraph applies only to partners and senior managers involved in the audit. An insurer or HMO may apply to the Commissioner [~~commissioner~~] for

an exemption from the requirements of this paragraph on the basis of unusual circumstances.

(11) The Commissioner will [~~commissioner shall~~] not accept an audited financial report prepared wholly or partly by an individual or firm who the commissioner finds:

(A) has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. §1961 et seq.), or a state or federal criminal offense involving dishonest conduct;

(B) has violated the insurance laws of this state with respect to a report filed under [~~the~~] Insurance Code Chapter 401, Subchapter A, or this section;

(C) has demonstrated a pattern or practice of failing to detect or disclose material information in reports filed under [~~the~~] Insurance Code Chapter 401, Subchapter A, or this section; or

(D) has directly or indirectly entered into an agreement of indemnity or release of liability regarding an audit of an insurer.

(12) The insurer or HMO must [~~shall~~] file, with its annual statement filing, the approval of an exemption granted under paragraph (6) or (10) of this subsection with the states in which it does business or is authorized to do business and with the National Association of Insurance Commissioners. If a state, other than this state, in which the insurer or HMO does business or is authorized to do business accepts electronic filing, the insurer or HMO must [~~shall~~] file the approval in an electronic format acceptable to the National Association of Insurance Commissioners.

(i) Accountant's letter [~~Letter~~] of qualifications [~~Qualifications~~]. The audited financial report required under [~~the~~] Insurance Code §401.004 must be accompanied by a letter, provided by the accountant who performed the audit, that includes the representations and statements required under [~~the~~] Insurance Code §401.013, and a representation that the accountant is in compliance with the requirements specified in subsection (h) of this section.

(j) Communication of internal control matters noted [~~Internal Control Matters Noted~~] in audit [~~Audit~~].

(1) In addition to the audited financial report required by [~~the~~] Insurance Code Chapter 401, Subchapter A, and this section, each insurer or HMO shall provide to the Commissioner [~~commissioner~~] a written communication prepared by an accountant in accordance with the Professional Standards of the American Institute of Certified Public Accountants that describes any unremediated material weaknesses in its internal controls over financial reporting noted during the audit. The insurer or HMO must [~~shall~~] annually file with the Commissioner [~~commissioner~~] the communication required by this subsection not later than the 60th day after the date the audited financial report is filed. The communication must contain a description of any unremediated material weaknesses, as defined by Statement on Auditing Standards No. 112, "Communicating Internal Control Related Matters Identified in an Audit," or a successor document, as of the immediately preceding December 31, in the insurer's or HMO's internal control over financial reporting that was noted by the accountant during the course of the audit of the financial statements. The communication must affirmatively state if unremediated material weaknesses were not noted by the accountant.

(2) The insurer or HMO shall also provide a description of remedial actions taken or proposed to be taken to correct unremediated material weaknesses, if the actions are not described in the accountant's communication.

(k) Requirements for audit committees [~~Audit Committees~~].

(1) This subsection does not apply to the following:

- (A) a foreign or alien insurer or HMO;
- (B) an insurer or HMO that is a SOX-compliant entity;
- (C) an insurer or HMO that is a direct or indirect wholly owned subsidiary of a SOX-compliant entity; or
- (D) a non-stock insurer that is under the direct or indirect control of a SOX-compliant entity, including pursuant to the terms of an exclusive management contract.

(2) Except as provided in paragraphs (1) and (3) of this subsection, an insurer or HMO to which ~~the~~ Insurance Code Chapter 401, Subchapter A, applies must ~~shall~~ establish an audit committee conforming to the following criteria:

(A) an insurer or HMO with over \$500 million in direct written and assumed premiums for the preceding calendar year shall establish an audit committee with an independent membership of at least 75 percent;

(B) an insurer or HMO with \$300 million to \$500 million in direct written and assumed premiums for the preceding calendar year shall establish an audit committee with an independent membership of at least 50 percent; and

(C) except as provided in paragraph (3) of this subsection, an insurer with less than \$300 million in direct and assumed premiums for the preceding calendar year is not required to comply with the independence requirements in this subsection for its audit committee.

(3) Notwithstanding subsection (k)(1) and ~~(10)~~~~(9)~~ of this section, the Commissioner ~~Commissioner~~ may require the insurer's or HMO's board to enact improvements to the independence of the audit committee membership if the insurer or HMO:

(A) is in a risk-based capital action level event, as described by or provided in ~~the~~ Insurance Code Chapters 822, 841, 843, or 884 or rules adopted thereunder, including §7.402 of this title ~~chapter~~ (relating to Risk-Based Capital and Surplus Requirements for Insurers and HMOs);

(B) meets one or more of the standards of an insurer or HMO considered to be in hazardous financial condition as described by or provided in ~~the~~ Insurance Code Chapter 404, 441, or 843 or rules adopted thereunder, including Chapter 8 of this title (relating to Hazardous Condition)~~(relating to Early Warning System for Insurers in Hazardous Condition)~~ and §11.811 of this title (relating to Action under Insurance Code §843.157 and Insurance Code §843.461)~~§11.810 of this title (relating to Hazardous Conditions for HMOs)~~; or

(C) otherwise exhibits qualities of a troubled insurer or HMO.

(4) An insurer or HMO with direct written and assumed premiums, excluding premiums reinsured with the Federal Crop Insurance Corporation and the National Flood Insurance Program, of less than \$500 million may apply to the Commissioner ~~Commissioner~~ for a waiver from the requirements of paragraphs (1), (2), ~~(5)~~, ~~(6)~~ and ~~(8)~~ - ~~(13)~~ ~~(5)~~ - ~~(12)~~ of this subsection based on hardship. The insurer or HMO shall file, with its annual statement filing, the approval of a waiver under this paragraph with the states in which it does business or is authorized to do business and with the National Association of Insurance Commissioners. If a state other than this state accepts electronic filing, the insurer or HMO shall file the approval in an electronic format acceptable to the National Association of Insurance Commissioners.

(5) In this subsection, direct written and assumed premiums for the preceding calendar year must ~~shall~~ be the combined total of direct premiums and assumed premiums from non-affiliates for the reporting entities.

(6) The audit committee is directly responsible for the appointment, compensation, and oversight of the work of any accountant, including the resolution of disagreements between the management of the insurer or HMO and the accountant regarding financial reporting, for the purpose of preparing or issuing the audited financial report or related work under ~~the~~ Insurance Code Chapter 401, Subchapter A, and this section. Each accountant shall report directly to the audit committee.

(7) The audit committee of an insurer or HMO or group of insurers or HMOs must be responsible for overseeing the insurer's or HMO's internal audit function and granting the person or persons performing the function suitable authority and resources to fulfill their responsibilities if required by subsection (1) of this section, relating to internal audit function requirements.

~~(8)~~ ~~(7)~~ Each member of the audit committee must be a member of the board of directors of the insurer or HMO or, at the election of the controlling person, a member of the board of directors of an entity that controls the group of insurers or HMOs as provided under paragraph ~~(11)~~~~(10)~~ of this subsection and described under subsection ~~(c)~~~~(3)~~ of this section.

~~(9)~~ ~~(8)~~ To be independent for purposes of this subsection, a member of the audit committee may not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee, accept any consulting, advisory, or other compensatory fee from the entity or be an affiliate of the entity or an affiliate of any subsidiary of the entity. To the extent of any conflict with a statute requiring an otherwise non-independent board member to participate in the audit committee, the other statute prevails and controls, and the member may participate in the audit committee unless the member is an officer or employee of the insurer or HMO or an affiliate of the insurer or HMO.

~~(10)~~ ~~(9)~~ Except as provided in paragraph (3) of this subsection, if a member of the audit committee ceases to be independent for reasons outside the member's reasonable control, the member may remain an audit committee member of the responsible entity, if the responsible entity gives notice to the Commissioner ~~Commissioner~~, until the earlier of:

(A) the next annual meeting of the responsible entity;

(B) the first anniversary of the occurrence of the event that caused the member to be no longer independent.

~~(11)~~ ~~(10)~~ To exercise the election of the controlling person to designate the audit committee under this section, the ultimate controlling person must provide written notice of the affected insurers or HMOs to the Commissioner ~~Commissioner~~. Notice must be made before the issuance of the statutory audit report and must include a description of the basis for the election. The election may be changed through a notice to the Commissioner ~~Commissioner~~ by the insurer or HMO, which must include a description of the basis for the change. An election remains in effect until changed by later election.

~~(12)~~ ~~(11)~~ The audit committee must ~~shall~~ require the accountant who performs an audit required by ~~the~~ Insurance Code Chapter 401, Subchapter A, and this section to report to the audit committee in accordance with the requirements of Statement on Auditing Standards No. 114, "The Auditor's Communication With Those Charged With Governance," or a successor document, including:

(A) all significant accounting policies and material permitted practices;

(B) all material alternative treatments of financial information in statutory accounting principles that have been discussed with the insurer's or HMO's management officials;

(C) ramifications of the use of the alternative disclosures and treatments, if applicable, and the treatment preferred by the accountant; and

(D) other material written communications between the accountant and the management of the insurer or HMO, such as any management letter or schedule of unadjusted differences.

(13) [(42)] If an insurer or HMO is a member of an insurance holding company system, the report required by paragraph (12)[(44)] of this subsection may be provided to the audit committee on an aggregate basis for insurers or HMOs in the holding company system if any substantial differences among insurers or HMOs in the system are identified to the audit committee.

(l) Internal audit function requirements.

(1) An insurer or HMO is exempt from the requirements of this subsection if:

(A) the insurer or HMO has annual direct written and unaffiliated assumed premium, including international direct and assumed premium but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than \$500 million; and

(B) the insurer or HMO is a member of a group of insurers or HMOs, the group has annual direct written and unaffiliated assumed premium including international direct and assumed premium, but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than \$1 billion.

(2) An insurer or HMO or group of insurers or HMOs subject to this subsection must establish an internal audit function providing independent, objective, and reasonable assurance to the audit committee and insurer or HMO management regarding the insurer's or HMO's governance, risk management, and internal controls. This assurance must be provided by performing general and specific audits, reviews, and tests, and by employing other techniques deemed necessary to protect assets, evaluate control effectiveness and efficiency, and evaluate compliance with policies and regulations.

(3) In order to ensure that internal auditors remain objective, the internal audit function must be organizationally independent. Specifically, the internal audit function cannot defer ultimate judgment on audit matters to others and must appoint an individual to head the internal audit function who has direct and unrestricted access to the board of directors. Organizational independence does not prevent dual-reporting relationships.

(4) The head of the internal audit function must report to the audit committee regularly but no less than annually on the periodic audit plan, factors that may adversely impact the internal audit function's independence or effectiveness, material findings from completed audits, and the appropriateness of corrective actions implemented by management as a result of audit findings.

(5) If an insurer or HMO is a member of an insurance holding company system or included in a group of insurers or HMOs, the insurer or HMO may satisfy the internal audit function requirements set forth in this section at the ultimate controlling parent level, an intermediate holding company level, or the individual legal entity level.

(m) [(4)] Prohibited conduct [Conduct] in connection [Connection] with preparation [Preparation] of required reports [Required Reports] and documents [Documents].

(1) A director or officer of an insurer or HMO may not, directly or indirectly:

(A) make or cause to be made a materially false or misleading statement to an accountant in connection with an audit, review, or communication required by [the] Insurance Code Chapter 401, Subchapter A, or this section; or

(B) omit to state, or cause another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which the statements were made, not misleading to an accountant in connection with any audit, review, or communication required under [the] Insurance Code Chapter 401, Subchapter A, or this section.

(2) An officer or director of an insurer or HMO, or another person acting under the direction of an officer or director of an insurer or HMO, may not directly or indirectly coerce, manipulate, mislead, or fraudulently influence an accountant performing an audit under [the] Insurance Code Chapter 401, Subchapter A, or this section if that person knew or should have known that the action, if successful, could result in rendering the insurer's or HMO's financial statements materially misleading. For purposes of this paragraph, actions that could result in rendering the insurer's or HMO's financial statements materially misleading include actions taken at any time with respect to the professional engagement period to coerce, manipulate, mislead, or fraudulently influence an accountant:

(A) to issue or reissue a report on an insurer's or HMO's financial statements that is not warranted and would result in material violations of statutory accounting principles prescribed by the Commissioner [eommissioner], generally accepted auditing standards, or other professional or regulatory standards;

(B) not to perform an audit, review, or other procedure required by generally accepted auditing standards or other professional standards;

(C) not to withdraw an issued report; or

(D) not to communicate matters to an insurer's or HMO's audit committee.

(n) [(m)] Report of internal control [Internal Control] over financial reporting [Financial Reporting].

(1) Each insurer or HMO required to file an audited financial report under [the] Insurance Code Chapter 401, Subchapter A, and this section that has annual direct written and assumed premiums, excluding premiums reinsured with the Federal Crop Insurance Corporation and the National Flood Insurance Program, of \$500 million or more must [shall] prepare a report of the insurer's or HMO's or group of insurers' or HMOs' internal control over financial reporting. The report must be filed with the Commissioner [eommissioner] with the communication described by subsection (j) of this section. The report of internal control over financial reporting shall be filed with the Commissioner [eommissioner] as of the immediately preceding December 31.

(2) Notwithstanding the premium threshold under paragraph (1) of this subsection, the Commissioner [eommissioner] may require an insurer or HMO to file the management's report of internal control over financial reporting if the insurer or HMO is in any risk-based capital level event or meets one or more of the standards of an insurer or HMO considered to be in hazardous financial condition as described by or provided in [the] Insurance Code Chapter 404, 441,

822, 841, 843, or 884 or rules adopted thereunder, including §7.402 of this title, Chapter 8 of this title, and §11.811 [§11-810] of this title.

(3) An insurer or HMO or a group of insurers or HMOs may file the insurer's or HMO's or the insurer's or HMO's parent's Section 404 report and an addendum if the insurer or HMO or group of insurers or HMOs is:

(A) directly subject to Section 404;

(B) part of a holding company system whose parent is directly subject to Section 404;

(C) not directly subject to Section 404 but is a SOX-compliant entity; or

(D) a member of a holding company system whose parent is not directly subject to Section 404 but is a SOX-compliant entity.

(4) A Section 404 report described by paragraph (3) of this subsection must include those internal controls of the insurer or HMO or group of insurers or HMOs that have a material impact on the preparation of the insurer's or HMO's or group of insurers' or HMOs' audited statutory financial statements, including those items listed in [the] Insurance Code §401.009(a)(3)(B) - (H) and (b). The addendum must be a positive statement by management that there are no material processes excluded from the Section 404 report with respect to the preparation of the insurer's or HMO's or group of insurers' or HMOs' audited statutory financial statements, including those items specified in [the] Insurance Code §401.009(a)(3)(B) - (H) and (b). If there are internal controls of the insurer or HMO or group of insurers or HMOs that have a material impact on the preparation of the insurer's or HMO's or group of insurers' or HMOs' audited statutory financial statements and those internal controls are not included in the Section 404 report, the insurer or HMO or group of insurers or HMOs may either file:

(A) a report under this subsection; or

(B) the Section 404 report and a report under this subsection for those internal controls that have a material impact on the preparation of the insurer's or HMO's or group of insurers' or HMOs' audited statutory financial statements not covered by the Section 404 report.

(5) The insurer's or HMO's management report of internal control over financial reporting must include:

(A) a statement that management is responsible for establishing and maintaining adequate internal control over financial reporting;

(B) a statement that management has established internal control over financial reporting and an opinion concerning whether, to the best of management's knowledge and belief, after diligent inquiry, its internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles;

(C) a statement that briefly describes the approach or processes by which management evaluates the effectiveness of its internal control over financial reporting;

(D) a statement that briefly describes the scope of work that is included and whether any internal controls were excluded;

(E) disclosure of any unremediated material weaknesses in the internal control over financial reporting identified by management as of the immediately preceding December 31;

(F) a statement regarding the inherent limitations of internal control systems; and

(G) signatures of the chief executive officer and the chief financial officer or an equivalent position or title.

(6) For purposes of paragraph (5)(E) of this subsection, an insurer's or HMO's management may not conclude that the internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles if there is one or more unremediated material weaknesses in its internal control over financial reporting.

(7) Management must [~~shall~~] document, and make available upon financial condition examination, the basis of the opinions required by paragraph (5) of this subsection. Management may base opinions, in part, on its review, monitoring, and testing of internal controls undertaken in the normal course of its activities.

(8) Management has discretion about the nature of the internal control framework used, and the nature and extent of the documentation required by paragraph (7) of this subsection, in order to form its opinions in a cost-effective manner and may include an assembly of or reference to existing documentation.

(9) The management's report of internal control over financial reporting required by this subsection and any supporting documentation provided in the course of a financial condition examination are considered examination information pursuant to [the] Insurance Code §401.058 and information described by [the] Insurance Code §401.201.

(o) [~~(m)~~] Transition dates [~~Dates~~].

(1) An insurer or HMO or group of insurers or HMOs whose audit committee as of September 1, 2010, is not subject to the independence requirements of subsection (k) of this section because the total written and assumed premium is below the threshold specified in subsection (k)(2)(A) or (B) of this section and that later becomes subject to one of the independence requirements because of changes in the amount of written and assumed premium, has one year following the year in which the written and assumed premium exceeds the threshold amount to comply with the independence requirements. An insurer or HMO that becomes subject to one of the independence requirements as a result of a business combination must comply with the independence requirements not later than the first anniversary of the date of the acquisition or combination.

(2) An insurer or HMO required to file an audited financial report under [the] Insurance Code Chapter 401, Subchapter A, and this section that has annual direct written and assumed premiums, excluding premiums reinsured with the Federal Crop Insurance Corporation and the National Flood Insurance Program, of \$500 million or more for the reporting period ending December 31, 2010, and that has not had total written premium at the \$500 million or more premium threshold amount in any prior calendar year reporting period must comply with the reporting requirements in subsection (n) [~~(m)~~] of this section no later than two years after the year in which the written premium exceeds the threshold amount required to file a report.

(3) An insurer or HMO or group of insurers or HMOs that is not required by subsection (n)(1) [~~(m)(1)~~] of this section to file a report beginning with the reporting period ending December 31, 2010, because the total written premium is below the threshold amount, and that later becomes subject to the reporting requirements, has two years after the year in which the written premium exceeds the threshold amount required to file a report. An insurer or HMO acquired in a business combination must comply with the reporting requirements not later than the second anniversary of the date of the acquisition or combination.

(4) An insurer or HMO or group of insurers or HMOs that no longer qualifies for the exemption in subsection (l)(1) of this section

has one year after the year the threshold is exceeded to comply with the requirements of subsection (l)(1) of this section.

(p) ~~(o)~~ Severability. If any subsection or portion of a subsection of this section is held to be invalid for any reason, all valid parts are severable from the invalid parts and remain in effect. If any subsection or portion of a subsection is held to be invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications. To this end, all provisions of this section are declared to be severable.

§7.89. Corporate Governance Annual Disclosure.

(a) Purpose. The purpose of this section is to implement Insurance Code Chapter 831 by providing the procedures for filing and the content of the corporate governance annual disclosures.

(b) Definitions. The definitions in Insurance Code §831.0002 apply to this section. Consistent with Insurance Code §831.0002(3), when used in this section the term "insurer" includes Health Maintenance Organizations. In addition, the following terms are defined as used in this section:

(1) Board--insurer's board of directors;

(2) CGAD--Corporate Governance Annual Disclosure;

(3) Senior Management--any corporate officer reporting information to the board of directors at regular intervals or providing this information to shareholders or regulators, and includes, but is not limited to, the chief executive officer, chief financial officer, chief operations officer, chief procurement officer, chief legal officer, chief information officer, chief technology officer, chief revenue officer, chief visionary officer, or any other senior level executive;

(4) TDI--Texas Department of Insurance.

(c) Filing procedures.

(1) Filing deadline. An insurer required to file a CGAD under Insurance Code §831.0001 must file it with TDI no later than June 1 of each calendar year.

(2) Signature. The CGAD must include a signature of the insurer's or insurance group's chief executive officer or corporate secretary attesting to the best of that individual's belief and knowledge that the insurer or insurance group has implemented the corporate governance practices and that a copy of the CGAD has been provided to the insurer's or insurance group's board of directors or appropriate committee.

(3) Submitting. Insurers and HMOs must submit the CGAD in an electronic format acceptable to TDI. The electronic filing address is provided on TDI's website at [www.tdi.texas.gov](http://www.tdi.texas.gov).

(4) Format of CGAD. The insurer or insurance group have discretion over the format of the information required by this section and can customize the CGAD to provide the most relevant information necessary as long as it allows TDI to gain an understanding of the corporate governance structure, policies, and practices used by the insurer or insurance group.

(5) Level providing information.

(A) For purposes of completing the CGAD, the insurer or insurance group may choose to provide information on governance activities that occur at the ultimate controlling parent level, an intermediate holding company level or the individual legal entity level, depending on how the insurer or insurance group has structured its system of corporate governance.

(B) The insurer or insurance group is encouraged to make the CGAD disclosures at the level at which the insurer's or

insurance group's risk appetite is determined, or at which the earnings, capital, liquidity, operations, and reputation of the insurer are overseen collectively and at which the supervision of those factors are coordinated and exercised, or the level at which legal liability for failure of general corporate governance duties would be placed.

(C) If the insurer or insurance group determines the level of reporting based on the criteria in paragraph (5)(B) of this subsection, it must indicate which of the three criteria was used to determine the level of reporting and explain any subsequent changes in level of reporting.

(6) Filing if CGAD is completed on insurance group level. If the CGAD is completed at the insurance group level, then it must be filed with the lead state of the group as determined by the procedures outlined in the most recent financial analysis handbook adopted by the National Association of Insurance Commissioners. In these instances, a copy of the CGAD must also be provided to the chief regulatory official of any state in which the insurance group has a domestic insurer, on request.

(7) Annual filing of amended versions. Each year following the initial filing of the CGAD, the insurer or insurance group must file:

(A) an amended version of the previously filed CGAD indicating where changes have been made; or

(B) a letter stating that no changes were made in the information or activities reported by the insurer or insurance group since the previously filed CGAD. The letter must state the date of the previously filed CGAD.

(d) Content of CGAD. The insurer or insurance group must be as descriptive as possible in completing the CGAD, with inclusion of attachments or example documents that are used in the governance process, since these may provide a means to demonstrate the strengths of their governance framework and practices. The insurer or insurance group may reference other filings that were previously submitted to TDI instead of resubmitting similar information.

(e) CGAD considerations. The CGAD must describe the insurer's or insurance group's corporate governance framework and structure including consideration of the following:

(1) the board and various board committees ultimately responsible for overseeing the insurer or insurance group and the level at which that oversight occurs. The level of oversight may be at the ultimate controlling parent level, intermediate holding company control level, or the individual legal entity control level, depending on how the insurer or insurance group has structured its system of corporate governance. The insurer or insurance group must describe and discuss the rationale for the current board size and structure; and

(2) the duties of the board and each of its significant committees and how they are governed under the bylaws, charters, and informal mandates, as well as how the board's leadership is structured, including a discussion of the roles of chief executive officer and chairman of the board within the organization.

(f) Factors. The insurer or insurance group must describe the policies and practices of the most senior governing entity and its significant committees, including a discussion of the following factors:

(1) How the qualifications, expertise, and experience of each board member meet the needs of the insurer or insurance group.

(2) How an appropriate amount of independence is maintained on the board and its significant committees.

(3) The number of meetings held by the board and its significant committees over the past year as well as information on director attendance.

(4) How the insurer or insurance group identifies, nominates, and elects members to the board and its committees. The discussion should include:

(A) Whether a nomination committee is in place to identify and select individuals for consideration.

(B) Whether term limits are placed on directors.

(C) How the election and re-election processes function.

(D) Whether a board diversity policy is in place and if so, how it functions.

(5) The processes in place for the board to evaluate its performance and the performance of its committees, as well as any recent measures taken to improve performance, including any board or committee training programs that have been put in place.

(g) Additional factors. The insurer or insurance group must describe the policies and practices for directing senior management, including a description of the following factors:

(1) Any processes or practices (suitability standards) to determine whether officers and key persons in control functions have the appropriate background, experience and integrity to fulfill their prospective roles, including:

(A) identification of the specific positions for which suitability standards have been developed and a description of the standards employed; and

(B) any changes in an officer's or key person's suitability as outlined by the insurer's or insurance group's standards and procedures to monitor and evaluate such changes.

(2) The insurer's or insurance group's code of business conduct and ethics, the discussion of which considers, for example:

(A) compliance with laws, rules, and regulations; and

(B) proactive reporting of any illegal or unethical behavior.

(3) The insurer's or insurance group's processes for performance evaluation, compensation, and corrective action to ensure effective senior management throughout the organization, including a description of the general objectives of significant compensation programs and what the programs are designed to reward. The description must include enough detail to allow the director to understand how the organization ensures that compensation programs do not encourage and reward excessive risk taking. Elements to be discussed may include:

(A) the board's role in overseeing management compensation programs and practices;

(B) the various elements of compensation awarded in the insurer's or insurance group's compensation programs and how the insurer or insurance group determines and calculates the amount of each element of compensation paid;

(C) how compensation programs are related to both company and individual performance over time;

(D) whether compensation programs include risk adjustments and how those adjustments are incorporated into the programs for employees at different levels;

(E) any "clawback provisions" built into the programs to recover awards or payments if the performance measures upon which they are based are restated or otherwise adjusted; and

(F) any other factors relevant in understanding how the insurer or insurance group monitors its compensation policies to determine whether its risk management objectives are met by incentivizing its employees.

(4) The insurer's or insurance group's plans for chief executive officer and senior management succession.

(h) Oversight. The insurer or insurance group must describe the processes by which the board, its committees, and senior management ensure an appropriate amount of oversight to the critical risk areas impacting the insurer's business activities, including a discussion of:

(1) how oversight and management responsibilities are delegated between the board, its committees, and senior management;

(2) how the board is kept informed of the insurer's strategic plans, the associated risks, and steps that senior management is taking to monitor and manage those risks; and

(3) how reporting responsibilities are organized for each critical risk area. The description should allow the board to understand the frequency at which information on each critical risk area is reported to and reviewed by senior management and the board. This description may include the following critical risk areas of the insurer:

(A) risk management processes. An ORSA summary report filer may refer to its ORSA summary report under Insurance Code Chapter 30;

(B) actuarial function;

(C) investment decision-making processes;

(D) reinsurance decision-making processes;

(E) business strategy/finance decision-making processes;

(F) compliance function;

(G) financial reporting/internal auditing; and

(H) market conduct decision-making processes.

(i) Severability. If any portion of this section, or its application to any person or circumstance, is held invalid, the determination does not affect other portions of this section or its applications that can be given effect without the invalid portion or application. To this end, the provisions of this rule are severable.

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

Filed with the Office of the Secretary of State on August 5, 2020.

TRD-202003177

James Person

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: September 20, 2020

For further information, please call: (512) 676-6584

◆ ◆ ◆  
**TITLE 31. NATURAL RESOURCES AND CONSERVATION**



# PART 10. TEXAS WATER DEVELOPMENT BOARD

## CHAPTER 356. GROUNDWATER MANAGEMENT

The Texas Water Development Board ("TWDB" or "board") proposes an amendment to 31 Texas Administrative Code (TAC) §356.10 and proposes a new Subchapter G, 31 TAC 356, relating to brackish groundwater production zones requirements by statutory amendments to Chapter 36 of the Texas Water Code.

### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED AMENDMENT.

Through House Bill 722 of the 86th Texas Legislature, 2019, the Legislature created a framework for groundwater conservation districts to establish rules for a person interested in obtaining a permit from a groundwater conservation district to authorize producing brackish groundwater from a designated brackish groundwater production zone for (1) a municipal drinking water project and (2) an electric generation project. The Legislature directed the TWDB to conduct technical reviews of operating permit applications and, when requested by a groundwater conservation district, conduct technical reviews of annual reports and summarize findings in a report.

The TWDB is proposing rules to implement the technical reviews by adding two new definitions in Section 356.10 and creating a new subchapter in Chapter 356, relating to brackish groundwater production zones.

### SECTION BY SECTION DISCUSSION OF PROPOSED AMENDMENTS.

31 TAC §356.10 contains definitions related to groundwater management. The proposed amendment to §356.10 adds definitions for the following two terms that will be used in the proposed new Subchapter G: "Brackish groundwater production zone operating permit" and "Designated brackish groundwater production zone".

*Proposed Amendment to 31 TAC Chapter 356 by addition of a New Subchapter G (relating to brackish groundwater production zones)*

#### *31 TAC §356.70. Brackish Groundwater Production Zone Designation of Subchapter G.*

Section 356.70 is proposed to clarify how the agency identifies and designates local or regional brackish groundwater production zones in areas of the state that meet specific criteria and the information required to be provided for each zone. A designated brackish groundwater production zone may span multiple groundwater conservation districts and statute does not clarify how groundwater conservation districts should coordinate with each other related to production volumes and sharing information.

#### *31 TAC §356.71. Brackish Groundwater Production Zone Operating Permit Review.*

Section 356.71 is proposed to outline how the agency will conduct an assessment and technical review of a brackish groundwater production zone operating permit applications. The section also discusses the information required to conduct the technical review and the report the agency will provide the groundwater conservation district that submitted the application.

#### *31 TAC §356.72. Annual Report Review*

Section 356.72 is proposed to outline how the agency will investigate and conduct a technical review of an annual report(s), upon request by a groundwater conservation district. The section also discusses the information required to conduct the technical review and the technical report the agency will issue to the groundwater conservation district that sends the request.

### FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS

Ms. Rebecca Trevino, Chief Financial Officer, has determined that there will be no fiscal implications for state or local governments as a result of the proposed rulemaking. For the first five years these rules are in effect, there is no expected additional cost to state or local governments resulting from their administration.

These rules are not expected to result in reductions in costs to either state or local governments. There is no change in costs for implementing these amendments and adding a new subchapter. These rules are not expected to have any impact on state or local revenues. The rules do not require any increase in expenditures for state or local governments as a result of administering these rules. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from these rules.

Because these rules will not impose a cost on regulated persons, the requirement included in Texas Government Code Section 2001.0045 to repeal a rule does not apply. Furthermore, the requirement in Section 2001.0045 does not apply because these rules are amended to reduce the burden or responsibilities imposed on regulated persons by the rule; are necessary to protect water resources of this state as authorized by the Water Code; and are necessary to implement legislation.

The board invites public comment regarding this fiscal note. Written comments on the fiscal note may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

### PUBLIC BENEFITS AND COSTS

Ms. Rebecca Trevino also has determined that for each year of the first five years the proposed rulemaking is in effect, the public will benefit from the rulemaking as the rules will clarify the agency's role in technical reviews of brackish groundwater production zone operating permit applications and associated annual reports and groundwater conservation districts will be able to receive these technical reviews and reports.

### LOCAL EMPLOYMENT IMPACT STATEMENT

The board has determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect because it will impose no new requirements on local economies. The board also has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of enforcing this rulemaking. The board also has determined that there is no anticipated economic cost to persons who are required to comply with the rulemaking as proposed. Therefore, no regulatory flexibility analysis is necessary.

### DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The board reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to clarify the agency's role in technical reviews of brackish groundwater production zone operating permit applications and associated annual reports.

Even if the proposed rule were a major environmental rule, Texas Government Code, §2001.0225 still would not apply to this rulemaking because Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any standard set by any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not proposed solely under the general powers of the agency, but rather is proposed under the authority of Texas Water Code §§16.060 and 36.1015. Therefore, this proposed rule does not fall under any of the applicability criteria in Texas Government Code, §2001.0225.

The board invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

#### TAKINGS IMPACT ASSESSMENT

The board evaluated this proposed rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to implement legislation and clarify the agency's role in technical reviews of brackish groundwater production zone operating permit applications and associated annual reports. The proposed rule would substantially advance this stated purpose by proposing new rules for brackish groundwater productions zone designation and guiding groundwater conservation districts in the technical review process of permit applications and annual reports.

The board's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this proposed rule because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code, §2007.003(b)(4). The board is the agency that identifies and designates brackish groundwater production zones.

Nevertheless, the board further evaluated this proposed rule and performed an assessment of whether it constitutes a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of this proposed rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. Therefore, the proposed rule does not constitute a taking under Texas Government Code, Chapter 2007.

#### GOVERNMENT GROWTH IMPACT STATEMENT

The board reviewed the proposed rulemaking in light of the government growth impact statement requirements of Texas Government Code §2001.0221 and has determined, for the first five years the proposed rule would be in effect, the proposed rule will not: (1) create or eliminate a government program; (2) require the creation of new employee positions or the elimination of existing employee positions; (3) require an increase or decrease in future legislative appropriations to the agency; (4) require an increase or decrease in fees paid to the agency; (5) create a new regulation; (6) expand, limit, or repeal an existing regulation; (7) increase or decrease the number of individuals subject to the rule's applicability; or (8) positively or adversely affect this state's economy.

#### SUBMISSION OF COMMENTS

Written comments on the proposed rulemaking may be submitted by mail to Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by email to [rulescomments@twdb.texas.gov](mailto:rulescomments@twdb.texas.gov), or by fax to (512) 475-2053. Comments will be accepted until 5:00 p.m. of the 31st day following publication in the *Texas Register*. Include "Chapter 356" in the subject line of any comments submitted.

#### SUBCHAPTER A. DEFINITIONS

##### 31 TAC §356.10

##### STATUTORY AUTHORITY

This rulemaking is proposed under the authority of Texas Water Code §6.101, which authorizes the board to adopt rules necessary to carry out the powers and duties of the board, and Texas Water Code §16.060 and §36.1015, which require the board to designate brackish groundwater production zones and to conduct technical reviews of brackish groundwater production zone operating permit applications and annual reports.

Chapters 16 and 36 of the Texas Water Code are affected by this rulemaking.

##### §356.10. Definitions.

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

(5) Brackish groundwater production zone operating permit--A permit issued by a district under Texas Water Code §36.1015.

(6) [(5)] Conjunctive use--The combined use of groundwater and surface water sources that optimizes the beneficial characteristics of each source, such as water banking, aquifer storage and recovery, enhanced recharge, and joint management.

(7) [(6)] Conjunctive surface management issues--Issues related to conjunctive use such as groundwater or surface water quality degradation and impacts of shifting between surface water and groundwater during shortages.

(8) Designated brackish groundwater production zone--An aquifer, subdivision of an aquifer, or geologic stratum designated under Texas Water Code §16.060(b)(5).

(9) [(7)] Desired future condition--The desired, quantified condition of groundwater resources (such as water levels, spring flows, or volumes) within a management area at one or more specified future times as defined by participating groundwater conservation districts within a groundwater management area as part of the joint planning process.

(10) [(8)] District--Any district or authority subject to Chapter 36, Texas Water Code.

(11) [(9)] Executive administrator--The executive administrator of the Texas Water Development Board or a designated representative.

(12) [(10)] Groundwater Availability Model--A regional groundwater flow model approved by the executive administrator.

(13) [(11)] Major aquifer--An aquifer designated as a major aquifer in the State Water Plan.

(14) [(12)] Minor aquifer--An aquifer designated as a minor aquifer in the State Water Plan.

(15) [(13)] Modeled Available Groundwater--The amount of water that the executive administrator determines may be produced on an average annual basis to achieve a desired future condition.

(16) [(14)] Most efficient use of groundwater--Practices, techniques, and technologies that a district determines will provide the least consumption of groundwater for each type of use balanced with the benefits of using groundwater.

(17) [(15)] Natural resources issues--Issues related to environmental and other concerns that may be affected by a district's groundwater management plan and rules, such as impacts on endangered species, soils, oil and gas production, mining, air and water quality degradation, agriculture, and plant and animal life.

(18) [(16)] Office--State Office of Administrative Hearings.

(19) [(17)] Petition--A document submitted to the groundwater conservation district by an affected person appealing the reasonableness of a desired future condition.

(20) [(18)] Projected water demand--The quantity of water needed on an annual basis according to the state water plan for the state water plan planning period.

(21) [(19)] Recharge enhancement--Increased recharge accomplished by the modification of the land surface, streams, or lakes to increase seepage or infiltration rates or by the direct injection of water into the subsurface through wells.

(22) [(20)] Relevant aquifer--An aquifer designated as a major or minor aquifer.

(23) [(21)] State water plan--The most recent state water plan adopted by the board under Texas Water Code §16.051 (relating to State Water Plan).

(24) [(22)] Surface water management entities--Political subdivisions as defined by Texas Water Code Chapter 15 and identified from Texas Commission on Environmental Quality records that are granted authority under Texas Water Code Chapter 11 to store, take, divert, or supply surface water either directly or by contract for use within the boundaries of a district.

(25) [(23)] Total Estimated Recoverable Storage--The estimated amount of groundwater within an aquifer that accounts for recovery scenarios that range between 25% and 75% of the porosity-adjusted aquifer volume.

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

Filed with the Office of the Secretary of State on August 10, 2020.

TRD-202003223

Ashley Harden

General Counsel

Texas Water Development Board

Earliest possible date of adoption: September 20, 2020

For further information, please call: (512) 463-7686



## SUBCHAPTER G. BRACKISH GROUNDWATER PRODUCTION ZONES

### 31 TAC §356.70

#### STATUTORY AUTHORITY

This rulemaking is proposed under the authority of Texas Water Code §6.101, which authorizes the board to adopt rules necessary to carry out the powers and duties of the board; and Texas Water Code §16.060 and §36.1015, which requires the board to designate brackish groundwater production zones and to conduct technical reviews of brackish groundwater production zone operating permit applications and annual reports.

Chapters 16 and 36 of the Texas Water Code are affected by this rulemaking.

#### §356.70. Brackish Groundwater Production Zone Designation.

(a) The agency will identify and designate local or regional brackish groundwater production zones in areas of the state with moderate to high availability and productivity of brackish groundwater that can be used to reduce the use of fresh groundwater and that:

(1) are separated by hydrogeologic barriers sufficient to prevent significant impacts to water availability or water quality in any area of the same or other aquifers, subdivisions of aquifers, or geologic strata that have an average total dissolved solids level of 1,000 milligrams per liter or less at the time of designation of the zones; and

(2) are not located in:

(A) an area of the Edwards Aquifer subject to the jurisdiction of the Edwards Aquifer Authority;

(B) the boundaries of the:

(i) Barton Springs-Edwards Aquifer Conservation District;

(ii) Harris-Galveston Subsidence District; or

(iii) Fort Bend Subsidence District;

(C) an aquifer, subdivision of an aquifer, or geologic stratum that:

(i) has an average total dissolved solids level of more than 1,000 milligrams per liter; and

(ii) is serving as a significant source of water supply for municipal, domestic, or agricultural purposes at the time of designation of the zones; or

(D) an area of a geologic stratum that is designated or used for wastewater injection through the use of injection wells or disposal wells permitted under Texas Water Code Chapter 27.

(b) In designating a brackish groundwater production zone under this section, the agency shall:

(1) determine the amount of brackish groundwater that the zone is capable of producing over a 30-year period and a 50-year period without causing a significant impact to water availability or water quality as described by subsection (a)(1) of this section; and

(2) include in the designation description:

(A) the amounts of brackish groundwater that the zone is capable of producing during the periods described by paragraph (1) of this subsection; and

(B) recommendations regarding reasonable monitoring to observe the effects of brackish groundwater production within the zone.

(c) Areas of the state that are not designated as brackish groundwater production zones are not precluded from development of brackish groundwater or from future designation of zones.

§356.71. Brackish Groundwater Production Zone Operating Permit Review.

(a) This section does not apply to a district that overlies the Dockum Aquifer and includes wholly or partly 10 or more counties.

(b) When a district submits an application for a brackish groundwater production zone operating permit to the agency, the agency will conduct a technical review of the application, subject to subsections (c) and (d) of this section.

(c) Upon receipt of such an application, the agency will assess the application to determine whether a proposed production well is located within a designated brackish groundwater production zone. If a proposed production well is not located within a designated brackish groundwater production zone, the agency will not conduct the technical review of the application. If a proposed production well is located within a designated brackish groundwater production zone, the agency will conduct the technical review of the applicable permit application or applicable portions of a permit application in accordance with subsections (d) - (f) of this section.

(d) Upon receipt of an application for a brackish groundwater production zone operating permit for a proposed production well located within a designated brackish groundwater production zone and that includes all of the information required by Texas Water Code §36.1015(g), the agency will conduct a technical review of the application. If the agency does not receive all of the information required by Texas Water Code §36.1015(g), the agency will notify the district of the missing information. The agency will not conduct a technical review of an incomplete application until all required information is received.

(e) After conducting the application assessment and required technical review of a complete application, the board shall provide a report of the technical review of the application to the district that submitted the application that includes:

(1) findings regarding the compatibility of the proposed well field design with the designated brackish groundwater production zone, including:

(A) whether the proposed production exceeds the amount of brackish groundwater that the zone is capable of producing over a 30-year period and a 50-year period, as determined pursuant to Texas Water Code §16.060(e); and

(B) whether the parameters and assumptions used in the model described in Texas Water Code §36.1015(g)(4)(A) are compatible with the designated brackish groundwater production zone;

(2) recommendations for the monitoring system required by Texas Water Code §36.1015(e)(4) and (6), including whether the number of monitoring wells are adequate and in appropriate locations and aquifers, in accordance with recommendations established under Texas Water Code §16.060(e)(2)(B);

(f) The findings and recommendations included in subsection (e) of this section will only be site-specific if the agency has received site-specific data and information from the district.

§356.72. Annual Report Review

(a) If a district makes a request under Texas Water Code §36.1015(j), the agency will investigate and issue a technical report to the district that sent the request, subject to subsection (b) of this section.

(b) Upon receipt of a request, the agency will determine whether it has received the applicable annual report and all of the information required under Texas Water Code §36.1015(e)(6), and for a project located in a designated brackish groundwater production zone in the Gulf Coast Aquifer, the information required to be collected under Texas Water Code §36.1015(e)(5), related to subsidence. If the agency has not received all of the information required under Texas Water Code §36.1015(e)(6) or §36.1016(e)(5), as applicable, the agency will notify the district of the missing information and will not conduct a technical review of the reports until all required information is received.

(c) Not later than the 120th day after the date the agency receives all of the required information, the agency will investigate and issue a technical report on whether:

(1) brackish groundwater production under the project that is the subject of the report from the designated brackish groundwater production zone is projected to cause:

(A) significant aquifer level declines in the same or an adjacent aquifer, subdivision of an aquifer, or geologic stratum that were not anticipated by the agency in the designation of the zone;

(B) negative effects on quality of water in an aquifer, subdivision of an aquifer, or geologic stratum; or

(C) for a project located in a designated brackish groundwater production zone in the Gulf Coast Aquifer, subsidence during the permit term; or

(2) whether not enough information is available to determine whether brackish groundwater production under the project that is the subject of the report from the designated brackish groundwater production zone is projected to cause the conditions listed in paragraph (1) of this subsection.

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

Filed with the Office of the Secretary of State on August 10, 2020.  
TRD-202003224



## CHAPTER 365. RURAL WATER ASSISTANCE FUND

### SUBCHAPTER C. CLOSING AND RELEASE OF FUNDS

#### 31 TAC §365.41

The Texas Water Development Board ("TWDB" or "board") proposes an amendment to 31 Texas Administrative Code (TAC) §365.41 regarding Loan Closing for the Rural Water Assistance Fund (RWAFF) program.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED AMENDMENT.

TWDB presently has outstanding loans in the RWAFF program for which we receive payments directly from borrowers, rather than through paying agents. In accordance with current TAC §365.41, these borrowers may remit their payments only by wire transfer. Many RWAFF loans require monthly payments, and wire transfers can cost the borrower \$30 or more per transaction for the life of the loan. The proposed rule would expand allowable payments forms, including allowing Automated Clearing House (ACH) payments. The proposed rules would save time and reduce costs to TWDB borrowers and would improve TWDB's administrative processes.

#### SECTION BY SECTION DISCUSSION OF PROPOSED AMENDMENTS.

Section 365.41(a)(2)(J) would be amended to add the words "or in a manner acceptable to the Executive Administrator."

All other wording in the rule would remain unchanged.

#### FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS

Ms. Rebecca Trevino, Chief Financial Officer, has determined that there will be no fiscal implications for state or local governments as a result of the proposed rulemaking. For the first five years these rules are in effect, there is no expected additional cost to state or local governments resulting from its administration.

These rules are not expected to result in significant reductions in costs to either state or local governments. The TWDB may benefit from improved administrative processes related to the use of ACH for RWAFF loan repayments. Borrowers that use ACH payments may save time and reduce their cost to issue payments (\$30 or more per transaction for the life of the loan).

These rules are not expected to have any impact on state or local revenues. The rules do not require any increase in expenditures for state or local governments as a result of administering these rules. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from these rules.

Because these rules will not impose a cost on regulated persons, the requirement included in Texas Government Code Sec-

tion 2001.0045 to repeal a rule does not apply. Furthermore, the requirement in Section 2001.0045 does not apply because these rules are amended to reduce the burden or responsibilities imposed on regulated persons by the rule.

The board invites public comment regarding this fiscal note. Written comments on the fiscal note may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

#### PUBLIC BENEFITS AND COSTS

Ms. Rebecca Trevino also has determined that for each year of the first five years the proposed rulemaking is in effect, the public may benefit from the rulemaking as it may reduce the administrative burden and processing costs for the remittance of loan repayments to the TWDB.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

The board has determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect because it will impose no new requirements on local economies. The board also has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of enforcing this rulemaking. The board also has determined that there is no anticipated economic cost to persons who are required to comply with the rulemaking as proposed. Therefore, no regulatory flexibility analysis is necessary.

#### DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The board reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to reduce the administrative burden for local governments that are the recipients of TWDB financial assistance.

Even if the proposed rule were a major environmental rule, Texas Government Code, §2001.0225 still would not apply to this rulemaking because Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not proposed solely under the general powers of the agency, but rather §15.995. Therefore,

this proposed rule does not fall under any of the applicability criteria in Texas Government Code, §2001.0225.

The board invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

#### TAKINGS IMPACT ASSESSMENT

The board evaluated this proposed rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to reduce the administrative burden and processing costs for the remittance of loan repayments to the TWDB. The proposed rule would substantially advance this stated purpose by providing more repayment options to TWDB borrowers.

The board's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this proposed rule because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code, §2007.003(b)(4). The board is the agency that administers the Rural Water Assistance Fund.

Nevertheless, the board further evaluated this proposed rule and performed an assessment of whether it constitutes a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of this proposed rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, this rule reduces the administrative burden and processing costs for the remittance of loan repayments to the TWDB. Therefore, the proposed rule does not constitute a taking under Texas Government Code, Chapter 2007.

#### GOVERNMENT GROWTH IMPACT STATEMENT

The board reviewed the proposed rulemaking in light of the government growth impact statement requirements of Texas Government Code §2001.0221 and has determined, for the first five years the proposed rule would be in effect, the proposed rule will not: (1) create or eliminate a government program; (2) require the creation of new employee positions or the elimination of existing employee positions; (3) require an increase or decrease in future legislative appropriations to the agency; (4) require an increase or decrease in fees paid to the agency; (5) create a new regulation; (6) expand, limit, or repeal an existing regulation; (7) increase or decrease the number of individuals subject to the rule's applicability; or (8) positively or adversely affect this state's economy.

#### SUBMISSION OF COMMENTS

Written comments on the proposed rulemaking may be submitted by mail to Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by email to [rulescomments@twdb.texas.gov](mailto:rulescomments@twdb.texas.gov), or by fax to (512) 475-2053. Comments will be accepted until 5:00 p.m. of the 31st day following publication in the *Texas Register*. Include Chapter 365 in the subject line of any comments submitted.

#### STATUTORY AUTHORITY

This rulemaking is proposed under the authority of Texas Water Code §§6.101 and 15.995.

Texas Water Code, Chapter 15, Subchapter R is affected by this rulemaking.

#### §365.41. *Loan Closing.*

(a) Instruments needed for closing. The documents which shall be required at the time of closing shall include the following:

(1) (No change.)

(2) a certified copy of the bond ordinance, order or resolution adopted by the governing body authorizing the issuance of debt to be sold to the board, or an executed promissory note and loan agreement, that is acceptable to the executive administrator and which shall have sections providing as follows:

(A) - (I) (No change.)

(J) that all payments shall be made to the board via wire transfer or in a manner acceptable to the executive administrator at no cost to the board;

(K) - (N) (No change.)

(3) - (7) (No change.)

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

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

Filed with the Office of the Secretary of State on August 10, 2020.

TRD-202003222

Ashley Harden

General Counsel

Texas Water Development Board

Earliest possible date of adoption: September 20, 2020

For further information, please call: (512) 463-7686



## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 3. TAX ADMINISTRATION

##### SUBCHAPTER A. GENERAL RULES

###### 34 TAC §3.9

The Comptroller of Public Accounts proposes amendments to §3.9 concerning electronic filing of returns and reports; electronic transfer of certain payments by certain taxpayers. The comptroller amends the section to reflect changes in Tax Code, Chapter 151, Subchapter I-1 (Reports by Persons Involved in the Manufacture and Distribution of Alcoholic Beverages) made by House Bill 4542, 86th Legislature, 2019, effective September 1, 2019. The comptroller also proposes amendments to reflect changes in Tax Code, Chapter 151, Subchapter I-2 (Reports by Manufacturers of Certain Off-highway Vehicles Purchased Outside This State) made by House Bill 1543, 86th Legislature, 2019, effective September 1, 2019.

The comptroller amends subsection (e)(2) by adding brewpubs to implement House Bill 4542. The comptroller amends sub-

paragraph (A) by adding brewpubs to the definition of a seller. The comptroller amends clause (iv) to reflect the updated title to §151.462(b). New subparagraph (C) excludes certain brewpubs from filing reports. Subsequent subparagraphs are re-lettered accordingly. Re-lettered subparagraph (F) is amended to require certain brewpubs to file reports on or after September 1, 2019.

In addition, the comptroller adds new paragraph (5) to implement House Bill 1543, which added Tax Code, Chapter 151, Subchapter I-2 (Reports by Manufacturers of Certain Off-highway Vehicles Purchased Outside This State). Subsequent paragraphs are renumbered accordingly.

New subparagraph (A) provides definitions related to the reporting requirements for manufacturers of off-highway vehicles. Clause (i) defines the term "manufacturer" and clause (ii) defines the term "new off-highway vehicle." The definitions are based on definitions in §151.481 (Definitions).

Clause (iii) defines off-highway vehicles. Off-highway vehicles include vehicles listed in new subclauses (I)-(V).

Clause (iii)(I) defines the term "all-terrain vehicle" based on Transportation Code, §551A.001(1) (Definitions). Subclause (II) defines the term "off-highway motorcycle" based on Transportation Code, §501.0301(1)(B) (Certain Off-Highway Vehicles Purchased Outside This State) and Transportation Code, §541.201(9) (Definitions). Subclause (III) defines the term "recreational off-highway vehicle" based on Transportation Code, §551A.001(5). Subclause (IV) defines the term "sand rail" based on Transportation Code, §551A.001(3). Subclause (V) defines the term "utility vehicle" based on Transportation Code, §551A.001(6).

Subparagraph (B) implements §151.482 (Reports by Manufacturers).

New subparagraph (C) requires a manufacturer to file a report, even if they have no warranty information to report.

Subparagraph (D) implements §151.485 (Civil Penalty), subsequent paragraphs are renumbered accordingly.

Tom Currah, Chief Revenue Estimator, has determined that during the first five years that the proposed amendment is in effect, the amendment: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy. This proposal amends a current rule.

Mr. Currah also has determined that for each year of the first five years the rule is in effect, proposed amendment would benefit the public by conforming the rule to current statutes. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. The proposed amendment would have no significant fiscal impact on the state government, units of local government, or individuals. There would be no anticipated significant economic costs to the public.

Comments on the proposal may be submitted to Teresa G. Bostick, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than

30 days from the date of publication of the proposal in the *Texas Register*.

The comptroller proposes the amendment 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 amendment implements Tax Code, Chapter 151, Subchapter I-1 and 2.

*§3.9. Electronic Filing of Returns and Reports; Electronic Transfer of Certain Payments by Certain Taxpayers.*

(a) Voluntary electronic filing of returns and reports. The comptroller may authorize a taxpayer to file any report or return required to be filed with the comptroller under Tax Code, Title 2 (State Taxation), by means of electronic transmission under the following circumstances:

(1) the taxpayer or its authorized agent has registered with the comptroller to use an approved reporting method, such as WebFile, or the taxpayer is filing a return or report other than a return showing a tax liability; and

(2) the method of electronic transmission of each return or report complies with any requirements established by the comptroller and is compatible with the comptroller's equipment and facilities.

(b) Required electronic transfer of certain payments by certain taxpayers pursuant to Tax Code, §111.0625 (Electronic Transfer of Certain Payments).

(1) This paragraph is effective with the state fiscal year beginning September 1, 2018, for payments due on or after January 1, 2019. This paragraph applies to a taxpayer who pays the comptroller a total of \$500,000 or more in any single category of payments or taxes during the preceding state fiscal year, and whom the comptroller reasonably anticipates will pay at least that amount during the current state fiscal year. The comptroller shall notify the taxpayer of this electronic funds transfer requirement as provided in subsection (f) of this section. The taxpayer shall transfer all payments in any category of payments or taxes that totaled \$500,000 or more to the comptroller using the State of Texas Financial Network (TexNet), pursuant to Chapter 15 of this title (relating to Electronic Transfer of Certain Payments to State Agencies). This requirement applies to payments due beginning January 1 of each state fiscal year in which a taxpayer is notified and continues for one calendar year. For example, a taxpayer remits \$500,000 in any single category of taxes to the comptroller during the state fiscal year ending August 31, 2019. The comptroller reasonably anticipates that the taxpayer will pay at least \$500,000 in the same category of payments or taxes for fiscal year ending August 31, 2020. The comptroller notifies the taxpayer of the electronic payment requirement by October 31, 2019. The taxpayer must begin transferring payments to the comptroller using TexNet beginning on January 1, 2020. The taxpayer's electronic payment requirement continues until December 31, 2020.

(2) Taxpayers who paid the comptroller a total of \$100,000 or more in any single category of payments or taxes and were notified by the comptroller of a TexNet payment requirement must continue to make those payments using TexNet for original or amended reports filed for the calendar year for which the taxpayer was notified.

(3) Beginning January 1, 2019, taxpayers who paid \$100,000 or more, but less than \$500,000, in any single category of payments or taxes during the preceding state fiscal year, and whom the comptroller reasonably anticipates will pay at least that amount during the current state fiscal year, shall transfer all payments in that category of payments or taxes during the calendar year beginning January 1 of

the current state fiscal year to the comptroller by means of electronic funds transfer as set out in paragraph (4)(C) of this subsection. The comptroller shall notify the taxpayer of this electronic funds transfer requirement as provided in subsection (f) of this section. This requirement applies to payments due beginning January 1 of each state fiscal year for which a taxpayer is notified and continues for one calendar year. For example, a taxpayer remits \$100,000 in any single category of taxes to the comptroller during the state fiscal year ending August 31, 2019. The comptroller reasonably anticipates that the taxpayer will pay at least \$100,000 in the same category of payments or taxes for fiscal year ending August 31, 2020. The comptroller notifies the taxpayer of the electronic payment requirement by October 31, 2019. The taxpayer must begin transferring payments to the comptroller using one of the methods described in paragraph (4)(C) of this subsection beginning on January 1, 2020. The taxpayer's electronic payment requirement continues until December 31, 2020.

(4) Taxpayers who paid at least \$10,000, but less than \$100,000, in a single category of payments or taxes as listed in subparagraph (A) of this paragraph during the preceding state fiscal year, and whom the comptroller reasonably anticipates will pay at least that amount during the current state fiscal year, shall transfer all payments in that category of payments or taxes during the calendar year beginning January 1 of the current state fiscal year to the comptroller by means of electronic funds transfer as set out in subparagraph (C) of this paragraph.

(A) This paragraph applies only to:

- (i) state and local sales and use taxes;
- (ii) direct payment sales tax;
- (iii) gas severance tax;
- (iv) oil severance tax;
- (v) franchise tax;
- (vi) gasoline tax;
- (vii) diesel fuel tax;
- (viii) hotel occupancy tax;
- (ix) insurance premium taxes;
- (x) mixed beverage gross receipts tax;
- (xi) mixed beverage sales tax; and
- (xii) motor vehicle rental tax.

(B) The comptroller may add or remove a category of payments or taxes to or from this paragraph if the comptroller determines that such action is necessary to protect the interests of the state or of taxpayers.

(C) Payments under this paragraph shall be made by those electronic funds transfer methods approved by the comptroller, which include, but are not limited to, TexNet, electronic check (WebEFT), and the electronic transmission of credit card information. The comptroller may require payments in specific categories to be made by specific methods of electronic funds transfer.

(D) A taxpayer required under this paragraph to use electronic funds transfer who cannot comply due to hardship, impracticality, or other valid reason may submit a written request to the comptroller for a waiver of the requirement.

(c) Payment date for electronic transfer of funds.

(1) Pursuant to §15.33 of this title (relating to Determination of Settlement Date), a person who enters payment information into

TexNet may choose either to accept the settlement date that TexNet offers or enter a settlement date up to 30 days from the business day after payment is submitted. TexNet will offer the business day following the day on which payment information is entered into TexNet, provided that the information is entered by 6:00 p.m. central time on any business day.

(2) A taxpayer who files tax returns and makes payments through the electronic data interchange (EDI) system must submit the payment information to the comptroller by 2:30 p.m. central time.

(3) A taxpayer who makes payment by an electronic funds transfer method approved by the comptroller other than TexNet or the EDI system must transmit payment information by 11:59 p.m. central time on the date payment is due.

(d) The administrative rules found in Chapter 15 of this title on electronic funds transfer under Government Code, §404.095 (Electronic Transfer of Certain Payments) using TexNet apply to all such payments to the comptroller.

(e) Required electronic filing of certain reports by certain taxpayers.

(1) Reports required by Tax Code, §111.0626 (Electronic Filing of Certain Reports).

(A) Pursuant to Tax Code, §111.0626(a)(1), taxpayers who are required to use electronic funds transfer for payments of certain taxes must also file report data electronically, including reports required by the International Fuel Tax Agreement. This requirement applies to:

- (i) state and local sales and use taxes;
- (ii) direct payment sales tax;
- (iii) gas severance tax;
- (iv) oil severance tax; and
- (v) motor fuel tax.

(B) Pursuant to Tax Code, §111.0626(a)(2), taxpayers who owe no tax and are required to file an information report under Tax Code, §171.204 (Information Report) must file the information report electronically.

(C) Pursuant to Tax Code, §111.0626(b-1), taxpayers who paid \$50,000 or more during the preceding fiscal year must file report data electronically. A taxpayer filing a report electronically may use an application provided by the comptroller, software provided by the comptroller, or commercially available software that satisfies requirements prescribed by the comptroller. This subparagraph only applies after issuance to the taxpayer of the 60 days notice required by subsection (f) of this section.

(2) Reports by brewers, manufacturers, brewpubs, wholesalers, and distributors of alcoholic beverages required by Tax Code, Chapter 151, Subchapter I-1 (Reports by Persons Involved in the Manufacture and Distribution of Alcoholic Beverages).

(A) For purposes of this paragraph, a "seller" means a person who is a brewer with a brewer's self-distribution permit, manufacturer with a manufacturer's self-distribution license, brewpub, wholesaler, winery, distributor, or package store local distributor, as described in Tax Code, §§151.461(1) - (4) and (6) (Definitions), 151.465 (Applicability to Certain Brewers), and 151.466 (Applicability to Certain Manufacturers); and a "retailer" means a person who holds one or more of the permits listed in Tax Code, §151.461(5).

(B) On or before the 25th day of each month, each seller holding a comptroller-issued tax identification number must file a re-



port of alcoholic beverage sales to retailers in this state. The report must be filed by a means of electronic transmission approved by the comptroller. The report must contain the following information:

(i) each Texas Alcoholic Beverage Commission (TABC) permit or license associated with the seller's comptroller-issued tax identification number;

(ii) the TABC permit or license number for each seller location from which a sale was made to a retailer during the preceding calendar month;

(iii) the TABC permit or license number, comptroller-issued tax identification number, and TABC trade name and physical address (street name and number, city, state, and zip code) of each retail location to which the seller sold alcoholic beverages during the preceding calendar month;

(iv) the information required by Tax Code, §151.462(b) (Reports by Brewers, Manufacturers, Brewpubs, Wholesalers and Distributors) regarding the seller's monthly sales to each retailer holding a separate TABC permit or license, including:

(I) the individual container size of each product, such as the individual bottle or can container size, sold to retailers;

(II) the brand name of the alcoholic beverage sold;

(III) the beverage class code for distilled spirits, wine, beer, or malt beverage;

(IV) the Universal Product Code (UPC) of the alcoholic beverage sold;

(V) the number of individual containers of alcoholic beverages sold for each brand, UPC, and container size. Multi-unit packages, such as cases, must be broken down into the number of individual bottles or cans;

(VI) the total selling price of the containers sold; and

(v) any other information deemed necessary by the comptroller for the efficient administration of this subsection.

(C) A brewpub license holder not performing activities described under Alcoholic Beverage Code, §74.08 (Sales by Brewpub License Holders to Retailers) is not required to file the report described by subparagraph (B) of this paragraph.

(D) [(E)] If a person fails to file a report required by subparagraph (B) of this paragraph, or fails to file a complete report, the comptroller may:

(i) suspend or cancel one or more permits issued to the person under Tax Code, §151.203 (Suspension and Revocation of Permit);

(ii) impose a civil penalty under Tax Code, §151.703(d) (Failure to Report or Pay Tax);

(iii) impose a criminal penalty under Tax Code, §151.709 (Failure to Furnish Report; Criminal Penalty); and/or

(iv) notify the TABC of the failure and the TABC may take administrative action against the person for the failure under the Alcoholic Beverage Code.

(E) [(D)] In addition to the penalties imposed under subparagraph (C) of this paragraph, if a person violates Tax Code, Chapter 151, Subchapter I-1, or this paragraph, the comptroller shall

collect from the seller an additional civil penalty of not less than \$25 or more than \$2,000 for each day the violation continues.

(F) [(E)] The requirements of this paragraph related to brewpubs apply to sales occurring on or after September 1, 2019. The requirements of this paragraph related to permittees other than brewpubs, apply to sales occurring on or after September 1, 2011.

(3) Reports by wholesalers and distributors of cigarettes. Pursuant to Tax Code, §154.212 (Reports by Wholesalers and Distributors of Cigarettes), on or before the 25th day of each month each wholesaler or distributor of cigarettes shall file a report of sales to retailers in this state. The report must be filed by a means of electronic transmission approved by the comptroller and must contain the following information for the preceding calendar month's sales made to each retailer:

(A) the name of the retailer and the address, including city and zip code, of the retailer's outlet location to which the wholesaler or distributor delivered cigarettes;

(B) the comptroller-assigned taxpayer number of the retailer, if the wholesaler or distributor is in possession of the number;

(C) the cigarette permit number of the outlet location to which the wholesaler or distributor delivered cigarettes;

(D) the monthly net sales made to the retailer, including the quantity and units of cigarettes in stamped packages sold to the retailer and the price charged to the retailer; and

(E) any other information deemed necessary by the comptroller for the efficient administration of this subsection.

(4) Reports by wholesalers and distributors of cigars and tobacco products. Pursuant to Tax Code, §155.105 (Reports by Wholesalers and Distributors of Cigars and Tobacco Products), on or before the 25th day of each month each wholesaler or distributor of cigars or tobacco products shall file a report of sales to retailers in this state. The report must be filed by a means of electronic transmission approved by the comptroller and must contain the following information for the preceding calendar month's sales made to each retailer:

(A) the name of the retailer and the address, including the city and zip code, of the retailer's outlet location to which the wholesaler or distributor delivered cigars or tobacco products;

(B) the comptroller-assigned taxpayer number of the retailer, if the wholesaler or distributor is in possession of the number;

(C) the tobacco permit number of the outlet location to which the wholesaler or distributor delivered cigars or tobacco products;

(D) the monthly net sales made to the retailer, including the quantity and units of cigars and tobacco products sold to the retailer and the price charged to the retailer;

(E) the net weight as listed by the manufacturer for each unit of tobacco products other than cigars; and

(F) any other information deemed necessary by the comptroller for the efficient administration of this subsection.

(5) Reports by manufacturers of certain off-highway vehicles purchased outside this state. Pursuant to Tax Code, Chapter 151, Subchapter I-2 (Reports by Manufacturers of Certain Off-highway Vehicles Purchased Outside This State) manufacturers must file a report on or before March 1 of each year, listing each warranty issued by the manufacturer for each new off-highway vehicle that was, during the preceding calendar year, sold to a resident of this state by a retailer located outside this state.

(A) For the purposes of this paragraph:

(i) Manufacturer means a person that manufactures off-highway vehicles and is required to hold a manufacturer's license under Occupations Code, Chapter 2301.

(ii) New off-highway vehicle means an off-highway vehicle that has not been the subject of a retail sale.

(iii) Off-highway vehicle includes:

(I) All-terrain vehicle--A vehicle that is equipped with a seat or seats for the use of the rider and one or more passengers, designed to propel itself with three or more tires in contact with the ground, designed by the manufacturer for off-highway use, not designed by the manufacturer primarily for farming or lawn care, and not more than 50 inches in width;

(II) Off-highway motorcycle--A vehicle, other than a tractor or moped, that is equipped with a rider's saddle, designed to propel itself with not more than three tires on the ground, and designed by the manufacturer for off-highway use only;

(III) Recreational off-highway vehicle--A vehicle that is equipped with a seat or seats for the use of the rider and one or more passengers, designed to propel itself with four or more tires in contact with the ground, designed by the manufacturer for off-highway use, and not designed by the manufacturer primarily for farming or lawn care;

(IV) Sand rail--A vehicle that is designed or built primarily for off-highway use in sandy terrains, including for use on sand dunes; has a tubular frame, an integrated roll cage, and an engine that is rear-mounted or placed midway between the front and rear axles of the vehicle; and has a gross vehicle weight of not less than 700 pounds and not more than 2,000 pounds; or

(V) Utility vehicle--A vehicle that is equipped with side-by-side seating for the use of the operator and one or more passengers, designed to propel itself with at least four tires in contact with the ground, designed by the manufacturer for off-highway use, and designed by the manufacturer primarily for utility work and not for recreational purposes.

(B) The report must be filed by a means of electronic transmission approved by the comptroller and contain the following information for each new off-highway vehicle:

(i) the vehicle identification number;

(ii) the make, model, and model year of the vehicle;

(iii) the total sales price, or, if the total sales price is not available, the manufacturer suggested retail price; and

(iv) the name and address, including street name and number, city, and zip code, of the purchaser of the vehicle.

(C) A manufacturer must file a report, even if they have no warranty information to report.

(D) If a manufacturer fails to file a report or files an incomplete report, the comptroller:

(i) may impose a civil penalty of \$50 under Tax Code, §151.703(d) for each report not filed or for each incomplete report;

(ii) shall impose a civil penalty of not less than \$25 or more than \$2,000 for each day the violation continues under Tax Code, §151.485 (Civil Penalty); and

(iii) may notify the Texas Department of Motor Vehicles (TxDMV) of the failure. The TxDMV may take administrative action against the manufacturer for the failure under Occupations Code, Chapter 2301.

(6) [(5)] Except as provided by Tax Code, §111.006 (Confidentiality of Information), information contained in the reports required by paragraphs (2), (3), [and] (4), and (5) of this subsection is confidential and not subject to disclosure under Government Code, Chapter 552 (Public Information).

(7) [(6)] The reports required by paragraphs (2), (3), [and] (4), and (5) of this subsection are required in addition to any other reports required by the comptroller.

(8) [(7)] The reports required by paragraphs (2), (3), and (4) of this subsection must be filed each month even if no sales were made to retailers during the preceding month.

(f) Notification of affected persons. The comptroller shall notify taxpayers who are affected by subsection (b) or (e)(1) of this section no less than 60 days before the first required electronic transmittal of report data or payment.

(g) A taxpayer who is required to file report data electronically under subsection (e)(1) of this section may submit a written request to the comptroller for a waiver of the requirement. A taxpayer who is required to electronically file a report under subsection (e)(3) or (4) of this section may submit a written request to the comptroller for a waiver of the requirement and authorization of an alternative filing method.

(h) Pursuant to Tax Code, §111.063 (Penalty for Failure to Use Electronic Transfers and Filings), the comptroller may impose separate penalties of 5.0% of the tax due for failure to pay the tax due by electronic funds transfer, as required by this section, or for failure to file a report electronically, as required by Tax Code, §111.0626.

(i) Protest payments by electronic funds transfer. Protested tax payments made under Tax Code, §112.051 (Protest Payment Required), must be accompanied by a written statement that fully and in detail sets out each reason for recovery of the payment. Protested tax payments are not required to be submitted by electronic funds transfer.

(1) A person who is otherwise required to pay taxes by means of electronic funds transfer may make protested payments by other means, including cash, check, or money order. A written statement of protest that fully and in detail sets out each reason for recovery of the payment must accompany the non-electronic payment.

(2) A person may submit a protested tax payment by means of electronic funds transfer if the written statement is submitted in compliance with the requirements set out in subparagraph (A) of this paragraph.

(A) A person may submit a protest payment by means of electronic funds transfer only if:

(i) a written statement of protest is delivered by facsimile transmission or hand-delivery at one of the comptroller's offices in Austin, Texas;

(ii) the written statement of protest is delivered to the comptroller within 24 hours before or after the electronic transfer of the payment;

(iii) the written statement of protest identifies the date of electronic payment, the taxpayer number under which the electronic payment was or will be submitted, and the amount paid under protest; and

(iv) the electronic payment is specifically identified as a protest payment by the method, if any (such as a special transaction code or accompanying electronic message), that the comptroller may designate as appropriate to the method by which the person transferred the funds electronically.

(B) The failure of a taxpayer to submit a written statement in compliance with subparagraph (A) of this paragraph means the tax payment that the taxpayer made is not considered to be a protest tax payment as provided by Tax Code, §112.051.

(C) If a person submits multiple written statements of protest that relate to the same electronic payment, then only the first statement that the comptroller actually receives is considered the written protest for purposes of Tax Code, §112.051.

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

Filed with the Office of the Secretary of State on August 6, 2020.

TRD-202003184

William Hamner

Special Counsel for Tax Administration

Comptroller of Public Accounts

Earliest possible date of adoption: September 20, 2020

For further information, please call: (512) 475-0387



## SUBCHAPTER O. STATE AND LOCAL SALES AND USE TAXES

### 34 TAC §3.285

The Comptroller of Public Accounts proposes amendments to §3.285, concerning resale certificate; sales for resale. The proposed amendments implement House Bill 1525, 86th Legislature, 2019 and Senate Bill 1525, 86th Legislature, 2019. House Bill 1525 establishes sales and use tax collection responsibilities for marketplace providers. Senate Bill 1525 clarifies existing statutes related to sales for resale.

The comptroller amends subsection (a)(8) to include marketplace providers in the definition of "seller" and conforms the definition to statute. The comptroller corrects the reference to §3.286 of this title (relating to Seller's and Purchaser's Responsibilities), cited therein.

The comptroller amends subsection (b) to implement the changes made in Senate Bill 1525. The comptroller amends subsection (b)(1)(A) to delete unnecessary language. The comptroller amends subsection (b)(1)(E) to clarify that a sale for resale includes the sale of tangible personal property or a taxable service acquired for the purpose of transferring it as part of a contract for the sale, other than lease or rental, of tangible personal property with an exempt organization under Tax Code, §151.309 (Governmental Entities) or §151.310 (Religious, Educational, and Public Service Organizations). The comptroller also amends subsection (b)(1)(F) to remove reference to a rule title as the rule was previously referred to in subsection (a)(4).

The comptroller amends subsection (b)(4) to clarify that a sale for resale does not include the sale of tangible personal property or a taxable service acquired for the purpose of performing a service not listed in Tax Code, §151.0101 ("Taxable Services") unless the tangible personal property or taxable service is purchased for

the purpose of performing a contract for a service for specified federal agencies.

The comptroller adds new subsection (b)(9) stating that a sale for resale does not include the sale of tangible personal property that is acquired for the purpose of using, consuming, expending it in, or incorporating it into an oil or gas well in the performance of an oil well service taxable under Tax Code, Chapter 191 (Miscellaneous Occupation Taxes).

The comptroller adds new subsection (c)(6) that provides that the independent organization certified under Texas Utilities Code, §39.151 - currently, the Electric Reliability Council of Texas, Inc. (ERCOT) - is not required to collect a resale certificate from a person who purchases electricity from it solely for the purpose of resale and is not required to provide a resale certificate to a person from whom it purchases electricity solely for the purpose of resale. Collection or issuance of resale certificates is not necessary in this context because, due to the manner in which the ERCOT market functions, all electricity purchased or sold by ERCOT must necessarily be resold before it is used by an electricity consumer.

Tom Currah, Chief Revenue Estimator, has determined that during the first five years that the proposed amendment is in effect, the amendment: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy. This proposal amends a current rule.

Mr. Currah also has determined that for each year of the first five years the rule is in effect, proposed amendment would benefit the public by conforming the rule to current statutes and agency policy. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. The proposed amendment would have no significant fiscal impact on the state government, units of local government, or individuals. There would be no anticipated significant economic costs to the public.

Comments on the proposal may be submitted to Teresa G. Bostick, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

This amendment is proposed under Tax Code §111.002, 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.

This amendment implements Tax Code, §151.006 and §151.008.

#### §3.285. *Resale Certificate; Sales for Resale.*

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

(1) Equipment--Any apparatus, device, or simple machine used to perform a service.

(2) Federal government--The government of the United States of America and its unincorporated agencies and instrumentalities, including all parts of the executive, legislative, and judicial

branches and all independent boards, commissions, and agencies of the United States government unless otherwise designated in this section.

(3) Integral part--An essential element without which the whole would not be complete. One taxable item is an integral part of a second item if the taxable item is necessary, as opposed to desirable, for the completion of the second item, and if the second item could not be provided as a whole without the taxable item.

(4) Internet hosting service--The provision to an unrelated user of access over the Internet to computer services using property that is owned or leased and managed by the service provider and on which the unrelated user may store or process the user's own data or use software that is owned, licensed, or leased by the unrelated user or service provider. The term does not include telecommunications services as defined in §3.344 of this title (relating to Telecommunications Services).

(5) Machinery--All power-operated machines.

(6) Mexico--Within the geographical limits of the United Mexican States.

(7) Purchaser--A person who is in the business of selling, leasing, or renting taxable items.

(8) Seller--Every retailer, wholesaler, distributor, manufacturer, marketplace provider, or any other person who sells, leases, rents, or transfers ownership of tangible personal property or performs taxable services [in this state] for consideration. Specific types of sellers, such as direct sales organizations, pawnbrokers, marketplace providers, and auctioneers, are further defined in §3.286 of this title (relating to Seller's and Purchaser's Responsibilities; ~~including Nexus, Permits, Returns and Reporting Periods, and Collection and Exemption Rules~~).

(9) Taxable item--Tangible personal property and taxable services. Except as otherwise provided by Tax Code, Chapter 151, the sale or use of a taxable item in an electronic form instead of on physical media does not alter the item's tax status.

(10) Tax-free inventory--A stock of tangible personal property purchased tax-free for resale, whether from out-of-state or by issuing a properly completed resale certificate, by a purchaser who, at the time of purchase:

(A) holds a valid Texas sales and use tax permit;

(B) makes sales of taxable items in the regular course of business; and

(C) does not know whether the tangible personal property will be resold in the normal course of business or used in the performance of a service.

(11) United States--Within the geographical limits of the United States of America or within the territories and possessions of the United States of America.

(b) Sale for resale.

(1) Except as provided in paragraphs (3) - (6) of this subsection, each of the following is a sale for resale:

(A) the sale of a taxable item to a purchaser who acquires the taxable item for the purpose of reselling it [with or] as a taxable item in the United States or Mexico in the normal course of business:

(i) in the form or condition in which it is acquired;

or

(ii) as an attachment to or as an integral part of another taxable item;

(B) the sale of tangible personal property to a purchaser who acquires the property for the sole purpose of leasing or renting it in the United States or Mexico in the normal course of business to another person, but not if incidental to the leasing or renting of real estate, as described in §3.294(k) of this title (relating to Rental and Lease of Tangible Personal Property);

(C) the sale of tangible personal property to a purchaser who acquires the property for the purpose of transferring the property to a customer in the United States or Mexico as an integral part of a taxable service;

(D) the sale of a taxable service performed on tangible personal property that the purchaser of the service holds for sale, lease, or rental;

(E) the sale of tangible personal property or a taxable service to a purchaser who acquires the tangible personal property or service for the purpose of transferring it as an integral part of performing a contract, or a subcontract of a contract, for the sale, other than the lease or rental, of tangible personal property with an entity or organization exempted from the taxes imposed by this chapter under Tax Code, §151.309 (Governmental Entities) or Tax Code, §151.310 (Religious, Educational, and Public Service Organizations) [the federal government] only if the purchaser:

(i) allocates and bills to the contract the cost of the tangible personal property or service as a direct or indirect cost; and

(ii) transfers title to the tangible personal property to the exempt entity or organization [federal government] under the contract or subcontract and any applicable [federal] acquisition regulations;

(F) the sale of a wireless voice communication device, such as a cellular telephone, to a purchaser who acquires the device for the purpose of transferring the device as an integral part of a taxable telecommunication service when the purchase of the service is a condition for receiving the device, regardless of whether there is a separate charge for the device or whether the purchaser is the provider of the taxable service. See §3.344 of this title [~~relating to Telecommunications Services~~]; and

(G) the sale of a computer program to a provider of Internet hosting services who acquires the computer program from an unrelated vendor for the purpose of selling the right to use the computer program to an unrelated user of the provider's Internet hosting services in the normal course of business and in the form or condition in which the provider acquired the computer program, without regard to whether the provider transfers care, custody, and control of the computer program to the unrelated user. The performance by the provider of routine maintenance of the computer program that is recommended or required by the unrelated vendor of the computer program does not affect the application of this subsection. For purposes of this subsection, the purchase of the computer program by the provider qualifies as a sale for resale only if:

(i) the provider offers the unrelated user a selection of computer programs that are available to the public for purchase directly from an unrelated vendor;

(ii) the provider executes a written contract with the unrelated user that specifies the name of the computer program sold to the unrelated user and includes a charge to the unrelated user for computing hardware;

(iii) the unrelated user purchases the right to use the computer program from the provider through the acquisition of a license; and

(iv) the provider does not retain the right to use the computer program under that license.

(2) To qualify as a sale for resale, the taxable item must be acquired for the purpose of selling, leasing, or renting it in the regular course of business or for the purpose of transferring it as an integral part of a taxable service performed in the regular course of business.

(3) A sale for resale does not include the sale of internal or external wrapping, packing, or packaging supplies to a purchaser who acquires the supplies for use in wrapping, packing, or packaging tangible personal property, or in the performance of a service, for the purpose of furthering the sale of the tangible personal property or the service. See §3.314 of this title (relating to Wrapping, Packing, Packaging Supplies, Containers, Labels, Tags, Export Packers, and Stevedoring Materials and Supplies).

(4) A sale for resale does not include the sale of tangible personal property or a taxable service to a purchaser who acquires the property or service for the purpose of performing a service not listed as a taxable service under Tax Code, §151.0101 ("Taxable Services") [service that is not taxed under this chapter], regardless of whether title transfers to the service provider's customer, unless the tangible personal property or taxable service is purchased for the purpose of performing [reselling it to the United States in] a contract, or a subcontract of a contract, for a service, including a taxable service under Tax Code, §151.0101, with any branch of the Department of Defense, Department of Homeland Security, Department of Energy, National Aeronautics and Space Administration, Central Intelligence Agency, National Security Agency, National Oceanic and Atmospheric Administration, or National Reconnaissance Office to the extent allocated and billed to the contract with the federal government.

(5) A sale for resale does not include the sale of a taxable item to a purchaser who acquires the taxable item for the purpose of reselling or transferring the taxable item outside the territorial limits of the United States or Mexico. Refer to §3.323 of this title (relating to Imports and Exports).

(6) Tangible personal property used to perform a taxable service is not considered resold unless the care, custody, and control of the tangible personal property is transferred to the purchaser of the service. The care, custody, and control of tangible personal property is transferred to the purchaser of the service when the purchaser has primary possession of the tangible personal property.

(A) Except as provided in subparagraphs (B) and (C) of this paragraph, to have primary possession, the purchaser or the purchaser's designee must have:

(i) physical possession of the tangible personal property off of the premises of the service provider;

(ii) a contractual duty to care for the tangible personal property. At a minimum, the contract must prohibit the purchaser from damaging the tangible personal property or impose liability if the purchaser damages the tangible personal property; and

(iii) a superior right to use the tangible personal property for a contractually specified period of time.

(B) The purchaser may have primary possession of tangible personal property if the purchaser or the purchaser's designee has physical possession of the tangible personal property and directly consumes the tangible personal property during the provision of the taxable service. Property is considered consumed if it can no longer be used for

its intended purpose in the normal course of business or is not retained or reusable by the service provider.

(C) A purchaser may have primary possession of a computer program if the purchaser acquires a license to use the computer program from the service provider and the service provider does not retain the right to use the computer program under that license.

(7) A person performing services taxable under Tax Code, Chapter 151 is the consumer of machinery and equipment used by the person in performing the services. A person performing a taxable service is not using the machinery or equipment in performing the service if the person has transferred primary possession, as that term is described in paragraph (6) of this subsection, of the machinery or equipment to the purchaser of the service.

(8) Aircraft. See §3.280 of this title (relating to Aircraft) for the definition of "sale for resale" as it applies to aircraft.

(9) A sale for resale does not include the sale of tangible personal property to a purchaser who acquires the property for the purpose of using, consuming, or expending it in, or incorporating it into, an oil or gas well in the performance of an oil well service taxable under Tax Code, Chapter 191 (Miscellaneous Occupation Taxes).

(c) Issuance and acceptance of resale certificates.

(1) A sale for resale as defined in subsection (b) of this section is not taxable.

(2) Who may issue a resale certificate.

(A) In general, a purchaser who holds a Texas sales and use tax permit may issue a resale certificate instead of paying tax at the time of purchase of a taxable item that the purchaser intends to resell, lease, rent, or transfer as an integral part of a taxable service in the normal course of business. A purchaser may also issue a resale certificate instead of paying tax at the time of purchase of a taxable item that the purchaser intends to maintain in a valid tax-free inventory, if the purchaser does not know at the time of purchase whether the item will be resold or used in the performance of a service. The purchaser must collect, report, and remit tax to the comptroller as required by §3.286 of this title when the purchaser sells, leases, or rents taxable items.

(B) A purchaser may not issue a resale certificate in lieu of paying tax on the purchase of a taxable item, including tangible personal property to maintain in a valid tax-free inventory, that the purchaser knows, at the time of purchase, will be used or consumed by the purchaser.

(3) Accepting a resale certificate.

(A) All gross receipts of a seller are presumed subject to sales or use tax unless a properly completed resale or exemption certificate is accepted by the seller. A properly completed resale certificate contains the information required by subsection (g) of this section. See also §3.287 of this title (relating to Exemption Certificates).

(B) A seller does not owe tax on a sale, lease, or rental of a taxable item if the seller accepts a properly completed resale certificate in good faith. A resale certificate is deemed to be accepted in good faith if:

(i) the resale certificate is accepted at or before the time of the transaction;

(ii) the resale certificate is properly completed, meaning that all of the information required by subsection (g) of this section is legible; and

(iii) the seller does not know, and does not have reason to know, that the sale is not a sale for resale. It is the seller's responsibility to be familiar with Texas sales tax law as it applies to the seller's business and to take notice of the information provided by the purchaser on the resale certificate. For example, a jewelry seller should know that a resale certificate from a landscaping service is invalid because a landscaping service is not in the business of reselling jewelry.

(C) The seller should obtain a properly executed resale certificate at the time the taxable transaction occurs. All certificates obtained on or after the date the comptroller's auditor actually begins work on the audit at the seller's place of business or on the seller's records after the entrance conference are subject to verification. All incomplete certificates will be disallowed regardless of when they were obtained. The seller has 60 days from the date written notice is received by the seller from the comptroller in which to deliver the certificates to the comptroller. Written notice shall be given by the comptroller upon the filing of a petition for redetermination or claim for refund. For the purposes of this section, written notice given by mail is presumed to have been received by the seller within three business days from the date of deposit in the custody of the United States Postal Service. The seller may overcome the presumption by submitting proof from the United States Postal Service or by other competent evidence showing a later delivery date. Any certificates delivered to the comptroller during the 60-day period will be subject to independent verification by the comptroller before any deductions will be allowed. Certificates delivered after the 60-day period will not be accepted and the deduction will not be granted. See §3.282 of this title (relating to Auditing Taxpayer Records) and §3.286 of this title.

(D) Resale certificates are subject to the provisions of §3.281 of this title (relating to Records Required; Information Required). A seller is required to keep resale certificates for a minimum of four years from the date on which the sale is made and throughout any period in which any tax, penalty, or interest may be assessed, collected, or refunded by the comptroller or in which an administrative hearing or judicial proceeding is pending.

(4) Blanket resale certificate. A purchaser may issue to a seller a blanket resale certificate describing the general nature of the taxable items purchased for resale. The seller may rely on the blanket certificate until it is revoked in writing.

(5) Bulk commodities. A resale certificate is not required to be issued by a broker or dealer that buys and sells only raw commodities in bulk, such as natural gas, raw cotton bales, or raw aluminum, from producers or other commodity brokers or dealers solely for resale in the normal course of business. However, if requested by the seller, a properly completed resale certificate, absent a sales tax permit number, may be issued by the purchaser of such raw commodities even if the purchaser does not hold a sales and use tax permit.

(6) Electricity sales and purchases by independent organization certified under Texas Utilities Code, §39.151. A resale certificate is not required to be issued by a person who purchases electricity solely for the purpose of resale from the independent organization certified under Texas Utilities Code, §39.151. The independent organization certified under Texas Utilities Code, §39.151 is not required to issue a resale certificate to a person from whom it purchases electricity solely for the purpose of resale.

(d) Retailers outside Texas.

(1) A seller in Texas may accept a resale certificate in lieu of tax from a retailer located outside Texas who purchases taxable items for resale in the United States or Mexico in a transaction that is a sale for resale, as defined in subsection (b) of this section.

(2) The resale certificate must show the signature and address of the purchaser, the date of the sale, the state in which the purchaser intends to resell the item, the sales tax permit number or the registration number assigned to the purchaser by the state in which the purchaser is authorized to do business or a statement that the purchaser is not required to be permitted in the state in which the purchaser is authorized to do business. Mexican retailers who purchase taxable items for resale must show their Federal Taxpayers Registry (RFC) identification number for Mexico on the resale certificate and give a copy of their Mexican Registration Form to the Texas seller. An invoice describing the taxable item purchased and showing the exact street address or office address from which the taxable item will be resold must be attached to the resale certificate. The resale certificate must also state the type business engaged in by the purchaser and the type items sold in the regular course of business. A resale certificate may be accepted from the out-of-state retailer even if the Texas retailer ships or delivers the taxable item directly to a recipient located inside Texas.

(3) The Texas retailer is not responsible for determining whether the out-of-state retailer is required to hold a Texas sales and use tax permit or to enter a Texas permit number on the resale certificate.

(4) Foreign purchasers, other than purchasers from Mexico, who are not engaged in business in Texas and do not hold a Texas sales and use tax permit, may issue a properly completed resale certificate, as described in paragraph (2) of this subsection, in lieu of paying tax on the purchase of taxable items for sale in the normal course of business when the items are delivered or shipped to a location outside of Texas but within the United States or Mexico.

(5) An out-of-state or foreign purchaser who acquires goods or services from a Texas seller for resale in Texas should refer to §3.286 of this title for information on their responsibilities.

(6) A purchaser, whether from Texas, Mexico, or another foreign country, may not issue a resale certificate for taxable items purchased for resale outside the United States or Mexico. See subsection (b)(5) of this section. Purchasers who purchase taxable items in Texas for sale outside the United States or Mexico must comply with the requirements of §3.323 of this title to claim exemption from the Texas sales tax.

(e) Taxable use of items purchased for resale; items removed from tax-free inventory.

(1) Divergent use; paying tax on fair market rental value. When a taxable item is removed from a valid tax-free inventory for use in Texas, Texas sales tax is due. When a taxable item purchased under a resale certificate is used for any purpose other than retention, demonstration, or display while holding it for sale, lease, or rental, or for transfer as an integral part of a taxable service, the purchaser is liable for sales tax based on the value of the taxable item for the period of time used.

(A) The value of tangible personal property is the fair market rental value of the tangible personal property. The fair market rental value is the amount that a purchaser would pay on the open market to rent or lease the tangible personal property for use. If tangible personal property has no fair market rental value, sales tax is due based upon the original purchase price.

(B) The value of a taxable service is the fair market value of the taxable service. The fair market value is the amount that a purchaser would pay on the open market to obtain that taxable service. If a taxable service has no fair market value, sales tax is due based upon the original purchase price.

(C) At any time the person using a taxable item may stop paying tax on the value of the taxable item and instead pay sales

tax on the original purchase price. When the person elects to pay sales tax on the original purchase price, credit will not be allowed for taxes previously paid based on value.

(2) Donation of taxable item. A purchaser who gives a valid resale certificate instead of paying tax on the purchase of a taxable item is not liable for sales tax on the taxable item when donated to an organization exempt under Tax Code, §151.309 (Governmental Entities), or §151.310(a)(1) and (2) (Religious, Educational, And Public Service Organizations), provided the purchaser did not make a taxable use of the donated taxable item prior to its donation.

(3) Use of taxable item as a trade-in. A purchaser who gives a valid resale certificate instead of paying tax on the purchase of a taxable item is liable for sales tax if the purchaser uses the taxable item as a trade-in on the purchase of another taxable item. Tax must be paid on the original purchase price of the taxable item used as a trade-in.

(4) Use of taxable item outside Texas. Texas sales or use tax is not due on a taxable item removed from a valid tax-free inventory for use by the purchaser outside the state.

(5) Lost or destroyed inventory. Texas sales or use tax is not due on tangible personal property purchased under a valid resale certificate that is totally destroyed or permanently disposed of by the purchaser in a manner other than for use or sale in the normal course of business. For example, documented theft, casualty damage or loss, or disposal in a landfill. This does not apply to consumable items that are completely used up or destroyed by the purchaser in the course of performing a service in Texas.

(f) Improper use of a resale certificate; criminal offenses.

(1) A person may not issue a resale certificate at the time of purchase for a taxable item if the person knows the item is being purchased for a specific taxable use.

(2) Any person who intentionally or knowingly makes, presents, uses, or alters a resale certificate for the purpose of evading Texas sales or use tax is guilty of a criminal offense. For more information, see §3.305 of this title (relating to Criminal Offenses and Penalties).

(g) Content of a resale certificate. A resale certificate must show:

(1) the name and address of the purchaser;

(2) the number from the sales tax permit held by the purchaser or a statement that an application for a permit is pending before the comptroller with the date the application for a permit was made. If the application is pending, the resale certificate is valid for only 60 days, after which time the resale certificate must be renewed to show the permanent permit number. If the purchaser holds a Texas sales and use tax permit, the number must consist of 11 digits that begin with a 1 or 3. Federal employer's identification (FEI) numbers or social security numbers are not acceptable evidence of resale. See also subsection (d)(2) of this section regarding registration numbers for retailers outside Texas;

(3) a description of the taxable items generally sold, leased, or rented by the purchaser in the regular course of business and a description of the taxable items to be purchased tax free by use of the certificate. The item to be purchased may be generally described on the certificate or itemized in an order or invoice attached to the certificate;

(4) the signature of the purchaser or an electronic form of the purchaser's signature authorized by the comptroller and the date; and

(5) the name and address of the seller.

(h) Form of a resale certificate. A resale certificate must be substantially either in the form of a Texas Sales and Use Tax Resale Certificate or a Border States Uniform Sale for Resale Certificate. Copies of both certificates are available at [comptroller.texas.gov](http://comptroller.texas.gov) or may be obtained by calling our toll-free number 1-800-252-5555. A seller may also accept as a resale certificate the Uniform Sales and Use Tax Certificate-Multijurisdiction promulgated by the Multistate Tax Commission and available online at <http://www.mtc.gov>. The Streamlined Sales and Use Tax Agreement Certificate of Exemption may not be accepted as a resale certificate.

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

Filed with the Office of the Secretary of State on August 6, 2020.

TRD-202003185

William Hamner

Special Counsel for Tax Administration

Comptroller of Public Accounts

Earliest possible date of adoption: September 20, 2020

For further information, please call: (512) 475-0387



### 34 TAC §3.292

The Comptroller of Public Accounts proposes amendments to §3.292, concerning repair, remodeling, maintenance, and restoration of tangible personal property. The section is being amended to reflect the changes made to Tax Code, §151.338 ("Environment and Conservation Services") by Senate Bill 1525, 86th Legislature, 2019. The section is being amended to also reflect the changes made to Tax Code, §160.001(2) ("Definitions") by House Bill 4032, 86th Legislature, 2019.

The comptroller amends subsection (a)(1) "Chapter 160 boat" to update the maximum length of such a boat from 65 to 115 feet to implement House Bill 4032.

The comptroller amends subsection (b)(1) to update the title reference to §3.286 of this title (relating to Seller's and Purchaser's Responsibilities).

The comptroller amends section (f) to add the title reference §3.300 of this title (relating to Manufacturing; Custom Manufacturing; Fabricating; Processing).

The comptroller adds new subsection (h) to clarify the exemption for labor to repair, remodel, maintain, or restore tangible personal property when that labor is required by law to protect the environment or conserve energy to implement Senate Bill 1525.

Tom Currah, Chief Revenue Estimator, has determined that during the first five years that the proposed amendment is in effect, the amendment: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy. This proposal amends a current rule.

Mr. Currah also has determined that for each year of the first five years the rule is in effect, proposed amendment would benefit the public by conforming the rule to current statutes. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. The proposed amendment would have no significant fiscal impact on the state government, units of local government, or individuals. There would be no anticipated significant economic costs to the public.

Comments on the proposal may be submitted to Teresa G. Bostick, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments are proposed 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.

The amendments implement Tax Code, §151.338, ("Environment and Conservation Services"), and §160.001(2) ("Definitions").

§3.292. *Repair, Remodeling, Maintenance, and Restoration of Tangible Personal Property.*

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

(1) Chapter 160 boat--A vessel not more than 115 [65] feet in length, measured from the tip of the bow in a straight line to the stern, that is not a canoe, kayak, rowboat, raft, punt, inflatable vessel, or other watercraft designed to be propelled by paddle, oar, or pole, and that is subject to tax under Tax Code, Chapter 160 (Taxes on Sales and Use of Boats and Boat Motors).

(2) Commercial vessel--A vessel that displaces eight or more tons of fresh water before being loaded with fuel, supplies, or cargo, and that is:

(A) used exclusively and directly in a commercial or business enterprise or activity, including, but not limited to, commercial fishing; or

(B) used commercially for pleasure fishing by individuals who are paying passengers.

(3) Consumable supplies--Tangible personal property that is used by a service provider to repair, remodel, maintain, or restore tangible personal property belonging to another; is not transferred into the care, custody, and control of the purchaser of the service; and, having been used once for its intended purpose, is completely used up or destroyed. Examples of consumable supplies include, but are not limited to, canned air used to remove dust from equipment and solvents used to clean equipment parts.

(4) Extended warranty or service policy--A contract sold to the purchaser of tangible personal property for an amount in addition to the charge for the tangible personal property, or sold to an owner of tangible personal property, to extend the terms of the manufacturer's written warranty or provide a warranty in addition to or in place of the manufacturer's written warranty.

(5) Fabricate--To make, build, create, produce, or assemble components of tangible personal property, or to make tangible personal property work in a new or different manner.

(6) Maintain--To perform maintenance.

(7) Maintenance--Work performed on operational and functioning tangible personal property that is necessary to sustain or support safe, efficient, continuous operation of the tangible personal property, or is necessary to keep the tangible personal property in good working order by preventing decline, failure, lapse, or deterioration.

(8) Manufacturer's written warranty--A manufacturer's guarantee made for no additional charge to the purchaser of an item of tangible personal property that the item is operable and will remain operable for a specified period of time.

(9) Processing--The physical application of the materials and labor necessary to modify or to change the characteristics of tangible personal property. The repair of tangible personal property, belonging to another, by restoring it to its original condition is not considered processing of the tangible personal property. The mere packing, unpacking, or shelving of tangible personal property to be sold is not considered to be processing of the tangible personal property. Processing does not include remodeling.

(10) Remodel--To modify or remake tangible personal property belonging to another in a similar but different manner, or to change the style, shape, or form of tangible personal property belonging to another, without causing a loss of its identity or without causing it to operate in a new or different manner. Remodeling does not include processing.

(11) Repair--To mend or restore to working order or operating condition tangible personal property that was broken, damaged, worn, defective, or malfunctioning.

(12) Restore--To return tangible personal property that is still operational and functional, but that has faded, declined, or deteriorated, to its former or original state.

(13) Service provider--A person who repairs, remodels, maintains, or restores tangible personal property belonging to another.

(14) Vessel--A watercraft, other than a seaplane on water, used, or capable of being used, for navigation and transportation of persons or property on water. The term includes a ship, boat, watercraft designed to be propelled by paddle or oar, barge, and floating dry-dock.

(15) Warrantor--A person who has a contractual obligation for a specified period of time to repair, remodel, maintain, or restore tangible personal property belonging to another.

(b) Taxability of services to repair, remodel, maintain, or restore tangible personal property.

(1) General rule. Except as otherwise provided in this section, service providers who repair, remodel, maintain, or restore tangible personal property belonging to another are providing taxable services. A service provider is a seller and must obtain a sales and use tax permit and collect and remit sales and use tax as provided in §3.286 of this title (relating to Seller's and Purchaser's Responsibilities[~~including Nexus, Permits, Returns and Reporting Periods, and Collection and Exemption Rules~~]). Sales or use tax is due from the purchaser on the entire charge for a service to repair, remodel, maintain, or restore tangible personal property, including any separately stated charge for materials, parts, labor, consumable supplies, or equipment. In addition, the purchaser owes sales or use tax on any charge connected to the taxable service, including separately stated charges for inspecting, monitoring, or testing.

(A) Aircraft. Service providers who repair, remodel, maintain, or restore aircraft should refer to §3.280 of this title (relating to Aircraft).



(B) Motor vehicles. Service providers who remodel motor vehicles are providing taxable services and are covered by this section. Service providers who repair, maintain, or restore motor vehicles should refer to §3.290 of this title (relating to Motor Vehicle Repair and Maintenance; Accessories and Equipment Added to Motor Vehicles; Moveable Specialized Equipment).

(C) Vessels. Service providers who repair, remodel, maintain, or restore a vessel that is a Chapter 160 boat, sports fishing boat, or any other boat used for pleasure, and that is not a commercial vessel, are providing taxable services and are covered by this section. Service providers who repair, remodel, maintain, or restore commercial vessels should refer to §3.297 of this title (relating to Carriers, Commercial Vessels, Locomotives and Rolling Stock, and Motor Vehicles).

(D) Locomotives and rolling stock. Service providers who repair, remodel, maintain, or restore locomotives or rolling stock should refer to §3.297 of this title.

(E) Exempt equipment. A service to repair, remodel, maintain, or restore tangible personal property that, if sold, leased, or rented at the time the service is performed, would be exempt under Tax Code, Chapter 151 (Limited Sales, Excise, and Use Tax) due to its nature or its use is exempt from sales and use taxes. Tax is due on the sale of services to repair, remodel, maintain, or restore tangible personal property that was exempt at the time of purchase but would not be exempt at the time the service is performed. For example, services to repair, remodel, maintain, or restore the following tangible personal property will not qualify for exemption based solely on the fact that such tangible personal property was exempt at the time of its purchase: [5]

(i) tangible personal property purchased from an organization exempted from paying sales or use tax under Tax Code, §151.309 (Governmental Entities) or §151.310 (Religious, Educational, and Public Service Organizations);

(ii) tangible personal property exempted from use tax because sales tax was paid on the purchase;

(iii) tangible personal property acquired tax-free in a transaction qualifying as an occasional sale under Tax Code, §151.304 (Occasional Sales), or as a joint ownership transfer exempted under Tax Code, §151.306 (Transfers of Common Interests in Property). See §3.316 of this title (relating to Occasional Sales; Transfers Without Change in Ownership; Sales by Senior Citizens' Organizations; Sales by University and College Student Organizations; and Sales by Non-profit Animal Shelters) and §3.331 of this title (relating to Transfers of Common Interests in Tangible Personal Property; Intercorporate Services); or

(iv) tangible personal property purchased tax-free during a sales tax holiday as provided by §3.353 of this title (relating to Sales Tax Holiday--Certain Emergency Preparation Supplies), §3.365 of this title (relating to Sales Tax Holiday--Clothing, Shoes and School Supplies) or §3.369 of this title (relating to Sales Tax Holiday--Certain Energy Star Products, Certain Water-Conserving Products, and WaterSense Products).

(2) Resale certificates.

(A) A service provider may issue a properly completed resale certificate instead of paying sales or use tax on the purchase of tangible personal property that is integral to repairing, remodeling, maintaining, or restoring tangible personal property belonging to another and is transferred to the care, custody, and control of the purchaser of the taxable service. See §3.285 of this title (relating to Resale Certificate; Sales for Resale).

(B) A person holding tangible personal property for sale, lease, or rental may issue a properly completed resale certificate in lieu of paying sales or use tax on the purchase of labor and tangible personal property used to repair, remodel, maintain, or restore that tangible personal property. Refer to §3.285 of this title and §3.294 of this title (relating to Rental and Lease of Tangible Personal Property).

(3) A service provider working under an agreement that provides that the purchaser of the service will furnish the tangible personal property required for the service must collect sales or use tax on the charge for the service.

(4) A service provider may accept a properly completed exemption certificate instead of collecting sales or use tax when performing a taxable service for a purchaser who is exempt from sales and use tax under Tax Code, Chapter 151, or when performing services on tangible personal property that is exempt from sales and use tax. Refer to §3.287 of this title (relating to Exemption Certificates).

(c) Consumable supplies and equipment. Sales or use tax must be paid by the service provider on consumable supplies and equipment that are purchased for use in the performance of a service that are not transferred to the care, custody, and control of the customer.

(d) Warranties. For information on warranties for the repair of motor vehicles, refer to §3.290 of this title. For information concerning warranties for the repair of aircraft, refer to §3.280 of this title.

(1) Manufacturer's written warranty or recall campaign. No sales or use tax is due on tangible personal property or labor furnished by the manufacturer to repair tangible personal property under a manufacturer's written warranty or recall campaign.

(A) Records must be kept by the service provider to document that the service and tangible personal property were used in repairing an item under a manufacturer's written warranty or recall campaign.

(B) The service provider may purchase tangible personal property to be used in repairs under a manufacturer's written warranty or recall campaign tax-free by issuing an exemption certificate to the seller.

(2) Extended warranty or service policy.

(A) Sales or use tax is due on the sale of an extended warranty or service policy.

(B) The warrantor may issue a resale certificate in lieu of paying sales or use tax on the purchase of taxable items used in performing the services covered by the contract as long as the taxable items are integral to performing the service and the taxable items are also transferred to the care, custody, and control of the purchaser. Refer to §3.285 of this title.

(C) If the warrantor uses a third-party service provider to perform the service, the third-party service provider may accept a resale certificate from the warrantor in lieu of sales or use tax.

(D) The warrantor must collect sales or use tax on any charge to the purchaser for labor or tangible personal property not covered by the extended warranty or service policy.

(E) If the warrantor uses a third-party service provider to fulfill the warranty and the service provider charges the warrantor or the purchaser for tangible personal property or labor not covered under the warranty, the service provider must collect sales or use tax on such charges.

(3) Replacements and reimbursements.

(A) Trade-in. If the warrantor is a seller of tangible personal property, and if the terms of a manufacturer's or extended warranty agreement provide for either the replacement or the repair, remodeling, maintenance, or restoration of tangible personal property, then tangible personal property accepted by the warrantor under the terms of the warranty in exchange for, or towards the purchase of, tangible personal property of the type sold by the warrantor in the regular course of business will be considered a trade-in. The provisions of Tax Code, §151.007(c)(5) ("Sales Price" or "Receipts") apply to such a transaction and any amount or credit provided for the trade-in reduces the taxable amount of the sale of the replacement item.

(B) The sale of a contract that provides that a warrantor will reimburse a purchaser for payments made to replace, repair, remodel, maintain, or restore faulty, damaged, lost, or stolen tangible personal property, including the amount of any sales and use tax, is not taxable. In addition, the amount reimbursed to the purchaser of the faulty, damaged, lost, or stolen tangible personal property by the warrantor under such a contract is not taxable.

(e) Services performed on real property. Persons who build new improvements to real property, or repair, restore, or remodel residential real property belonging to others, should refer to §3.291 of this title (relating to Contractors). Persons who repair or remodel nonresidential real property belonging to others should refer to §3.357 of this title (relating to Nonresidential Real Property Repair, Remodeling, and Restoration; Real Property Maintenance).

(f) Fabricating or processing tangible personal property. Persons who fabricate or process tangible personal property belonging to another should refer to §3.300 of this title (relating to Manufacturing; Custom Manufacturing; Fabricating; Processing).

(g) Exemption for disaster areas.

(1) Labor to repair, restore, remodel, or maintain tangible personal property is exempt if:

(A) the amount of the charge for labor is separately stated from any charge for tangible personal property on the invoice, contract, or similar document provided by the service provider to the purchaser; and

(B) the service is performed on tangible personal property that was damaged within a disaster area by the condition that caused the area to be declared a disaster area.

(2) The exemption does not apply to tangible personal property transferred from the service provider to the purchaser as part of the repair.

(3) In this subsection, "disaster area" means:

(A) an area declared a disaster area by the Governor of Texas under Government Code, Chapter 418 (Emergency Management); or

(B) an area declared a disaster area by the President of the United States under 42 United States Code, Chapter 68 (Disaster Relief).

(h) Repair services required to protect the environment or conserve energy.

(1) Labor to repair, remodel, maintain, or restore tangible personal property is exempt if:

(A) the repair, remodeling, maintenance, or restoration is required by statute, ordinance, order, rule, or regulation of any commission, agency, court, or political, governmental, or quasi-govern-

mental entity in order to protect the environment or to conserve energy; and

(B) the charge for the labor is itemized separately from the charge for materials furnished.

(2) The exemption in paragraph (1) of this subsection does not apply to a lump sum charge for labor and materials.

(3) Sixty-five percent of a lump-sum charge for labor and materials for the repair, remodeling, maintenance, or restoration of tangible personal property is exempt if:

(A) the repair, remodeling, maintenance, or restoration is required by statute, ordinance, order, rule, or regulation of any commission, agency, court, or political, governmental, or quasi-governmental entity in order to protect the environment or to conserve energy; and

(B) the labor and materials are purchased for a health care facility (Health and Safety Code, §108.002) or oncology center.

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

Filed with the Office of the Secretary of State on August 6, 2020.

TRD-202003186

William Hamner

Special Counsel for Tax Administration

Comptroller of Public Accounts

Earliest possible date of adoption: September 20, 2020

For further information, please call: (512) 475-0387



### 34 TAC §3.305

The Comptroller of Public Accounts proposes amendments to §3.305, concerning criminal offenses and penalties. The comptroller amends the section to reflect the changes in Tax Code, §151.704 (Sales Tax Absorption; Criminal Penalty) made by House Bill 2358, 86th Legislature, 2019.

House Bill 2358 amended Tax Code, §151.704, retitled to Sales Tax Absorption; Criminal Penalty, to provide conditions under which a seller may advertise to a customer that the seller will pay the sales tax due on a taxable transaction. To implement these changes, the comptroller amends subsection (b)(1) to state it is a criminal offense for a seller to state in an advertisement or other similar statement that the sales or use tax payable by the customer is not part of the sales price. The comptroller adds new paragraph (2) to provide the conditions under which a seller can indicate in an advertisement or statement that the seller is paying the tax for the customer. Subsequent paragraphs are renumbered accordingly.

Tom Currah, Chief Revenue Estimator, has determined that during the first five years that the proposed amendment is in effect, the amendment: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy. This proposal amends a current rule.

Mr. Currah also has determined that for each year of the first five years the rule is in effect, the proposed amendment would benefit the public by conforming the rule to current statutes and agency policy. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. The proposed amendment would have no significant fiscal impact on the state government, units of local government, or individuals. There would be no anticipated significant economic costs to the public.

Comments on the proposal may be submitted to Teresa G. Bostick, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments are proposed 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.

The amendment implements Tax Code, §151.704, (Sales Tax Absorption; Criminal Penalty).

§3.305. *Criminal Offenses and Penalties.*

(a) General. Tax Code, Chapter 151, prohibits certain activities and provides criminal penalties for violations.

(b) Criminal offenses provided in Tax Code, Chapter 151, include, but are not limited to, the following:

(1) A seller commits an offense if the seller directly or indirectly advertises, ~~or~~ holds out, or states to a customer or to the public that the tax is not part of the sales price payable by the customer. ~~[seller will assume, absorb, or refund any portion of the tax, or that the seller will not add the tax to the sales price of taxable items.]~~ This offense is a misdemeanor punishable by a fine of not more than \$500 for each occurrence.

(2) It is not a criminal offense if:

(A) a seller indicates in an advertisement, holding out, or statement that the seller is paying the tax due on the purchased item(s) for the customer;

(B) the seller does not indicate or imply in the advertisement, holding out, or statement that the sale is exempt or excluded from taxation; and

(C) any purchaser's receipt or other statement given to the customer lists the sales price paid or to be paid by the customer, separately states the amount of the tax due on the purchase price, and indicates that the tax will be paid and remitted by the seller.

(3) ~~[(2)]~~ A person commits an offense if the person intentionally or knowingly makes a false entry in, or a fraudulent alteration of, an exemption or resale certificate; makes, presents, or uses an exemption or resale certificate with knowledge that it is false and with intent that the certificate be accepted as valid; or intentionally conceals, removes, or impairs the verity or legibility of an exemption or resale certificate; or unreasonably impedes the availability of an exemption or resale certificate. An offense is:

(A) a Class C misdemeanor if the tax avoided by the use of the exemption or resale certificate is less than \$20;

(B) a Class B misdemeanor if the tax avoided by the use of the exemption or resale certificate is \$20 or more but less than \$200;

(C) a Class A misdemeanor if the tax avoided by the use of the exemption or resale certificate is \$200 or more but less than \$750;

(D) a felony of the third degree if the tax avoided by the use of the exemption or resale certificate is \$750 or more but less than \$20,000; and

(E) a felony of the second degree if the tax avoided by the use of the exemption or resale certificate is \$20,000 or more.

(4) ~~[(3)]~~ A person or officer of a corporation commits an offense if the person or the corporation engages in business as a seller in this state without a permit or with a suspended permit. A separate offense is committed each day a person operates a business without a permit or with a suspended permit. An offense is:

(A) a Class C misdemeanor for a first offense;

(B) a Class B misdemeanor punishable by a fine not to exceed \$2,000 for a second conviction;

(C) a Class A misdemeanor punishable by a fine not to exceed \$4,000 for a third conviction; and

(D) a Class A misdemeanor punishable by a fine not to exceed \$4,000, confinement in jail for a term not to exceed a year, or both the fine and confinement for a fourth or subsequent conviction.

(5) ~~[(4)]~~ A person commits an offense if the person intentionally or knowingly fails to pay to the comptroller the tax collected by that person. When tax is collected and not paid pursuant to one scheme or continuous course of conduct, all such conduct may be considered as one offense and the amounts of tax collected and not paid may be aggregated in determining the grade of the offense. An offense is:

(A) a Class C misdemeanor if the amount of the tax collected and not paid is less than \$50;

(B) a Class B misdemeanor if the amount of the tax collected and not paid is \$50 or more but less than \$500;

(C) a Class A misdemeanor if the amount of the tax collected and not paid is \$500 or more but less than \$1,500;

(D) a state jail felony if the amount of the tax collected and not paid is \$1,500 or more but less than \$20,000;

(E) a felony of the third degree if the amount of the tax collected and not paid is \$20,000 or more but less than \$100,000;

(F) a felony of the second degree if the amount of the tax collected and not paid is \$100,000 or more but less than \$200,000; and

(G) a felony of the first degree if the amount of the tax collected and not paid is \$200,000 or more.

(6) ~~[(5)]~~ A person commits an offense if the person refuses to furnish a report as required by Tax Code, Chapter 151, or by the comptroller. An offense is:

(A) a Class C misdemeanor for a first offense;

(B) a Class B misdemeanor punishable by a fine not to exceed \$2,000 for a second conviction; and

(C) a Class A misdemeanor punishable by a fine not to exceed \$4,000 for a third or subsequent conviction.

(7) ~~[(6)]~~ A person commits an offense if the person intentionally or knowingly conceals, destroys, makes a false entry in, or fails to make an entry in records that are required to be made or kept under Tax Code, Chapter 151. An offense is a felony of the third degree.

(8) [(7)] A person commits an offense if the person fails to produce or allow inspection of a record that is required to be kept under Tax Code, Chapter 151, within an allowed period of time after a person who is authorized by the comptroller requests the record. Except as provided in paragraph (9) [(8)] of this subsection, an offense is a Class C misdemeanor. A separate offense is committed each day the person fails to allow inspection of records or fails to produce records after the allowed time period expired. See subsection (c) of this section for certain restrictions.

(9) [(8)] A person commits an offense if the person intentionally fails to produce to the comptroller records that document the taxpayer's taxable sale of items that the taxpayer obtained using a resale certificate. The records to which the offense applies are those required to be kept under Tax Code, §151.025 (Records Required to be Kept), which were requested by the comptroller under Tax Code, §151.023 (Investigations and Audits) and which are not produced in the period required by that section. The items to which the offense applies are items the sales of which are required to be reported to the comptroller under Tax Code, §§151.433 (Reports by Wholesalers and Distributors of Beer, Wine, and Malt Liquor), 154.212 (Reports by Wholesalers and Distributors of Cigarettes), or 155.105 (Reports by Wholesalers and Distributors of Cigars and Tobacco Products). It is an affirmative defense to prosecution under this paragraph that the items listed for purchase on the resale certificate had not been resold at the time of the comptroller's request for records under Tax Code, §151.023. If the conduct described by this paragraph is related to one scheme or continuous course of conduct, all such conduct may be considered as one offense and the amounts aggregated in determining the grade of the offense. See subsection (c) of this section for certain restrictions. An offense is:

(A) a Class C misdemeanor if the tax avoided by use of the resale certificate is less than \$20;

(B) a Class B misdemeanor if the tax avoided by use of the resale certificate is \$20 or more but less than \$200;

(C) a Class A misdemeanor if the tax avoided by use of the resale certificate is \$200 or more but less than \$750;

(D) a felony of the third degree if the tax avoided by use of the resale certificate is \$750 or more but less than \$20,000; or

(E) a felony of the second degree if the tax avoided by use of the resale certificate is \$20,000 or more.

(c) Inspection and demand for production. Tax Code, §151.023 permits the comptroller to inspect business premises where a taxable event has occurred and to issue a written demand notice to a taxpayer or to an employee, an authorized representative, or agent of the taxpayer for the production of documents within 10 business days of delivery of the notice. This authority will be exercised within the parameters outlined in §3.281(f) of this title (relating to Records Required; Information Required). The comptroller may file criminal charges with appropriate authorities for violations of Tax Code, §151.023, if the taxpayer fails to permit inspection or fails to produce documents in response to a demand by the comptroller's Enforcement Division or Criminal Investigation Division.

(d) Confidential information. The comptroller or the attorney general may use taxpayer information or records made confidential by Tax Code, Title 2 to enforce Tax Code, Title 2 or the criminal laws of Texas or the United States, or may authorize the use of information or records made confidential by Tax Code, Title 2 in a judicial or administrative proceeding in which this state, another state, or the federal government is a party.

(e) Penal Code.

(1) Criminal conspiracy. Penal Code, §15.02 (Criminal Conspiracy) and §15.04 (Renunciation Defense) apply to all criminal offenses prescribed by the Tax Code.

(2) Organized crime. A person commits an offense under Penal Code, §71.02, if the person, with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang, commits or conspires to commit a felony offense prescribed by the Tax Code. The terms "combination," "profits," "criminal street gang," and "conspires to commit," are defined by Penal Code, §71.01.

(3) Money laundering. The definition of the term "proceeds" in Penal Code, Chapter 34 (Money Laundering) includes funds acquired or derived directly or indirectly from, produced through, or realized through conduct that constitutes an offense under Tax Code, §151.7032 (Failure to Pay Taxes Collected; Criminal Penalty and Aggregation of Amounts Involved).

(f) Venue. The venue for prosecution of any offense incurred under Tax Code, Chapter 151 is Travis County or the county in which any element of the offense occurs. If prosecution for engaging in criminal conspiracy, an organized criminal activity, or money laundering is based upon an offense classified as a felony under the Tax Code, the venue for prosecution of the conspiracy, organized criminal activity, or money laundering is any county in which venue for the underlying offense is proper under the Tax Code.

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

Filed with the Office of the Secretary of State on August 6, 2020.

TRD-202003187

William Hamner

Special Counsel for Tax Administration

Comptroller of Public Accounts

Earliest possible date of adoption: September 20, 2020

For further information, please call: (512) 475-0387



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

#### CHAPTER 4. COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES

##### SUBCHAPTER B. REGULATIONS GOVERNING TRANSPORTATION SAFETY

###### 37 TAC §4.12

The Texas Department of Public Safety (the department) proposes amendments to §4.12, concerning Exemptions and Exceptions. The proposed amendments are necessary to harmonize updates to 49 CFR with those laws adopted by Texas. The Federal Motor Carrier Safety Administration has granted an expansion of interstate hours of service for short-haul drivers and provided for an exemption for adverse driving conditions. This adoption harmonizes intrastate rules so that intrastate drivers

can also use these expanded hours. Section 4.12 (a)(5) is eliminated as the changes in (a)(4) make it redundant.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the section as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of enforcing the rule will be maximum efficiency of the Motor Carrier Safety Assistance Program.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require an increase or decrease in future legislative appropriations to the agency; will not require the creation of new employee positions nor eliminate current employee positions; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does limit an existing regulation. It does not increase or decrease the number of individuals subject to its applicability. During the first five years the proposed rule is in effect, the proposed rule should positively impact the state's economy.

The Texas Department of Public Safety, in accordance with the Administrative Procedures Act, Texas Government Code, §2001, *et seq.*, and Texas Transportation Code, Chapter 644, will hold a public hearing on Tuesday, September 8, 2020 at 10:00 a.m., at the Texas Department of Public Safety, Texas Highway Patrol Division, Building G Annex, 5805 North Lamar, Austin, Texas 78752-4431. The purpose of this hearing is to receive comments from all interested persons regarding adoption of the proposed amendments to Administrative Rule §4.12 regarding Exemptions and Exceptions, proposed for adoption under the authority of Texas Transportation Code, Chapter 644, which provides that the director shall, after notice and a public hearing, adopt rules regulating the safe operation of commercial motor vehicles.

Persons interested in attending this hearing are encouraged to submit advance written notice of their intent to attend the hearing and to submit a written copy of their comments. Correspondence

should be addressed to Major Chris Nordloh, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500.

Persons with special needs or disabilities who plan to attend this hearing and who may need auxiliary aids or services are requested to contact Major Chris Nordloh at (512) 424-2775 at least three working days prior to the hearing so that appropriate arrangements can be made.

Other comments on this proposal may be submitted to Major Chris Nordloh, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-2775. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

These amendments are proposed pursuant to Texas Transportation Code, §644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations, by reference.

Texas Transportation Code, §644.051 is affected by this proposal.

#### *§4.12. Exemptions and Exceptions.*

(a) Exemptions to the adoptions in §4.11 of this title (relating to General Applicability and Definitions) are made pursuant to Texas Transportation Code, §§644.052 - 644.054, and are adopted as follows:

(1) Such regulations shall not apply to the vehicles detailed in subparagraph (A) - subparagraph (D) of this paragraph when operated intrastate:

(A) a vehicle used in oil or water well servicing or drilling which is constructed as a machine consisting in general of a mast, an engine for power, a draw works, and a chassis permanently constructed or assembled for such purpose or purposes;

(B) a mobile crane which is an unladen, self-propelled vehicle constructed as a machine used to raise, shift, or lower weights;

(C) a vehicle transporting seed cotton; or

(D) concrete pumps.

(2) The provisions of Title 49, Code of Federal Regulations, §395.3 shall not apply to intrastate commerce. Drivers in intrastate commerce will be permitted to drive 12 hours following 8 consecutive hours off duty. Drivers in intrastate commerce may not drive after having been on duty 15 hours, following 8 consecutive hours off duty. Drivers in intrastate commerce violating the 12 or 15 hour limits provided in this paragraph shall be placed out-of-service for 8 consecutive hours. Drivers of vehicles operating in intrastate commerce shall be permitted to accumulate the equivalent of 8 consecutive hours off duty by taking a combination of at least 8 consecutive hours off duty and sleeper berth time; or by taking two periods of rest in the sleeper berth, providing:

(A) neither rest period in the sleeper berth is shorter than 2 hours duration;

(B) the driving time in the period immediately before and after each rest period in the sleeper berth, when added together, does not exceed 12 hours;

(C) the on duty time in the period immediately before and after each rest period in the sleeper berth, when added together, does not include any driving time after the 15th hour; and

(D) the driver may not return to driving subject to the normal hours of service requirements in this subsection without taking at least 8 consecutive hours off duty, at least 8 consecutive hours in the sleeper berth, or a combination of at least 8 consecutive hours off duty and sleeper berth time.

(3) Drivers in intrastate commerce who are not transporting placardable hazardous materials and were regularly employed in Texas as commercial vehicle drivers prior to August 28, 1989, are not required to meet the medical standards contained in the federal regulations.

(A) For the purpose of enforcement of this regulation, those drivers who reached their 18th birthday on or after August 28, 1989, shall be required to meet all medical standards.

(B) The exceptions contained in this paragraph shall not be deemed as an exemption from drug and alcohol testing requirements contained in Title 49, Code of Federal Regulations, Part 40 and Part 382.

(4) The maintenance of a driver's record of duty status is not required if the vehicle is operated within a 150 air-mile radius of the driver's normal work reporting location if:

(A) the driver returns to the normal work reporting location and is released from work within 14 [12] consecutive hours;

(B) the driver has at least 8 consecutive hours off duty separating each 14 [12] hours on duty; and

(C) the motor carrier that employs the driver maintains and retains for a period of 6 months true and accurate time and business records which include:

(i) the time the driver reports for duty each day;

(ii) the total number of hours the driver is on duty each day;

(iii) the time the driver is released from duty each day;

(iv) the total time on duty for the preceding seven days in accordance with Title 49, Code of Federal Regulations, §395.8(j)(2) for drivers used for the first time or intermittently; and

(v) the motor carrier maintains business records that provide the date, time, quantity, and location of the delivery of a product or service, including delivery tickets or sales invoices.

~~[(5) The maintenance of a driver's record of duty status is not required for the driver of a ready-mix concrete delivery vehicle or a waste and recycling vehicle if the vehicle is operated intrastate within a 150 air-mile radius of the driver's normal work reporting location if:]~~

~~[(A) the driver returns to the normal work reporting location and is released from work within 14 consecutive hours;]~~

~~[(B) the driver has at least 8 consecutive hours off duty separating each 14 hours on duty;]~~

~~[(C) the driver does not exceed 12 hours maximum driving time following 8 consecutive hours off duty; and]~~

~~[(D) the motor carrier that employs the driver maintains and retains for a period of 6 months true and accurate time and business records which include:]~~

~~[(i) the time the driver reports for duty each day;]~~

~~[(ii) the total number of hours the driver is on duty each day;]~~

~~[(iii) the time the driver is released from duty each day;]~~

~~[(iv) the total time on duty for the preceding 7 days in accordance with Title 49, Code of Federal Regulations, §395.8(j)(2) for drivers used for the first time or intermittently; and]~~

~~[(v) the motor carrier maintains business records that provide the date, time, quantity, and location of the delivery of a product or service, including delivery tickets or sales invoices.]~~

~~(5) [(6)] An electronic logging device (ELD) and an automatic on-board recording device have the meaning as defined in Title 49, Code of Federal Regulations, §395.2.~~

~~(6) [(7)] Unless otherwise exempted, a motor carrier operating commercial motor vehicles intrastate shall require each of its drivers to record the driver's record of duty status:~~

~~(A) Using an ELD that meets the requirements of subpart B of Title 49, Code of Federal Regulations, Part 395;~~

~~(B) Using an automatic on-board recording device that meets the requirements of Title 49, Code of Federal Regulations, §395.15; or~~

~~(C) Manually, recorded as specified in Title 49, Code of Federal Regulations, §395.8. The record of duty status must be recorded in duplicate for each 24-hour period for which recording is required.~~

~~(7) [(8)] Unless otherwise exempted, a motor carrier operating commercial motor vehicles intrastate must install and require each of its drivers to use an ELD to record the driver's duty status in accordance with Title 49, Code of Federal Regulations, Part 395.~~

~~(8) [(9)] The provisions of Title 49, Code of Federal Regulations, Part 395 shall not apply to drivers transporting agricultural commodities in intrastate commerce for agricultural purposes within a 150 air-mile radius from the source of the commodities or the distribution point for the farm supplies during planting and harvesting seasons.~~

~~(b) Exceptions adopted by the director of the Texas Department of Public Safety not specified in Texas Transportation Code, §644.053, are:~~

~~(1) Title 49, Code of Federal Regulations, §393.86, requiring rear-end protection shall not be applicable provided the vehicle was manufactured prior to September 1, 1991 and is used solely in intrastate commerce.~~

~~(2) Drivers of vehicles under this section operating in intrastate transportation shall not be permitted to drive after having worked and/or driven for 70 hours in any consecutive seven-day period. A driver may restart a consecutive seven-day period after taking 34 or more consecutive hours off-duty. Drivers in intrastate transportation violating the 70 hour limit provided in this paragraph will be placed out-of-service until no longer in violation.~~

~~(3) For drivers of commercial motor vehicles operating in intrastate transportation and used exclusively in the transportation of oilfield equipment, including the stringing and picking up of pipe used in pipelines, and servicing of the field operations of the natural gas and oil industry, any period of 7 consecutive days may end with the beginning of any off-duty period of 24 or more successive hours.~~

~~(4) For drivers of a commercial motor vehicle operating in intrastate transportation and used primarily in the transportation of construction materials and equipment, any period of 7 consecutive days may end with the beginning of any off-duty period of 24 or more successive hours. "Transportation of construction materials and equip-~~

ment" has the meaning assigned by Title 49, Code of Federal Regulations, §395.2.

(5) Drivers of vehicles operating in intrastate transportation claiming the 150 air-mile radius exemption in paragraph (4) of this subsection must return to the work reporting location; be released from work within 12 consecutive hours; and have at least 8 consecutive hours off-duty separating each 12 hours on-duty.

(6) The provisions of Title 49, Code of Federal Regulations, §391.11(b)(1) shall not apply to intrastate commerce. The minimum age for an intrastate driver shall be 18 years of age. Intrastate drivers in violation of this paragraph shall be placed out-of-service until no longer in violation.

(7) The provisions of Title 49, Code of Federal Regulations, §391.11(b)(2) shall not apply to intrastate commerce. An intrastate driver must have successfully passed the examination for a Texas Commercial Driver's License and be a minimum age of 18 years old.

(8) Texas Transportation Code, §547.401 and §547.404, concerning brakes on trailers weighing 15,000 pounds gross weight or less take precedence over the brake requirements in the federal regulations for trailers of this gross weight specification unless the vehicle is required to meet the requirements of Federal Motor Vehicle Safety Standard No. 121 (Title 49, Code of Federal Regulations §571.121) applicable to the vehicle at the time it was manufactured.

(9) Title 49, Code of Federal Regulations, §390.23 (Relief from Regulations), is adopted for intrastate motor carriers with the exceptions detailed in subparagraph (A) and subparagraph (B) of this paragraph:

(A) Title 49, Code of Federal Regulations, §390.23(a)(2) is not applicable to intrastate motor carriers making emergency residential deliveries of heating fuels or responding to a pipeline emergency, provided the carrier:

(i) documents the type of emergency, the duration of the emergency, and the drivers utilized; and

(ii) maintains the documentation on file for a minimum of six months. An emergency under this paragraph is one that if left unattended would result in immediate serious bodily harm, death or substantial property damage but does not include routine requests to refill empty propane gas tanks.

(B) The requirements of Title 49, Code of Federal Regulations, §390.23(c)(1) and (2), for intrastate motor carriers shall be:

(i) the driver has met the requirements of Texas Transportation Code, Chapter 644; and

(ii) the driver has had at least eight consecutive hours off-duty when the driver has been on duty for 15 or more consecutive hours, or the driver has had at least 34 consecutive hours off duty when the driver has been on duty for more than 70 hours in seven consecutive days.

(10) The provisions of Title 49, Code of Federal Regulations, Part 380 (Subparts A - D) shall not apply to intrastate motor carriers and drivers. Title 49, Code of Federal Regulations, Part 380 (Subpart E) is adopted for intrastate motor carriers and drivers. Intrastate motor carriers and drivers must complete the requirements of Title 49, Code of Federal Regulations, §380.500 on or before July 31, 2005.

(11) In accordance with §4132 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETA-LU) (Pub. L. 109-59), the hours of service regulations in this subchapter are not applicable to utility service vehicles that

operate in either interstate or intrastate commerce. Utility service vehicles are those vehicles operated by public utilities, as defined in the Public Utility Regulatory Act, the Gas Utility Regulatory Act, the Texas Water Code, Title 49, Code of Federal Regulations, §395.2, or other applicable regulations, and charged with the responsibility for maintaining essential services to the public to protect health and safety.

(12) The United States Department of Transportation number requirements in Texas Transportation Code, Chapter 643 do not apply to vehicles/motor carriers operating exclusively in intrastate commerce and that are exempted from the requirements by Texas Transportation Code, §643.002.

(13) Drivers of vehicles under this section, operating in intrastate transportation, who encounter adverse driving conditions and cannot, because of those conditions, safely complete the run within the maximum driving time or duty time during which driving is permitted under subsection (a)(2) of this section, may drive and be permitted or required to drive a commercial motor vehicle for not more than two additional hours beyond the maximum allowable hours permitted under subsection (a)(2) of this section to complete that run or to reach a place offering safety for the occupants of the commercial motor vehicle and security for the commercial motor vehicle and its cargo. Adverse driving conditions means snow, sleet, fog, or other adverse weather conditions, a highway covered with snow or ice, or unusual road and traffic conditions, none of which were apparent on the basis of information known to the driver immediately prior to beginning the duty day or immediately before beginning driving after a qualifying rest break or sleeper berth period, or a motor carrier immediately prior to dispatching the driver.

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

Filed with the Office of the Secretary of State on August 5, 2020.

TRD-202003167

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: September 20, 2020

For further information, please call: (512) 424-5848



## **TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

### **PART 12. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS**

#### **CHAPTER 374. DISCIPLINARY ACTIONS/DETRIMENTAL PRACTICE/COMPLAINT PROCESS/CODE OF ETHICS/LI-CENSURE OF PERSONS WITH CRIMINAL CONVICTIONS**

##### **40 TAC §374.1**

The Texas Board of Occupational Therapy Examiners proposes amendments to the Schedule of Sanctions Figure in 40 Texas Administrative Code §374.1, concerning Disciplinary Actions.

The amendments are proposed to replace "investigative costs" with "administrative penalties" in the Schedule of Sanctions, and to update other language to make the schedule consistent with other provisions in the chapter.

Changes to the Schedule of Sanctions include replacing investigative costs with administrative penalties. The Occupational Therapy Practice Act, Texas Occupations Code §454.3521, authorizes the Board to impose an administrative penalty for a violation of the chapter or a rule adopted under the chapter. The proposed amendments to the Schedule of Sanctions Figure in §374.1 will impose administrative penalties, not to exceed \$200 for each day a violation continues or occurs, to the "Minimum Discipline," "Intermediate Discipline," and "Maximum Discipline" levels per §454.3521. The graduated penalty amounts are assessed based on the severity and type of violation per §454.3025(a).

Additional changes to the Schedule of Sanctions include updating citations to the "OT Act/Rule" column. The changes also include removing from the "Failed to Properly Renew a License" violation the reference to §367.1(b) and replacing such with a reference to the full §367.1, concerning continuing education, as further provisions in the section concern the violation. Such a change, concomitantly, will ensure that the schedule's reference to the section remains intact in the event that changes to the lettering of the section's provisions are made.

An additional cleanup removes the phrase "until conditions are met or indefinitely" from the "Maximum Discipline" column, with regard to the revocation or surrender of a license. The change is made to reflect that the administrative penalty assessed in an order is fixed, not indefinitely cumulative.

A further change to the section concerns removing from the "Minimum Discipline" and "Intermediate Discipline" columns the extraneous term "provisional" when it precedes "restricted practice." The removal is a cleanup to increase consistency in the schedule, as in other areas of the schedule, just the phrase "restricted practice" is employed for an equivalent sanction. A further change to the section involves a cleanup to correct "licensee" to "license."

#### FISCAL NOTE ON STATE AND LOCAL GOVERNMENTS

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

#### LOCAL EMPLOYMENT IMPACT

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

#### PUBLIC BENEFIT AND COST NOTE

Mr. Harper has determined under Texas Government Code §2001.024(a)(5) that for each of the first five years the proposed amendments would be in effect, the public benefit will be the increased consistency of the penalties in the Schedule of Sanctions and conformity with other sections in the Occupational Therapy Practice Act. There would not be an additional

anticipated economic cost to persons required to comply with the proposed amendments because the Occupational Therapy Practice Act already allows for the Board to impose an administrative penalty and proposed changes do not exceed that amount, and the remaining proposed amendments are cleanups that do not concern costs.

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

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

#### TAKINGS IMPACT ASSESSMENT

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

#### GOVERNMENT GROWTH IMPACT STATEMENT

The agency has determined under Texas Government Code §2001.0221 that during the first five years the rule would be in effect:

- (1) the rule will not create or eliminate a government program;
- (2) the rule will not require the creation of new employee positions or the elimination of existing employee positions;
- (3) the rule will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rule will not require an increase or decrease in fees paid to the agency;
- (5) the rule will not create a new regulation as the changes concerning administrative penalties reflect extant regulations concerning such in the Occupational Therapy Practice Act, and further changes are cleanups;
- (6) the rule will not limit, repeal, or expand an existing regulation as changes concerning administrative penalties reflect extant regulations already in effect in the Occupational Therapy Practice Act, and further changes are cleanups;
- (7) the rule will not increase or decrease the number of individuals subject to the rule's applicability; and
- (8) the rule will neither positively nor adversely affect this state's economy.

#### COSTS TO REGULATED PERSONS

The agency determined that the rule does not impose a cost on regulated persons who practice in compliance with the Board's statute and rules, and the rule does not impose a cost on another state agency, a special district, or a local government. To the extent the rule imposes a cost on regulated persons by imposing an administrative penalty at the conclusion of a disciplinary action, the sanction is necessary to deter the practice of occupational therapy in a manner detrimental to the public health and welfare. This rule is not subject to Texas Government Code §2001.0045 because the rule is necessary to protect the health, safety, and welfare of the residents of this state and the Board is required to



adopt a schedule of administrative penalties and other sanctions by rule pursuant to Texas Occupations Code §454.3025(a).

#### ENVIRONMENTAL IMPACT STATEMENT

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

#### PUBLIC COMMENT

Comments on the proposed amendments may be submitted in writing to Lea Weiss, Occupational Therapy Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701-3942 or to lea@ptot.texas.gov within 30 days following the publication of this notice in the *Texas Register*. It is requested when sending a comment that individuals include the rule section to which the comment refers and that comments sent by email include "Public Comment" in the email's subject line.

#### STATUTORY AUTHORITY

The amendments to the Schedule of Sanctions Figure in 40 TAC §374.1(c) are proposed under Texas Occupations Code §454.102, which authorizes the Board to adopt rules to carry out its duties under chapter 454. The amendments are also proposed under §454.3025, which requires the Board by rule to adopt a schedule of administrative penalties and other sanctions that the Board may impose under this chapter. Lastly, the amendments are proposed under §454.3521, which authorizes the Board to impose an administrative penalty, not to exceed \$200 for each day a violation continues or occurs, under this chapter for a violation of this chapter or a rule or order adopted under this chapter.

#### CROSS REFERENCE TO STATUTE

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

#### §374.1. *Disciplinary Actions.*

(a) The board, in accordance with the Administrative Procedure Act, may deny, revoke, suspend, or refuse to renew or issue a license, or may reprimand or impose probationary conditions, if the licensee or applicant for licensure has been found in violation of the rules or the Act. The board will adhere to procedures for such action as stated in the Act, §§454.301, 454.302, 454.303, and 454.304.

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

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

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

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

(4) Level IV: Revocation--A determination that the licensee may not practice as an occupational therapist or occupational therapy assistant. Upon passage of 180 days, from the date the revo-

cation order becomes final, the former licensee may petition the board for re-issuance of a license. The former licensee may be required to re-take the Examination.

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

Figure: 40 TAC §374.1(c)

[Figure: 40 TAC §374.1(e)]

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

(1) the seriousness of the violation, including:

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

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

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts to correct the violation;

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

(6) whether the violation was intentional; and

(7) any other matter that justice requires.

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

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

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

(h) The board may expunge any record of disciplinary action taken against a license holder before September 1, 2019, for practicing in a facility that failed to meet the registration requirements of §454.215 of the Act (relating to Occupational Therapy Facility Registration), as that section existed on January 1, 2019. The board may not expunge a record under this subsection after September 1, 2021.

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

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

Filed with the Office of the Secretary of State on August 7, 2020.

TRD-202003213

Ralph A. Harper

Executive Director

Texas Board of Occupational Therapy Examiners

Earliest possible date of adoption: September 20, 2020

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

## TITLE 43. TRANSPORTATION

# PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

## CHAPTER 206. MANAGEMENT

### SUBCHAPTER B. PUBLIC MEETINGS AND HEARINGS

#### 43 TAC §206.22

**INTRODUCTION.** The Texas Department of Motor Vehicles (department) proposes amendments to Title 43 TAC §206.22 regarding contested cases. These amendments are necessary to implement Occupations Code §2301.709(d) and to respond to a petition for rulemaking.

On April 3, 2020, the department posted on its website an informal draft of the amendments for public comment. The department received and considered comments in preparing this proposal.

**EXPLANATION.** Amendments to §206.22 are proposed in response to William Crocker's petition for rulemaking dated February 5, 2019 regarding minimum time limits for parties to a contested case to make presentations to the board of the Texas Department of Motor Vehicles (board) when the board reviews a contested case before issuing a final order. Amendments to §206.22 are also proposed in response to informal comments in response to the informal draft of the amendments that the department posted on its website. Amendments are further proposed to implement Occupations Code §2301.709(d). Lastly, amendments add a reference in §206.22(a) and (b)(3) to the current exception in subsection (e), which authorizes the board chairman to grant a person more than three minutes to speak to the board on an agenda item. The amendments provide the parties with an adequate amount of time to make their initial presentation and rebuttal, authorize the board chairman to grant each party additional time, require an intervening party in support of another party to share in that party's time, and clarify that time spent by a party responding to any board questions is not counted against their time.

The chairman currently has the authority under §206.22(e) to grant each party more than three minutes to present their case; however, Mr. Crocker and many informal commenters who commented on the department's informal draft of Title 43 TAC §215.61 requested the department to amend §206.22 to give each party a minimum of 20 minutes to present their case to the board. The department grants each party a maximum of 20 minutes for the initial presentation, and five minutes for any rebuttal. However, the department reminds the parties that the board is not authorized to relitigate contested cases. In the *Sunset Advisory Commission Staff Report with Final Results, 2018 - 2019, 86th Legislature*, the Sunset Advisory Commission warned the board that the board is not authorized to relitigate contested cases. The State Office of Administrative Hearings (SOAH) proceedings provide the parties to a contested case an opportunity to make arguments and produce evidence in accordance with standard processes under the Texas Administrative Procedure Act, Government Code Chapter 2001. SOAH proceedings can last from hours to weeks, depending on the complexity of the case. The department's proposed amendments give each party an adequate amount of time to present their case to the board for most cases, while providing the chairman with the authority to grant more time for cases

that warrant more time, consistent with the board's role under Government Code §2001.058(e).

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Linda M. Flores, Chief Financial Officer, has determined that for each year of the first five years the amendments will be in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. Daniel Avitia, Deputy Executive Director, has determined that there will be no measurable effect on local employment or the local economy as a result of the proposal.

**PUBLIC BENEFIT AND COST NOTE.** Mr. Avitia has also determined that, for each year of the first five years the amended section is in effect, there is an anticipated public benefit because the amendments give each party an adequate amount of time to present their case to the board for most cases, while providing the chairman with the authority to grant more time for cases that warrant more time.

**Anticipated Costs To Comply With The Proposal.** Mr. Avitia anticipates that there will be no costs to comply with these amendments. Parties to a contested case have an opportunity, rather than a requirement, to make an oral presentation to the board.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** As required by Government Code §2006.002, the department has determined that the proposed amendments will not have an adverse economic effect on small businesses, micro-business, and rural communities because parties to a contested case have an opportunity, rather than a requirement, to make an oral presentation to the board. Therefore, the department is not required to prepare a regulatory flexibility analysis under Government Code §2006.002.

**TAKINGS IMPACT ASSESSMENT.** The department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

**GOVERNMENT GROWTH IMPACT STATEMENT.** The department has determined that each year of the first five years the proposed amendments are in effect, no government program would be created or eliminated. Implementation of the proposed amendments would not require the creation of new employee positions or elimination of existing employee positions. Implementation would not require an increase or decrease in future legislative appropriations to the department or an increase or decrease of fees paid to the department. The proposed amendments do not create a new regulation, or expand, limit, or repeal an existing regulation. Lastly, the proposed amendments do not affect the number of individuals subject to the rule's applicability and will not affect this state's economy.

#### REQUEST FOR PUBLIC COMMENT.

If you want to comment on the proposal, submit your written comments by 5:00 p.m. CDT on September 21, 2020. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to [rules@txdmv.gov](mailto:rules@txdmv.gov) or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

STATUTORY AUTHORITY. The department proposes amendments under Occupations Code §2301.153(a)(8), which authorizes the board to adopt rules; Occupations Code §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code Chapter 2301 and to govern practice and procedure before the board; Occupations Code §2301.709(d), which authorizes the board to adopt rules that establish standards for reviewing a case under Occupations Code Chapter 2301, Subchapter O; Occupations Code §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code Chapter 2302; Transportation Code §502.091, which authorizes the department to adopt and enforce rules to carry out the International Registration Plan; Transportation Code §623.002, which authorizes the board to adopt rules that are necessary to enforce Transportation Code Chapter 623; Transportation Code §643.003, which authorizes the department to adopt rules to administer Transportation Code Chapter 643; Government Code §2001.004(1), which authorizes a state agency to adopt rules of practice that state the nature and requirements of all available formal and informal procedures; and Transportation Code §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Occupations Code §§2301.001, 2301.153(a)(1) and (a)(7), and Chapter 2301, Subchapter O; Occupations Code §2302.354 and §2302.355; Transportation Code §§502.091, 623.271 -623.272, 643.251 -643.257, §1004.002; and Government Code Chapter 2001, Subchapters C and F.

§206.22. *Public Access to Board Meetings.*

(a) Posted agenda items. A person may speak before the board on any matter on a posted agenda by submitting a request, in a form and manner as prescribed by the department, prior to the matter being taken up by the board. A person speaking before the board on an agenda item will be allowed an opportunity to speak:

(1) prior to a vote by the board on the item; and

(2) for a maximum of three minutes, except as provided in subsections [subsection] (d)(6), (e), and (f) of this section.

(b) Open comment period.

(1) At the conclusion of the posted agenda of each regular business meeting, the board shall allow an open comment period, not to exceed one hour, to receive public comment on any other matter that is under the jurisdiction of the board.

(2) A person desiring to appear under this subsection shall complete a registration form, as provided by the department, prior to the beginning of the open comment period.

(3) Except as provided in subsections [subsection] (d)(6) and (e) of this section, each person shall be allowed to speak for a maximum of three minutes for each presentation in the order in which the speaker is registered.

(c) Disability accommodation. Persons with disabilities, who have special communication or accommodation needs and who plan to attend a meeting, may contact the department in Austin to request auxiliary aids or services. Requests shall be made at least two days before a meeting. The department shall make every reasonable effort to accommodate these needs.

(d) Conduct and decorum. The board shall receive public input as authorized by this section, subject to the following guidelines.

(1) Questioning of those making presentations shall be reserved to board members and the department's administrative staff.

(2) Organizations, associations, or groups are encouraged to present their commonly held views, and same or similar comments, through a representative member where possible.

(3) Presentations shall remain pertinent to the issue being discussed.

(4) A person who disrupts a meeting shall leave the meeting room and the premises if ordered to do so by the chair.

(5) Time allotted to one speaker may not be reassigned to another speaker.

(6) The time allotted for presentations or comments under this section may be increased or decreased by the chair, or in the chair's absence, the vice chair, as may be appropriate to assure opportunity for the maximum number of persons to appear.

(e) Waiver. Subject to the approval of the chair, a requirement of this section may be waived in the public interest if necessary for the performance of the responsibilities of the board or the department.

(f) Contested Cases. The parties to a contested case under review by the board will be allowed an opportunity to provide oral argument to the board, subject to the following limitations and conditions.

(1) Each party shall be allowed a maximum of 20 minutes for their initial presentation.

(2) Each party shall be allowed a maximum of 5 minutes for rebuttal.

(3) Any party that is intervening in support of another party shall share that party's time.

(4) Time spent by a party responding to any board questions is not counted against their time.

(5) Time spent objecting when another party allegedly attempts to make arguments or discuss evidence that is not contained in the SOAH administrative record is not counted against the objecting party's time.

(6) The board chairman is authorized to grant each party additional time.

(7) A party must timely comply with the requirements of §215.59 of this title (relating to Request for Oral Argument) before it is authorized to provide oral argument to the board.

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

Filed with the Office of the Secretary of State on August 7, 2020.

TRD-202003211

Tracey Beaver

General Counsel

Texas Department of Motor Vehicles

Earliest possible date of adoption: September 20, 2020

For further information, please call: (512) 465-5665



SUBCHAPTER H. RISK-BASED  
MONITORING AND PREVENTING  
FRAUDULENT ACTIVITY

### 43 TAC §206.151

**INTRODUCTION.** The Texas Department of Motor Vehicles (department) proposes new 43 TAC §206.151, concerning an internal risk-based system of monitoring and preventing fraudulent activity related to vehicle registration and titling in order to efficiently allocate resources and personnel. The new section is necessary to implement Transportation Code §520.004(4) as added by Senate Bill 604, 86th Legislature, Regular Session (2019).

This proposal addresses risk based monitoring of department operations, including regional services centers. The department has also proposed new 43 TAC §223.101 concerning the risk based monitoring of external persons in this issue of the *Texas Register*.

**EXPLANATION.** Proposed §206.151 is necessary under Transportation Code §520.004(4), as enacted in SB 604. Transportation Code §520.004(4) requires the department, by rule, to establish a risk-based system of monitoring and preventing fraudulent activity related to vehicle registration and titling in order to efficiently allocate resources and personnel. The requirement is included within Sunset Advisory Commission's Change in Statute Recommendation 2.4, as stated in the Sunset Staff Report with Commission Decisions, 2018-2019, 86th Legislature (2019). The Sunset recommendation envisioned that the department develop criteria to determine varying risk levels, such as transaction volume and past violations, to strategically allocate resources and personnel. Further, monitoring and investigation would extend both to counties and their contractors, dealers, and the department's regional service centers.

To implement Transportation Code §520.004(4) in line with the Sunset recommendation, the department has developed internal and external risk-based monitoring systems. The internal system is overseen through department management and the Internal Audit Division. The external system is overseen through by the department's Compliance and Investigations Division. Each system rule is placed in its appropriate chapter based on its focus.

Proposed new §206.151 outlines the program generally, to allow flexibility for change over time and because detailed disclosure of the means and methods that the department's system could be used to evade the monitoring. The monitoring system does not add additional requirements or costs on any regulated person.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Linda M. Flores, Chief Financial Officer, has determined that for each year of the first five years the proposed new section will be in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. Sandra Menjivar-Suddeath, Director of the Internal Audit Division, has determined that there will be no measurable effect on local employment or the local economy as a result of the proposal.

**PUBLIC BENEFIT AND COST NOTE.** Ms. Menjivar-Suddeath has also determined that, for each year of the first five years the proposed new section is in effect, the public benefits include establishing a risk-based system of monitoring and preventing fraudulent activity related to vehicle registration and titling in order to efficiently allocate resources and personnel.

Ms. Menjivar-Suddeath anticipates that there will be no additional costs on regulated persons to comply with these rules, be-

cause the rules do not establish any additional requirements on regulated person.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** As required by Government Code, §2006.002, the department has determined that the proposed new section will not have an adverse economic effect on small businesses, micro-businesses, or rural communities because the proposal imposes no additional requirements, and has no financial effect, on any small businesses, micro-businesses, or rural communities. Therefore, the department is not required to prepare a regulatory flexibility analysis under Government Code §2006.002.

**TAKINGS IMPACT ASSESSMENT.** The department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under Government Code, §2007.043.

**GOVERNMENT GROWTH IMPACT STATEMENT.** The department has determined that each year of the first five years the proposed new section is in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the department;
- will not require an increase or decrease in fees paid to the department;
- will create new regulation §206.151 to implement Transportation Code §520.004(4);
- will not expand existing regulations;
- will not repeal existing regulations;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

#### REQUEST FOR PUBLIC COMMENT.

If you want to comment on the proposal, submit your written comments by 5:00 p.m. CST on September 21, 2020. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to [rules@txdmv.gov](mailto:rules@txdmv.gov) or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

**STATUTORY AUTHORITY.** The department proposes new section to §206.151 under Transportation Code §§520.003, 520.004, and §1002.001.

--Transportation Code §520.003 authorizes the department to adopt rules to administer Transportation Code Chapter 520.

--Transportation Code §520.004 requires the department to establish by rule a risk-based system of monitoring and preventing fraudulent activity related to vehicle registration and titling in order to efficiently allocate resources and personnel.

--Transportation Code §1002.001, authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Transportation Code §520.004.

§206.151. Internal Risk-Based Monitoring System.

The department shall establish a risk-based system of monitoring and preventing fraudulent activity related to vehicle registration and titling in order to efficiently allocate resources and personnel, including:

- (1) establishing a risk-based system of monitoring the department's regional service centers;
- (2) developing criteria to determine varying risk levels for the department's internal fraud monitoring functions to strategically allocate resources and personnel;
- (3) reviewing the department's methods for collecting and evaluating related information; and
- (4) developing and providing training to department staff.

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

Filed with the Office of the Secretary of State on August 7, 2020.

TRD-202003216

Tracey Beaver

General Counsel

Texas Department of Motor Vehicles

Earliest possible date of adoption: September 20, 2020

For further information, please call: (512) 465-5665



## CHAPTER 209. FINANCE

### SUBCHAPTER B. PAYMENT OF FEES FOR DEPARTMENT GOODS AND SERVICES

#### 43 TAC §209.23

INTRODUCTION. The Texas Department of Motor Vehicles (the department) proposes an amendment to Title 43 TAC §209.23, concerning payment of fees for department goods and services. The amendment is necessary to conform §209.23 to proposed amendments to Title 43 TAC §219.11, which is also proposed in this issue of the *Texas Register*.

EXPLANATION. The proposed amendment to §209.23 is necessary to remove unnecessary citations to statutes and to conform §209.23 to proposed amendments to Title 43 TAC §219.11, which is also proposed in this issue of the *Texas Register*. Amendments to §219.11(f)(1)(A) and (B) are proposed to remove two escrow account payment methods for purchasing oversize/overweight permits in order to streamline department processes to improve program efficiency.

The proposed amendment to §209.23 deletes most of the language regarding the use of escrow accounts, including use of permit account cards for payment for oversize overweight vehicle permits. The amendment removes unnecessary citations to statutes and conforms §209.23 to the proposed amendments to §219.11(f)(1)(A) and (B), which remove escrow accounts as an acceptable payment method for oversize/overweight permits.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Linda M. Flores, Chief Financial Officer, has determined that for each year of the first five years the amendment will be in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. Jimmy Archer, Director of the Motor Carrier Division, has determined that there will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT AND COST NOTE. Mr. Archer has also determined that, for each year of the first five years the amended section is in effect, there is an anticipated public benefit because the amendment conforms §209.23 to proposed amendments to §219.11. Mr. Archer also anticipates that regulated persons will incur no additional costs to comply with the proposed rule because the amendment conforms §209.23 to the proposed amendments in §219.11.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. As required by Government Code §2006.002, the department has determined that the proposed amendment will not have an adverse economic effect on small businesses, micro-business, and rural communities because it conforms §209.23 to the proposed amendments in §219.11 and does not add additional requirements to regulated persons. Therefore, the department is not required to prepare a regulatory flexibility analysis under Government Code §2006.002.

TAKINGS IMPACT ASSESSMENT. The department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

GOVERNMENT GROWTH IMPACT STATEMENT. The department has determined that each year of the first five years the proposed amendment is in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the department;
- will not require an increase or decrease in fees paid to the department;
- will not create new regulations;
- will not expand existing regulations;
- will repeal existing regulations to conform with §219.11;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

REQUEST FOR PUBLIC COMMENT. If you want to comment on the proposal, submit your written comments by 5:00 p.m. CDT on September 21, 2020. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to [rules@txdmv.gov](mailto:rules@txdmv.gov) or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

STATUTORY AUTHORITY. The department proposes an amendment to §209.23 under Transportation Code §1001.009 and §1002.001.

--Transportation Code §1001.009 authorizes the Board of the Texas Department of Motor Vehicles (board) to adopt rules regarding the method of collection of a fee for any goods or services provided by the department.

--Transportation Code §1002.001 authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department under the Transportation Code.

CROSS REFERENCE TO STATUTE. Transportation Code Chapters 502, 621, 622, 623, 643, and 645.

§209.23. *Methods of Payment.*

(a) All fees for department goods and services and any fees required in the administration of any department program shall be paid to the department with a method of payment accepted by the department at the point of sale, which may be:

(1) a valid debit or credit card, approved by the department, and issued by a financial institution chartered by a state or the United States, or a nationally recognized credit organization;

(2) electronic funds transfer;

(3) a personal check, business check, cashier's check, or money order, payable to the Texas Department of Motor Vehicles, except that a personal or business check is not an acceptable method of payment of fees under Transportation Code, §502.094;

(4) cash in United States currency, paid in person; or

(5) by an escrow account, established with the department for the specific purpose of paying fees [~~required by Transportation Code, Chapters 502, 621, 622, 623, 643, or 645. Use of an escrow account includes use of a Permit Account Card (PAC) for payment of Oversize/Overweight vehicle permit fees, as authorized by §219.11(f)(1)(A) of this title (relating to General Oversize/Overweight Permit Requirements and Procedures)].~~

(b) Persons paying the department by credit card or Automated Clearing House (ACH) shall pay any applicable service charge per transaction.

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

Filed with the Office of the Secretary of State on August 7, 2020.

TRD-202003209

Tracey Beaver

General Counsel

Texas Department of Motor Vehicles

Earliest possible date of adoption: September 20, 2020

For further information, please call: (512) 465-5665



CHAPTER 215. MOTOR VEHICLE  
DISTRIBUTION  
SUBCHAPTER B. ADJUDICATIVE PRACTICE  
AND PROCEDURE

43 TAC §§215.22, 215.55, 215.59 - 215.63

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes amendments to Title 43 TAC §215.22 and §215.55, and proposes new Title 43 TAC §§215.59 - 215.63, regarding contested cases. These amendments and new sections are necessary to implement Occupations Code §2301.709(d) and to respond to a petition for rulemaking.

The department also proposes amendments to §215.22 and §215.55 to conform to statute and existing rules.

On April 3, 2020, the department posted on its website an informal draft of these rules for public comment. The department received and considered comments in preparing this proposal.

EXPLANATION. Proposed amendments to §215.22(a) are necessary to conform with Government Code §2001.061, regarding ex parte communications and Occupations Code Chapter 2301. In response to an informal comment regarding §215.22(a), the department proposes the addition of the word "person," which is included in §2001.061. The department also proposes amendments to §215.22(a) to expand the scope of prohibited ex parte communications to be consistent with §2001.061. The department further proposes amendments to §215.22(a) to fix grammatical errors.

The department proposes a new §215.22(b) to implement Occupations Code §2301.709(d)(1) regarding the role of division personnel in advising the board or a person delegated power from the board under Occupations Code §2301.154. The department also proposes a conforming amendment regarding the role of division personnel in advising the hearing officer on those cases in which a hearing officer is authorized under Occupations Code Chapter 2301. New §215.22(b) is further proposed in response to a petition for rulemaking dated February 5, 2019 requesting the department to prohibit department staff from providing any recommendations to the board on contested cases. However, when the department is a party to the contested case, department staff are authorized to recommend a final decision, just as any other party is authorized to recommend a final decision.

The department further proposes to renumber the current §215.22(b) to §215.22(c) and to make a conforming amendment to new §215.22(c) because not all cases under Occupations Code Chapter 2301 have a hearing officer.

Proposed amendments to §215.55 are necessary to conform with §215.58 under which the board delegated final order authority in certain cases.

Proposed new §§215.59 - 215.63 are necessary to implement Occupations Code §2301.709(d), which requires the board to adopt rules that establish standards for reviewing a case under Occupations Code Chapter 2301, Subchapter O regarding hearing procedures. Section 2301.709(d) requires the rules to: 1) specify the role of the department's personnel in managing contested cases before the board, including advising on procedural matters; 2) specify appropriate conduct and discussion by the board regarding proposals for decisions issued by administrative law judges; 3) specify clear expectations limiting arguments and discussion on contested cases in which the board allows oral argument; 4) address ex parte communications; and 5) distinguish between using industry expertise and representing or advocating for an industry when the board is reviewing a contested case under Occupations Code Chapter 2301, Subchapter O regarding hearing procedures.

At this time, the department declines to adopt rules under Occupations Code §2301.709(d)(2) to specify the appropriate con-

duct and discussion by a person delegated power from the board under Occupations Code §2301.154, regarding proposals for decision issued by administrative law judges. Under 43 TAC §215.88, the board only delegated power under Occupations Code §2301.154 in cases in which there has not been a decision on the merits, so there will not be a proposal for decision issue by an administrative law judge in the delegated cases.

Proposed new §215.59 is consistent with the department's current practice, including the practice of having department staff provide a recommendation to the board when the department is a party to the contested case. In response to an informal commenter's request for 30-days' notice of the date of a board meeting to review the contested case, the department modified its informal working draft language to increase the notice to at least 30-days' notice. The proposed new §215.59 is consistent with the department's current practice of requiring a party to timely request oral argument before being granted the privilege of providing oral argument. The board has the discretion on whether to allow oral arguments under Occupations Code §2301.709(b). The department and the board chairman need to know in advance whether a party wants to provide oral argument so the department and the chairman can efficiently organize and schedule the board meeting, including the order in which certain agenda items are heard.

One informal commenter on §215.59 and §215.60 requested the opportunity for the parties to file briefs. The department proposes new §215.60 to authorize the parties to submit written presentation aids; however, the department limited the number of pages to a total of six pages: four pages for the initial presentation aid, and two pages for any rebuttal presentation aids. In the *Sunset Advisory Commission Staff Report with Final Results, 2018 - 2019, 86th Legislature*, the Sunset Advisory Commission warned the board that the board is not authorized to relitigate contested cases. The State Office of Administrative Hearings (SOAH) proceedings provide the parties to a contested case an opportunity to make arguments and produce evidence in accordance with standard processes under the Texas Administrative Procedure Act, Government Code Chapter 2001. SOAH proceedings can last from hours to weeks, depending on the complexity of the case. The department does not want to impose any unnecessary burdens on the board under Government Code §2001.141(e). Also, the department proposes uniform standards for the size and appearance of the presentation aids so the aids will fit into the board book that the department provides to the board, the board members can easily read the presentation aids, the parties have a clear understanding of what is allowed, and the parties can be held to the same standard to avoid an unfair advantage.

Proposed new §215.60 also requires the parties to timely provide their presentation aids to the department and all other parties. The department needs the presentation aids in advance so the department can include them in the board book that the department provides to the board members and so the department can advise the board. The other parties need the presentation aids in advance so they can provide a rebuttal presentation aid if needed and prepare for any oral argument. The department also renumbered the remaining new §§215.61 - 215.63 after adding new §215.60, which was not included in the informal working draft.

One informal commenter on the informal working draft of §215.59 and §215.60 requested a requirement for department staff to provide a recommendation upon a board member's

request. The department declines to impose a requirement for department staff to provide a recommendation upon a board member's request because it would place a new burden on department staff, and the board is responsible for deciding the final order.

Some informal comments on the informal working draft of §215.59(b) stated it was acceptable for department staff to provide a recommendation to the board on cases in which the department is a party; however, one comment stated that the recommendation should be made available to the affected parties prior to the board meeting under the fundamental tenant of due process. On cases in which the department is a party to the contested case, the department's current practice is to provide the department's recommendations in the board book, which is posted on the department's website prior to each board meeting. Another informal comment on §215.59(b) stated that communications are prohibited unless allowed by rule. The department disagrees with this comment. Occupations Code §2301.709(d) does not require a board rule to give the department staff authority to communicate with the board on contested cases because Government Code §2001.061, Government Code §2001.090, and case law already provide the authority for department staff to do so. Proposed new §215.22(b) acknowledges the authority and limitations under existing law for department staff to communicate with board members regarding contested cases. Proposed new §215.62(a) complies with the requirement in Occupations Code §2301.709(d)(1) for the board's rule to specify the role of division personnel in managing contested cases before the board regarding advice on procedural matters.

Proposed new §215.61(a) reminds the parties to a contested case that they must limit their arguments and discussion to evidence that is contained in the SOAH administrative record. Proposed new §215.61(a) complies with Occupations Code §2301.709(d)(3), which requires the board to adopt rules that specify clear expectations limiting arguments and discussion to evidence in the SOAH administrative record. Proposed new §215.61(b) states each party is responsible for objecting when another party attempts to make arguments or engage in discussion regarding evidence that is not contained in the SOAH administrative record. The department received informal comments on the informal draft rule §215.60(b), requesting the department to delete the language in proposed new §215.61(b), or to say that the failure to object does not waive the violation or preclude the complaining party from raising the issue as a ground for a rehearing in a motion for rehearing of the board's final order or in a petition for judicial review of the board's final order. The department declines to amend §215.61(b) in response to the informal comments, and the department won't provide legal advice regarding the impact of a failure to object on a motion for rehearing or an appeal. Timely objections to arguments or discussion about evidence that is outside of the SOAH administrative record are necessary to allow board members to appropriately and efficiently review and decide contested cases. Timely objections give our board the opportunity to make a decision on the spot and to say on the record whether they did or didn't consider the evidence, which could avoid an unnecessary motion for rehearing or petition for judicial review. The board chairman has the authority to preside over board meetings and to make rulings on motions and points of order under Transportation Code §1001.023(b)(1).

The department also received informal comments on the informal working draft of §215.60, requesting the department to add

language regarding the authority for a party to make an argument or to provide information outside of SOAH's administrative record if the party contends the case should be remanded to SOAH. The department made the requested change in proposed new §215.61(a); however, the proposed change is limited to arguments requesting the board to remand the case to SOAH. Although Government Code §2001.058(e) does not expressly authorize the board to remand a contested case to SOAH, SOAH's administrative rule (Title 1 TAC §155.153(b)(13)) contemplates remands, and SOAH decides whether a remand is appropriate.

An informal commenter requested the board to amend the informal working draft of §215.60 to address a circumstance in which a party is arguing error under Government Code §2001.058(e) when the SOAH administrative law judge fails to admit certain evidence presented, while another informal commenter requested the board to add the word "admitted" before the word "record." In response to the informal comments, the department added language to proposed new §215.61(a) to require the parties to limit their arguments and discussion to evidence in the SOAH administrative record, consistent with the scope of the board's authority to take action under Government Code §2001.058(e). The addition of this language is sufficient to address the comments because §2001.058(e) establishes the boundaries on the board's authority regarding review of contested cases.

Proposed new §215.62 sets out the order of presentations to the board for review of a contested case. The department received informal comments on the informal working draft of §215.61, requesting the department to modify the language to say the party with the burden of proof shall have the opportunity to present oral argument first, and the department received comments stating the party that is adversely affected should have the opportunity to present oral argument first. The department declines to modify the proposed language that says the party who is adversely affected has the opportunity to present oral argument first. By having the adversely affected party present first, it helps to focus the board's review on issues the board is authorized to address, and it recognizes the SOAH administrative law judge's role in assessing the evidence and making a recommendation in the proposal for decision. Also, the Texas Rules of Civil Procedure do not apply to the presentation before the board.

An informal comment on the informal working draft of §215.61 requested an amendment that says only the party with the burden of proof should have the authority to make a rebuttal presentation. The department declines to make the requested change to proposed new §215.62, which gives all parties an equal opportunity to make a rebuttal presentation. In response to an informal comment requesting the addition of language to clarify that the board has the authority to decide the order if both parties lose on an issue at SOAH, the department added the requested language. The department declines to add language to give aligned parties the authority to agree on the order of presentation because the department's proposed language provides certainty on the order of presentation. The board has authority to allow presentation aids that are consistent with the SOAH administrative record and the board's authority under Government Code §2001.058(e).

Proposed new §215.63 addresses board conduct and discussion when reviewing a contested case. The department received an informal comment on the informal working draft of §215.62, requesting the department to add language to §215.62(a) that says the board will conduct its review of a contested case under

Occupations Code Chapter 2301, as well as language limiting the authority for the board to vacate or modify an order issued by the administrative law judge. The department declines to add the requested language to proposed new §215.63 because the additions are unnecessary. Chapter 215 implements Occupations Code Chapter 2301, which also authorizes the board to enforce Transportation Code Chapter 503. Also, Government Code Chapter 2001 governs the board's review of a contested case. Also, the SOAH administrative law judge does not issue the final order in contested cases under Chapter 215, so it is unnecessary to add language regarding the board's authority to vacate or modify an order issued by the administrative law judge.

An informal commenter requested the department to add language to the informal working draft of §215.62(b) to say the board may question the department about any matter that is relevant to a proposal for decision, any matter that is in the administrative record, and any matter that is conducive to the issuance of a final order. The department added language to proposed new §215.63(b); however, the questions must be consistent with the scope of the board's authority to take action under Government Code §2001.058(e). In response to the comment, the department also clarified that the board has the authority to question any party on any matter that is relevant to the proposal for decision, as well as evidence contained in the SOAH administrative record. The department added language to proposed new §215.63(b) in response to an informal comment requesting the department to add language to allow board members to ask questions regarding a request to remand the contested case to SOAH.

In response to comments to add and delete language in the informal working draft of proposed new §215.62(c) regarding the requirement for the board to distinguish between using their industry expertise and representing or advocating for an industry, the department added a clause to proposed new §215.63(c) stating the board must do so consistent with the scope of the board's authority to take action under Government Code §2001.058(e). The department declines to amend proposed §215.63 to say that only members of the board and the executive director may question a person making a presentation on behalf of a party, as requested by one informal commenter. Current §206.22(d)(1) only authorizes board members and the department's administrative staff to question the people making a presentation to the board. The chairman has the authority to preside over board meetings under Transportation Code §1001.023(b)(1), including the authority to determine who has the floor to speak during a board meeting. The department wants to preserve the chairman's flexibility to preside over board meetings.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Linda M. Flores, Chief Financial Officer, has determined that for each year of the first five years the amendments and new sections will be in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. Daniel Avitia, Deputy Executive Director, has determined that there will be no measurable effect on local employment or the local economy as a result of the proposal.

**PUBLIC BENEFIT AND COST NOTE.** Mr. Avitia has also determined that, for each year of the first five years the amended and new sections are in effect, there is an anticipated public benefit because parties to a contested case will have more clarity regarding their rights, their obligations, and the board's authority regarding a contested case that is presented at a board meeting.



Anticipated Costs To Comply With The Proposal. Mr. Avitia anticipates that there will be no costs to comply with these rules. Parties to a contested case have an opportunity, rather than a requirement, to make an oral presentation to the board and to provide presentation aids to the board.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. As required by Government Code §2006.002, the department has determined that the proposed amendments and new sections will not have an adverse economic effect on small businesses, micro-business, and rural communities because parties to a contested case have an opportunity, rather than a requirement, to make an oral presentation to the board and to provide presentation aids to the board. Therefore, the department is not required to prepare a regulatory flexibility analysis under Government Cod, §2006.002.

TAKINGS IMPACT ASSESSMENT. The department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

GOVERNMENT GROWTH IMPACT STATEMENT. The department has determined that each year of the first five years the proposed amendments and new sections are in effect, no government program would be created or eliminated. Implementation of the proposed amendments and new sections would not require the creation of new employee positions or elimination of existing employee positions. Implementation would not require an increase or decrease in future legislative appropriations to the department or an increase or decrease of fees paid to the department. The proposed amendments and new sections include a new regulation that makes each party responsible for objecting when another party attempts to make arguments or engage in discussion regarding evidence that is not contained in the SOAH administrative record. The proposed amendments and new sections do not limit or repeal an existing regulation. Lastly, the proposed amendments and new sections do not affect the number of individuals subject to the rule's applicability and will not affect this state's economy.

REQUEST FOR PUBLIC COMMENT. If you want to comment on the proposal, submit your written comments by 5:00 p.m. CDT on September 21, 2020. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to [rules@txdmv.gov](mailto:rules@txdmv.gov) or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

STATUTORY AUTHORITY. The department proposes amendments and new sections under Occupations Code §§2301.153(a)(8), which authorizes the board to adopt rules; Occupations Code §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code Chapter 2301 and to govern practice and procedure before the board; Occupations Code §2301.709(d), which authorizes the board to adopt rules that establish standards for reviewing a case under Occupations Code Chapter 2301, Subchapter O; Government Code §2001.004(1), which authorizes a state agency to adopt rules of practice that state the nature and requirements of all available formal and informal procedures; and Transportation Code §1002.001, which authorizes the

board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Occupations Code §§2301.001, 2301.151, 2301.152, 2301.153(a)(1), (a)(7), (a)(8), and Chapter 2301, Subchapter O; and Government Code Chapter 2001, Subchapters C and F.

*§215.22. Prohibited Communications.*

(a) No person, party, attorney of record, or authorized representative in any contested case shall engage in [make], directly or indirectly, any ex parte communication, in violation of Government Code, §2001.061, concerning the [merits of the] contested case with [to] the board or hearing officer assigned to render a decision or make findings of fact and conclusions of law in a contested case.

(b) Except as prohibited by Government Code, §2001.061, department staff may advise the board, the hearing officer, and a person delegated power from the board under Occupations Code, §2301.154 regarding the contested case and any procedural matters. However, staff shall not recommend a final decision to the board unless the department is a party to the contested case.

(c) [(b)] Violations of this section shall be promptly reported to the hearing officer, as applicable, and the general counsel of the department. The general counsel shall ensure that a copy or summary of the ex parte communication is included with the record of the contested case and that a copy is forwarded to all parties or their authorized representatives. The general counsel may take any other appropriate action otherwise provided by law.

*§215.55. Final Decision.*

(a) Except as provided by §215.58 of this title (relating to Delegation of Final Order Authority), the [The] board has final order authority in a contested case initiated by a complaint filed before January 1, 2014, under Occupations Code, §2301.204 or §§2301.601 - 2301.613.

(b) The hearings examiner has final order authority in a contested case filed on or after January 1, 2014, under Occupations Code, §2301.204 or §§2301.601 - 2301.613.

(c) Except as provided by subsections (a) and (b) of this section and §215.58 of this title, the board has final order authority in a contested case filed under Occupations Code, Chapter 2301 or under Transportation Code, Chapter 503.

(d) An order shall be deemed final and binding on all parties and all administrative remedies are deemed to be exhausted as of the effective date, unless a motion for rehearing is filed with the appropriate authority as provided by law.

*§215.59. Request for Oral Argument.*

(a) At least 30 days prior to the date of a board meeting during which the board will review a contested case, department staff shall notify the parties regarding the opportunity to attend and provide oral argument concerning a proposal for decision before the board.

(b) If a party wants to provide oral argument at the board meeting, it must submit a written request for oral argument to the department's Office of General Counsel at least 14 days prior to the date of the board meeting at which the party's contested case will be considered.

(c) If a party timely submits a written request for oral argument, that party may present oral argument at the board meeting. If a party fails to timely submit a written request for oral argument, that party shall not present oral argument at the board meeting.

*§215.60. Presentation Aids.*

(a) If a party wants to provide a presentation aid to the board, it must provide the presentation aid to the department and all other parties in accordance with §215.30 of this title (Relating to Filing of Documents) and §215.49 of this title (Relating to Service of Pleadings, Petitions, Briefs, and Other Documents) at least 21 days prior to the date of the board meeting. If a party wants to provide a rebuttal presentation aid to the board, it must provide the rebuttal presentation aid to the department and all other parties in accordance with §215.30 of this title and §215.49 of this title at least 14 days prior to the date of the board meeting. If a party fails to timely provide a presentation aid to the department or any other party, the department shall not provide the presentation aid to the board and the party shall not provide the presentation aid to the board at the board meeting.

(b) For the purposes of this section, presentation aids are defined as written materials, such as a document or PowerPoint slides, which contain a party's arguments and discussion of evidence, laws, and rules regarding the contested case. Presentation aids shall be limited to evidence contained in the SOAH administrative record and consistent with the scope of the board's authority to take action under Government Code §2001.058(e). However, any party may argue that the board should remand the case to SOAH.

(c) All information in the presentation aids shall include a cite to the SOAH administrative record on all points to specifically identify where the information is located.

(d) Presentation aids shall be single-sided, double-spaced, 8.5 inches by 11 inches, and at least 12-point type. Initial presentation aids are limited to four pages, and rebuttal presentation aids are limited to two pages for a total of six pages. If a party provides the department with a presentation aid that contains more pages than the maximum allowed, the department shall not provide the presentation aid to the board and the party shall not provide the presentation aid to the board at the board meeting.

*§215.61. Limiting Arguments and Discussion to Evidence in the Administrative Record.*

(a) The parties to a contested case under review by the board shall limit their arguments and discussion to evidence in the SOAH administrative record, and their arguments and discussion shall be consistent with the scope of the board's authority to take action under Government Code §2001.058(e). However, any party may argue that the board should remand the case to SOAH.

(b) Each party is responsible for objecting when another party attempts to make arguments or engage in discussion regarding evidence that is not contained in the SOAH administrative record.

*§215.62. Order of Presentations to the Board for Review of a Contested Case.*

(a) The department's staff will present the procedural history and summary of the contested case.

(b) The party that is adversely affected has the opportunity to present its case first. However, the board chairman is authorized to determine the order of each party's presentation in the event of the following:

- (1) it is not clear which party is adversely affected;
- (2) it appears as though more than one party is adversely affected; or
- (3) different parties are adversely affected by different portions of the contested case under review.

(c) The other party or parties then have an opportunity to respond. If there are more than one other party, each party will have an

opportunity to respond in alphabetical order based on the name of the party in the pleadings in the SOAH administrative record.

(d) Each party then has an opportunity to provide a rebuttal.

(e) A party must timely comply with the requirements of §215.59 of this title (relating to Request for Oral Argument) before it is authorized to provide oral argument to the board.

*§215.63. Board Conduct and Discussion When Reviewing a Contested Case.*

(a) The board shall conduct its review of a contested case in compliance with Government Code Chapter 2001, including the limitations on changing a finding of fact or conclusion of law made by the administrative law judge at SOAH, and the prohibition on considering evidence outside of the SOAH administrative record.

(b) Board members may question any party or the department on any matter that is relevant to the proposal for decision or the evidence contained in the SOAH administrative record; however, any questions shall be consistent with the scope of the board's authority to take action under Government Code §2001.058(e), and the communication must comply with §215.22 of this title (Relating to Prohibited Communications). In addition, board members are authorized to ask questions regarding arguments or a request to remand the case to SOAH.

(c) Board members may use their industry expertise to help them understand the case and make effective decisions, consistent with the scope of the board's authority to take action under Government Code §2001.058(e). However, board members are not advocates for a particular industry. Board members are public servants who take an oath to preserve, protect, and defend the Constitution and laws of the United States and Texas.

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

Filed with the Office of the Secretary of State on August 7, 2020.

TRD-202003212

Tracey Beaver

General Counsel

Texas Department of Motor Vehicles

Earliest possible date of adoption: September 20, 2020

For further information, please call: (512) 465-5665



## SUBCHAPTER J. ADMINISTRATIVE SANCTIONS

### 43 TAC §215.500, §215.504

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes to amend 43 TAC §215.500, concerning administrative sanctions and procedures and add new §215.504 concerning buyer and lessee refunds. The proposed amended and new sections implement Senate Bill (SB) 604, 86th Legislature, Regular Session (2019), which amended Occupations Code Chapter 2301 by adding §2301.807 which allows the board to order a licensee under Chapter 2301 to pay a refund to a buyer or lessee of a motor vehicle.

EXPLANATION. The proposed amendment to §215.500 adds §215.500(a)(5) to the existing list of administrative sanctions available to the department. The department's enforcement division will order refunds within existing enforcement procedures

outlined in Chapter 215. The board could order the issuance of refunds through settlement negotiations undertaken under Chapter 215 as well as the adoption of a proposal for decision issued by an administrative law judge at the State Office of Administrative Hearings. Proposed new §215.500(a)(5) is necessary to implement SB 604 and to clarify that refunds will be ordered using the same procedures as existing sanctions under the rules.

Proposed new §215.504(a) permits the board to order a person to issue a refund if, after a proceeding under Chapter 215, it determines the person violated or has violated Occupations Code Chapter 2301 or department rules. Proposed new §215.504 (a) is necessary to implement SB 604.

Proposed new §215.504(b) defines "refund" as the return of any percentage of funds paid, or contracted to be paid, to a person, whether those funds are documented as a separate line item or the overall amount paid by a customer. Proposed new §215.504(b) explains that a refund may include overpayments, fees paid for services not rendered, and payments made for products not delivered. A refund does not include any consideration of damages or harm over the amount paid by the customer. Occupations Code §2301.807 did not extend the department's sanction authority to order damages or restitution. Proposed new §215.504(b) is necessary to explain the meaning of refund in the subsection and clarify that the refund is not a mechanism for restitution or to make the consumer whole; such as, the dealer licensee reimbursing the buyer or lessee for the cost of third-party services in a situation where the buyer or lessee must engage a third-party to complete services not rendered. A refund is a tool that may be used by the department's enforcement division to order a person who has violated Occupations Code Chapter 2301 to refund the customer by giving back or returning money paid or contracted to be paid, if the customer has entered into a financing agreement, because the consumer did not receive a service or item. The refund is limited to funds paid or contracted to be paid to the dealer licensee.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Linda M. Flores, Chief Financial Officer, has determined that for each year of the first five years the amended and new sections will be in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. Corrie Thompson, Director of the Enforcement Division, has determined that there will be no measurable effect on local employment or the local economy as a result of the proposal.

**PUBLIC BENEFIT AND COST NOTE.** Ms. Thompson has also determined that, for each year of the first five years the amended and new sections are in effect, there are public benefits anticipated from the ability of the board to order refunds.

**Anticipated Public Benefits.** The public benefits anticipated as a result of the proposal include expanding the administrative tools that the board has to sanction dealer licensees that violate the Occupations Code and department rules and providing buyers and lessees a means of receiving a refund of money paid to dealer licensees for overpayments, fees paid for services not rendered, and payments made for products not delivered.

**Anticipated Costs To Comply With The Proposal.** Ms. Thompson anticipates that there will be no costs to comply with these rules. The proposed rules do not create any compliance requirement of cost of compliance on a regulated person. The proposed rules implement a potential statutory sanction provision that the

department may order against a person that violates Occupations Code Chapter 2301 or a rule adopted under the chapter.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** As required by the Government Code, §2006.002, the department has determined that the proposed new section will not have an adverse economic effect on small businesses, micro-businesses, or rural communities as a result of implementing this rule because it will not create additional requirements or costs on regulated persons. Therefore, the department is not required to prepare a regulatory flexibility analysis under Government Code §2006.002.

**TAKINGS IMPACT ASSESSMENT.** The department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

**GOVERNMENT GROWTH IMPACT STATEMENT.** The department has determined that during the first five years the proposed amended and new sections are in effect, no government program would be created or eliminated. Implementation of the proposed amended and new sections would not require the creation of new employee positions or elimination of existing employee positions. Implementation would not require an increase or decrease in future legislative appropriations to the department or an increase or decrease of fees paid to the department. The proposed amended and new sections do not create a new regulation, or expand, or repeal an existing regulation. Lastly, the proposed amended and new sections do not affect the number of individuals subject to the rule's applicability and will not affect this state's economy.

**REQUEST FOR PUBLIC COMMENT.** If you want to comment on the proposal, submit your written comments by 5:00 p.m. CDT on September 21, 2020. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to [rules@txdmv.gov](mailto:rules@txdmv.gov) or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

**STATUTORY AUTHORITY.** The amendment and new rule are proposed under Occupations Code §2301.155, which provides the board authority to adopt rules as necessary or convenient to administer Occupations Code Chapter 2301 and to govern practice and procedure before the board and Transportation Code §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

**CROSS REFERENCE TO STATUTE.** Occupations Code §2301.807.

§215.500. *Administrative Sanctions and Procedures.*

- (a) An administrative sanction may include:
  - (1) denial of an application for a license;
  - (2) suspension of a license;
  - (3) revocation of a license; [ø#]
  - (4) the imposition of civil penalties; or [-]

(5) a refund under §215.504 of this title (concerning buyer or lessee refund).

(b) The department shall issue and mail a Notice of Department Decision to a license applicant, license holder, or other person by certified mail, return receipt requested, to the last known address upon a determination under Occupations Code, Chapters 2301 and 2302 or Transportation Code, Chapter 503 that:

- (1) an application for a license should be denied; or
- (2) administrative sanctions should be imposed.

(c) The last known address of a license applicant, license holder, or other person is the last mailing address provided to the department when the license applicant applies for its license, when a license holder renews its license, or when the license holder notifies the department of a change in the license holder's mailing address.

(d) The Notice of Department Decision shall include:

- (1) a statement describing the department decision and the effective date;
- (2) a description of each alleged violation;
- (3) a description of each administrative sanction being proposed;
- (4) a statement regarding the legal basis for each administrative sanction;
- (5) a statement regarding the license applicant, license holder, or other person's right to request a hearing;
- (6) the procedure to request a hearing, including the deadline for filing; and
- (7) notice to the license applicant, license holder, or other person that the proposed decision and administrative sanctions in the Notice of Department Decision will become final on the date specified if the license applicant, license holder, or other person fails to timely request a hearing.

(e) The license applicant, license holder, or other person must submit, in writing, a request for a hearing under this section. The department must receive a request for a hearing within 26 days of the date of the Notice of Department Decision.

(f) If the department receives a timely request for a hearing, the department will set a hearing date and give notice to the license applicant, license holder, or other person of the date, time, and location of the hearing.

(g) If the license applicant, license holder, or other person does not make a timely request for a hearing or enter into a settlement agreement within 27 days of the date of the Notice of Department Decision, the department decision becomes final.

§215. 504. Buyer or Lessee Refund.

(a) The board may order a person to issue a refund if, after a proceeding under this chapter, it determines the person violated or has violated Occupations Code Chapter 2301 or department rules.

(b) Under this section, a refund is the return of any percentage ordered by the department of funds paid, or contracted to be paid, to a person, whether those funds are documented as a separate line item or part of the overall amount paid by a consumer. Refund may include overpayments, fees paid for services not rendered, and payments made for products not delivered.

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

Filed with the Office of the Secretary of State on August 7, 2020.

TRD-202003214

Tracey Beaver

General Counsel

Texas Department of Motor Vehicles

Earliest possible date of adoption: September 20, 2020

For further information, please call: (512) 465-5665



## CHAPTER 218. MOTOR CARRIERS SUBCHAPTER F. ENFORCEMENT

### 43 TAC §218.72

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes to amend Title 43 of the Texas Administrative Code (TAC) §218.72 concerning administrative sanctions. The proposed amendment implements Senate Bill 604, 86th Legislature, Regular Session (2019). Senate Bill 604 amended Transportation Code Chapter 643 by adding §643.257, authorizing the department to order a motor carrier that violates Transportation Code Chapter 643, or a department rule or order issued under that chapter, to pay a refund to a consumer who paid the motor carrier to transport household goods.

EXPLANATION. The proposed amendment to §218.72 adds proposed new subsection (d), which adds refunds to the existing list of administrative sanctions available to the department. Department enforcement will employ the use of refunds within existing enforcement procedures outlined in Chapter 218.

Proposed new §218.72(d)(1) permits the department to order a motor carrier that violates Transportation Code Chapter 643, or a department rule or order issued under that chapter, to pay a refund to a consumer who paid the motor carrier to transport household goods. Proposed new §218.72(d)(1) is necessary to implement SB 604.

Proposed new §218.72(d)(2) defines "refund" as the return of any percentage of funds paid, or contracted to be paid, to a motor carrier transporting household goods, whether those funds are documented as a separate line item or included in the overall amount paid by a customer. Proposed new §218.72(d)(2) is necessary to explain the meaning of "refund" in the subsection.

Proposed new §218.72(d)(2)(A) clarifies that a refund includes overpayments, fees paid for services not rendered, and fees paid for charges not listed on the household mover's tariff after the household mover takes possession of the customer's property. Proposed new §218.72(d)(2)(B) clarifies that a refund does not include any consideration of damages or harm over the amount paid by the customer. Proposed new §218.72(d)(2)(A) and (B) are necessary to clarify that a refund is not a mechanism for restitution or to make the consumer whole, such as a household good mover reimbursing the consumer for the cost of third-party services to complete services not rendered by the mover. A refund is a tool that may be used by the department's enforcement division to order a household good mover to refund the customer by returning money paid, or contracted to be paid, because they did not receive a service or item. The refund all circumstance

would be limited to funds paid or contracted to be paid to the household goods mover.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Linda M. Flores, Chief Financial Officer, has determined that for each year of the first five years the amendment will be in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. Corrie Thompson, Director of the Enforcement Division, has determined that there will be no measurable effect on local employment or the local economy as a result of the proposal.

**PUBLIC BENEFIT AND COST NOTE.** Ms. Thompson has also determined that, for each year of the first five years the amended section is in effect, there are public benefits anticipated from the ability of the department to order refunds.

**Anticipated Public Benefits.** The public benefits anticipated as a result of the proposal include expanding the administrative tools that the department has to sanction household good movers that violate the Transportation Code and department rules and providing consumers a means of receiving a refund of money paid to household good movers for overpayments, fees paid for services not rendered, and fees paid for charges not listed on the household mover's tariff after the household mover takes possession of the customer's property.

**Anticipated Costs to Comply with the Proposal.** Ms. Thompson anticipates that there will be no costs to comply with these rules. The proposed rule does not create any compliance requirement of cost of compliance on a regulated person. The proposed rule implements a potential statutory penalty provision that the department may order against a person who violates Transportation Code Chapter 643 or a rule adopted under the chapter.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** As required by the Government Code §2006.002, the department has determined that the proposed new amendment will not have an adverse economic effect on small businesses, micro-businesses, or rural communities as a result of implementing this rule because it will not create additional requirements or costs on regulated persons. Therefore, the department is not required to prepare a regulatory flexibility analysis under Government Code §2006.002.

**TAKINGS IMPACT ASSESSMENT.** The department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

**GOVERNMENT GROWTH IMPACT STATEMENT.** The department has determined that during the first five years the proposed amendment is in effect, no government program would be created or eliminated. Implementation of the proposed amendments will not require the creation of new employee positions or elimination of existing employee positions. Implementation would not require an increase or decrease in future legislative appropriations to the department or an increase or decrease of fees paid to the department. The proposed amendment does not create a new regulation, or expand, or repeal an existing regulation. Lastly, the proposed amendment does not affect the number of individuals subject to the rule's applicability and will not affect this state's economy.

**REQUEST FOR PUBLIC COMMENT.** If you want to comment on the proposal, submit your written comments by 5:00 p.m. CDT on September 21, 2020. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to [rules@txdmv.gov](mailto:rules@txdmv.gov) or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

**STATUTORY AUTHORITY.** The amendment is proposed under Transportation Code §643.003, which provides the department authority to adopt rules to administer Chapter 643 and Transportation Code §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

**CROSS REFERENCE TO STATUTE.** Transportation Code §643.257.

§218.72. *Administrative Sanctions.*

(a) Grounds for suspension and revocation. Transportation Code, §643.252 provides the grounds for which the department can suspend or revoke a certificate of registration issued under Transportation Code, Chapter 643.

(b) Department of Public Safety enforcement recommendations.

(1) The department may suspend or revoke a certificate of registration of a motor carrier upon a written request by the Department of Public Safety, if a motor carrier:

(A) has an unsatisfactory safety rating under 49 C.F.R., Part 385; or

(B) has multiple violations of Transportation Code, Chapter 644, a rule adopted under that chapter, or Transportation Code, Title 7, Subtitle C.

(2) A request under paragraph (1) of this subsection must include documentation showing the violation.

(c) Probation.

(1) The department may probate any suspension ordered under this section.

(2) In determining whether to probate a suspension, the department will review:

(A) the seriousness of the violation;

(B) prior violations by the motor carrier;

(C) whether the department has previously probated a suspension for the motor carrier;

(D) cooperation by the motor carrier in the investigation and enforcement proceeding; and

(E) the ability of the motor carrier to correct the violations.

(3) The department shall set the length of the probation based on the seriousness of the violation and previous violations by the motor carrier.

(4) The department will require that the motor carrier report monthly to the department any information necessary to determine compliance with the terms of the probation.

(5) The department may revoke the probation and order the initial suspension and administrative penalty if the motor carrier fails to abide by any terms of the probation.

(d) Refund.

(1) The department may order a motor carrier that violates Transportation Code Chapter 643, department rules, or a department order adopted under Transportation Code Chapter 643 to issue a refund to a customer who paid the motor carrier to transport household goods.

(2) Under this subsection, a refund is the return of any percentage of funds paid, or contracted to be paid, to a motor carrier transporting household goods, whether those funds are documented as a separate line item or included in the overall amount paid by a customer.

(A) A refund includes overpayments, fees paid for services not rendered, and fees paid for charges not listed on the household mover's tariff after the household mover takes possession of the customer's property.

(B) A refund does not include any consideration of damages or harm over the amount paid by the customer.

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

Filed with the Office of the Secretary of State on August 7, 2020.

TRD-202003215

Tracey Beaver

General Counsel

Texas Department of Motor Vehicles

Earliest possible date of adoption: September 20, 2020

For further information, please call: (512) 465-5665



## CHAPTER 219. OVERSIZE AND OVERWEIGHT VEHICLES AND LOADS

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes amendments to Title 43 TAC §§219.2, 219.11, 219.13 - 219.15, 219.42, 219.43, and 219.61 - 219.63, concerning: 1) payment methods for oversize or overweight permits to streamline department processes; and 2) escort flag vehicles to conform the rules to Transportation Code §547.305(e-3) and (f)(1), as added by House Bill (HB) 61, 86th Legislature, Regular Session (2019).

EXPLANATION. Amendments to Title 43 TAC Subchapters A, B, D, and E are necessary to conform the rules to HB 61, 86th Legislature, Regular Session (2019). House Bill 61 added a new definition for "escort flag vehicle" under Transportation Code §547.305 and provided the operator of an escort flag vehicle with the option of equipping the escort flag vehicle with alternating or flashing blue and amber lights.

Amendments to Title 43 TAC §219.11(f) are necessary to streamline department processes to improve program efficiency by eliminating two escrow account payment methods for customers that purchase oversize or overweight permits. One of the escrow account payment methods requires department personnel to manually process payments, and the second escrow account payment method requires department personnel to reconcile the payment records.

Transportation Code §547.305(f)(1) defines an "escort flag vehicle" as a vehicle that precedes or follows an oversize or overweight vehicle to facilitate the safe movement of the oversize or overweight vehicle over roads. To implement HB 61, the term, "escort vehicle" is changed to the term "escort flag vehicle" throughout Title 43 TAC Chapter 219.

Transportation Code §547.305(e-3) is permissive, allowing escort flag vehicles to be equipped with alternating or flashing blue and amber lights. Transportation Code §623.099(c)(1) already requires that escort flag vehicles have two lights flashing simultaneously or one rotating amber beacon of not less than eight inches when escorting a manufactured house. Transportation Code §623.129 already requires that escort flag vehicles have two lights flashing simultaneously or one rotating amber beacon of not less than eight inches when escorting a portable building and compatible cargo because the requirements under Transportation Code §623.099 apply to the movement of these vehicles.

Transportation Code §623.008(b) allows the department to require a person operating under a permit issued under the subtitle to use one or more escort flag vehicles if required by the Texas Department of Transportation or for the safe movement over roads of an oversize or overweight vehicle. Transportation Code §547.305(e-3) adds that the flashing lights for an escort flag vehicle may be alternating flashing blue and amber lights, and it controls under Government Code §311.025(a) to the extent of a conflict with §623.099 because §547.305(e-3) is the latest legislative enactment.

Proposed amendments to §219.2 add the word "flag" to the term "escort vehicle" to define "escort flag vehicle" as a vehicle that precedes or follows an oversize or overweight vehicle to facilitate the safe movement of the oversize or overweight vehicle over roads. This change is necessary to track the statutory language in Transportation Code §547.305(f)(1) and clarify the use of the term throughout Title 43 TAC Chapter 219. Proposed amendments to §219.2 delete the term "permit account card" and renumber the remaining definitions because the department is proposing to eliminate this form of payment for an oversize or overweight permit.

Proposed amendments throughout §219.11 add the word "flag" to the term "escort vehicle" to conform to the definition of the term "escort flag vehicle" under Transportation Code §547.305(f)(1). Proposed amendment to §219.11(k)(7)(B) track the statutory language in Transportation Code §547.305, which permits an escort flag vehicle to be equipped with alternating or flashing blue and amber lights.

Proposed amendments to §219.15(f)(3)(C) track the statutory language in Transportation Code §547.305, which permits an escort flag vehicle to be equipped with alternating or flashing blue and amber lights.

Proposed amendments to §§219.13-219.15, 219.42, 219.43, 219.61-219.63 add the word "flag" to the term "escort vehicle" to clarify that the use of the term throughout the chapter is as defined under proposed amended §219.2 regarding an "escort flag vehicle."

Proposed amendments to §219.11(f) eliminate both permit account cards and escrow accounts (together referred to as "escrow accounts") as methods of payment for oversize or overweight permits.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Linda M. Flores, Chief Financial Officer, has determined that for each year of the first five years the amendments will be in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. The proposal does not add to or decrease state revenues or expenditures, and local governments are not involved in enforcing or complying with the proposed rule. Jimmy Archer, Director of the Motor Carrier Division, does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. Mr. Archer has also determined that, for each year of the first five years the amended sections are in effect, there are anticipated public benefits.

Anticipated Public Benefits. The public benefits anticipated as a result of the proposal include conforming the rules to existing law under to Transportation Code §547.305(e-3) and (f)(1). The public benefits of removing the escrow account payment methods for purchasing an oversize or overweight permit include improved efficiency by encouraging the use of electronic payment methods and reducing the amount of transactions that department personnel must manually process or reconcile.

Anticipated Costs To Comply With the Proposal. Mr. Archer anticipates that regulated entities will not incur costs as a result of the proposed rules.

The proposed amendments do not directly impose any fees for using the following payment methods: credit card, Automatic Clearing House (ACH), check, money order, cashier's check, and cash. The cost, if any, in this proposal is the difference between using an escrow account and another authorized method of payment.

Each payment method may result in an indirect cost to a customer from the customer's third-party vendor (such as the bank's fee for a cashier's check), or it may result in a direct cost to a customer if a customer pays in cash by traveling to one of the department's Regional Service Centers to pay.

The department anticipates that the customer will have the information necessary to determine as a business decision its own costs and the customer's business needs. Because the department does not impose additional fees, the customer will be in the best place to determine the most efficient way to pay for an oversize or overweight permit.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. As required by Government Code, §2006.002, the department has determined that the proposed amendments will not have an adverse economic effect on small businesses, micro-business, and rural communities because the proposed amendments conform Title 43 TAC Chapter 219, Subchapters A, B, D, and E to Transportation Code §547.305(e-3) and (f)(1) and do not add additional requirements to regulated persons. Although the department proposes to remove two methods of payment for oversize or overweight permits, customers will continue to have alternative methods of payment, including methods that cost less than the methods the department proposes to remove.

The department currently accepts the following methods of payment for oversize or overweight permits for online purchases through the Texas Permitting and Routing Optimization System (TxPROS): credit card, ACH, check, money order, cashier's check, cash, escrow accounts administered by the department,

and the Permit Account Card (PAC), which is an escrow account administered by Frost Bank. The department currently accepts these same methods of payment, except for the ACH, for purchases of oversize or overweight permits by non-online methods, such as applications submitted by facsimile.

To determine whether the proposed removal of the two escrow methods of payment would have an adverse economic effect on small businesses, the department analyzed the total direct and indirect costs to a customer to buy one of three different permits using the current methods of payment. For the purposes of this analysis, the department excluded any setup fees or monthly service or maintenance fees charged by the third-party service providers, as well as the requirement for a customer to make an initial deposit of \$305 with the department to set up an escrow account that the department administers under §219.11(f). Setup fees and monthly service or maintenance fees varied too much, based on the type of account or how much money a customer has in their account. Also, the Elavon fees vary by contract. Some banks waive monthly service or maintenance fees, based on the type of account. The department assumed that the customers who pay by check already have a checking account and that they use the checking account to write checks for other purchases, so the department did not factor in the cost for buying printed checks. The department also assumed that the average customer must drive 20 miles to pick up a money order or cashier's check, and that the average customer must drive 50 miles to the closest Regional Service Center if they want to pay by cash. For mileage costs, the department used the state's automobile mileage reimbursement rate of \$0.57.5 per mile, which amounts to \$11.50 for 20 miles and \$28.75 for 50 miles. For purposes of this analysis, the department chose the cheapest oversize or overweight permit, the most expensive oversize or overweight permit, and one of the most commonly purchased oversize or overweight permits.

Figure: 43 TAC Chapter 219 - Preamble

The department determined that there will not be an adverse economic effect on small or micro-businesses as a result of the enforcement or administration of amendments to §219.11(f). A total of 30,529 customers purchased oversize and/or overweight permits in the last twelve months. The department was unable to obtain information regarding the number of customers affected by this proposal that qualify as a small business or a micro-business under Government Code 2006.002. However, out of 30,529 customers who purchased oversize and/or overweight permits in the last twelve months, the department estimates that a majority of them are small or micro-businesses that may be affected by this proposal. Also, in the last 14 months, only 317 customers purchased oversize or overweight permits using an escrow account that the department administers. In the last 14 months, only 225 customers purchased oversize or overweight permits using the PAC. The cost of compliance will not vary between large businesses and small or micro-businesses. As demonstrated in the calculations above, customers will continue to have methods of payment that are cheaper than the two methods of payment that the department proposes to remove.

The objective of this proposal is to enable more department transactions to be done electronically, which should make the program more efficient. The proposal removes two oversize or overweight permit escrow account payment methods that require physical handling by the department. Although Frost Bank administers the PAC escrow accounts, the department's staff must engage in a month-end reconciliation process for

payments made by PAC. The proposal allows customers to continue using other payment methods to purchase the permits with no additional fees imposed by the department, including: payment by credit card, ACH, check, money order, cashier's check, and cash. The customer is in the best position to make the business decision to determine which method of payment is most suitable and cost-effective for their business practices.

The department balanced the needs of providing cost-effective payment options for customers with the goal of improving program efficiency by having more transactions processed electronically. The department determined that due to the other available payment options, terminating escrow accounts will improve program efficiency.

The department determined that the proposal will not have an adverse economic effect on rural communities because the department does not charge municipalities for oversize or overweight permits. As a result, and in accordance with Government Code §2006.002(c), it is not necessary for the department to address rural communities in its regulatory flexibility analysis.

**TAKINGS IMPACT ASSESSMENT.** The department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code, §2007.043.

**GOVERNMENT GROWTH IMPACT STATEMENT.** The department has determined that each year of the first five years the proposed amendments are in effect, the proposed amendments:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the department;
- will not require an increase or decrease in fees paid to the department;
- will not create new regulations;
- will not expand existing regulations;
- will repeal existing regulations;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

#### REQUEST FOR PUBLIC COMMENT.

If you want to comment on the proposal, submit your written comments by 5:00 p.m. CDT on September 21, 2020. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to [rules@txdmv.gov](mailto:rules@txdmv.gov) or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

### SUBCHAPTER A. GENERAL PROVISIONS

#### 43 TAC §219.2

**STATUTORY AUTHORITY.** The department proposes amendments under Transportation Code §§623.002, 1001.009, and 1002.001.

- Transportation Code §632.002 authorizes the board of the Texas Department of Motor Vehicles (board) to adopt rules as necessary to implement Transportation Code Chapter 623.

- Transportation Code §1001.009 authorizes the board to adopt rules regarding the method of collection of a fee for any goods or services provided by the department.

- Transportation Code §1002.001 authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department under the Transportation Code.

**CROSS REFERENCE TO STATUTE.** Transportation Code §547.305, Chapter 621, and Chapter 623.

#### §219.2. Definitions.

(a) The definitions contained in Transportation Code, Chapters 621, 622, and 623 apply to this chapter. In the event of a conflict with this chapter, the definitions contained in Transportation Code, Chapters 621, 622, and 623 control.

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

(1) Annual permit--A permit that authorizes movement of an oversize and/or overweight load for one year commencing with the effective date.

(2) Applicant--Any person, firm, or corporation requesting a permit.

(3) Axle--The common axis of rotation of one or more wheels whether power-driven or freely rotating, and whether in one or more segments.

(4) Axle group--An assemblage of two or more consecutive axles, with two or more wheels per axle, spaced at least 40 inches from center of axle to center of axle, equipped with a weight-equalizing suspension system that will not allow more than a 10% weight difference between any two axles in the group.

(5) Board--The Board of the Texas Department of Motor Vehicles.

(6) Closeout--The procedure used by the department to terminate a permit, issued under Transportation Code, §623.142 or §623.192 that will not be renewed by the applicant.

(7) Complete identification number--A unique and distinguishing number assigned to equipment or a commodity for purposes of identification.

(8) Concrete pump truck--A self-propelled vehicle designed to pump the concrete product from a ready mix truck to the point of construction.

(9) Crane--Any unladen lift equipment motor vehicle designed for the sole purpose of raising, shifting, or lowering heavy weights by means of a projecting, swinging mast with an engine for power on a chassis permanently constructed or assembled for such purpose.

(10) Credit card--A credit card approved by the department.

(11) Daylight--The period beginning one-half hour before sunrise and ending one-half hour after sunset.



(12) Department--The Texas Department of Motor Vehicles.

(13) Digital signature--An electronic identifier intended by the person using it to have the same force and effect as a manual signature. The digital signature shall be unique to the person using it.

(14) Director--The Executive Director of the Texas Department of Motor Vehicles or a designee not below the level of division director.

(15) District--One of the 25 geographical areas, managed by a district engineer of the Texas Department of Transportation, in which the Texas Department of Transportation conducts its primary work activities.

(16) District engineer--The chief executive officer in charge of a district of the Texas Department of Transportation.

(17) Electronic identifier--A unique identifier which is distinctive to the person using it, is independently verifiable, is under the sole control of the person using it, and is transmitted in a manner that makes it infeasible to change the data in the communication or digital signature without invalidating the digital signature.

(18) Escort flag vehicle--A vehicle that precedes or follows an oversize or overweight vehicle to facilitate the safe movement of the oversize or overweight vehicle over roads [A motor vehicle used to warn traffic of the presence of an oversize and/or overweight vehicle].

(19) Four-axle group--Any four consecutive axles, having at least 40 inches from center of axle to center of axle, whose extreme centers are not more than 192 inches apart and are individually attached to or articulated from, or both, to the vehicle by a weight equalizing suspension system.

(20) Gauge--The transverse spacing distance between tires on an axle, expressed in feet and measured to the nearest inch, from center-of-tire to center-of-tire on an axle equipped with only two tires, or measured to the nearest inch from the center of the dual wheels on one side of the axle to the center of the dual wheels on the opposite side of the axle.

(21) Gross weight--The unladen weight of a vehicle or combination of vehicles plus the weight of the load being transported.

(22) Height pole--A device made of a non-conductive material, used to measure the height of overhead obstructions.

(23) Highway maintenance fee--A fee established by Transportation Code, §623.077, based on gross weight, and paid by the permittee when the permit is issued.

(24) Highway use factor--A mileage reduction figure used in the calculation of a permit fee for a permit issued under Transportation Code, §623.142 and §623.192.

(25) Hubometer--A mechanical device attached to an axle on a unit or a crane for recording mileage traveled.

(26) HUD number--A unique number assigned to a manufactured home by the U.S. Department of Housing and Urban Development.

(27) Indirect cost share--A prorated share of administering department activities, other than the direct cost of the activities, including the cost of providing statewide support services.

(28) Load-restricted bridge--A bridge that is restricted by the Texas Department of Transportation, under the provisions of Transportation Code, §621.102, to a weight limit less than the maximum amount allowed by Transportation Code, §621.101.

(29) Load-restricted road--A road that is restricted by the Texas Department of Transportation, under the provisions of Transportation Code, §621.102, to a weight limit less than the maximum amount allowed by Transportation Code, §621.101.

(30) Machinery plate--A license plate issued under Transportation Code, §502.146.

(31) Manufactured home--Manufactured housing, as defined in Occupations Code, Chapter 1201, and industrialized housing and buildings, as defined in Occupations Code, §1202.002, and temporary chassis systems, and returnable undercarriages used for the transportation of manufactured housing and industrialized housing and buildings, and a transportable section which is transported on a chassis system or returnable undercarriage that is constructed so that it cannot, without dismantling or destruction, be transported within legal size limits for motor vehicles.

(32) Motor carrier--A person that controls, operates, or directs the operation of one or more vehicles that transport persons or cargo over a public highway in this state, as defined by Transportation Code, §643.001.

(33) Motor carrier registration (MCR)--The registration issued by the department to motor carriers moving intrastate, under authority of Transportation Code, Chapter 643.

(34) Nighttime--The period beginning one-half hour after sunset and ending one-half hour before sunrise, as defined by Transportation Code, §541.401.

(35) Nondivisible load or vehicle--

(A) Any load or vehicle exceeding applicable length or weight limits which, if separated into smaller loads or vehicles, would:

(i) compromise the intended use of the vehicle, i.e., make it unable to perform the function for which it was intended;

(ii) destroy the value of the load or vehicle, i.e., make it unusable for its intended purpose; or

(iii) require more than eight workhours to dismantle using appropriate equipment. The applicant for a nondivisible load permit has the burden of proof as to the number of workhours required to dismantle the load.

(B) Emergency response vehicles, including those loaded with salt, sand, chemicals or a combination thereof, with or without a plow or blade attached in front, and being used for the purpose of spreading the material on highways that are or may become slick or icy.

(C) Casks designed for the transport of spent nuclear materials.

(D) Military vehicles transporting marked military equipment or materiel.

(36) Oil field rig-up truck--An unladen vehicle with an overweight single steering axle, equipped with a winch and set of gin poles used for lifting, erecting, and moving oil well equipment and machinery.

(37) Oil well servicing unit--An oil well clean-out unit, oil well drilling unit, or oil well swabbing unit, which is mobile equipment, either self-propelled or trailer-mounted, constructed as a machine used solely for cleaning-out, drilling, servicing, or swabbing oil wells, and consisting in general of, but not limited to, a mast, an engine for power, a draw works, and a chassis permanently constructed or assembled for this purpose.

(38) One trip registration--Temporary vehicle registration issued under Transportation Code, §502.095.

(39) Overdimension load--A vehicle, combination of vehicles, or vehicle and its load that exceeds maximum legal width, height, length, overhang, or weight as set forth by Transportation Code, Chapter 621, Subchapters B and C.

(40) Overhang--The portion of a load extending beyond the front or rear of a vehicle or combination of vehicles.

(41) Overheight--A vehicle or load that exceeds the maximum height specified in Transportation Code, §621.207.

(42) Overlength--A vehicle, combination of vehicles, or a vehicle or vehicle combination and its load that exceed(s) the maximum length specified in Transportation Code, §§621.203, 621.204, 621.205, and 621.206.

(43) Oversize load--A vehicle, combination of vehicles, or a vehicle or vehicle combination and its load that exceed(s) maximum legal width, height, length, or overhang, as set forth by Transportation Code, Chapter 621, Subchapter C.

(44) Overweight--A vehicle, combination of vehicles, or a vehicle or vehicle combination and its load that exceed(s) the maximum weight specified in Transportation Code, §621.101.

(45) Overwidth--A vehicle or load that exceeds the maximum width specified in Transportation Code, §621.201.

(46) Permit--Authority for the movement of an oversize and/or overweight vehicle, combination of vehicles, or a vehicle or vehicle combination and its load, issued by the department under Transportation Code, Chapter 623.

~~[(47) Permit account card (PAC)--A debit card that can only be used to purchase a permit and which is issued by a financial institution that is under contract to the department and the Comptroller of Public Accounts.]~~

(47) ~~[(48)]~~ Permit officer--An employee of the department who is authorized to issue an oversize/overweight permit.

(48) ~~[(49)]~~ Permit plate--A license plate issued under Transportation Code, §502.146, to a crane or an oil well servicing vehicle.

(49) ~~[(50)]~~ Permitted vehicle--A vehicle, combination of vehicles, or vehicle and its load operating under the provisions of a permit.

(50) ~~[(51)]~~ Permittee--Any person, firm, or corporation that is issued an oversize/overweight permit by the department.

(51) ~~[(52)]~~ Pipe box--A container specifically constructed to safely transport and handle oil field drill pipe and drill collars.

(52) ~~[(53)]~~ Portable building compatible cargo--Cargo, other than a portable building unit, that is manufactured, assembled, or distributed by a portable building unit manufacturer and is transported in combination with a portable building unit.

(53) ~~[(54)]~~ Portable building unit--The pre-fabricated structural and other components incorporated and delivered by the manufacturer as a complete inspected unit with a distinct serial number whether in fully assembled, partially assembled, or kit (unassembled) configuration when loaded for transport.

(54) ~~[(55)]~~ Principal--The person, firm, or corporation that is insured by a surety bond company.

(55) ~~[(56)]~~ Roll stability support safety system--An electronic system that monitors vehicle dynamics and estimates the stability of a vehicle based on its mass and velocity, and actively adjusts vehicle systems including the throttle and/or brake(s) to maintain stability when a rollover risk is detected.

(56) ~~[(57)]~~ Shipper's certificate of weight--A form approved by the department in which the shipper certifies to the maximum weight of the shipment being transported.

(57) ~~[(58)]~~ Single axle--An assembly of two or more wheels whose centers are in one transverse vertical plane or may be included between two parallel transverse planes 40 inches apart extending across the full width of the vehicle.

(58) ~~[(59)]~~ Single-trip permit--A permit issued for an overdimension load for a single continuous movement over a specific route for an amount of time necessary to make the movement.

(59) ~~[(60)]~~ State highway--A highway or road under the jurisdiction of the Texas Department of Transportation.

(60) ~~[(61)]~~ State highway system--A network of roads and highways as defined by Transportation Code, §221.001.

(61) ~~[(62)]~~ Surety bond--An agreement issued by a surety bond company to a principal that pledges to compensate the Texas Department of Transportation for any damage that might be sustained to the highways and bridges by virtue of the operation of the equipment for which a permit was issued. A surety bond is effective the day it is issued and expires at the end of the state fiscal year, which is August 31st. For example, if you obtain a surety bond on August 30th, it will expire the next day at midnight.

(62) ~~[(63)]~~ Tare weight--The empty weight of any vehicle transporting an overdimension load.

(63) ~~[(64)]~~ Temporary vehicle registration--A 72-hour temporary vehicle registration, 144-hour temporary vehicle registration, or one-trip registration.

(64) ~~[(65)]~~ Three-axle group--Any three consecutive axles, having at least 40 inches from center of axle to center of axle, whose extreme centers are not more than 144 inches apart, and are individually attached to or articulated from, or both, to the vehicle by a weight equalizing suspension system.

(65) ~~[(66)]~~ Time permit--A permit issued for a specified period of time under §219.13 of this title (relating to Time Permits).

(66) ~~[(67)]~~ Tire size--The inches of lateral tread width.

(67) ~~[(68)]~~ Traffic control device--All traffic signals, signs, and markings, including their supports, used to regulate, warn, or control traffic.

(68) ~~[(69)]~~ Trailer mounted unit--An oil well clean-out, drilling, servicing, or swabbing unit mounted on a trailer, constructed as a machine used for cleaning out, drilling, servicing, or swabbing oil wells, and consisting in general of, but not limited to, a mast, an engine for power, a draw works, and a chassis permanently constructed or assembled for this purpose.

(69) ~~[(70)]~~ Truck--A motor vehicle designed, used, or maintained primarily for the transportation of property.

(70) ~~[(71)]~~ Truck blind spot systems--Vehicle-based sensor devices that detect other vehicles or objects located in the vehicle's adjacent lanes. Warnings can be visual, audible, vibrating, or tactile.

(71) ~~[(72)]~~ Trunnion axle--Two individual axles mounted in the same transverse plane, with four tires on each axle, that are con-

nected to a pivoting wrist pin that allows each individual axle to oscillate in a vertical plane to provide for constant and equal weight distribution on each individual axle at all times during movement.

(72) [(73)] Trunnion axle group--Two or more consecutive trunnion axles whose centers are at least 40 inches apart and which are individually attached to or articulated from, or both, to the vehicle by a weight equalizing suspension system.

(73) [(74)] Two-axle group--Any two consecutive axles whose centers are at least 40 inches but not more than 96 inches apart and are individually attached to or articulated from, or both, to the vehicle by a weight equalizing suspension system.

(74) [(75)] TxDOT--Texas Department of Transportation.

(75) [(76)] Unit--Oil well clean-out unit, oil well drilling unit, oil well servicing unit, and/or oil well swabbing unit.

(76) [(77)] Unladen lift equipment motor vehicle--A motor vehicle designed for use as lift equipment used solely to raise, shift, or lower heavy weights by means of a projecting, swinging mast with an engine for power on a chassis permanently constructed or assembled for such purpose.

(77) [(78)] USDOT Number--The United States Department of Transportation number.

(78) [(79)] Variable load suspension axles--Axles, whose controls must be located outside of and be inaccessible from the driver's compartment, that can be regulated, through the use of hydraulic and air suspension systems, mechanical systems, or a combination of these systems, for the purpose of adding or decreasing the amount of weight to be carried by each axle during the movement of the vehicle.

(79) [(80)] Vehicle identification number--A unique and distinguishing number assigned to a vehicle by the manufacturer or by the department in accordance with Transportation Code, §501.032 and §501.033.

(80) [(81)] Water Well Drilling Machinery--Machinery used exclusively for the purpose of drilling water wells, including machinery that is a unit or a unit mounted on a conventional vehicle or chassis.

(81) [(82)] Weight-equalizing suspension system--An arrangement of parts designed to attach two or more consecutive axles to the frame of a vehicle in a manner that will equalize the load between the axles.

(82) [(83)] Windshield sticker--Identifying insignia indicating that a permit has been issued in accordance with Subchapter C of this chapter.

(83) [(84)] Year--A time period consisting of 12 consecutive months that commences with the effective date stated in the permit.

(84) [(85)] 72-hour temporary vehicle registration--Temporary vehicle registration issued by the department authorizing a vehicle to operate at maximum legal weight on a state highway for a period not longer than 72 consecutive hours, as prescribed by Transportation Code, §502.094.

(85) [(86)] 144-hour temporary vehicle registration--Temporary vehicle registration issued by the department authorizing a vehicle to operate at maximum legal weight on a state highway for a period not longer than 144 consecutive hours, as prescribed by Transportation Code, §502.094.

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

Filed with the Office of the Secretary of State on August 7, 2020.

TRD-202003204

Tracey Beaver

General Counsel

Texas Department of Motor Vehicles

Earliest possible date of adoption: September 20, 2020

For further information, please call: (512) 465-5665



## SUBCHAPTER B. GENERAL PERMITS

### 43 TAC §§219.11, 219.13 - 219.15

STATUTORY AUTHORITY. The department proposes amendments under Transportation Code §§623.002, 1001.009, and 1002.001.

- Transportation Code §632.002 authorizes the board of the Texas Department of Motor Vehicles (board) to adopt rules as necessary to implement Transportation Code Chapter 623.

- Transportation Code §1001.009 authorizes the board to adopt rules regarding the method of collection of a fee for any goods or services provided by the department.

- Transportation Code §1002.001 authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department under the Transportation Code.

CROSS REFERENCE TO STATUTE. Transportation Code §547.305, Chapter 621, and Chapter 623.

§219.11. *General Oversize/Overweight Permit Requirements and Procedures.*

(a) Purpose and scope. This section contains general requirements relating to oversize/overweight permits, including single-trip permits. Specific requirements for each type of specialty permit are provided for in this chapter.

(b) Prerequisites to obtaining an oversize/overweight permit. Unless exempted by law or this chapter, the following requirements must be met prior to the issuance of an oversize/overweight permit.

(1) Commercial motor carrier registration or surety bond. Prior to obtaining an oversize/overweight permit, an applicant permitted under the provisions of Transportation Code, Chapter 623, Subchapter D, must be registered as a commercial motor carrier under Chapter 218 of this title (relating to Motor Carriers) or, if not required to obtain a motor carrier registration, file a surety bond with the department as described in subsection (n) of this section.

(2) Vehicle registration. A vehicle registered with a permit plate will not be issued an oversize/overweight permit under this subchapter. A permitted vehicle operating under this subchapter must be registered with one of the following types of vehicle registration:

(A) current Texas license plates that indicate the permitted vehicle is registered for maximum legal gross weight or the maximum weight the vehicle can transport;

(B) Texas temporary vehicle registration;

(C) current out of state license plates that are apportioned for travel in Texas; or

(D) foreign commercial vehicles registered under Texas annual registration.

(c) Permit application.

(1) An application for a permit shall be made in a form and by the method prescribed by the department, and at a minimum shall include the following:

(A) name, address, telephone number, and email address (if requested) of the applicant;

(B) applicant's customer identification number;

(C) applicant's MCR number or USDOT Number, if applicable;

(D) complete load description, including maximum width, height, length, overhang, and gross weight;

(E) complete description of vehicle, including truck year, make, license plate number and state of issuance, and vehicle identification number, if required;

(F) vehicle axle and tire information including number of axles, distance between axles, axle weights, number of tires, and tire size for overweight permit applications; and

(G) any other information required by law.

(2) Applications transmitted electronically are considered signed if a digital signature is transmitted with the application and intended by the applicant to authenticate the application.

(A) The department may only accept a digital signature used to authenticate an application under procedures that comply with any applicable rules adopted by the Department of Information Resources regarding department use or acceptance of a digital signature.

(B) The department may only accept a digital signature to authenticate an application if the digital signature is:

(i) unique to the person using it;

(ii) capable of independent verification;

(iii) under the sole control of the person using it; and

(iv) transmitted in a manner that will make it infeasible to change the data in the communication or digital signature without invalidating the digital signature.

(d) Maximum permit weight limits.

(1) General. An overweight permitted vehicle will not be routed over a load-restricted bridge when exceeding the posted capacity of the bridge, unless a special exception is granted by TxDOT, based on an analysis of the bridge performed by a TxDOT approved licensed professional engineer or by TxDOT. Any analysis by a non-TxDOT engineer must have final approval from TxDOT.

(A) An axle group must have a minimum spacing of four feet, measured from center of axle to center of axle, between each axle in the group to achieve the maximum permit weight for the group.

(B) The maximum permit weight for an axle group with spacing of five or more feet between each axle will be based on an engineering study of the equipment conducted by TxDOT.

(C) A permitted vehicle will be allowed to have air suspension, hydraulic suspension, and mechanical suspension axles in a common weight equalizing suspension system for any axle group.

(D) The department may permit axle weights greater than those specified in this section, for a specific individual permit request, based on an engineering study of the route and hauling equipment performed by a TxDOT approved licensed professional engineer or by TxDOT. Any analysis by a non-TxDOT engineer must have final approval from TxDOT.

(E) A permitted vehicle or combination of vehicles may not exceed the manufacturer's rated tire carrying capacity, unless expressly authorized in the language on the permit based on an analysis performed by a TxDOT approved licensed professional engineer or by TxDOT. Any analysis by a non-TxDOT engineer must have final approval from TxDOT.

(F) Two or more consecutive axle groups having an axle spacing of less than 12 feet, measured from the center of the last axle of the preceding group to the center of the first axle of the following group, will be reduced by 2.5% for each foot less than 12 feet.

(2) Maximum axle weight limits. Maximum permit weight for an axle or axle group is based on 650 pounds per inch of tire width or the following axle or axle group weights, whichever is the lesser amount:

(A) single axle--25,000 pounds;

(B) two axle group--46,000 pounds;

(C) three axle group--60,000 pounds;

(D) four axle group--70,000 pounds;

(E) five axle group--81,400 pounds;

(F) axle group with six or more axles--determined by TxDOT based on an engineering study of the equipment, which will include the type of steering system used, the type of axle suspension, the spacing distance between each axle, the number of tires per axle, and the tire size on each axle; or

(G) trunnion axles--30,000 pounds per axle if the trunnion configuration has:

(i) two axles;

(ii) eight tires per axle;

(iii) axles a minimum of 10 feet in width; and

(iv) at least five feet of spacing between the axles, not to exceed six feet.

(3) Weight limits for load restricted roads. Maximum permit weight for an axle or axle group, when traveling on a load restricted road, will be based on 650 pounds per inch of tire width or the following axle or axle group weights, whichever is the lesser amount:

(A) single axle--22,500 pounds;

(B) two axle group--41,400 pounds;

(C) three axle group--54,000 pounds;

(D) four axle group--63,000 pounds;

(E) five axle group--73,260 pounds;

(F) axle group with six or more axles--determined by TxDOT based on an engineering study of the equipment, which will include the type of steering system used, the type of axle suspension, the spacing distance between each axle, the number of tires per axle, and the tire size on each axle;

(G) trunnion axles--54,000 pounds; and

(H) two or more consecutive axle groups having an axle spacing of less than 12 feet, measured from the center of the last axle of the preceding group to the center of the first axle of the following group will be reduced by 2.5% for each foot less than 12 feet.

(e) Permit issuance.

(1) General. Upon receiving an application in the form prescribed by the department, the department will review the permit application for the appropriate information and will then determine the most practical route based on information provided by TxDOT.

(2) Routing.

(A) A permitted vehicle will be routed over the most practical route available taking into consideration:

(i) the size and weight of the overdimension load in relation to vertical clearances, width restrictions, steep grades, and weak or load restricted bridges;

(ii) the geometrics of the roadway in comparison to the overdimension load;

(iii) sections of highways restricted to specific load sizes and weights due to construction, maintenance, and hazardous conditions;

(iv) traffic conditions, including traffic volume;

(v) route designations by municipalities in accordance with Transportation Code, §623.072;

(vi) load restricted roads; and

(vii) other considerations for the safe transportation of the load.

(B) When a permit applicant desires a route other than the most practical, more than one permit will be required for the trip unless an exception is granted by the department.

(3) Movement to and from point of origin or place of business. A permitted vehicle will be allowed to:

(A) move empty oversize and overweight hauling equipment to and from the job site; and

(B) move oversize and overweight hauling equipment with a load from the permitted vehicle's point of origin to pick up a permitted load, and to the permitted vehicle's point of origin or the permittee's place of business after dropping off a permitted load, as long as:

(i) the load does not exceed legal size and weight limits under Transportation Code, Chapters 621 and 622; and

(ii) the transport complies with the permit, including the time period stated on the permit.

(f) Payment of permit fees, refunds.

(1) Payment methods. All permit applications must be accompanied by the proper fee, which shall be payable as provided by §209.23 of this title (relating to Methods of Payment).

~~[(A) Permit Account Card (PAC). Application for a PAC should be made directly to the issuing institution. A PAC must be established and maintained according to the contract provisions stipulated between the PAC holder and the financial institution under contract to the department and the Comptroller of Public Accounts.]~~

~~[(B) Eserow accounts. A permit applicant may establish an eserow account with the department for the specific purpose of paying any fee that is related to the issuance of a permit under this subchapter.]~~

~~[(i) A permit applicant who desires to establish an eserow account shall complete and sign an eserow account agreement, and shall return the completed and signed agreement to the department~~

~~with a check in the minimum amount of \$305, which shall be deposited to the appropriate fund by the department with the Comptroller of Public Accounts. In lieu of submitting a check for the initial deposit to an applicant's eserow account, the applicant may transfer funds to the department electronically.]~~

~~[(ii) Upon initial deposit, and each subsequent deposit made by the eserow account holder, \$5 will be charged as an eserow account administrative fee.]~~

~~[(iii) The eserow account holder is responsible for monitoring of the eserow account balance.]~~

~~[(iv) An eserow account holder must submit a written request to the department to terminate the eserow account agreement. Any remaining balance will be returned to the eserow account holder.]~~

(2) Refunds. A permit fee will not be refunded after the permit number has been issued unless such refund is necessary to correct an error made by the permit officer.

(g) Amendments. A permit may be amended for the following reasons:

(1) vehicle breakdown;

(2) changing the intermediate points in an approved permit route;

(3) extending the expiration date due to conditions which would cause the move to be delayed;

(4) changing route origin or route destination prior to the start date as listed on the permit;

(5) changing vehicle size limits prior to the permit start date as listed on the permit, provided that changing the vehicle size limit does not necessitate a change in the approved route; and

(6) correcting any mistake that is made due to permit officer error.

(h) Requirements for overwidth loads.

(1) Unless stated otherwise on the permit, an overwidth load must travel in the outside traffic lane on multi-lane highways, when the width of the load exceeds 12 feet.

(2) Overwidth loads are subject to the escort requirements of subsection (k) of this section.

(3) A permitted vehicle exceeding 16 feet in width will not be routed on the main lanes of a controlled access highway, unless an exception is granted by TxDOT, based on a route and traffic study. The load may be permitted on the frontage roads when available, if the movement will not pose a safety hazard to other highway users.

(4) An applicant requesting a permit to move a load exceeding 20 feet wide will be furnished with a proposed route. The applicant must physically inspect the proposed route to determine if the vehicle and load can safely negotiate it, unless an exception is granted based on a route and traffic study conducted by TxDOT. A permit application and the appropriate fee are required for every route inspection.

(A) The applicant must notify the department in writing whether the vehicle and load can or cannot safely negotiate the proposed route.

(B) If any section of the proposed route is unacceptable, the applicant shall provide the department with an alternate route around the unacceptable section.

(C) Once a route is decided upon and a permit issued, the permit may not be amended unless an exception is granted by the department.

(i) Requirements for overlength loads.

(1) Overlength loads are subject to the escort requirements stated in subsection (k) of this section.

(2) A single vehicle, such as a motor crane, that has a permanently mounted boom is not considered as having either front or rear overhang as a result of the boom because the boom is an integral part of the vehicle.

(3) When a single vehicle with a permanently attached boom exceeds the maximum legal length of 45 feet, a permit will not be issued if the boom projects more than 25 feet beyond the front bumper of the vehicle, or when the boom projects more than 30 feet beyond the rear bumper of the vehicle, unless an exception is granted by TxDOT, based on a route and traffic study.

(4) Maximum permit length for a single vehicle is 75 feet.

(5) A load extending more than 20 feet beyond the front or rearmost portion of the load carrying surface of the permitted vehicle must have a rear escort flag vehicle, unless an exception is granted by TxDOT, based on a route and traffic study.

(6) A permit will not be issued for an oversize vehicle and load with:

(A) more than 25 feet front overhang; or

(B) more than 30 feet rear overhang, unless an exception is granted by TxDOT, based on a route and traffic study.

(7) An applicant requesting a permit to move an oversize vehicle and load exceeding 125 feet overall length will be furnished with a proposed route. The applicant must physically inspect the proposed route to determine if the oversize vehicle and load can safely negotiate it, unless an exception is granted based on a route and traffic study conducted by TxDOT. A permit application and the appropriate fee are required for every route inspection.

(A) The applicant must notify the department in writing whether the oversize vehicle and load can or cannot safely negotiate the proposed route.

(B) If any section of the proposed route is unacceptable, the applicant shall provide the department with an alternate route around the unacceptable section.

(C) Once a route is decided upon and a permit issued, the permit may not be amended unless an exception is granted by the department.

(8) A permitted vehicle that is not overwidth or overheight, and does not exceed 150 feet overall length, may be moved in a convoy consisting of not more than four overlength permitted vehicles. A permitted vehicle that is not overwidth or overheight that exceeds 150 feet, but does not exceed 180 feet overall length, may be moved in a convoy consisting of not more than two overlength permitted vehicles. Convoys are subject to the requirements of subsection (k) of this section. Each permitted vehicle in the convoy must:

(A) be spaced at least 1,000 feet, but not more than 2,000 feet, from any other permitted vehicle in the convoy; and

(B) have a rotating amber beacon or an amber pulsating light, not less than eight inches in diameter, mounted at the rear top of the load being transported.

(j) Requirements for overheight loads.

(1) Overheight loads are subject to the escort requirements stated in subsection (k) of this section.

(2) An applicant requesting a permit to move an oversize vehicle and load with an overall height of 19 feet or greater will be furnished with a proposed route. The applicant must physically inspect the proposed route to determine if the oversize vehicle and load can safely negotiate it, unless an exception is granted based on a route and traffic study conducted by TxDOT. A permit application and the appropriate fee are required for every route inspection.

(A) The applicant must notify the department in writing whether the oversize vehicle and load can or cannot safely negotiate the proposed route.

(B) If any section of the proposed route is unacceptable, the applicant shall provide the department with an alternate route around the unacceptable section.

(C) Once a route is decided upon and a permit issued, the permit may not be amended unless an exception is granted by the department.

(k) Escort flag vehicle requirements. Escort flag vehicle requirements are provided to facilitate the safe movement of permitted vehicles and to protect the traveling public during the movement of permitted vehicles. A permittee must provide for escort flag vehicles and law enforcement assistance when required by TxDOT. The requirements in this subsection do not apply to the movement of manufactured housing, portable building units, or portable building compatible cargo.

(1) General.

(A) Applicability. The operator of an escort flag vehicle shall, consistent with applicable law, warn the traveling public when:

(i) a permitted vehicle must travel over the center line of a narrow bridge or roadway;

(ii) a permitted vehicle makes any turning movement that will require the permitted vehicle to travel in the opposing traffic lanes;

(iii) a permitted vehicle reduces speed to cross under a low overhead obstruction or over a bridge;

(iv) a permitted vehicle creates an abnormal and unusual traffic flow pattern; or

(v) in the opinion of TxDOT, warning is required to ensure the safety of the traveling public or safe movement of the permitted vehicle.

(B) Law enforcement assistance. Law enforcement assistance may be required by TxDOT to control traffic when a permitted vehicle is being moved within the corporate limits of a city, or at such times when law enforcement assistance would provide for the safe movement of the permitted vehicle and the traveling public.

(C) Obstructions. It is the responsibility of the permittee to contact utility companies, telephone companies, television cable companies, or other entities as they may require, when it is necessary to raise or lower any overhead wire, traffic signal, street light, television cable, sign, or other overhead obstruction. The permittee is responsible for providing the appropriate advance notice as required by each entity.

(2) Escort requirements for overwidth loads. Unless an exception is granted based on a route and traffic study conducted by TxDOT, an overwidth load must:

(A) have a front escort flag vehicle if the width of the load exceeds 14 feet, but does not exceed 16 feet, when traveling on a two lane roadway;

(B) have a rear escort flag vehicle if the width of the load exceeds 14 feet, but does not exceed 16 feet, when traveling on a roadway of four or more lanes; and

(C) have a front and a rear escort flag vehicle for all roads, when the width of the load exceeds 16 feet.

(3) Escort requirements for overlength loads. Unless an exception is granted by TxDOT, based on a route and traffic study, overlength loads must have:

(A) a front escort flag vehicle when traveling on a two lane roadway if the vehicle exceeds 110 feet overall length, but does not exceed 125 feet overall length;

(B) a rear escort flag vehicle when traveling on a multi-lane highway if the vehicle exceeds 110 feet overall length, but does not exceed 125 feet overall length; and

(C) a front and rear escort flag vehicle at all times if the permitted vehicle exceeds 125 feet overall length.

(4) Escort requirements for overheight loads. Unless an exception is granted by TxDOT, based on a route and traffic study, overheight loads must have:

(A) a front escort flag vehicle equipped with a height pole to ensure the vehicle and load can clear all overhead obstructions for any permitted vehicle that exceeds 17 feet in height; and

(B) a front and rear escort flag vehicle for any permitted vehicle exceeding 18 feet in height.

(5) Escort requirements for permitted vehicles exceeding legal limits in more than one dimension. When a load exceeds more than one dimension that requires an escort under this subsection, front and rear escort flag vehicles [escorts] will be required unless an exception is granted by TxDOT.

(6) Escort requirements for convoys. Convoys must have a front escort flag vehicle and a rear escort flag vehicle on all highways at all times.

(7) General equipment requirements. The following special equipment requirements apply to permitted vehicles and escort flag vehicles that are not motorcycles.

(A) An escort flag vehicle must be a single unit with a gross vehicle weight (GVW) of not less than 1,000 pounds nor more than 10,000 pounds.

(B) An escort flag vehicle must be equipped with two flashing amber lights; ~~[or] one rotating amber beacon of not less than eight inches in diameter; or alternating or flashing blue and amber lights, each of which must be visible from all directions [; affixed to the roof of the escort vehicle, which must be visible to the front, sides, and rear of the escort vehicle]~~ while actively engaged in escort duties for the permitted vehicle.

(C) An escort flag vehicle must display a sign, on either the roof of the vehicle, or the front and rear of the vehicle, with the words "OVERSIZE LOAD" or "WIDE LOAD." The sign must be visible from the front and rear of the vehicle while escorting the permitted load. The sign must meet the following specifications:

(i) at least five feet, but not more than seven feet in length, and at least 12 inches, but not more than 18 inches in height;

(ii) the sign must have a yellow background with black lettering;

(iii) letters must be at least eight inches, but not more than 10 inches high with a brush stroke at least 1.41 inches wide; and

(iv) the sign must be visible from the front or rear of the vehicle while escorting the permitted vehicle, and the signs must not be used at any other time.

(D) An escort flag vehicle must maintain two-way communications with the permitted vehicle and other escort flag vehicles involved with the movement of the permitted vehicle.

(E) Warning flags must be either red or orange fluorescent material, at least 12 inches square, securely mounted on a staff or securely fastened by at least one corner to the widest extremities of an overwidth permitted vehicle, and at the rear of an overlength permitted vehicle or a permitted vehicle with a rear overhang in excess of four feet.

(8) Equipment requirements for motorcycles.

(A) An official law enforcement motorcycle may be used as a primary escort flag vehicle for a permitted vehicle traveling within the limits of an incorporated city, if the motorcycle is operated by a highway patrol officer, sheriff, or duly authorized deputy, or municipal police officer.

(B) An escort flag vehicle must maintain two-way communications with the permitted vehicle and other escort flag vehicles involved with the movement of the permitted vehicle.

(l) Restrictions.

(1) Restrictions pertaining to road conditions. Movement of a permitted vehicle is prohibited when road conditions are hazardous based upon the judgment of the operator and law enforcement officials. Law enforcement officials shall make the final determination regarding whether or not conditions are hazardous. Conditions that should be considered hazardous include, but are not limited to:

(A) visibility of less than 2/10 of one mile; or

(B) weather conditions such as wind, rain, ice, sleet, or snow.

(2) Daylight and night movement restrictions.

(A) A permitted vehicle may be moved only during daylight hours unless:

(i) the permitted vehicle is overweight only;

(ii) the permitted vehicle is traveling on an interstate highway and does not exceed 10 feet wide and 100 feet long, with front and rear overhang that complies with legal standards; or

(iii) the permitted vehicle meets the criteria of clause (ii) of this subparagraph and is overweight.

(B) An exception may be granted allowing night movement, based on a route and traffic study conducted by TxDOT. Escort flag vehicles [Escorts] may be required when an exception allowing night movement is granted.

(3) Holiday restrictions. The maximum size limits for a permit issued under Transportation Code, Chapter 623, Subchapter D, for holiday movement is 14 feet wide, 16 feet high, and 110 feet long, unless an exception is granted based on a route and traffic study conducted by TxDOT. The department may restrict holiday movement of specific loads based on a determination that the load could pose a hazard for the traveling public due to local road or traffic conditions.

(4) Curfew restrictions. The operator of a permitted vehicle must observe the curfew movement restrictions of any city or county in which the vehicle is operated. However, only the curfew restrictions listed on the permit apply to the permit.

(m) General provisions.

(1) Multiple commodities.

(A) Except as provided in subparagraph (B) of this paragraph, when a permitted commodity creates a single overdimension, two or more commodities may be hauled as one permit load, provided legal axle weight and gross weight are not exceeded, and provided an overdimension of width, length or height is not created or made greater by the additional commodities. For example, a permit issued for the movement of a 12 foot wide storage tank may also include a 10 foot wide storage tank loaded behind the 12 foot wide tank provided that legal axle weight and gross weight are not exceeded, and provided an overdimension of width, length or height is not created.

(B) When the transport of more than one commodity in a single load creates or makes greater an illegal dimension of length, width, or height the department may issue an oversize permit for such load subject to each of the following conditions.

(i) The permit applicant or the shipper of the commodities files with the department a written certification by the Texas Economic Development and Tourism Office, attesting that issuing the permit will have a significant positive impact on the economy of Texas and that the proposed load of multiple commodities therefore cannot be reasonably dismantled. As used in this clause the term significant positive impact means the creation of not less than 100 new full-time jobs, the preservation of not less than 100 existing full-time jobs, that would otherwise be eliminated if the permit is not issued, or creates or retains not less than one percent of the employment base in the affected economic sector identified in the certification.

(ii) Transport of the commodities does not exceed legal axle and gross load limits.

(iii) The permit is issued in the same manner and under the same provisions as would be applicable to the transport of a single oversize commodity under this section; provided, however, that the shipper and the permittee also must indemnify and hold harmless the department, its board members, officers, and employees from any and all liability for damages or claims of damages including court costs and attorney fees, if any, which may arise from the transport of an oversized load under a permit issued pursuant to this subparagraph.

(iv) The shipper and the permittee must file with the department a certificate of insurance on a form prescribed by the department, or otherwise acceptable to the department, naming the department, its board members, officers, and employees as named or additional insurers on its comprehensive general liability insurance policy for coverage in the amount of \$5 million per occurrence, including court costs and attorney fees, if any, which may arise from the transport of an oversized load under a permit issued pursuant to this subparagraph. The insurance policy is to be procured from a company licensed to transact insurance business in the State of Texas.

(v) The shipper and the permittee must file with the department, in addition to all insurance provided in clause (iv) of this subparagraph, a certificate of insurance on a form prescribed by the department, or otherwise acceptable to the department, naming the department, its board members, officers, and employees as insurers under an auto liability insurance policy for the benefit of said insurers in an amount of \$5 million per accident. The insurance policy is to be procured from a company licensed to transact insurance business in the

State of Texas. If the shipper or the permittee is self-insured with regard to automobile liability then that party must take all steps and perform all acts necessary under the law to indemnify the department, its board members, officers, and employees as if the party had contracted for insurance pursuant to, and in the amount set forth in, the preceding sentence and shall agree to so indemnify the department, its board members, officers, and employees in a manner acceptable to the department.

(vi) Issuance of the permit is approved by written order of the board which written order may be, among other things, specific as to duration and routes.

(C) An applicant requesting a permit to haul a dozer and its detached blade may be issued a permit, as a non-dismantable load, if removal of the blade will decrease the overall width of the load, thereby reducing the hazard to the traveling public.

(2) Oversize hauling equipment. A vehicle that exceeds the legal size limits, as set forth by Transportation Code, Chapter 621, Subchapter C, may only haul a load that exceeds legal size limits unless otherwise noted in this subchapter, but such vehicle may haul an overweight load that does not exceed legal size limits, except for the special exception granted in §219.13(c)(3) of this title (relating to Time Permits).

(n) Surety bonds.

(1) General. The following conditions apply to surety bonds specified in Transportation Code, §623.075.

(A) The surety bond must:

(i) be made payable to the Texas Department of Transportation with the condition that the applicant will pay the Texas Department of Transportation for any damage caused to the highway by the operation of the equipment covered by the surety bond;

(ii) be effective the day it is issued and expires at the end of the state fiscal year, which is August 31st. For example, if you obtain a surety bond on August 30th, it will expire the next day at midnight.

(iii) include the complete mailing address and zip code of the principal;

(iv) be filed with the department and have an original signature of the principal;

(v) have a single entity as principal with no other principal names listed; and

(vi) A non-resident agent with a valid Texas insurance license may issue a bond on behalf of an authorized insurance company when in compliance with Insurance Code, Chapter 4056.

(B) A certificate of continuation will not be accepted.

(C) The owner of a vehicle bonded under Transportation Code, §623.075 or §623.163, that damages the state highway system as a result of the permitted vehicle's movement will be notified by certified mail of the amount of damage and will be given 30 days to submit payment for such damage. Failure to make payment within 30 days will result in TxDOT placing the claim with the attorney general for collection.

(D) The venue of any suit for a claim against a surety bond for the movement of a vehicle permitted under the provisions of Transportation Code, Chapter 623, Subchapter D, will be any court of competent jurisdiction in Travis County.

(2) Permit surety bonds.



(A) A surety bond required under the provisions of Transportation Code, Chapter 623, Subchapter D, must be submitted on the department's standard surety bond form in the amount of \$10,000.

(B) A facsimile or electronic copy of the surety bond is acceptable in lieu of the original surety bond, for a period not to exceed 10 days from the date of its receipt in the department. If the original surety bond has not arrived in the department by the end of the 10 days, the applicant will not be issued a permit until the original surety bond has been received in the department.

(C) The surety bond requirement does apply to the delivery of farm equipment to a farm equipment dealer.

(D) A surety bond is required when a dealer or transporter of farm equipment or a manufacturer of farm equipment obtains a permit.

(E) The surety bond requirement does not apply to driving or transporting farm equipment which is being used for agricultural purposes if it is driven or transported by or under the authority of the owner of the equipment.

(F) The surety bond requirement does not apply to a vehicle or equipment operated by a motor carrier registered with the department under Transportation Code, Chapters 643 or 645 as amended.

#### §219.13. Time Permits.

(a) General information. Applications for time permits issued under Transportation Code, Chapter 623, and this section shall be made in accordance with §219.11(b) and (c) of this title (relating to General Oversize/Overweight Permit Requirements and Procedures). Permits issued under this section are governed by the requirements of §219.11(e)(1) of this title.

(b) 30, 60, and 90 day permits. The following conditions apply to time permits issued for overwidth or overlength loads, or overlength vehicles, under this section.

(1) Fees. The fee for a 30-day permit is \$120; the fee for a 60-day permit is \$180; and the fee for a 90-day permit is \$240. All fees are payable in accordance with §219.11(f) of this title. All fees are non-refundable.

(2) Validity of Permit. Time permits are valid for a period of 30, 60, or 90 calendar days, based on the request of the applicant, and will begin on the effective date stated on the permit.

(3) Weight/height limits. The permitted vehicle may not exceed the weight or height limits set forth by Transportation Code, Chapter 621, Subchapters B and C.

(4) Registration requirements for permitted vehicles. Time permits will not be issued to a vehicle or vehicle combination that is registered with temporary vehicle registration.

(5) Vehicle indicated on permit. The permit will indicate only the truck or truck-tractor transporting the load; however, any properly registered trailer or semi-trailer is covered by the permit.

(6) Permit routes. The permit will allow travel on a statewide basis.

(7) Restrictions.

(A) The permitted vehicle must not cross a load restricted bridge or load restricted road when exceeding the posted capacity of the road or bridge.

(B) The permitted vehicle may travel through highway construction or maintenance areas if the dimensions do not exceed the construction restrictions as published by the department.

(C) The permitted vehicle is subject to the restrictions specified in §219.11(l) of this title, and the permittee is responsible for obtaining from the department information concerning current restrictions.

(8) Escort requirements. Permitted vehicles are subject to the escort requirements specified in §219.11(k) of this title.

(9) Transfer of time permits. Time permits issued under this subsection are non-transferable between permittees or vehicles.

(10) Amendments. With the exception of time permits issued under subsection (e)(4) of this section, time permits issued under this subsection will not be amended except in the case of permit officer error.

(c) Overwidth loads. An overwidth time permit may be issued for the movement of any load or overwidth trailer, subject to subsection (a) of this section and the following conditions:

(1) Width requirements.

(A) A time permit will not be issued for a vehicle with a width exceeding 13 feet.

(B) When multiple items are hauled at the same time, the items may not be loaded in a manner that creates a width greater than the width of the widest item being hauled.

(2) Weight, height, and length requirements.

(A) The permitted vehicle shall not exceed legal weight, height, or length according to Transportation Code, Chapter 621, Subchapters B and C.

(B) When multiple items are hauled at the same time, the items may not be loaded in a manner that creates:

(i) a height greater than 14 feet;

(ii) an overlength load; or

(iii) a gross weight exceeding the legal gross or axle weight of the vehicle hauling the load.

(3) Movement of overwidth trailers. When the permitted vehicle is an overwidth trailer, it will be allowed to:

(A) move empty to and from the job site; and

(B) haul a load from the permitted vehicle's point of origin to pick up a permitted load, and to the permitted vehicle's point of origin or the permittee's place of business after dropping off a permitted load, as long as:

(i) the load does not exceed legal size and weight limits under Transportation Code, Chapters 621 and 622; and

(ii) the transport complies with the permit, including the time period stated on the permit.

(4) Use in conjunction with other permits. An overwidth time permit may be used in conjunction with an overlength time permit.

(d) Overlength loads. An overlength time permit may be issued for the transportation of overlength loads or the movement of an overlength self-propelled vehicle, subject to subsection (a) of this section and the following conditions:

(1) Length requirements.

(A) The maximum overall length for the permitted vehicle may not exceed 110 feet.

(B) The department may issue a permit under Transportation Code, §623.071(a) for an overlength load or an overlength self-propelled vehicle that falls within the definition of a nondivisible load or vehicle.

(2) Weight, height and width requirements.

(A) The permitted vehicle may not exceed legal weight, height, or width according to Transportation Code, Chapter 621, Subchapters B and C.

(B) A permit will not be issued when the load has more than 25 feet front overhang, or more than 30 feet rear overhang.

(3) Use in conjunction with other permits. An overlength time permit may be used in conjunction with an overwidth time permit.

(4) Emergency movement. A permitted vehicle transporting utility poles will be allowed emergency night movement for restoring electrical utility service, provided the permitted vehicle is accompanied by a rear escort flag vehicle.

(e) Annual permits.

(1) General information. All permits issued under this subsection are subject to the following conditions.

(A) Fees for permits issued under this subsection are payable as described in §219.11(f) of this title.

(B) Permits issued under this subsection are not transferable.

(C) Vehicles permitted under this subsection shall be operated according to the restrictions described in §219.11(l) of this title. The permittee is responsible for obtaining information concerning current restrictions from the department.

(D) Vehicles permitted under this subsection may not travel over a load restricted bridge or load restricted road when exceeding the posted capacity of the road or bridge.

(E) Vehicles permitted under this subsection may travel through any highway construction or maintenance area provided the dimensions do not exceed the construction restrictions as published by the department.

(F) With the exception of permits issued under paragraph (5) of this subsection, vehicles permitted under this subsection shall be operated according to the escort requirements described in §219.11(k) of this title.

(2) Implements of husbandry. An annual permit may be issued for an implement of husbandry being moved by a dealer in those implements, and for harvesting equipment being moved as part of an agricultural operation. Permits issued under this paragraph are subject to the conditions described in paragraph (1) of this subsection.

(A) The fee for a permit issued under this paragraph is \$270, plus the highway maintenance fee specified in Transportation Code, §623.077.

(B) The time period will be for one year and will start on the effective date stated on the permit.

(C) The maximum width may not exceed 16 feet; maximum height may not exceed 16 feet; maximum length may not exceed 110 feet; and maximum weight may not exceed the limits stated in §219.11(d) of this title.

(D) Unless stated otherwise on the permit, the permitted vehicle must travel in the outside traffic lane on multi-lane highways, when the width of the load exceeds 12 feet.

(E) The permitted vehicle must be registered in accordance with Transportation Code, Chapter 502, for maximum weight for the vehicle or vehicle combination, as set forth by Transportation Code, Chapter 621.

(3) Water well drilling machinery. The department may issue annual permits under Transportation Code, §623.071, for water well drilling machinery and equipment that fall within the definition of a nondivisible load or vehicle. Permits issued under this paragraph are subject to the conditions described in paragraph (1) of this subsection.

(A) The fee for a permit issued under this paragraph is \$270, plus the highway maintenance fee specified in Transportation Code, §623.077 for an overweight load.

(B) A water well drilling machinery permit is valid for one year from the effective date stated on the permit.

(C) The maximum dimensions may not exceed 16 feet wide, 14 feet 6 inches high, 110 feet long, and maximum weight may not exceed the limits stated in §219.11(d) of this title.

(D) The permitted vehicle must be registered in accordance with Transportation Code, Chapter 502, for the maximum weight of the vehicle, as set forth by Transportation Code, Chapter 621.

(E) A permit issued under this section authorizes a permitted vehicle to operate only on the state highway system.

(4) Envelope vehicle permits.

(A) The department may issue an annual permit under Transportation Code, §623.071(c), to a specific vehicle, for the movement of superheavy or oversize equipment that falls within the definition of a nondivisible load. This permit may not be used for a container, including a trailer or an intermodal container, loaded with divisible cargo. Unless otherwise noted, permits issued under this paragraph are subject to the conditions described in paragraph (1) of this subsection.

(i) Superheavy or oversize equipment operating under an annual envelope vehicle permit may not exceed:

(I) 12 feet in width;

(II) 14 feet in height;

(III) 110 feet in length; or

(IV) 120,000 pounds gross weight.

(ii) Superheavy or oversize equipment operating under an annual envelope vehicle permit may not transport a load that has more than 25 feet front overhang, or more than 30 feet rear overhang.

(iii) The fee for an annual envelope vehicle permit is \$4,000, and is non-refundable.

(iv) The time period will be for one year and will start on the effective date stated on the permit.

(v) This permit authorizes operation of the permitted vehicle only on the state highway system.

(vi) The permitted vehicle must comply with §219.11(d)(2) and (3) of this title.

(vii) The permitted vehicle or vehicle combination must be registered in accordance with Transportation Code, Chapter

502, for maximum weight as set forth by Transportation Code, Chapter 621.

(viii) A permit issued under this paragraph is non-transferable between permittees.

(ix) A permit issued under this paragraph may be transferred from one vehicle to another vehicle in the permittee's fleet provided:

(I) the permitted vehicle is destroyed or otherwise becomes permanently inoperable, to an extent that it will no longer be utilized, and the permittee presents proof that the negotiable certificate of title or other qualifying documentation has been surrendered to the department; or

(II) the certificate of title to the permitted vehicle is transferred to someone other than the permittee, and the permittee presents proof that the negotiable certificate of title or other qualifying documentation has been transferred from the permittee.

(x) A single-trip permit, as described in §219.12 of this title (relating to Single-Trip Permits Issued Under Transportation Code, Chapter 623, Subchapter D), may be used in conjunction with an annual permit issued under this paragraph for the movement of vehicles or loads exceeding the height or width limits established in subparagraph (A) of this paragraph. The department will indicate the annual permit number on any single-trip permit to be used in conjunction with a permit issued under this paragraph, and permittees will be assessed a fee of \$60 for the single-trip permit.

(B) The department may issue an annual permit under Transportation Code, §623.071(d), to a specific motor carrier, for the movement of superheavy or oversize equipment that falls within the definition of a nondivisible load. This permit may not be used for a container, including a trailer or an intermodal container, loaded with divisible cargo. Unless otherwise noted, permits issued under this paragraph are subject to the conditions described in paragraph (1) of this subsection and subparagraphs (A)(i)-(viii) of this paragraph. A permit issued under this paragraph may be transferred from one vehicle to another vehicle in the permittee's fleet provided:

(i) that no more than one vehicle is operated at a time; and

(ii) the original certified permit is carried in the vehicle that is being operated under the terms of the permit.

(C) An annual envelope permit issued under subparagraph (B) of this paragraph will be sent to the permittee via registered mail, or at the permittee's request and expense overnight delivery service. This permit may not be duplicated. This permit will be replaced only if:

(i) the permittee did not receive the original permit within seven business days after its date of issuance;

(ii) a request for replacement is submitted to the department within 10 business days after the original permit's date of issuance; and

(iii) the request for replacement is accompanied by a notarized statement signed by a principle or officer of the permittee acknowledging that the permittee understands the permit may not be duplicated and that if the original permit is located, the permittee must return either the original or replacement permit to the department.

(D) A request for replacement of a permit issued under subparagraph (B) of this paragraph will be denied if the department can verify that the permittee received the original.

(E) Lost, misplaced, damaged, destroyed, or otherwise unusable permits will not be replaced. A new permit will be required.

(5) Annual manufactured housing permit. The department may issue an annual permit for the transportation of new manufactured homes from a manufacturing facility to a temporary storage location, not to exceed 20 miles from the point of manufacture, in accordance with Transportation Code, §623.094. Permits issued under this paragraph are subject to the requirements of paragraph (1), subparagraphs (A), (B), (C), (D), (E), and (G), of this subsection.

(A) A permit shall contain the name of the company or person authorized to be issued permits by Transportation Code, Chapter 623, Subchapter E.

(B) The fee for a permit issued under this paragraph is \$1,500. Fees are non-refundable, and shall be paid in accordance with §219.11(f) of this title.

(C) The time period will be for one year from the effective date stated on the permit.

(D) The permitted vehicle must travel in the outside traffic lane on multi-lane highways when the width of the load exceeds 12 feet.

(E) The permitted vehicle must be registered in accordance with Transportation Code, Chapter 502.

(F) Authorized movement for a vehicle permitted under this section shall be valid during daylight hours only as defined by Transportation Code, §541.401.

(G) The permitted vehicle must be operated in accordance with the escort requirements described in §219.14(f) of this title (relating to Manufactured Housing, and Industrialized Housing and Building Permits).

(H) Permits issued under this section are non-transferable between permittees.

(6) Power line poles. An annual permit will be issued under Transportation Code, Chapter 622, Subchapter E, for the movement of poles required for the maintenance of electric power transmission and distribution lines. Permits issued under this paragraph are subject to the conditions described in paragraph (1) of this subsection.

(A) The fee for the permit is \$120.

(B) The time period will be for one year and will start on the effective date stated on the permit.

(C) The maximum length of the permitted vehicle may not exceed 75 feet.

(D) The width, height and gross weight of the permitted vehicle may not exceed the limits set forth by Transportation Code, Chapter 621.

(E) Vehicles permitted under this paragraph may not travel over a load restricted bridge or load zoned road when exceeding posted limits.

(F) The permitted vehicle must be registered in accordance with Transportation Code, Chapter 502, for maximum weight as set forth by Transportation Code, Chapter 621.

(G) Movement will be between the hours of sunrise and sunset; however, the limitation on hours of operation does not apply to a vehicle being operated to prevent interruption or impairment of electric service, or to restore electric service that has been interrupted. When operated at night, a vehicle permitted under this subsection must be accompanied by a rear escort vehicle.

(H) The permitted vehicle may not travel during hazardous road conditions as stated in §219.11(1)(1)(A) and (B) of this title except to prevent interruption or impairment of electric service, or to restore electric service that has been interrupted.

(I) The speed of the permitted vehicle may not exceed 50 miles per hour.

(J) The permitted vehicle must display on the extreme end of the load:

(i) two red lamps visible at a distance of at least 500 feet from the rear;

(ii) two red reflectors that indicate the maximum width and are visible, when light is insufficient or atmospheric conditions are unfavorable, at all distances from 100 to 600 feet from the rear when directly in front of lawful lower beams of headlamps; and

(iii) two red lamps, one on each side, that indicate the maximum overhang, and are visible at a distance of at least 500 feet from the side of the vehicle.

(7) Cylindrically shaped bales of hay. An annual permit may be issued under Transportation Code, §623.017, for the movement of vehicles transporting cylindrically shaped bales of hay. Permits issued under this paragraph are subject to the conditions described in paragraph (1) of this subsection.

(A) The permit fee is \$10.

(B) The time period will be for one year, and will start on the effective date stated on the permit.

(C) The maximum width of the permitted vehicle may not exceed 12 feet.

(D) The length, height, and gross weight of the permitted vehicle may not exceed the limits set forth by Transportation Code, Chapter 621.

(E) Movement is restricted to daylight hours only.

(F) The permitted vehicle must be registered in accordance with Transportation Code, Chapter 502, for maximum weight, as set forth by Transportation Code, Chapter 621.

(8) Overlength load or vehicles. An annual overlength permit may be issued for the transportation of a nondivisible overlength load or the movement of a nondivisible overlength vehicle or combination of vehicles under Transportation Code, §623.071(c-1). This permit is subject to the portions of subsections (a), (b), and (d) of this section that are not limited to the fee or duration for the 30, 60, and 90 day permits.

*§219.14. Manufactured Housing, and Industrialized Housing and Building Permits.*

(a) General information.

(1) A manufactured home that exceeds size limits for motor vehicles as defined by Transportation Code, Chapter 621, Subchapters B and C, must obtain a permit from the department.

(2) Pursuant to Transportation Code, Chapter 623, Subchapter E, a permit may be issued to persons registered as manufacturers, installers, or retailers with the Texas Department of Housing and Community Affairs or motor carriers registered with the department under Transportation Code, Chapter 643.

(3) The department may issue a permit to the owner of a manufactured home provided that:

(A) the same owner is named on the title of the manufactured home and towing vehicle;

(B) or the owner presents a lease showing that the owner of the manufactured home is the lessee of the towing vehicle.

(b) Application for permit.

(1) The applicant must complete the application and shall include the manufactured home's HUD label number, Texas seal number, or the complete identification number or serial number of the manufactured home, and the overall width, height, and length of the home and the towing vehicle in combination. If the manufactured home is being moved to or from a site in this state where it has been, or will be, occupied as a dwelling, the permit must also show the name of the owner of the home, the location from which the home is being moved, and the location to which the home is being delivered.

(2) A permit application for industrialized housing or industrialized building that does not meet the definition in Occupations Code, §1202.002 and §1202.003 shall be submitted in accordance with §219.11(c) of this title (relating to General Oversize/Overweight Permit Requirements and Procedures).

(c) Amendments to permit. Amendments can only be made to change intermediate points between the origination and destination points listed on the permit.

(d) Payment of permit fee. The cost of the permit is \$40, payable in accordance with §219.11(f) of this title.

(e) Permit provisions and conditions.

(1) The overall combined length of the manufactured home and the towing vehicle includes the length of the hitch or towing device.

(2) The height is measured from the roadbed to the highest elevation of the manufactured home.

(3) The width of a manufactured home includes any roof or eaves extension or overhang on either side.

(4) A permit will be issued for a single continuous movement not to exceed five days.

(5) Movement must be made during daylight hours only and may be made on any day except New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

(6) The department may limit the hours for travel on certain routes because of heavy traffic conditions.

(7) The department will publish any limitations on movements during the national holidays listed in this subsection, or any limitations during certain hours of heavy traffic conditions, and will make such publications available to the public prior to the limitations becoming effective.

(8) The permit will contain the route for the transportation of the manufactured home from the point of origin to the point of destination.

(9) The route for the transportation must be the most practical route as described in §219.11(e) of this title, except where construction is in progress and the permitted vehicle's dimensions exceed the construction restrictions as published by the department, or where bridge or overpass width or height would create a safety hazard.

(10) The department will publish annually a map or list of all bridges or overpasses which, due to height or width, require an escort flag vehicle to stop oncoming traffic while the manufactured home crosses the bridge or overpass.

(11) A permittee may not transport a manufactured home with a void permit; a new permit must be obtained.

(f) Escort requirements.

(1) A manufactured home exceeding 12 feet in width must have a rotating amber beacon of not less than eight inches in diameter mounted somewhere on the roof at the rear of the manufactured home, or may have two five-inch flashing amber lights mounted approximately six feet from ground level at the rear corners of the manufactured home. The towing vehicle must have one rotating amber beacon of not less than eight inches in diameter mounted on top of the cab. These beacons or flashing lights must be operational and luminiferous during any permitted move over the highways, roads, and streets of this state.

(2) A manufactured home with a width exceeding 16 feet but not exceeding 18 feet must have a front escort flag vehicle on two-lane roadways and a rear escort flag vehicle on roadways of four or more lanes.

(3) A manufactured home exceeding 18 feet in width must have a front and a rear escort vehicle on all roadways at all times.

(4) The escort flag vehicle must:

(A) have one red 16 inch square flag mounted on each of the four corners of the vehicle;

(B) have a sign mounted on the front and rear of the vehicle displaying the words "WIDE LOAD" in black letters at least eight inches high with a brush stroke at least 1.41 inches wide against a yellow background;

(C) have ~~[an amber light or lights, visible from both front and rear,]~~ mounted on top of the vehicle and visible from both the front and rear [in one of the following configurations]:

*(i)* two simultaneously flashing lights; ~~[or]~~

*(ii)* one rotating amber beacon of not less than eight inches in diameter; or

*(iii)* alternating or flashing blue and amber lights;

and

(D) maintain two-way communications with the permitted vehicle and other escort flag vehicles involved with the movement of the permitted vehicle.

(5) Two transportable sections of a multi-section manufactured home, or two single section manufactured homes, when towed together in convoy, may be considered one home for purposes of the escort flag vehicle requirements, provided the distance between the two units does not exceed 1,000 feet.

(6) An escort flag vehicle must comply with the requirements in §219.11(k)(1) and §219.11(k)(7)(A) of this title.

§219.15. *Portable Building Unit Permits.*

(a) General information.

(1) A vehicle or vehicle combination transporting one or more portable building units and portable building compatible cargo that exceed legal length or width limits set forth by Transportation Code, Chapter 621, Subchapters B and C, may obtain a permit under Transportation Code, Chapter 623, Subchapter F.

(2) In addition to the fee required by subsection (d), the department shall collect an amount equal to any fee that would apply to the movement of cargo exceeding any applicable width limits, if such cargo were moved in a manner not governed by this section.

(b) Application for permit. Applications shall be made in accordance with §219.11(c) of this title (relating to General Over-size/Overweight Permit Requirements and Procedures).

(c) Permit issuance. Permit issuance is subject to the requirements of §219.11(b)(2),(e) and (g) of this title.

(d) Payment of permit fee. The cost of the permit is \$15, with all fees payable in accordance with §219.11(f) of this title. All fees are non-refundable.

(e) Permit provisions and conditions.

(1) A portable building unit may only be issued a single-trip permit.

(2) Portable building units may be loaded end-to-end to create an overlength permit load, provided the overall length does not exceed 80 feet.

(3) Portable building units must not be loaded side-by-side to create an overwidth load, or loaded one on top of another to create an overheight load.

(4) Portable building units must be loaded in a manner that will create the narrowest width for permit purposes and provide for greater safety to the traveling public.

(5) The permit will be issued for a single continuous movement from the origin to the destination for an amount of time necessary to make the move, not to exceed 10 consecutive days.

(6) Movement of the permitted vehicle must be made during daylight hours only.

(7) A permittee may not transport portable building units or portable building compatible cargo with a void permit; a new permit must be obtained.

(f) Escort requirements.

(1) A portable building unit or portable building compatible cargo with a width exceeding 16 feet but not exceeding 18 feet must have a front escort flag vehicle on two-lane roadways and a rear escort flag vehicle on roadways of four or more lanes.

(2) A portable building unit or portable building compatible cargo exceeding 18 feet in width must have a front and a rear escort flag vehicle on all roadways at all times.

(3) The escort flag vehicle must:

(A) have one red 16 inch square flag mounted on each of the four corners of the vehicle;

(B) have a sign mounted on the front and rear of the vehicle displaying the words "WIDE LOAD" in black letters at least eight inches high with a brush stroke at least 1.41 inches wide against a yellow background;

(C) have ~~[an amber light or lights, visible from both front and rear,]~~ mounted on top of the vehicle and visible from both front and rear, [and which must be] two simultaneously flashing lights, [or] one rotating amber beacon of not less than eight inches in diameter, or alternating or flashing blue and amber lights; and

(D) maintain two-way communications with the permitted vehicle and other escort flag vehicles involved with the movement of the permitted vehicle.

(4) An escort flag vehicle must comply with the requirements in §219.11(k)(1) and §219.11(k)(7)(A) of this title.

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

Filed with the Office of the Secretary of State on August 7, 2020.

TRD-202003205

Tracey Beaver

General Counsel

Texas Department of Motor Vehicles

Earliest possible date of adoption: September 20, 2020

For further information, please call: (512) 465-5665



## SUBCHAPTER D. PERMITS FOR OVERSIZE AND OVERWEIGHT OIL WELL RELATED VEHICLES

### 43 TAC §219.42, §219.43

STATUTORY AUTHORITY. The department proposes amendments under Transportation Code §§623.002, 1001.009, and 1002.001.

- Transportation Code §632.002 authorizes the board of the Texas Department of Motor Vehicles (board) to adopt rules as necessary to implement Transportation Code Chapter 623.

- Transportation Code §1001.009 authorizes the board to adopt rules regarding the method of collection of a fee for any goods or services provided by the department.

- Transportation Code §1002.001 authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department under the Transportation Code.

CROSS REFERENCE TO STATUTE. Transportation Code §547.305, Chapter 621, and Chapter 623.

§219.42. *Single-Trip Mileage Permits.*

(a) General information.

(1) Permits issued under this section are subject to the requirements of §219.41 of this title (relating to General Requirements).

(2) A single-trip mileage permit:

(A) is limited to a maximum of seven consecutive days;

(B) routes the vehicle from the point of origin to the point of destination and has the route listed on the permit; and

(C) allows the unit to be returned to the point of origin on the same permit, provided the return trip is made within the time period stated in the permit.

(3) A unit exceeding 175,000 pounds gross weight must:

(A) have front and rear escort flag vehicles to prevent traffic from traveling beside the unit as it crosses a bridge;

(B) cross all multi-lane bridges by centering the unit on a lane line;

(C) cross all two-lane bridges in the center of the bridge; and

(D) cross each bridge at a speed not greater than 20 miles per hour.

(4) A unit exceeding 12 feet in width must be centered in the outside traffic lane of any highway that has paved shoulders.

(b) Maximum permit weight limits.

(1) The maximum permit weight for any single axle must not exceed 30,000 pounds or 850 pounds per inch of tire width, whichever is less.

(2) The maximum permit weight for any group of axles on a unit will be determined by calculating the "W" weight for the group, using the formulas shown in Figure 2: 43 TAC §219.42(f), titled "Maximum Permit Weight Formulas," and comparing the calculated "W" weight with the corresponding "W" weight that is established in Figure 1: 43 TAC §219.42(f), titled "Maximum Permit Weight Table."

(3) The maximum permit weight per inch of tire width for axles that are steerable must not exceed 950 pounds, and the maximum permit weight per inch of tire width for axles that are not steerable must not exceed 850 pounds.

(4) A unit that does not have any group of axles that exceeds the limits established in Figure 1: 43 TAC §219.42(f), "Maximum Permit Weight Table," and Figure 2: 43 TAC §219.42(f), "Maximum Permit Weight Formulas" will be permitted with a single-trip mileage or quarterly hubometer permit for travel on any route that does not include a load restricted bridge.

(5) A unit that has any group of axles that exceeds the limits established by Figure 1: 43 TAC §219.42(f), "Maximum Permit Weight Table," and Figure 2: 43 TAC §219.42(f), "Maximum Permit Weight Formulas" will be eligible, on an individual case-by-case basis, for a single-trip mileage permit only; permit approval or denial will be based on a detailed route study and an analysis conducted by TxDOT of each bridge on the proposed travel route to determine if the road(s) and bridge(s) are capable of sustaining the movement.

(6) A road or bridge that has been analyzed and determined to be incapable of sustaining the unit will be excluded from the permit route.

(c) Permit application and issuance.

(1) An application for a single-trip mileage permit under this section must be made in accordance with §219.41(b) of this title and shall also include the origin and destination points of the unit.

(2) Upon receipt of the application, the department will review and verify unit size and weight information, check route and mileage to be traveled, compute the permit fee, and advise the applicant of the permit fee.

(3) Upon receipt of the permit fee, the department will advise the applicant of the permit number, and will provide a copy of the permit to the applicant.

(d) Permit fees and refunds.

(1) Minimum fee. The minimum fee for a single-trip mileage permit is either the calculated permit fee or \$31, whichever is the greater amount.

(2) Permit fee calculation. The fee for a single-trip mileage permit is calculated by multiplying the number of miles traveled, the highway use factor, and the total rate per mile, and then adding the indirect cost share to the product.

(A) Highway use factor. The highway use factor for a single trip mileage permit is 0.6.

(B) Total rate per mile. The total rate per mile is the combined mileage rates for width, height, and weight for the unit. For

a trailer mounted unit, the total rate per mile is based on the overall width, overall height, and all axle weights, including the truck-tractor axles.

(i) The mileage rate for width is \$.06 per mile for each foot (or fraction thereof) above legal width.

(ii) The mileage rate for height is \$.04 per mile for each foot (or fraction thereof) above legal height.

(iii) The mileage rate for a single axle or any axle within a group that exceeds 20,000 pounds, but is less than or equal to 25,000 pounds, is calculated by multiplying \$.045 times the amount by which the axle or axle group weight exceeds the legal weight for the axle or axle group and dividing the resultant figure by 1,000 pounds.

(iv) The mileage rate for a single axle or any axle within a group that exceeds 25,000 pounds, but is less than or equal to 30,000 pounds, is calculated by multiplying \$.055 times the amount by which the axle or axle group weight exceeds the legal weight for the axle or axle group and dividing the resultant figure by 1,000 pounds.

(3) Permit fees for trailer mounted units.

(A) The permit fee for a trailer mounted unit is based on the overall width, overall height, and all axle weights, including the truck-tractor axles.

(B) A unit with two or more axle groups that do not have a spacing of at least 12 feet between the closest axles of the opposing groups must have the permit fee calculated by the following method.

(i) The axle group with the lowest weight will have the axle closest to the next axle group temporarily disregarded from its group in order to create a spacing of at least 12 feet between the two groups for fee calculation purposes.

(ii) An axle group will not have more than one axle disregarded.

(iii) The permit fee for the axle group with the temporarily disregarded axle must be based on the actual weight of the entire axle group minus the legal weight for the remaining axles of the group.

(4) Refunds. Fees for permits issued under this section are non-refundable.

(e) Amendments. A single-trip mileage permit may not be amended unless an exception is granted by the department.

(f) Weight table and formulas. The following table entitled "Maximum Permit Weight Table" is Figure 1: 43 TAC §219.42(f), and the list of formulas entitled, "Maximum Permit Weight Formulas," is Figure 2: 43 TAC §219.42(f).

Figure 1: 43 TAC §219.42(f) (No Change.)

Figure 2: 43 TAC §219.42(f) (No Change.)

§219.43. *Quarterly Hubometer Permits.*

(a) General information.

(1) Permits issued under this section are subject to the requirements of §219.41 of this title (relating to General Requirements).

(2) A quarterly hubometer permit:

(A) is effective for three consecutive months;

(B) allows the unit to travel on all state-maintained highways; and

(C) allows the unit to travel on a state-wide basis.

(3) A unit permitted under this subsection must not exceed any of the following dimensions:

(A) 12 feet in width;

(B) 14 feet, 6 inches in height; and

(C) 95 feet in length.

(4) With the exception of units that are overlength only, a unit operated with a permit issued under this section must be equipped with a hubometer. The permittee must maintain the hubometer in good working condition.

(5) A unit exceeding 175,000 pounds gross weight must:

(A) have front and rear escort flag vehicles to prevent traffic from traveling beside the unit as it crosses a bridge;

(B) cross all multi-lane bridges by centering the unit on a lane line;

(C) cross all two-lane bridges in the center of the bridge; and

(D) cross each bridge at a speed not greater than 20 miles per hour.

(b) Maximum permit weight limits.

(1) The maximum permit weight for any single axle must not exceed 30,000 pounds or 850 pounds per inch of tire width, whichever is less.

(2) The maximum permit weight for any group of axles on a unit will be determined by calculating the "W" weight for the group, using the formulas in Figure 2: 43 TAC §219.42(f), "Maximum Permit Weight Formulas," and comparing the calculated "W" weight with the corresponding "W" weight that is established in Figure 1: 43 TAC §219.42(f), "Maximum Permit Weight Table."

(3) The maximum permit weight per inch of tire width for axles that are steerable must not exceed 950 pounds, and the maximum permit weight per inch of tire width for axles that are not steerable must not exceed 850 pounds.

(4) A unit that does not have any group of axles that exceeds the limits established in Figure 1: 43 TAC §219.42(f), "Maximum Permit Weight Table," and Figure 2: 43 TAC §219.42(f), "Maximum Permit Weight Formulas" will be permitted with a single-trip mileage or quarterly hubometer permit for travel on any route that does not include a load restricted bridge.

(5) A unit that has any group of axles that exceeds the limits established by Figure 1: 43 TAC §219.42(f), "Maximum Permit Weight Table," and Figure 2: 43 TAC §219.42(f), "Maximum Permit Weight Formulas" will be eligible, on an individual case-by-case basis, for a single-trip mileage permit only; permit approval or denial will be based on a detailed route study and an analysis conducted by TxDOT of each bridge on the proposed travel route to determine if the road(s) and bridge(s) are capable of sustaining the movement.

(6) A bridge that has been analyzed and determined to be incapable of sustaining the unit will be excluded from the permit route.

(c) Initial permit application and issuance.

(1) An application for an initial quarterly hubometer permit under this section must be made in accordance with §219.41(b) of this title. In addition, the applicant must provide the current hubometer mileage reading and an initial \$31 processing fee.

(2) Upon verification of the unit information and receipt of the permit fee, the department will provide a copy of the permit to the applicant, as well as a renewal application.

(d) Permit renewals and closeouts.

(1) An application for a permit renewal or closeout must be made on a form and in the manner prescribed by the department.

(2) Upon receipt of the renewal application, the department will verify unit information, check mileage traveled on the last permit, calculate the new permit fee, and advise the applicant of the permit fee.

(e) Permit fees.

(1) Minimum fee. The minimum fee for a quarterly hubometer permit is either the calculated permit fee or \$31, whichever is the greater amount.

(2) Fees for overlength units. A unit that is overlength only must obtain a quarterly hubometer permit with a fee of \$31, but is not required to have a hubometer.

(3) Quarterly hubometer permit fee calculation. The permit fee for a quarterly hubometer permit is calculated by multiplying the hubometer mileage, the highway use factor, and the total rate per mile, and then adding the indirect cost share to the product.

(A) Hubometer mileage. Mileage for a quarterly hubometer permit is determined by the unit's current hubometer mileage reading minus the unit's hubometer mileage reading from the previous quarterly hubometer permit.

(B) Highway use factor. The highway use factor for a quarterly hubometer permit is 0.3.

(C) Total rate per mile. The total rate per mile is the combined mileage rates for width, height, and weight for the unit. The rate per mile for a trailer mounted unit is based on the overall width, overall height, and all axle weights, including the truck-tractor axles.

(i) The mileage rate for width is \$.06 per mile for each foot (or fraction thereof) above legal width.

(ii) The mileage rate for height is \$.04 per mile for each foot (or fraction thereof) above legal height.

(iii) The mileage rate for a single axle or any axle within a group that exceeds 20,000 pounds, but is less than or equal to 25,000 pounds, is calculated by multiplying \$.045 times the amount by which the axle or axle group weight exceeds the legal weight for the axle or axle group and dividing the resultant figure by 1,000 pounds.

(iv) The mileage rate for a single axle or any axle within a group that exceeds 25,000 pounds, but is less than or equal to 30,000 pounds, is calculated by multiplying \$.055 times the amount by which the axle or axle group weight exceeds the legal weight for the axle or axle group and dividing the resultant figure by 1,000 pounds.

(4) Permit fees for trailer mounted units.

(A) The permit fee for a trailer mounted unit is based on the overall width, overall height, and all axle weights, including the truck-tractor axles.

(B) A unit with two or more axle groups that does not have a spacing of at least 12 feet between the closest axles of the opposing groups must have the permit fee calculated by the following method.

(i) The axle group with the lowest weight will have the axle closest to the next axle group temporarily disregarded from its

group in order to create a spacing of at least 12 feet between the two groups for fee calculation purposes.

(ii) An axle group will not have more than one axle disregarded.

(iii) The permit fee for the axle group with the temporarily disregarded axle must be based on the actual weight of the entire axle group minus the legal weight for the remaining axles of the group.

(f) Amendments. A quarterly hubometer permit may be amended only to indicate:

(1) a new hubometer serial number; or

(2) a new license plate number.

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

Filed with the Office of the Secretary of State on August 7, 2020.

TRD-202003206

Tracey Beaver

General Counsel

Texas Department of Motor Vehicles

Earliest possible date of adoption: September 20, 2020

For further information, please call: (512) 465-5665



## SUBCHAPTER E. PERMITS FOR OVERSIZE AND OVERWEIGHT UNLADEN LIFT EQUIPMENT MOTOR VEHICLES

### 43 TAC §§219.61 - 219.63

STATUTORY AUTHORITY. The department proposes amendments under Transportation Code §§623.002, 1001.009, and 1002.001.

- Transportation Code §632.002 authorizes the board of the Texas Department of Motor Vehicles (board) to adopt rules as necessary to implement Transportation Code Chapter 623.

- Transportation Code §1001.009 authorizes the board to adopt rules regarding the method of collection of a fee for any goods or services provided by the department.

- Transportation Code §1002.001 authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department under the Transportation Code.

CROSS REFERENCE TO STATUTE. Transportation Code §§547.305, Chapter 621, and Chapter 623.

§219.61. *General Requirements for Permits for Oversize and Overweight Unladen Lift Equipment Motor Vehicles.*

(a) General information.

(1) Unless otherwise noted, permits issued under this subchapter are subject to the requirements of this section.

(2) Cranes are eligible for an annual permit under this subchapter.

(3) Cranes are also eligible for the following permits under this subchapter at weights above those established by §219.11(d)(2)



of this title (relating to General Oversize/Overweight Permit Requirements and Procedures):

- (A) single-trip mileage permits; and
- (B) quarterly hubometer permits.

(4) If a truck-tractor is used to transport a trailer-mounted crane, the combination of vehicles is limited to the dimensions and weights listed in this subchapter.

(b) Permit application. An application shall be made on a form and in a manner prescribed by the department. The applicant shall provide all applicable information, including:

- (1) name, address, telephone number, and email address (if requested) of the applicant;
- (2) year and make of the crane;
- (3) vehicle identification number of the crane;
- (4) width, height, and length of the crane;
- (5) crane axle and tire information, including the number of axles, distance between axles, gauge per axle, axle weights, number of tires, and tire size; and
- (6) any other information required by law.

(c) Payment of permit fees. Fees for permits issued under this subchapter are payable as described in §219.11(f) of this title.

(d) Restrictions.

(1) A crane permitted under this subchapter is subject to the restrictions specified in §219.11(1)(1), (3), and (4) of this title, and the permittee is responsible for obtaining information concerning current restrictions from the department.

(2) A crane permitted under this subchapter may travel through highway construction or maintenance areas provided the dimensions do not exceed the construction restrictions as published by the department.

(3) A crane permitted under this subchapter may only be operated during daylight, unless:

(A) the crane is overweight only; or

(B) the crane complies with one of the following, regardless of whether the crane is overweight:

(i) the crane does not exceed nine feet in width, 14 feet in height, or 65 feet in length; or

(ii) the crane is accompanied by a front and rear escort flag vehicle and does not exceed:

(I) 10 feet, 6 inches in width;

(II) 14 feet in height; or

(III) 95 feet in length.

(e) Transferability. Unless otherwise noted, a permit issued under this subchapter may not be transferred between cranes or between permittees.

(f) Escort requirements. In addition to any other escort requirements specified in this subchapter, cranes permitted under this subchapter are subject to the escort requirements specified in §219.11(k) of this title.

(g) Properly secured equipment. A crane permitted under this subchapter may travel with properly secured equipment, such as out-

riggers, booms, counterweights, jibs, blocks, balls, cribbing, outrigger pads, and outrigger mats, in accordance with the manufacturer's specifications to the extent the equipment is necessary for the crane to perform its intended function, provided the axle weights, axle group weights, and gross weight do not exceed the maximum permit weights listed in this subchapter.

§219.62. *Single Trip Mileage Permits.*

(a) General information.

(1) Permits issued under this section are subject to the requirements of §219.61 of this title (relating to General Requirements for Permits for Oversize and Overweight Unladen Lift Equipment Motor Vehicles).

(2) A single-trip mileage permit:

(A) is limited to a maximum of seven consecutive days;

(B) is routed from the point of origin to the point of destination and has the route listed on the permit; and

(C) allows the crane to be returned to the point of origin on the same permit, provided the return trip is made within the time period stated in the permit.

(3) A crane exceeding 175,000 pounds gross weight must:

(A) have front and rear escort flag vehicles to prevent traffic from traveling beside the crane as it crosses a bridge;

(B) cross all multi-lane bridges by centering the crane on a lane line;

(C) cross all two-lane bridges in the center of the bridge; and

(D) cross each bridge at a speed not greater than 20 miles per hour.

(4) A crane exceeding 12 feet in width must be centered in the outside traffic lane of any highway that has paved shoulders.

(5) Except as otherwise provided in this section, the permitted crane must not cross a load-restricted bridge when exceeding the posted capacity of the bridge.

(b) Maximum permit weight limits.

(1) The maximum permit weight for any single axle must not exceed 30,000 pounds or 850 pounds per inch of tire width, whichever is less.

(2) The maximum permit weight for any group of axles on a crane is determined by calculating the "W" weight for the group, using the formulas shown in Figure 2: 43 TAC §219.62(f), "Maximum Permit Weight Formulas," and comparing the calculated "W" weight with the corresponding "W" weight that is established in Figure 1:43 TAC §219.62(f), "Maximum Permit Weight Table."

(3) The maximum permit weight per inch of tire width for axles that are steerable must not exceed 950 pounds, and the maximum permit weight per inch of tire width for axles that are not steerable must not exceed 850 pounds.

(4) An applicant with a crane that has any group of axles that exceeds the limits established by Figure 1: 43 TAC §219.62(f), "Maximum Permit Weight Table," and Figure 2: 43 TAC §219.62(f), "Maximum Permit Weight Formulas," must comply with the following process and requirements:

(A) submit the following to the department to determine if a permit can be issued:

(i) a detailed diagram, on a form prescribed by the department, which illustrates the required information listed in §219.61(b)(5) of this title;

(ii) the exact beginning and ending points relative to a state highway; and

(iii) the name and contact information of the applicant's TxDOT-approved licensed professional engineer.

(B) The department will select and provide the applicant with a tentative route based on the size of the crane, excluding the weight. The applicant must inspect the tentative route and advise the department, in writing, that the route is capable of accommodating the crane.

(C) Before the department will issue a permit, the applicant's TxDOT-approved licensed professional engineer must submit to TxDOT a written certification that includes a detailed structural analysis of the bridges on the proposed route demonstrating that the bridges and culverts on the travel route are capable of sustaining the crane. The certification must be approved by TxDOT and submitted to the department before the department will issue the permit.

(c) Permit application and issuance.

(1) An application for a single-trip mileage permit under this section must be made in accordance with §219.61(b) of this title and must also include the origin and destination points of the crane.

(2) Upon receipt of the application, the department will review and verify size and weight information, check the route and mileage to be traveled, compute the permit fee, and advise the applicant of the permit fee.

(3) Upon receipt of the permit fee, the department will advise the applicant of the permit number and will provide a copy of the permit to the applicant.

(d) Permit fees and refunds.

(1) Minimum fee. The minimum fee for a single-trip mileage permit is either the calculated permit fee or \$31, whichever is the greater amount.

(2) Permit fee calculation. The permit fee for a single-trip mileage permit is calculated by multiplying the number of miles traveled, the highway use factor, and the total rate per mile, and then adding the indirect cost share to the product.

(A) Highway use factor. The highway use factor for a single-trip mileage permit is 0.6.

(B) Total rate per mile. The total rate per mile is the combined mileage rates for width, height, and weight for the crane. The rate per mile for a trailer-mounted crane is based on the overall width, overall height, and all axle weights, including the truck-tractor axles.

(i) The mileage rate for width is \$.06 per mile for each foot (or fraction thereof) above legal width.

(ii) The mileage rate for height is \$.04 per mile for each foot (or fraction thereof) above legal height.

(iii) The mileage rate for a single axle or any axle within a group that exceeds 20,000 pounds, but is less than or equal to 25,000 pounds, is calculated by multiplying \$.045 times the amount by which the axle or axle group weight exceeds the legal weight for the axle or axle group and dividing the resultant figure by 1,000 pounds.

(iv) The mileage rate for a single axle or any axle within a group that exceeds 25,000 pounds, but is less than or equal to

30,000 pounds, is calculated by multiplying \$.055 times the amount by which the axle or axle group weight exceeds the legal weight for the axle or axle group and dividing the resultant figure by 1,000 pounds.

(3) Exceptions to fee computations. A crane with two or more axle groups that does not have a spacing of at least 12 feet between the closest axles of the opposing groups must have the permit fee calculated by the following method.

(A) The axle group with the lowest weight will have the axle closest to the next axle group temporarily disregarded from its group in order to create a spacing of at least 12 feet between the two groups for fee calculation purposes.

(B) An axle group will not have more than one axle disregarded.

(C) The permit fee for the axle group with the temporarily disregarded axle must be based on the actual weight of the entire axle group minus the legal weight for the remaining axles of the group.

(4) Refunds. Fees for permits issued under this section are non-refundable.

(e) Amendments. A single-trip mileage permit issued under this section may not be amended unless an exception is granted by the department.

(f) Weight table and formulas. The following table entitled "Maximum Permit Weight Table" is Figure 1: 43 TAC §219.62(f), and the list of formulas entitled "Maximum Permit Weight Formulas," is Figure 2: 43 TAC §219.62(f).

Figure 1: 43 TAC §219.62(f) (No Change.)

Figure 2: 43 TAC §219.62(f) (No Change.)

§219.63. Quarterly Hubometer Permits.

(a) General information.

(1) Permits issued under this section are subject to the requirements of §219.61 of this title (relating to General Requirements for Permits for Oversize and Overweight Unladen Lift Equipment Motor Vehicles).

(2) A quarterly hubometer permit:

(A) is effective for three consecutive months;

(B) allows the crane to travel on all state-maintained highways; and

(C) allows the crane to travel on a state-wide basis.

(3) A crane permitted under this section must not exceed any of the following dimensions:

(A) 12 feet in width;

(B) 14 feet, 6 inches in height; or

(C) 95 feet in length.

(4) With the exception of cranes that are overlength only, cranes operated with a quarterly hubometer permit must be equipped with a hubometer. The permittee must maintain the hubometer in good working condition.

(5) A crane exceeding 175,000 pounds gross weight must:

(A) have front and rear escort flag vehicles to prevent traffic from traveling beside the crane as it crosses a bridge;

(B) cross all multi-lane bridges by centering the crane on a lane line;

(C) cross all two-lane bridges in the center of the bridge; and

(D) cross each bridge at a speed not greater than 20 miles per hour.

(6) The permitted crane must not cross a load-restricted bridge when exceeding the posted capacity of the bridge.

(7) The permit may be amended only to indicate:

- (A) a new hubometer serial number; or
- (B) a new license plate number.

(b) Maximum permit weight limits.

(1) The maximum permit weight for any single axle must not exceed 30,000 pounds or 850 pounds per inch of tire width, whichever is less.

(2) The maximum permit weight for any group of axles on a crane will be determined by calculating the "W" weight for the group, using the formulas in Figure 2: 43 TAC §219.62(f), "Maximum Permit Weight Formulas," and comparing the calculated "W" weight with the corresponding "W" weight that is established in Figure 1 :43 TAC §219.62(f), "Maximum Permit Weight Table."

(3) The maximum permit weight per inch of tire width for axles that are steerable must not exceed 950 pounds, and the maximum permit weight per inch of tire width for axles that are not steerable must not exceed 850 pounds.

(4) A crane that has any group of axles that exceeds the limits established by Figure 1 :43 TAC §219.62(f), "Maximum Permit Weight Table," and Figure 2: 43 TAC §219.62(f), "Maximum Permit Weight Formulas," is not eligible for a permit under this section; however, it is eligible for a permit under §219.62 of this title (relating to Single-Trip Mileage Permits).

(c) Initial permit application and issuance.

(1) An application for an initial quarterly hubometer permit must be made in accordance with §219.61(b) of this title. In addition, the applicant must provide the current hubometer mileage reading and an initial \$31 processing fee.

(2) Upon verification of the crane information and receipt of the permit fee, the department will provide a copy of the permit to the applicant, and will also provide a renewal application form to the applicant.

(d) Permit renewals and closeouts.

(1) An application for a permit renewal or closeout must be made on a form and in a manner prescribed by the department.

(2) Upon receipt of the renewal application, the department will verify crane information, check mileage traveled on the last permit, calculate the new permit fee, and advise the applicant of the permit fee.

(e) Permit fees.

(1) Minimum fee. The minimum fee for a quarterly hubometer permit is either the calculated permit fee or \$31, whichever is the greater amount.

(2) Fees for overlength cranes. A crane that is overlength only is not required to have a hubometer. The fee for this permit is \$31.

(3) Quarterly hubometer permit fee calculation. The permit fee for a quarterly hubometer permit is calculated by multiplying the hubometer mileage, the highway use factor, and the total rate per mile, and then adding the indirect cost share to the product.

(A) Hubometer mileage. Mileage for a quarterly hubometer permit is determined by the crane's current hubometer mileage reading minus the crane's hubometer mileage reading from the previous quarterly hubometer permit.

(B) Highway use factor. The highway use factor for a quarterly hubometer permit is 0.3.

(C) Total rate per mile. The total rate per mile is the combined mileage rates for width, height, and weight for the crane.

(i) The mileage rate for width is \$.06 per mile for each foot (or fraction thereof) above legal width.

(ii) The mileage rate for height is \$.04 per mile for each foot (or fraction thereof) above legal height.

(iii) The mileage rate for a single axle or any axle within a group that exceeds 20,000 pounds, but is less than or equal to 25,000 pounds, is calculated by multiplying \$.045 times the amount by which the axle or axle group weight exceeds the legal weight for the axle or axle group and dividing the resultant figure by 1,000 pounds.

(iv) The mileage rate for a single axle or any axle within a group that exceeds 25,000 pounds, but is less than or equal to 30,000 pounds, is calculated by multiplying \$.055 times the amount by which the axle or axle group weight exceeds the legal weight for the axle or axle group and dividing the resultant figure by 1,000 pounds.

(4) Special fee provisions. A crane with two or more axle groups that do not have a spacing of at least 12 feet between the closest axles of the opposing groups must have the permit fee calculated by the following method.

(A) The axle group with the lowest weight will have the axle closest to the next axle group temporarily disregarded from its group in order to create a spacing of at least 12 feet between the two groups for fee calculation purposes.

(B) An axle group will not have more than one axle disregarded.

(C) The permit fee for the axle group with the temporarily disregarded axle must be based on the actual weight of the entire axle group minus the legal weight for the remaining axles of the group.

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

Filed with the Office of the Secretary of State on August 7, 2020.

TRD-202003207

Tracey Beaver

General Counsel

Texas Department of Motor Vehicles

Earliest possible date of adoption: September 20, 2020

For further information, please call: (512) 465-5665



## CHAPTER 219. OVERSIZE AND OVERWEIGHT VEHICLES AND LOADS

The Texas Department of Motor Vehicles (department) proposes amendments to Title 43 TAC §219.31 and §219.126 concerning the movement of oversize or overweight vehicles, including the enforcement of motor vehicle size and weight limitations. The department also proposes the repeal of Title 43 TAC §219.83 concerning shipper's certificates of weight. The amendments

are necessary to conform to amendments to Transportation Code §623.272 and §623.321 by House Bill 2620, 86th Legislature, Regular Session (2019). The repeal is necessary because it duplicates language found in Transportation Code §623.271 and §623.274. Also, some of the language in §219.83 is inconsistent with Transportation Code §623.274, which was also amended by House Bill 2620.

**EXPLANATION.** The proposal amends §219.31(a) to conform with Transportation Code §623.321 by authorizing the current timber permit to be used to transport equipment used to load timber on a vehicle.

The proposal amends §219.126 to conform with Transportation Code §623.272 because it adds that the department may also investigate and impose a fine on a shipper who does not provide a shipper's certificate of weight as required under Transportation Code §623.274(b).

The proposal repeals §219.83 because it duplicates language found in Transportation Code §623.271 and §623.274. Also, some of the language in §219.83 is inconsistent with Transportation Code §623.274.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Linda M. Flores, Chief Financial Officer, has determined that for each year of the first five years the amendments and repeal will be in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. Jimmy Archer, Director of the Motor Carrier Division, has determined that there will be no measurable effect on local employment or the local economy as a result of the proposal.

**PUBLIC BENEFIT AND COST NOTE.** Mr. Archer has also determined that, for each year of the first five years the amended and repealed sections are in effect, the public will benefit because the rules will be consistent with current statutes.

**Anticipated Costs to Comply With the Proposal.** Mr. Archer anticipates that there will be no costs to comply with these rules because the proposed amendments conform to Transportation Code §623.321 and §623.272 and do not create any additional requirement or cost on a regulated person. Also, the repeal duplicates language found in Transportation Code §623.271 and §623.274, and some of the language is inconsistent with Transportation Code §623.274.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** As required by Government Code, §2006.002, the department has determined that the proposed amendments and repeal will not have an adverse economic effect on small businesses, micro-business, and rural communities because the proposal conforms the rules to statute and does not impose any additional requirements or cost on a regulated person. Therefore, the department is not required to prepare a regulatory flexibility analysis under Government Code, §2006.002.

**TAKINGS IMPACT ASSESSMENT.** The department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code, §2007.043.

**GOVERNMENT GROWTH IMPACT STATEMENT.** The department has determined that each year of the first five years the proposed amendments are in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the department;
- will not require an increase or decrease in fees paid to the department;
- will not create new regulations;
- will not expand existing regulations;
- will repeal existing regulations;
- will not increase the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

#### REQUEST FOR PUBLIC COMMENT.

If you want to comment on the proposal, submit your written comments by 5:00 p.m. CDT on September 21, 2020. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to [rules@txdmv.gov](mailto:rules@txdmv.gov) or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

### SUBCHAPTER C. PERMITS FOR OVER AXLE AND OVER GROSS WEIGHT TOLERANCES

#### 43 TAC §219.31

**STATUTORY AUTHORITY.** The department proposes amendments under Transportation Code §623.002, which authorizes the Texas Department of Motor Vehicles Board (board) to adopt rules for the administration of Transportation Code Chapter 623; and Transportation Code §1002.001 which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

**CROSS REFERENCE TO STATUTE.** Transportation Code §§623.272, 623.274, and 623.321.

*§219.31. Timber Permits.*

(a) Purpose. This section prescribes the requirements and procedures regarding the annual permit for the operation of a vehicle or combination of vehicles that will be used to transport unrefined timber, wood chips, [☐] woody biomass, or equipment used to load timber on a vehicle under the provisions of Transportation Code, Chapter 623, Subchapter Q.

(b) Application for permit.

(1) To qualify for a timber permit, a person must submit an application to the department.

(2) The application shall be in a form prescribed by the department and at a minimum, will require the following:

(A) name, address, telephone number, and email address (if requested) of the applicant;

(B) name of contact person and telephone number or email address;

(C) vehicle information, including vehicle year, make, license plate number and state of issuance, and vehicle identification number; and

(D) a list of timber producing counties described in Transportation Code, §623.321(a), in which the vehicle or combination of vehicles will be operated.

(3) The application shall be accompanied by:

(A) the total annual permit fee required by statute; and

(B) a blanket bond or irrevocable letter of credit as required by Transportation Code, §623.012, unless the applicant has a current blanket bond or irrevocable letter of credit on file with the department that complies with Transportation Code, §623.012.

(4) Fees for permits issued under this section are payable as required by §219.11(f) of this title (relating to General Oversize/Overweight Permit Requirements and Procedures).

(c) Issuance and placement of permit and windshield sticker; restrictions.

(1) A permit and a windshield sticker will be issued once the application is approved, and each will be mailed to the applicant at the address contained in the application.

(2) The windshield sticker shall be affixed to the inside of the windshield of the vehicle in accordance with the diagram printed on the back of the sticker and in a manner that will not obstruct the vision of the driver. Any attempt to remove the sticker from the windshield will render the sticker void and will require a new permit and sticker.

(3) A replacement sticker for a lost, stolen, or mutilated windshield sticker may be issued, provided that the permittee submits a request on a form approved by the department which shall include a statement, signed by the permittee, affirming that the sticker was lost, stolen, or mutilated. The replacement sticker shall only be valid for the permitted vehicle.

(d) Notification. The financially responsible party as defined in Transportation Code, §623.323(a), shall electronically file the notification document described by §623.323(b) with the department via the form on the department's website.

(e) Transfer of permit. An annual permit issued under this section is not transferable between vehicles.

(f) Amendments. An annual permit issued under this section will not be amended except in the case of department error.

(g) Termination of permit. An annual permit issued under this section will automatically terminate, and the windshield sticker must be removed from the vehicle:

(1) on the expiration of the permit;

(2) when the lease of the vehicle expires;

(3) on the sale or other transfer of ownership of the vehicle for which the permit was issued;

(4) on the dissolution or termination of the partnership, corporation, or other legal entity to which the permit was issued; or

(5) if the permittee fails to timely replenish the bond or letter of credit as required by Transportation Code, §623.012.

(h) Restrictions. Permits issued under this section are subject to the restrictions in §219.11(l) of this title.

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

Filed with the Office of the Secretary of State on August 7, 2020.

TRD-202003221

Tracey Beaver

General Counsel

Texas Department of Motor Vehicles

Earliest possible date of adoption: September 20, 2020

For further information, please call: (512) 465-5665



## SUBCHAPTER F. COMPLIANCE

### 43 TAC §219.83

STATUTORY AUTHORITY. The department proposes this repeal under Transportation Code §623.002, which authorizes the Texas Department of Motor Vehicles Board (board) to adopt rules for the administration of Transportation Code Chapter 623; and Transportation Code §1002.001 which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Transportation Code §§623.272, 623.274, and 623.321

§219.83. *Shipper Certificate of Weight.*

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

Filed with the Office of the Secretary of State on August 7, 2020.

TRD-202003218

Tracey Beaver

General Counsel

Texas Department of Motor Vehicles

Earliest possible date of adoption: September 20, 2020

For further information, please call: (512) 465-5665



## SUBCHAPTER H. ENFORCEMENT

### 43 TAC §219.126

STATUTORY AUTHORITY. The department proposes amendments under Transportation Code §623.002, which authorizes the Texas Department of Motor Vehicles Board (board) to adopt rules for the administration of Transportation Code Chapter 623; and Transportation Code §1002.001 which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Transportation Code §§623.272, 623.274, and 623.321

§219.126. *Administrative Penalty for False Information on Certificate by a Shipper.*

(a) The department may investigate and impose an administrative penalty on a shipper who does not provide a shipper's certificate of weight as required under Transportation Code §623.274(b) or provides false information on a shipper's certificate of weight that the shipper delivers to a person transporting a shipment.

(b) The notice and hearing requirements of §219.124 of this title (relating to Administrative Proceedings) apply to the imposition of an administrative penalty under this section.

(c) The amount of an administrative penalty imposed under this section is calculated in the same manner as the amount of an administrative penalty imposed under §219.121 of this title (relating to Administrative Penalties).

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

Filed with the Office of the Secretary of State on August 7, 2020.

TRD-202003220

Tracey Beaver

General Counsel

Texas Department of Motor Vehicles

Earliest possible date of adoption: September 20, 2020

For further information, please call: (512) 465-5665



## CHAPTER 221. SALVAGE VEHICLE DEALERS

### SUBCHAPTER E. ADMINISTRATIVE PROCEDURES

#### 43 TAC §221.96

**INTRODUCTION.** The Texas Department of Motor Vehicles (department) proposes to add Title 43 of the Texas Administrative Code (TAC) §221.96 concerning cease and desist orders. The proposed new section implements Senate Bill 604, 86th Legislature, Regular Session (2019), which amended Occupations Code Chapter 2302 by adding §2302.055 authorizing the department's board (board) to issue cease and desist orders under the chapter.

**EXPLANATION.** Proposed new §221.96 permits the board to issue cease and desist orders if it appears that a violation of Occupations Code Chapter 2302, the department's rules, or an order from the department under Occupations Code Chapter 2302 is occurring. Proposed new §221.96(a) clarifies that a cease and desist order may only be issued if the board reasonably believes a person who is not licensed under Occupations Code Chapter 2302 is violating that chapter or a rule or order adopted under that chapter. Proposed new §221.96(a) is necessary to clarify that license holders under Occupations Code Chapter 2302 cannot be issued a cease and desist order and corresponds to the language in Occupations Code §2302.055. License holders under Occupations Code Chapter 2302 include a general distinguishing number holder acting under Occupations Code §2302.009.

Proposed new §221.96(b) permits the board to require a person to cease and desist from committing a violation or from engaging in any practice regulated by the board as necessary to prevent the violation and requires that the order contain a notice that a request for a hearing may be filed. Proposed new §221.96(b) is necessary to outline what actions the board can require or prohibit using a cease and desist order. Proposed new §221.96(b) also ensures that notice of an opportunity for hearing is given.

Proposed new §221.96(c) permits a person to whom a cease and desist order is issued to file a written request for a hearing

before the board not later than the 10th day after the date of receipt of the order. The written request for a hearing may be filed with the department electronically, through the mail, or in person. The request may be in any written form, but should state that a hearing is requested. Proposed new §221.96(c) clarifies that the order is final unless a request for hearing is timely filed. Proposed new §221.96(c) is necessary to provide an opportunity for hearing while balancing the need for quick resolution of the hearing and the finality of the order. The 10-day deadline for request for hearing balances those needs providing time to respond while providing a timeline for efficient and timely resolution.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Linda M. Flores, Chief Financial Officer, has determined that for each year of the first five years the amendment will be in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. Corrie Thompson, Director of the Enforcement Division, has determined that there will be no measurable effect on local employment or the local economy as a result of the proposal.

**PUBLIC BENEFIT AND COST NOTE.** Ms. Thompson has also determined that, for each year of the first five years the amended section is in effect, there are public benefits anticipated from the ability of the board to issue cease and desist orders.

**Anticipated Public Benefits.** The public benefits anticipated as a result of the proposal include expanding the administrative tools that the board has to prevent and limit violations of the Occupations Code and the department's rules and providing individuals that are issued a cease and desist order notice that they may be in violation of the law and a chance for a hearing.

**Anticipated Costs To Comply With The Proposal.** Ms. Thompson anticipates that there will be no costs to comply with these rules.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** As required by the Government Code §2006.002, the department has determined that the proposed new section will not have an adverse economic effect on small businesses, micro-businesses, or rural communities as a result of implementing this rule. Therefore, the department is not required to prepare a regulatory flexibility analysis under Government Code §2006.002.

**TAKINGS IMPACT ASSESSMENT.** The department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

**GOVERNMENT GROWTH IMPACT STATEMENT.** The department has determined that during the first five years the proposed new section is in effect, no government program would be created or eliminated. Implementation of the proposed new section would not require the creation of new employee positions or elimination of existing employee positions. Implementation would not require an increase or decrease in future legislative appropriations to the department or an increase or decrease of fees paid to the department. The proposed new section does not create a new regulation, or expand, or repeal an existing regulation. Lastly, the proposed new section does not affect the number of individuals subject to the rule's applicability and will not affect this state's economy.

REQUEST FOR PUBLIC COMMENT. If you want to comment on the proposal, submit your written comments by 5:00 p.m. CDT on September 21, 2020. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to [rules@txdmv.gov](mailto:rules@txdmv.gov) or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

STATUTORY AUTHORITY. The amendment is proposed under Transportation Code §1002.001 which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; and more specifically, Occupations Code §2302.255 which provides the board authority to issue a cease and desist order prohibiting a person not licensed under Occupations Code Chapter 2302 from violating that chapter, an administrative rule, or an order adopted under that chapter.

CROSS REFERENCE TO STATUTE. Occupations Code §2302.255 and Transportation Code §1002.001.

§221.96. Cease and Desist Order.

(a) The board may issue a cease and desist order if the board reasonably believes a person who is not licensed under Occupations Code Chapter 2302 is violating that chapter or a rule or order adopted under that chapter.

(b) A cease and desist order may require a person to cease and desist from committing a violation or from engaging in any practice regulated by the board as necessary to prevent the violation. The order must contain a notice that a request for hearing may be filed under this section.

(c) A person to whom a cease and desist order is issued may file a written request for a hearing before the board. The order is final unless a request for hearing is timely filed. The person must file the hearing request not later than the 10th day after the date of receipt of the order.

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

Filed with the Office of the Secretary of State on August 7, 2020.

TRD-202003210

Tracey Beaver

General Counsel

Texas Department of Motor Vehicles

Earliest possible date of adoption: September 20, 2020

For further information, please call: (512) 465-5665



CHAPTER 223. COMPLIANCE AND INVESTIGATIONS DIVISION  
SUBCHAPTER B. RISK-BASED MONITORING AND PREVENTING FRAUDULENT ACTIVITY

**43 TAC §223.101**

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes new 43 TAC §223.101, concerning an ex-

ternal risk-based system of monitoring and preventing fraudulent activity related to vehicle registration and titling in order to efficiently allocate resources and personnel. The new section is necessary to implement Transportation Code §520.004(4) as added by Senate Bill 604, 86th Legislature, Regular Session (2019).

This proposal addresses risk based monitoring of regulated persons, including county tax assessor collectors, deputies, and dealers. The department has also proposed new 43 TAC §206.151 concerning the risk based monitoring of internal department operations in this issue of the *Texas Register*.

EXPLANATION. Proposed §223.101 is necessary under Transportation Code §520.004(4), as enacted in SB 604. Transportation Code §520.004(4) requires the department, by rule, to establish a risk-based system of monitoring and preventing fraudulent activity related to vehicle registration and titling in order to efficiently allocate resources and personnel. The requirement is included within the Sunset Advisory Commission's Change in Statute Recommendation 2.4, as stated in the Sunset Staff Report with Commission Decisions, 2018-2019, 86th Legislature (2019). The Sunset recommendation envisioned that the department develop criteria to determine varying risk levels, such as transaction volume and past violations, to strategically allocate resources and personnel. Further, monitoring and investigation would extend both to counties and their contractors, dealers, and the department's regional service centers.

To implement Transportation Code §520.004(4) in line with the Sunset recommendation, the department has developed internal and external risk-based monitoring systems. The internal system is overseen through department management and the Internal Audit Division. The external system is overseen through by the department's Compliance and Investigations Division. Each system rule is placed in its appropriate chapter based on its focus.

Proposed new §223.101 outlines the program generally, to allow flexibility for change over time and because detailed disclosure of the of the means and methods that the department's system could be used to evade the monitoring. The monitoring system does not add additional requirements or costs on any regulated person.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Linda M. Flores, Chief Financial Officer, has determined that for each year of the first five years the proposed new section will be in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. Timothy Menke, Director of the Compliance and Investigations Division, has determined that there will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT AND COST NOTE. Mr. Menke has also determined that, for each year of the first five years the proposed new section is in effect, the public benefits include establishing a risk-based system of monitoring and preventing fraudulent activity related to vehicle registration and titling in order to efficiently allocate resources and personnel.

Anticipated Costs To Comply With The Proposal. Mr. Menke anticipates that there will be no additional costs on regulated persons to comply with these rules, because the rules do not establish any additional requirements on regulated person.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. As required by Government Code, §2006.002, the department has determined that the proposed new section will not have an adverse economic effect on small businesses, micro-businesses, or rural communities because the proposal imposes no additional requirements, and has no financial effect, on any small businesses, micro-businesses, or rural communities. Therefore, the department is not required to prepare a regulatory flexibility analysis under Government Code §2006.002.

TAKINGS IMPACT ASSESSMENT. The department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT STATEMENT. The department has determined that each year of the first five years the proposed new section is in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the department;
- will not require an increase or decrease in fees paid to the department;
- will create new regulation §223.101 to implement Transportation Code §520.004(4);
- will not expand existing regulations;
- will not repeal existing regulations;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

#### REQUEST FOR PUBLIC COMMENT.

If you want to comment on the proposal, submit your written comments by 5:00 p.m. CST on September 21, 2020. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to [rules@txdmv.gov](mailto:rules@txdmv.gov) or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

STATUTORY AUTHORITY. The department proposes new §223.101 under Transportation Code §§520.003, 520.004, and §1002.001.

--Transportation Code §520.003 authorizes the department to adopt rules to administer Transportation Code Chapter 520.

--Transportation Code §520.004 requires the department to establish by rule a risk-based system of monitoring and preventing fraudulent activity related to vehicle registration and titling in order to efficiently allocate resources and personnel.

--Transportation Code §1002.001, authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Transportation Code §520.004.

#### §223.101. External Risk-Based Monitoring System.

The department's Compliance and Investigations Division shall establish a risk-based system of monitoring and preventing fraudulent activity related to vehicle registration and titling in order to efficiently allocate resources and personnel, including:

- (1) establishing a risk-based system of monitoring counties and their contractors;
- (2) developing criteria to determine varying risk levels for the department's fraud monitoring functions to strategically allocate resources and personnel;
- (3) reviewing the department's methods for collecting and evaluating related information, including the viability of incorporating more remote transaction review practices to supplement periodic, but less frequent, on-site visits to counties; and
- (4) developing and providing training to fraud investigations staff.

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

Filed with the Office of the Secretary of State on August 7, 2020.

TRD-202003217

Tracey Beaver

General Counsel

Texas Department of Motor Vehicles

Earliest possible date of adoption: September 20, 2020

For further information, please call: (512) 465-5665





# ADOPTED RULES

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

## TITLE 4. AGRICULTURE

### PART 1. TEXAS DEPARTMENT OF AGRICULTURE

#### CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS

##### SUBCHAPTER K. EUROPEAN CORN BORER QUARANTINE

###### 4 TAC §§19.110 - 19.113

The Texas Department of Agriculture (the Department) adopts amendments to the Texas Administrative Code, Title 4, Part 1, Chapter 19, Subchapter K, European Corn Borer Quarantine, §§19.110 - 19.112, without changes to the text as published in the April 10, 2020, issue of the *Texas Register* (45 TexReg 2394). These rules will not be republished. Section 19.113 is adopted with changes and will be republished.

The adopted amendment to §19.110 revises the taxonomic name of the Quarantined Pest, European Corn Borer to *Ostrinia nubilalis*, which is the most widely acceptable taxonomic name. The adopted amendment to §19.111 modifies the European Corn Borer Quarantined Areas to include counties in Florida known to be infested with European Corn Borer. The adopted amendment to §19.112 adds *Cannabis* spp. to the list of Quarantined Articles in the European Corn Borer Quarantine. The adopted amendments to §19.113 clarify the restrictions on the movement of European Corn Borer Quarantined Articles from European Corn Borer Quarantined Areas.

The Department received one comment on the proposal from Mr. Steven Long, Assistant Director of Regulatory and Public Service Programs in the Department of Plant Industry at Clemson University, State Plant Regulatory Official, and National Plant Board Vice President. Mr. Long expressed concern about the compliance agreement requirement for hemp plants for planting, as most would be shipped in life-stages not conducive for European corn borer infestation. Amendments were modified to allow shipments of hemp plants for planting, as well as ornamental plants, cut flowers and vegetables if each lot or shipment is inspected and accompanied by a certificate evidencing that no European Corn Borer were found.

The amendments are adopted under §71.001 of the Texas Agriculture Code, which provides the Department with the authority to quarantine an area if it determines that a dangerous insect pest or plant disease new to and not widely distributed in this state exists in any area outside the state; §71.005 of the Texas Agriculture Code, which provides that the Department shall prevent the movement, from a quarantined area into an unquaran-

ted area or pest-free area, of any plant, plant product, or substance capable of disseminating the pest or disease that is the basis for the quarantine; and §71.007 of the Texas Agriculture Code, which provides the Department with the authority to adopt rules as necessary for the protection of agricultural and horticultural interests.

Chapter 71 of the Texas Agriculture Code is affected by the adoption.

###### §19.113. Restrictions.

(a) General. Quarantined articles originating from quarantined areas are prohibited entry into or through the free areas of Texas, except as provided in subsections (b) and (c) of this section.

(b) Exemptions. The following quarantined articles are exempt from the restrictions of this subchapter:

(1) individual shipments of lots of shelled grain or seed of 100 pounds or less;

(2) grain comprised of packages less than 10 pounds and free from portion of plants or fragments capable of harboring the European Corn Borer;

(3) shelled popcorn, seed for planting, or clean, sacked grain for human consumption;

(4) dahlia tubers without stems;

(5) gladiolus corms without stems;

(6) pungent types of pepper fruits;

(7) dried flowers and leaves, seeds for planting and human consumption, extracted fiber, and extracted oil of *Cannabis* spp.;

(8) divisions without stems of the previous year's growth, seedling plants, rooted cuttings, and cut flowers of ornamental plants listed in §19.112(b)(3) of this subchapter (relating to Quarantined Articles) if shipped during the period between November 30th to May 1st; and

(9) quarantined articles destined to a processing facility may be granted an exemption upon departmental review.

(c) Exceptions.

(1) A quarantined article may be shipped into a free area in Texas if it is accompanied by a certificate issued by an authorized representative of the origin state's department of agriculture certifying that the article has met one of the following conditions:

(A) the quarantined article was a product of a state not listed as quarantined in this subchapter, and the quarantined article has been maintained to assure no blending or mixing with other quarantined articles produced in or shipped from quarantined areas described in this subchapter; or

(B) grain has been screened through a 1/2 inch or smaller mesh screen, or otherwise processed prior to loading and is free from stalks, cobs, stems or such portions of plants or fragments; or

(C) the quarantined article has been fumigated in a manner prescribed by the department; or

(D) the quarantined article originated from an approved establishment:

(i) in Texas, which has a current compliance agreement with the department; or

(ii) which has a current compliance agreement with the originating state department of agriculture; or

(E) divisions without stems of the previous year's growth, seedling plants, rooted cuttings, and cut flowers of ornamental plants listed in §19.112 (b)(3) of this subchapter (relating to Quarantined Articles), seedling plants and cuttings of Cannabis spp., and articles listed in §19.112(b)(2) of this subchapter (relating to Quarantined Articles), if each lot or shipment is inspected by an authorized representative of the origin state's department of agriculture and no European Corn Borer is found; or

(F) the greenhouse or the growing area where ornamentals with divisions without stems of the previous year's growth, rooted cuttings, seedling plants or cut flowers were produced, were inspected and no European Corn Borer was found; or

(G) parts of Cannabis spp. plants have been screened through a 1/2 inch or smaller mesh screen, or otherwise processed prior to loading and are free from stalks, stems or such portions of plants or fragments capable of harboring larvae of European Corn Borer.

(2) Unfumigated and unscreened grain may be shipped through the free area of Texas if it is destined to a foreign port through a port elevator operating under the authority of the Federal Grain Inspection Service (FGIS), provided a certificate from the state of origin accompanies each shipment stating:

(A) grain is for export only; and

(B) shipment shall not be diverted to any other Texas point; and

(C) a change in destination to other Texas points is not authorized.

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

Filed with the Office of the Secretary of State on August 10, 2020.

TRD-202003235

Skyler Shafer

Assistant General Counsel

Texas Department of Agriculture

Effective date: August 30, 2020

Proposal publication date: April 10, 2020

For further information, please call: (512) 936-9630



## TITLE 7. BANKING AND SECURITIES

### PART 6. CREDIT UNION DEPARTMENT

## CHAPTER 91. CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS

### SUBCHAPTER G. LENDING POWERS

#### 7 TAC §91.708

The Credit Union Commission (the Commission) adopts amendments to Texas Administrative Code, Title 7, Chapter 91, Subchapter B, §91.708, Real Estate Appraisals or Evaluations, without changes to the proposed text as published in the May 22, 2020, issue of the *Texas Register* (45 TexReg 3405). The amendments will not be republished.

The adopted rule reflects amendments made to the National Credit Union Administrations Rules and Regulations Part 722 (12 CFR Part 722) which aligns with requirements of other depository financial services providers. The adopted rule increases the threshold at which licensed appraisals are required when underwriting consumer real estate loans. The adopted rule requires consumer real estate loans at or exceeding \$400,000 to have an appraisal conducted by a state licensed appraiser, an increase from the current \$250,000 limit. The adopted rule is necessary for state-chartered credit unions to maintain competitiveness with federally-chartered credit unions, and to ensure credit unions are subject to the same standards that are applied to federal and state banking industries.

The Commission received no written comments on the proposed amendments to the rule.

The rule changes are adopted under Texas Finance Code, Section 15.402, which authorizes the Commission to adopt reasonable rules for administering Texas Finance Code, Title 2, Chapter 15 and Title 3, Subtitle D, and which authorizes the Commission to adopt rules that promote competitive parity of credit unions with other depository financial institutions.

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

Filed with the Office of the Secretary of State on August 10, 2020.

TRD-202003228

John J. Kolhoff

Commissioner

Credit Union Department

Effective date: August 30, 2020

Proposal publication date: May 22, 2020

For further information, please call: (512) 837-9236



## TITLE 13. CULTURAL RESOURCES

### PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

#### CHAPTER 6. STATE RECORDS

##### SUBCHAPTER A. RECORDS RETENTION SCHEDULING

#### 13 TAC §§6.1, 6.5, 6.8

The Texas State Library and Archives Commission (commission) adopts amendments to 13 TAC §§6.1, Definitions; 6.5, Certifica-

tion of Records Retention Schedules and Amendments; and 6.8, Implementation of Certified Records Retention Schedules. The amendments are adopted without changes to the proposed text as published in the June 26, 2020, issue of the *Texas Register* (45 TexReg 4249). The rules will not be republished.

**EXPLANATION OF ADOPTED AMENDMENTS AND NEW SECTIONS.** The amendments are necessary to improve accuracy and clarity of the rules and to add references to the Texas State University Retention Schedule (URRS), a schedule added as §6.10(b) in December 2019.

The amendments to §6.1 add the definition of Texas State University Records Retention Schedule, update the definition of Texas State Records Retention Schedule for consistency, and renumber the definitions accordingly.

The amendment to §6.5 adds a reference to the Texas State University Records Retention Schedule.

The amendment to §6.8 updates the title of a referenced standard and adds the ability to transfer archival records in electronic format.

**SUMMARY OF COMMENTS.** The Commission did not receive any comments on the proposed amendments or new rule.

**STATUTORY AUTHORITY.** The amendments are adopted under Government Code, §441.158, which requires the Commission to adopt records retention schedules by rule and requires the Commission to provide records retention schedules to local governments, and Government Code, §441.160, which allows the commission to revise the schedules.

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

Filed with the Office of the Secretary of State on August 10, 2020.

TRD-202003226

Sarah Swanson

General Counsel

Texas State Library and Archives Commission

Effective date: August 30, 2020

Proposal publication date: June 26, 2020

For further information, please call: (512) 463-5591



## CHAPTER 7. LOCAL RECORDS

### SUBCHAPTER A. REGIONAL HISTORICAL RESOURCE DEPOSITORIES AND REGIONAL RESEARCH CENTERS

#### 13 TAC §§7.1, 7.7, 7.10

The Texas State Library and Archives Commission (commission) adopts amendments to §7.1, Definitions and §7.7, Title to Materials, and new §7.10, Application for Transfer of Title to Local Historical Resources. The new and amended sections are adopted with no changes to the proposed text as published in the May 8, 2020, issue of the *Texas Register* (45 TexReg 2963). The rules will not be republished.

**EXPLANATION OF ADOPTED AMENDMENTS AND NEW SECTION.** The amendments and new rule are adopted, in part, to implement Recommendation 2.4 in the Sunset Advisory

Commission's Staff Report with Final Results, 2018-2019, 86th Legislature and Government Code, §441.153(g), which requires the commission, in consultation with depositories, to adopt rules providing an application procedure and standards for evaluating applications to transfer title to local historical resources to depositories.

The amendment to §7.1 adds a definition of "local historical resources." This definition is necessary because the statute refers to "local historical resources" and "state historical resources," but only defines "historical resources." The newly added definition clarifies that when "local historical resources" is used in §7.10, it refers to local government records as defined by the Local Government Code and to other items of historical interest or value to a specific region transferred to the custody of and accepted by the commission.

The amendment to §7.7 references new §7.10 and clarifies that title to materials given, donated, or transferred to the commission but placed in a depository remains with the commission except as authorized by the new rule.

New §7.10 establishes the application procedure and standards for approval of a request.

New subsection (a) is the statement authorizing a depository to request the transfer and provides that the commission will approve the transfer only if it is in the best interest of the state, as required by statute.

New subsection (b) requires a depository that wishes to transfer title to local historical resources to apply using a form provided by the commission. The form must be filled out completely and signed by an authorized representative of the depository's institution.

New subsection (c) clarifies that a depository may only apply for transfer of title to local historical resources currently held by the depository for which the commission has accession documentation. This requirement will ensure the commission has authority to approve the legal transfer. This subsection also clarifies that a depository may not apply for transfer of historical resources unless they are local historical resources. The subsection also specifies that a depository may not apply for transfer of records of local governments not currently held by the depository on behalf of the commission. Lastly, the subsection specifies that a depository must request transfer of all historical resources in one application. This requirement will minimize confusion regarding the records for researchers and ensure the administrative burden of managing records does not increase due to a piecemeal approach.

New subsection (d) provides that the State Archivist will review applications and notify the depository whether the application is approved or denied within 30 days of receipt, or notify the depository of a new date if the State Archivist is unable to make a determination within 30 days. This subsection also allows an applicant to appeal a denial of a transfer request to the director and librarian, whose decision is final.

New subsection (e) requires approved applicants to continue to meet the requirements of §7.3, Minimum Requirements for Depositories, for local historical resources transferred to the depository under this section. This requirement will ensure the local historical resources are preserved according to established archival standards. The commission recognizes it has no authority to enforce this requirement once title to local historical records has transferred; however, this requirement remains in effect for a

depository to continue as a depository under Government Code, §441.153, and reflects generally accepted standards. As such, this requirement should not place a new burden on a depository.

New subsection (f) provides examples of when a request may not be approved, including (1) when the request is for a state historical resource, (2) the request is for a resource not currently held by the depository, (3) the application is not signed, (4) the depository is unable to demonstrate the record was transferred to the depository by the commission, (5) the depository is not in compliance with §7.3 (relating to Minimum Requirements for Depositories), and (6) the transfer is not in the best interest of the state.

**SUMMARY OF COMMENTS.** The Commission did not receive any comments on the proposed amendments or new rule.

**STATUTORY AUTHORITY.** The amendments and new section are adopted under Government Code, §441.153(g), which requires the commission, in consultation with depositories, to adopt rules providing an application procedure and standards for evaluating applications to transfer title to local historical resources to depositories.

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

Filed with the Office of the Secretary of State on August 10, 2020.

TRD-202003225

Sarah Swanson

General Counsel

Texas State Library and Archives Commission

Effective date: August 30, 2020

Proposal publication date: May 8, 2020

For further information, please call: (512) 463-5591



## TITLE 16. ECONOMIC REGULATION

### PART 9. TEXAS LOTTERY COMMISSION

#### CHAPTER 401. ADMINISTRATION OF STATE LOTTERY ACT

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §401.158 (Suspension or Revocation of License), §401.160 (Standard Penalty Chart), §401.301 (General Definitions), §401.302 (Scratch Ticket Game Rules), §401.304 (Draw Game Rules (General)), §401.305 ("Lotto Texas®" Draw Game Rule), §401.307 ("Pick 3" Draw Game Rule), §401.308 ("Cash Five" Draw Game Rule), §401.312 ("Texas Two Step" Draw Game Rule), §401.315 ("Mega Millions" Draw Game Rule), §401.316 ("Daily 4" Draw Game Rule), §401.317 ("Powerball®" Draw Game Rule), §401.320 ("All or Nothing" Draw Game Rule), §401.321 (Instant Game Tickets Containing Non-English Words), §401.322 ("Texas Triple Chance" Draw Game Rule), §401.351 (Proceeds from Ticket Sales), §401.353 (Retailer Settlements, Financial Obligations, and Commissions), §401.355 (Restricted Sales), §401.363 (Retailer Record), §401.366 (Compliance with All Applicable Laws), and §401.368 (Lottery Ticket Vending Machines). The rules are adopted without changes to the proposed text as

published in the June 26, 2020, issue of the *Texas Register* (45 TexReg 4252) and will not be republished.

The rule amendments are a result of the Commission's recent rule review conducted in accordance with Texas Government Code §2001.039. The amendments will simplify and update the rules to conform to industry best practices. The amendments also include updates and clarifications of certain terms to conform usage of those terms throughout the rules (e.g., replacing the terms "instant ticket" and "instant game" with "scratch ticket" and "scratch ticket game").

Among the more significant changes, the amendments move the draw game "playslip" and "entry of play" provisions from various specific draw game rules to the definitions and general draw game rule with language that will apply consistently to all draw games. Likewise, the amendments move the general provisions regarding authorized promotions and retail bonus/incentives from individual draw game rules to the general draw game rule. The amendments also update the various game trademarks and definitions of "playboard" for consistency purposes.

The amendments to Rule 401.158 (Suspension or Revocation of License) and the penalty chart in Rule 401.160 (Standard Penalty Chart) update and clarify lottery enforcement policy and practice. The amendments also remove certain outdated requirements from the licensing rules and retailer rules.

Additionally, the amendments include the repeal of §401.322 ("Texas Triple Chance" Draw Game Rule) because that draw game is no longer offered. The amendments also remove references to "Lotto Texas® Winner Take All®" from §401.305 ("Lotto Texas®" Draw Game Rule) because that promotion was never implemented. The removal of the foregoing provisions will further streamline and simplify the Commission's rules.

The Commission received no written comments on the proposed amendments during the public comment period.

#### SUBCHAPTER B. LICENSING OF SALES AGENTS

##### 16 TAC §401.158, §401.160

These amendments are adopted under Texas Government Code §466.015, which authorizes the Commission to adopt rules governing the operation of the lottery, and §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

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

Filed with the Office of the Secretary of State on August 10, 2020.

TRD-202003283

Bob Biard

General Counsel

Texas Lottery Commission

Effective date: August 30, 2020

Proposal publication date: June 26, 2020

For further information, please call: (512) 344-5392



#### SUBCHAPTER D. LOTTERY GAME RULES

**16 TAC §§401.301, 401.302, 401.304, 401.305, 401.307, 401.308, 401.312, 401.315 - 401.317, 401.320, 401.321**

These amendments are adopted under Texas Government Code §466.015, which authorizes the Commission to adopt rules governing the operation of the lottery, and §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

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

Filed with the Office of the Secretary of State on August 10, 2020.

TRD-202003288

Bob Biard

General Counsel

Texas Lottery Commission

Effective date: August 30, 2020

Proposal publication date: June 26, 2020

For further information, please call: (512) 344-5392



**16 TAC §401.322**

This repeal is adopted under Texas Government Code §466.015, which authorizes the Commission to adopt rules governing the operation of the lottery, and §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

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

Filed with the Office of the Secretary of State on August 10, 2020.

TRD-202003285

Bob Biard

General Counsel

Texas Lottery Commission

Effective date: August 30, 2020

Proposal publication date: June 26, 2020

For further information, please call: (512) 344-5392



**SUBCHAPTER E. RETAILER RULES**

**16 TAC §§401.351, 401.353, 401.355, 401.363, 401.366, 401.368**

These amendments are adopted under Texas Government Code §466.015, which authorizes the Commission to adopt rules governing the operation of the lottery, and §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

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

Filed with the Office of the Secretary of State on August 10, 2020.

TRD-202003289

Bob Biard

General Counsel

Texas Lottery Commission

Effective date: August 30, 2020

Proposal publication date: June 26, 2020

For further information, please call: (512) 344-5392



**TITLE 19. EDUCATION**

**PART 2. TEXAS EDUCATION AGENCY**

**CHAPTER 61. SCHOOL DISTRICTS**

**SUBCHAPTER AA. COMMISSIONER'S**

**RULES ON SCHOOL FINANCE**

**19 TAC §61.1008**

The Texas Education Agency (TEA) adopts new §61.1008, concerning the school safety allotment. The new section is adopted without changes to the proposed text as published in the May 1, 2020 issue of the *Texas Register* (45 TexReg 2806) and will not be republished. The adopted new rule reflects changes made by Senate Bill (SB) 11, 86th Texas Legislature, 2019.

**REASONED JUSTIFICATION:** Texas Education Code (TEC), §42.168, added by SB 11, 86th Texas Legislature, 2019, directs the commissioner to adopt rules and take action as necessary to implement and administer the school safety allotment. The allotment provides additional funding for a school district in the amount provided by appropriation for each student in average daily attendance. Funds allocated for that purpose must be used to improve school safety and security, including costs associated with: (1) securing school facilities; (2) providing security for the district; (3) school safety and security training and planning; and (4) providing programs related to suicide prevention, intervention, and postvention.

House Bill 3, 86th Texas Legislature, 2019, passed independently of SB 11, transferred many Foundation School Program formulas to TEC, Chapter 48. Adopted new §61.1008 implements TEC, §42.168, by explaining that the school safety allotment will be treated as if it is located in TEC, Chapter 48. It is anticipated that the legislature will transfer TEC, §42.168, to TEC, Chapter 48, when it convenes in 2021.

**SUMMARY OF COMMENTS AND AGENCY RESPONSES:** The public comment period on the proposal began May 8, 2020, and ended June 8, 2020. No public comments were received.

**STATUTORY AUTHORITY.** The new section is adopted under Texas Education Code, §42.168, as added by Senate Bill 11, 86th Texas Legislature, 2019, authorizes the school safety allotment.

**CROSS REFERENCE TO STATUTE.** The new section implements Texas Education Code, §42.168, as added by Senate Bill 11, 86th Texas Legislature, 2019.

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

Filed with the Office of the Secretary of State on August 5, 2020.

TRD-202003176

◆ ◆ ◆  
**TITLE 22. EXAMINING BOARDS**

**PART 11. TEXAS BOARD OF NURSING**

**CHAPTER 217. LICENSURE, PEER  
ASSISTANCE AND PRACTICE**

**22 TAC §217.4**

**Introduction.** The Texas Board of Nursing (Board) adopts amendments to §217.4, relating to Requirements for Initial Licensure by Examination for Nurses Who Graduate from Nursing Education Programs Outside of United States' Jurisdiction, without changes to the proposed text as published in the March 20, 2020, issue of the *Texas Register* (45 TexReg 1941). The rule will not be republished.

**Reasoned Justification.** The amendments are being adopted under the authority of the Occupations Code §§301.157(d), 301.252, 301.2511, and 301.151.

**Background.** Rule 217.4 addresses applicants who graduated from nursing education programs outside the United States' jurisdiction and are seeking initial nurse licensure by examination in Texas. Under the current rule, these applicants must provide a credential evaluation service full education course-by-course report from the Commission on Graduates of Foreign Nursing Schools, the Educational Records Evaluation Service, or the International Education Research Foundation. The adopted amendments, however, eliminate the requirement that an applicant must choose from these three specific credential evaluation services traditionally recognized by the Board, and, instead, allow applicants to utilize any credential evaluation service meeting the standards adopted by the Board. This change is intended to provide additional options for applicants and additional opportunity for credential evaluation services seeking to do business in Texas.

**Minimum Criteria.** Adopted §217.4(b) sets forth the minimum criteria credential evaluation services must meet in order to be approved by the Board. The Board utilizes credential evaluation service reports to inform its licensure decisions. Establishing approval criteria is important to ensure the Board receives reliable information from its credential evaluation services. For example, under the adopted requirements, a credential evaluation service must be a member of a national credentialing organization that sets performance standards for the industry, and the credential evaluation service must adhere to those standards. The credential evaluation service must also specialize in the evaluation of international nursing education and licensure and be able to demonstrate its ability to accurately analyze academic and licensure credentials and provide a course-by-course analysis of nursing academic records. While there are national associations, such as the National Association of Credential Evaluation Services (NACES), that set industry standards for these organizations, the term "specialize" in the adopted rule does not require

a certification or certificate. Rather, the term is meant as an expression of experience in the field.

Further, in order to ensure reliable and efficient reports, credential evaluation services must have at least five years' experience in the industry. The majority of other state boards of nursing require the use of the same three credential evaluation services specified in the Board's current rule. In reviewing the few other state boards of nursing that have established their own criteria for approving credential evaluation services, one board adopted a requirement that an applicant credential evaluation service be in business for a minimum of ten years before being eligible for approval. The Board has determined that ten years is too long a time period and could eliminate many new companies from providing credential evaluation services in Texas, which would defeat the intent of the proposal. However, it is important for an organization to have an established reputation of providing quality services that can be evaluated on an objective basis. The Board must have a reasonable amount of confidence that any credential evaluation service it approves is capable of providing reliable information, has proven methods over time, has longevity and is fundamentally stable, and will be available and operational in the future. The Board has determined that a five-year benchmark is a reasonable amount of time for a credential evaluation service to be able to demonstrate these assurances.

Further, because the Board relies on the reports of credential evaluation services to determine if an applicant is eligible for licensure in Texas, reliability and credibility are of paramount importance. Similar to state agency contracting and purchasing requirements, customer feedback is expected and recorded. Agencies are required to provide feedback and record satisfaction ratings for entities it contracts with. In the same vein, the Board is interested in the feedback of customers that have utilized the services of an applicant credential evaluation service. Organizations whose customers indicate that an entity is slow to respond, is disorganized, is unable to support its report/opinion with objective evidence, is not qualified to review the information needed, is unreliable, or is unable to provide the services it advertises will be carefully considered by the Board during its approval process. While negative reviews/references will not necessarily disqualify an organization from being approved, it will be a cause of concern that will have to be reviewed carefully by the Board. Credential evaluation services must also be able to complete evaluation reports within a reasonable time period, not to exceed six weeks.

Each credential evaluation service must also complete a form and affidavit required by the Board, as well as supporting documentation, evidencing the credential evaluation service's ability to meet the Board's requirements. Further, a credential evaluation service may not provide an applicant's full education course-by-course report for Board consideration until the credential evaluation service has received Board approval. These standards are consistent with those required by other state boards of nursing and with industry standards established for credential evaluation services evaluating international education.

**Remaining Amendments.** The current rule also requires verification of a high school diploma or equivalent educational credentials, as established by the General Education Development Equivalency Test (GED). Because credential evaluation services ensure that an applicant has obtained a high school diploma or equivalent educational credentials, as established by the General Education Development Equivalency Test (GED), as part of their full education course-by-course report, the adopted amend-

ments eliminate this unnecessarily redundant requirement from the section. The remaining adopted amendments make editorial and typographical corrections and eliminate obsolete provisions from the text. Specifically, the adopted amendments require applicants to submit their fingerprints to the Board for a complete criminal background check, in compliance with the Occupations Code §301.2511, and because the Board's fingerprinting process has changed over time and is now automated through a third party vendor. Second, the adopted amendments eliminate the fee associated with a six month accustomation permit, which the Board no longer assesses.

**Proposal and Adoption.** The Board approved the proposed amendments for publication in the *Texas Register* at its January 23-24, 2020 meeting. The proposal was published on March 20, 2020. The Board did not receive any comments on the proposal. However, on April 3, 2020, the Regulatory Compliance Division (Division) of the Office of the Governor informed the Board that the Division would be commencing a review of the proposal. The Division invited public comments on the proposed amendments for an additional thirty-day period ending June 25, 2020. The Division received no comments. On July 22, 2020, the Board received notice from the Division that it determined that the proposal was consistent with state policy and could be finally adopted.

Specifically, the Division found that the proposal facilitated the Board's evaluation of an applicant's education by requiring credential evaluation service reports to include a course-by-course analysis of nursing academic records and to describe the comparability of the foreign education to United States standards. The Division further stated that, building on standards employed by other states, the Board's proposed rules establish criteria to ensure credential evaluation services have sufficient knowledge and experience and an acceptable national reputation to accurately evaluate nursing education programs, and provide timely, responsive services to applicants and the Board. Additional proposed criteria require credential evaluation services to use reliable, verifiable sources to evaluate education and inform the Board of any identified fraud, furthering the goals in the Occupations Code §301.451. The Division found the proposed rules to be reasonably construed to ensure the Board has a legitimate, reliable means of evaluating the qualifications of applicants educated abroad and are consistent with state policy.

**How the Section Will Function.** The adopted amendments to §217.4(a)(1) first eliminate the requirement that a licensed vocational nurse applicant must provide evidence of a high school diploma issued by an accredited secondary school or equivalent educational credentials as established by the General Education Development Equivalency Test (GED). The adopted amendments to §217.4(a)(1) and (2) require an applicant to provide a credential evaluation service full education course-by-course report from a credential evaluation service approved by the Board. Adopted §217.4(a)(5) requires applicants to submit fingerprints for a complete background check. Adopted §217.4(b) sets forth the criteria a credential evaluation service must meet in order to be approved by the Board. The adopted amendments to §217.4(d)(1) eliminate the fee formerly associated with an accustomation permit. The remaining adopted amendments correct editorial and typographical errors.

**Summary of Comments Received.** The Board did not receive any comments on the proposal.

Statutory Authority. The amendments are adopted under the authority of the Occupations Code §§301.157(d), 301.2511, 301.252, and 301.151.

Section 301.157(d) provides that a person may not be certified as a graduate of any school of nursing or educational program unless the person has completed the requirements of the prescribed course of study, including clinical practice, of a school of nursing or educational program that: (1) is approved by the board; (2) is accredited by a national nursing accreditation agency determined by the Board to have acceptable standards; or (3) is approved by a state board of nursing of another state and the Board, subject to Subsection (d-4).

Section 301.2511 provides that an applicant for a registered nurse license must submit to the Board, in addition to satisfying the other requirements of the subchapter, a complete and legible set of fingerprints, on a form prescribed by the Board, for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation. Section §301.2511(b) provides that the Board may deny a license to an applicant who does not comply with the requirement of subsection (a). Issuance of a license by the Board is conditioned on the Board obtaining the applicant's criminal history record information under the section. Finally, §301.2511(c) states that the Board by rule shall develop a system for obtaining criminal history record information for a person accepted for enrollment in a nursing educational program that prepares the person for initial licensure as a registered or vocational nurse by requiring the person to submit to the Board a set of fingerprints that meets the requirements of subsection (a). The Board may develop a similar system for an applicant for enrollment in a nursing educational program. The Board may require payment of a fee by a person who is required to submit a set of fingerprints under this subsection.

Section 301.252(a) states that each applicant for a registered nurse license or a vocational nurse license must submit to the Board a sworn application that demonstrates the applicant's qualifications under this chapter, accompanied by evidence that the applicant: (1) has good professional character related to the practice of nursing; (2) has successfully completed a program of professional or vocational nursing education approved under Section 301.157(d); and (3) has passed the jurisprudence examination approved by the Board as provided by Subsection (a-1).

Section 301.252(b) provides that Board may waive the requirement of subsection (a)(2) for a vocational nurse applicant if the applicant provides satisfactory sworn evidence that the applicant has completed an acceptable level of education in: (1) a professional nursing school approved under Section 301.157(d); or (2) a school of professional nurse education located in another state or a foreign country.

Section 301.252(c) provides that the Board by rule shall determine acceptable levels of education under Subsection (b).

Section 301.151 addresses the Board's rulemaking authority. Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

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

Filed with the Office of the Secretary of State on August 4, 2020.

TRD-202003134

Jena Abel

Deputy General Counsel

Texas Board of Nursing

Effective date: August 24, 2020

Proposal publication date: March 20, 2020

For further information, please call: (512) 305-6822



## 22 TAC §217.5

The Texas Board of Nursing (Board) adopts amendments to §217.5, relating to Temporary License and Endorsement, without changes to the proposed text as published in the March 20, 2020, issue of the *Texas Register* (45 TexReg 1944). The rule will not be republished.

**Reasoned Justification.** The amendments are being adopted under the authority of the Occupations Code and §301.151 and §301.259.

**Background.** Section 217.5 addresses applicants who have been licensed in another state or Canadian province and are seeking nurse licensure by endorsement in Texas. Under the current rule, these applicants must provide a credential evaluation service full education course-by-course report from the Commission on Graduates of Foreign Nursing Schools, the Educational Records Evaluation Service, or the International Education Research Foundation. The adopted amendments, however, eliminate the requirement that an applicant must choose from these three specific credential evaluation services traditionally recognized by the Board, and, instead, allow applicants to utilize any credential evaluation service meeting the standards adopted by the Board. This change is intended to provide additional options for applicants and additional opportunity for credential evaluation services seeking to do business in Texas.

**Minimum Criteria.** Adopted §217.5(b) sets forth the minimum criteria credential evaluation services must meet in order to be approved by the Board. The Board utilizes credential evaluation service reports to inform its licensure decisions. Establishing approval criteria is important to ensure the Board receives reliable information from its credential evaluation services. For example, under the adopted requirements, a credential evaluation service must be a member of a national credentialing organization that sets performance standards for the industry, and the credential evaluation service must adhere to those standards. The credential evaluation service must also specialize in the evaluation of international nursing education and licensure and be able to demonstrate its ability to accurately analyze academic and licensure credentials and provide a course-by-course analysis of nursing academic records. While there are national associations, such as the National Association of Credential Evaluation Services (NACES), that set industry standards for these organizations, the term 'specialize' in the adopted rule does not require a certification or certificate. Rather, the term is meant as an expression of experience in the field.

Further, in order to ensure reliable and efficient reports, credential evaluation services must have at least five years' experience in the industry. The majority of other state boards of nursing require the use of the same three credential evaluation services specified in the Board's current rule. In reviewing the few other state boards of nursing that have established their own criteria for approving credential evaluation services, one board adopted a requirement that an applicant credential evaluation service be in business for a minimum of ten years before being eligible for approval. The Board has determined that ten years is too long a time period and could eliminate many new companies from providing credential evaluation services in Texas, which would defeat the intent of the proposal. However, it is important for an organization to have an established reputation of providing quality services that can be evaluated on an objective basis. The Board must have a reasonable amount of confidence that any credential evaluation service it approves is capable of providing reliable information, has proven methods over time, has longevity and is fundamentally stable, and will be available and operational in the future. The Board has determined that a five-year benchmark is a reasonable amount of time for a credential evaluation service to be able to demonstrate these assurances.

Further, because the Board relies on the reports of credential evaluation services to determine if an applicant is eligible for licensure in Texas, reliability and credibility are of paramount importance. Similar to state agency contracting and purchasing requirements, customer feedback is expected and recorded. Agencies are required to provide feedback and record satisfaction ratings for entities it contracts with. In the same vein, the Board is interested in the feedback of customers that have utilized the services of an applicant credential evaluation service. Organizations whose customers indicate that an entity is slow to respond, is disorganized, is unable to support its report/opinion with objective evidence, is not qualified to review the information needed, is unreliable, or is unable to provide the services it advertises will be carefully considered by the Board during its approval process. While negative reviews/references will not necessarily disqualify an organization from being approved, it will be a cause of concern that will have to be reviewed carefully by the Board. Credential evaluation services must also be able to complete evaluation reports within a reasonable time period, not to exceed six weeks.

Each credential evaluation service must also complete a form and affidavit required by the Board, as well as supporting documentation, evidencing the credential evaluation service's ability to meet the Board's requirements. Further, a credential evaluation service may not provide an applicant's full education course-by-course report for Board consideration until the credential evaluation service has received Board approval. These standards are consistent with those required by other state boards of nursing and with industry standards established for credential evaluation services evaluating international education.

**Remaining Amendments.** The rule also currently requires individuals who have not taken the NCLEX examination or practiced nursing within the four years preceding an application by endorsement to complete the online Texas Board of Nursing Jurisprudence Prep Course; the Texas Board of Nursing Jurisprudence and Ethics Workshop; or a Texas Board of Nursing approved Nursing Jurisprudence and Ethics course *in addition to* completing a refresher course, extensive orientation, or program of study. Fifteen percent (15%) of the required content of a Board approved refresher course, extensive orientation, or program of study must include the review of the Nursing Practice Act,



Rules, Position Statements. This is the same content that is included in the online Texas Board of Nursing Jurisprudence Prep Course; the Texas Board of Nursing Jurisprudence and Ethics Workshop; and a Texas Board of Nursing approved Nursing Jurisprudence and Ethics course. The Board recognizes that the existing requirements of the rule may be unnecessarily redundant in this regard. The adopted amendments, therefore, eliminate these redundant requirements from the rule. Individuals will still be required to complete a Board approved refresher course, extensive orientation, or program of study, which must include an adequate focus on nursing jurisprudence and ethics. Further, because a nurse will still be required to successfully pass the Board's nursing jurisprudence exam, the public can be adequately assured that the nurse has successfully mastered this content prior to renewal of licensure. The adopted amendments also re-number the section appropriately.

Proposal and Adoption. The Board approved the proposed amendments for publication in the *Texas Register* at its January 23-24, 2020 meeting. The proposal was published on March 20, 2020. The Board did not receive any comments on the proposal. However, on April 3, 2020, the Regulatory Compliance Division (Division) of the Office of the Governor informed the Board that the Division would be commencing a review of the proposal. The Division invited public comments on the proposed amendments for an additional thirty-day period ending June 25, 2020. The Division received no comments. On July 22, 2020, the Board received notice from the Division that it determined that the proposal was consistent with state policy and could be finally adopted.

Specifically, the Division found that the proposal facilitated the Board's evaluation of an applicant's education by requiring credential evaluation service reports to include a course-by-course analysis of nursing academic records and to describe the comparability of the foreign education to United States standards. The Division further stated that, building on standards employed by other states, the Board's proposed rules establish criteria to ensure credential evaluation services have sufficient knowledge and experience and an acceptable national reputation to accurately evaluate nursing education programs, and provide timely, responsive services to applicants and the Board. Additional proposed criteria require credential evaluation services to use reliable, verifiable sources to evaluate education and inform the Board of any identified fraud, furthering the goals in the Occupations Code §301.451. The Division found the proposed rules to be reasonably construed to ensure the Board has a legitimate, reliable means of evaluating the qualifications of applicants educated abroad and are consistent with state policy.

How the Section Will Function. Adopted §217.5(a) requires an applicant who has graduated from a nursing education program outside of the United States or National Council jurisdictions to submit verification of licensure from the country of education or as evidenced in a credential evaluation service full education course by course report from a credential evaluation service approved by the Board, as well as meeting all other requirements in paragraphs (2) and (3) of the subsection. Adopted §217.5(b) sets forth the requirements that a credential evaluation service must meet in order to be approved by the Board. The adopted amendments to §217.5(c)(3) eliminate the requirement that an applicant submit to the Board a course completion form from the online Texas Board of Nursing Jurisprudence Prep Course; the Texas Board of Nursing Jurisprudence and Ethics Workshop; or a Texas Board of Nursing approved Nursing Jurisprudence and

Ethics course. The remaining adopted amendments re-number the section appropriately.

Summary of Comments Received. The Board did not receive any comments on the proposal.

Statutory Authority. The amendments are adopted under the authority of the Occupations Code §301.259 and §301.151.

Section 301.259 provides that, on payment of a fee established by the Board, the Board may issue a license to practice as a registered nurse or vocational nurse in this state by endorsement without examination to an applicant who holds a registration certificate as a registered nurse or vocational nurse, as applicable, issued by a territory or possession of the United States or a foreign country if the Board determines that the issuing agency of the territory or possession of the United States or foreign country required in its examination the same general degree of fitness required by this state.

Section 301.151 addresses the Board's rulemaking authority. Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

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

Filed with the Office of the Secretary of State on August 4, 2020.

TRD-202003137

Jena Abel

Deputy General Counsel

Texas Board of Nursing

Effective date: August 24, 2020

Proposal publication date: March 20, 2020

For further information, please call: (512) 305-6822



## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

#### CHAPTER 53. FINANCE

##### SUBCHAPTER A. FEES

#### DIVISION 1. LICENSE, PERMIT, AND BOAT AND MOTOR FEES

##### 31 TAC §53.13

The Texas Parks and Wildlife Commission in a duly noticed meeting on May 21, 2020, adopted an amendment to §53.13, concerning Commercial Licenses and Permits (Fishing), with changes to the proposed text as published in the April 17, 2020, issue of the *Texas Register* (45 TexReg 2483). The proposed amendment establishes the fees for cultivated oyster mariculture permits issued under the provisions of Parks and Wildlife

Code, Chapter 75. The amendment also corrects a grammatical disagreement in the title of the section.

The change corrects an error in the proposed coefficient for calculating the value of the surcharge imposed for nursery facilities located on public water. As published, that coefficient was \$0.023 per square foot. The value that should have been published is \$0.010, which represents a proportionally equivalent value of a Cultivated Oyster Mariculture Permit (COMP) for the use of public water.

The fee *requirement* for cultivated oyster mariculture permits is imposed by another proposed rulemaking published elsewhere in this issue. The application fee for a permit issued under the new subchapter is \$200, which represents the cost to the department of the time for a biologist to evaluate a prospective project. The annual fee for a COMP is \$450 per acre per year (except for COMPs located on private property), which is the estimated cost to the department for conducting an annual facility inspection, which is a requirement under the United States Food and Drug Administration's National Shellfish Sanitation Program (NSSP). This value was derived by calculating the payroll, vehicle, boat, and travel values for two department technicians to travel to a site, launch a boat, and conduct an inspection. By statute (Parks and Wildlife Code, §75.0105) the department is required to set aside 20 percent of the fees collected for oyster mariculture permits for the cleanup of illegal or abandoned cultivated oyster mariculture equipment and related debris in public water. Thus, the proposed fees incorporate 20 percent of the department's inspection expense, rounding up to the nearest \$50, which yields a permit fee of \$450. The annual fee for a COMP located on private property is the same as for a nursery facility, because of similar costs to the department for inspections.

The annual fee for a nursery permit is \$170 per acre per year, which is the estimated cost to the department for conducting an annual facility inspection, which is required by the NSSP. This value was derived by calculating the payroll, vehicle, boat, and travel values for one department technician to travel to a site and conduct an inspection. As noted previously, the department is required by statute (Parks and Wildlife Code, §75.0105) to set aside 20 percent of the fees collected for oyster mariculture permits for the cleanup of illegal or abandoned cultivated oyster mariculture equipment and related debris in public water. Thus, taking 20 percent of the department's inspection expense, rounded up to the nearest \$10 increment, yields a permit fee of \$170. In addition, if the nursery facility is located on public water, an additional fee of \$0.010 per square foot per year will be assessed, which represents a proportionally equivalent value of a COMP for the use of public water.

Two commenters opposed the fee structure, stating that the proposed annual permit fee is too high and there is not a reduced rate for additional acres. The department disagrees with the comment and responds that the annual fee structure was developed to cover department costs associated with one site inspection per year, as required by the U.S. Food and Drug Administration's National Shellfish Sanitation Program. In addition to the permitted areas, annual inspections will include the buffer areas associated with sensitive habitat elements (e.g. 200-feet for seagrass, 500-feet for oyster habitat, and 2,000-feet for bird rookeries). For a 1-acre permit area, a 200-foot seagrass habitat buffer will incorporate an additional 7.5 acres and a 500-foot oyster habitat buffer will include an additional 33 acres. For a 3-acre permit area, these buffers increase to 11 acres for seagrass and

42 acres for oysters that will be included in the annual inspections. No changes were made as a result of the comments.

The amendment is adopted under the authority of Parks and Wildlife Code, §75.0103, which requires the commission to adopt rules to establish fees and conditions for use of public resources, including broodstock oysters and public water; and any other matter necessary to implement and administer Parks and Wildlife Code, Chapter 75; and Parks and Wildlife Code, §75.0104, which requires the commission to adopt rules to establish requirements for permit applications and application fees; criteria for the approval, transfer, revocation, and suspension of permits; and procedures for hearings related to a permit.

§53.13. *Business Licenses and Permits (Fishing).*

(a) Licenses. The fee amounts prescribed in paragraphs (1) - (4) of this subsection reflect the total fee paid by the purchaser and include the surcharges established in subsection (b) of this section.

- (1) retail fish dealer's--\$92.40;
- (2) retail fish dealer's truck--\$171.60;
- (3) wholesale fish dealer's--\$825;
- (4) wholesale fish dealer's truck--\$590;
- (5) bait dealer's--individual--\$38;
- (6) bait dealer-place of business/building--\$38;
- (7) bait dealer-place of business/motor vehicle--\$38;
- (8) bait shrimp dealer's--\$215;
- (9) finfish import--\$95;

(10) freshwater fishing guide (required for residents or nonresidents who operate a boat for anything of value in transporting or accompanying anyone who is fishing in freshwater of this state)--\$132;

- (11) resident all-water fishing guide--\$210;
- (12) resident paddle craft all-water fishing guide--\$210;
- (13) non-resident all-water fishing guide--\$1,050; and
- (14) non-resident paddle craft all-water fishing guide--

\$1,050.

(b) Business license surcharge for shrimp marketing assistance account.

- (1) retail fish dealer's--\$8.40;
- (2) retail fish dealer's truck--\$15.60;
- (3) wholesale fish dealer's--\$75; and
- (4) wholesale fish dealer's truck--\$51.

(c) License transfers.

- (1) retail fish dealer's license transfer--\$25;
- (2) retail fish dealer's truck license transfer--\$25;
- (3) wholesale fish dealer's license transfer--\$25;
- (4) wholesale fish dealer's truck license transfer--\$25;
- (5) bait dealer's license transfer--\$25;
- (6) bait dealer's-place of business/building license transfer--\$25;
- (7) bait dealer's-place of business/motor vehicle license transfer--\$25;

- (8) bait shrimp dealer's license transfer--\$25;
- (9) finfish import license transfer--\$25.
- (d) Cultivated Oyster Mariculture Fees.
  - (1) Application fee--\$200.
  - (2) Cultivated Oyster Mariculture Permit (COMP).
    - (A) For a COMP located in public water--\$450 per acre per year.
    - (B) For a COMP located on private property--\$170 per acre per year.
    - (3) Cultivated Oyster Mariculture Permit - Nursery Only (nursery permit)--\$170 per acre per year, \$0.010 per square foot per year, if the nursery facility is located in public water.

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

Filed with the Office of the Secretary of State on August 4, 2020.  
 TRD-202003146  
 Colette Barron-Bradsby  
 Acting General Counsel  
 Texas Parks and Wildlife Department  
 Effective date: August 24, 2020  
 Proposal publication date: April 17, 2020  
 For further information, please call: (512) 389-4775



**31 TAC §53.15**

The Texas Parks and Wildlife Commission in a duly noticed meeting on May 21, 2020 adopted an amendment to §53.15, concerning Miscellaneous Wildlife and Fisheries Licenses and Permits, without changes to the proposed text as published in April 17, 2020, issue of the *Texas Register* (45 TexReg 2484).

The amendment changes the name of the current broodfish permit, renaming it the broodstock permit to reflect the scope of new rules to establish the cultivated oyster mariculture program.

The department received no comments concerning adoption of the proposed rule.

The amendment is adopted under the authority of Parks and Wildlife Code, §75.0103, which requires the commission to adopt rules to establish fees and conditions for use of public resources, including broodstock oysters and public water; and any other matter necessary to implement and administer Parks and Wildlife Code, Chapter 75.

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

Filed with the Office of the Secretary of State on August 4, 2020.  
 TRD-202003148  
 Colette Barron-Bradsby  
 Acting General Counsel  
 Texas Parks and Wildlife Department  
 Effective date: August 24, 2020  
 Proposal publication date: April 17, 2020  
 For further information, please call: (512) 389-4775

◆ ◆ ◆

**CHAPTER 57. FISHERIES**  
**SUBCHAPTER F. COLLECTION OF**  
**BROODSTOCK FROM TEXAS WATERS**

**31 TAC §§57.391, 57.392, 57.394 - 57.398, 57.400, 57.401**

The Texas Parks and Wildlife Commission in a duly noticed meeting on May 21, 2020, adopted amendments to §§57.391, 57.392, 57.394 - 57.398, 57.400, and 57.401, concerning Collection of Broodstock from Texas Waters. Sections 57.391 and 57.397 are adopted with changes to the proposed text as published in the April 17, 2020, issue of the *Texas Register* (45 TexReg 2485). The rules will be republished. Sections 57.392, 57.394 - 57.396, 57.398, 57.400, and 57.401 are adopted without changes and will not be republished.

The change to §57.391, concerning Definitions, alters paragraph (8) to replace the word "broodfish" with the word "broodstock." Punctuation was added to §57.397(2) and (3). The changes are nonsubstantive

The amendments conform the language of the subchapter to accommodate the creation of the cultivated oyster mariculture program under the provisions of new Chapter 58, Subchapter E, as adopted, which is published elsewhere in this issue. Because the new rules in Chapter 58 would allow the department to regulate the use of native oysters to propagate oysters for cultivated oyster mariculture, the provisions of Chapter 57, Subchapter F (and the title of the subchapter) need to be changed, as the term "broodfish" as currently defined does not include oysters. Therefore, the amendments replace the term "broodfish" with the term "broodstock" throughout the subchapter and refer where appropriate to "aquatic species" rather than "fish." Similarly, archaic references to "these rules" are replaced by references to "this subchapter." The portions of the amendments not specifically addressed in this preamble are nonsubstantive, housekeeping-type changes to modernize and clarify rule language to enhance readability, enforcement, administration, and compliance.

The amendment to §57.391, concerning Definitions, alters paragraph (1) to remove an irrelevant reference to private facilities. The amendment alters paragraph (2) to remove an unnecessary reference to the Agriculture Code. The amendment to paragraph (4) adds the term "mariculture" to the definition of "broodstock." The amendment adds new paragraph (10) to define "mariculture" as having the meaning assigned by Parks and Wildlife Code, Chapter 75. The amendment to paragraph (11) alters the definition of "progeny" to include oyster larvae, seed, and spat.

The amendment to §57.392, concerning General Rules, nonsubstantively rephrases subsection (a) for clarity.

The amendment to §57.395, concerning Broodstock Collection; Notification, adds a reference to Parks and Wildlife Code, Chapter 75 to the list of predicate violations for which the department will not issue a permit, which is necessary to accommodate violations relating to cultivated oyster mariculture permits.

The amendment to §57.397, concerning Broodfish Permit; Revocation, retitles the section "Prohibited Acts" and removes references to revocation. Parks and Wildlife Code, Chapter 12, provides a statutory process for the revocation of any license or permit; it is therefore unnecessary for revocation procedures to be established by rule. The amendment also enumerates the

categories of conduct that would constitute offenses under the subchapter rather than enumerate specific acts.

The department received no comments concerning adoption of the proposed amendments.

The amendments are adopted under the authority of Parks and Wildlife Code, §43.552, which requires the commission to prescribe by rule the requirements and conditions for the issuance of a permit under Parks and Wildlife Code, Chapter 43, Subchapter P.

§57.391. *Definitions.*

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

- (1) Aquaculture (or fish farming)--The business of producing and selling cultured aquatic species.
- (2) Aquaculturist--A person authorized by law to engage in aquaculture, fish farming or mariculture.
- (3) Aquaculture facility (or fish farm)--The property including private ponds from which fish, shellfish, or aquatic plants are produced, propagated, transported, or sold.
- (4) Broodstock--An aquatic species taken from the public waters of this state for the purpose of aquaculture or mariculture.
- (5) Collection--Any boating, fishing, or aquatic product transportation activity involved in the take or attempted take of broodstock.
- (6) Cultured species--Aquatic species raised under conditions where at least a portion of their life cycle is controlled by an aquaculturist.
- (7) Department--The Texas Parks and Wildlife Department.
- (8) Designated agent--A person designated by an aquaculturist and approved by permit to act on behalf of that aquaculturist in collection of broodstock.
- (9) Director--The executive director of the Texas Parks and Wildlife Department or his designee.
- (10) Mariculture--Cultivated oyster mariculture as defined by Parks and Wildlife Code, Chapter 75.
- (11) Progeny--Offspring of aquatic species, including eggs, fry, fingerlings, oyster larvae, seed, and spat.
- (12) Public waters--Bays, estuaries, and water of the Gulf of Mexico within the jurisdiction of the state, and the rivers, streams, creeks, bayous, reservoirs, lakes, and portions of those waters where public access is available without discrimination.
- (13) Recreational Fishing--The act of using legal means or methods to take or to attempt to take aquatic life for noncommercial purposes from the public waters of this state.

§57.397. *Prohibited Acts.*

It is an offense for any person to:

- (1) violate a provision of this subchapter;
- (2) violate a provision of a permit issued under this subchapter;
- (3) fail to comply with the reporting requirements of this subchapter;

(4) provide false information in a report required under this subchapter; or

(5) fail to remit to the department all restitution fees assessed by the department within 14 days of assessment.

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

Filed with the Office of the Secretary of State on August 4, 2020.

TRD-202003147

Colette Barron-Bradsby

Acting General Counsel

Texas Parks and Wildlife Department

Effective date: August 24, 2020

Proposal publication date: April 17, 2020

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



## CHAPTER 58. OYSTERS, SHRIMP, AND FINFISH

### SUBCHAPTER E. CULTIVATED OYSTER MARICULTURE

#### 31 TAC §§58.350 - 58.361

The Texas Parks and Wildlife Commission, in a duly noticed meeting on May 21, 2020, adopted new §§58.350 - 58.361, concerning Cultivated Oyster Mariculture. Sections 58.350 - 58.354 and 58.357 - 58.361 are adopted without changes to the proposed text as published in the April 17, 2020, issue of the *Texas Register* (45 TexReg 2488) and will not be republished. Section 58.355 and §58.356 are adopted with changes to the proposed text as published in the April 17, 2020, issue of the *Texas Register* (45 TexReg 2488). These rules will be republished. The new sections are located in new Subchapter E, Cultivated Oyster Mariculture.

The 86th Texas Legislature in 2019 enacted House Bill 1300, which amended the Parks and Wildlife Code by adding Chapter 75. Chapter 75 delegated to the Parks and Wildlife Commission authority to regulate cultivated oyster mariculture, which is the process of growing oysters in captivity. The new rules establish two types of cultured oyster mariculture permits and the general provisions governing permit privileges and obligations, as well as provisions governing administrative processes such as permit application, issuance, renewal, amendment, and denial, and reporting and recordkeeping requirements.

New §58.350, concerning Applicability, establishes the new subchapter as the primary body of administrative law governing cultivated oyster mariculture in this state and further stipulates that no provision of the new subchapter is to be construed as to relieve any person of the need to comply with any other applicable provision of federal, state, or local laws.

New §58.351, concerning Application of Shellfish Sanitation Rules of Department of State Health Services, requires all activities conducted under the subchapter to be compliant with relevant provisions of the rules of the Department of State Health Services (DSHS). The regulation of shellfish sanitation in Texas is shared between the Parks and Wildlife Department and the Department of State Health Services. As a matter of expedience, the new rules reference the applicable rules of

DSHS rather than duplicate them, which has the additional benefit of preventing unintended regulatory conflict.

New §58.352, concerning Definitions, establishes the meaning of words and terms for purposes of compliance, administration, and enforcement.

New §58.352(1) defines "administratively complete" as "an application for a permit or permit renewal that contains all information requested by the department, as indicated on the application form, without omissions." The definition is necessary to establish the threshold condition that the department considers to be acceptable before committing department time and resources to evaluation and analysis of a prospective project. The permitting process for cultivated oyster mariculture permits involves several different state and federal jurisdictions and the department believes the appropriate starting point for the evaluation of such projects is when all pertinent information (as indicated on the permit application) has been submitted.

New §58.352(2) defines "container" as "any bag, sack, box, crate, tray, conveyance, or receptacle used to hold, store, or transport oysters possessed under a permit issued under this subchapter." One of the most important challenges facing the department with respect to the new rules is that of keeping farmed oysters separate from wild oysters, in order to prevent potential resource depletion on public oyster reefs by inadvertently providing an opportunity or incentives for undersized oysters to be removed from those reefs. To that end, the new rules require farmed oysters to be accompanied by a transport document when possessed outside a regulated facility, which in turn necessitates a definition for the manner in which oysters are packed and shipped for transport.

New §58.352(3) defines "cultured oyster mariculture facility (facility)" as "any building, cage, or other infrastructure within a permitted area." The definition is necessary to distinguish those places to which the rules apply.

New §58.352(4) defines "gear tag" as "a tag composed of material as durable as the device to which it is attached." The definition is necessary because the rules require infrastructure components of cultivated oyster mariculture facilities to be equipped with gear tags to facilitate cleanup activities after strong storm and tides, which can move such things great distances.

New §58.352(5) define "infrastructure" as "a building, platform, dock, vessel, cage, nursery structure, or any other apparatus or equipment within a permitted area." The definition is necessary to designate a single term for the various physical components of a facility.

New §58.352(6) defines "larvae" as "the free-swimming, planktonic life stage of an oyster." The definition is necessary because the new rules create legal distinctions between oysters on the basis of shell length, but also allow for oyster hatcheries, which typically produce oyster larvae. The new rules establish two categories of cultivated oyster mariculture permits, one of which (the nursery-only permit) applies to facilities in which oysters are obtained as larvae and grown to a size at which they can be moved to a farm (oyster seed) to be grown to legal harvest size; thus, it is necessary to make the distinction between the early life stages of oysters and the later life stages, which are regulated in different types of facilities under separate permit categories.

New §58.352(7) defines "National Shellfish Sanitation Program (NSSP)" as "the cooperative program administered by the United States Food and Drug Administration (USFDA) for the sanitary

control of shellfish produced and sold for human consumption in the United States and adopted by rule of the Department of State Health Services." The definition is necessary because in order to market oysters outside the state of Texas, the state of Texas must be compliant with the federal program for oyster sanitation. The new rules require compliance with NSSP standards governing the tagging of oysters and because the NSSP has already been adopted by reference by DSHS, it is expedient for the department simply to refer to DSHS rules rather than reproduce NSSP standards in the new rules.

New §58.352(8) defines "nursery structure" as "a tank or chamber or system of tanks or chambers or other, similar devices in which a cultivated oyster is grown." The definition is necessary because the new rules establish two categories of cultivated oyster mariculture permits, one of which (the nursery-only permit) applies to facilities in which oysters are obtained as larvae and grown to a size at which they can be moved to a farm (oyster seed) to be grown to legal harvest size. Therefore, the new rules require a legal definition for the structures where larval oysters are held and cultured.

New §58.352(9) defines "oyster seed" as "shellstock of less than legal size." The definition is necessary to distinguish oysters that are not larval but not large enough to harvest.

New §58.352(10) defines "permitted area" as "the geophysical and/or geographical area identified in a permit where cultivated oyster mariculture activities are authorized." The term is necessary in order to avoid the repetition of cumbersome phraseology when referring to spatial parameters within which cultivated oyster mariculture is authorized under a permit.

New §58.352(11) defines "Permit Identifier (permit ID)" as "a unique alphanumeric identifier issued by the department to a permittee holding a Cultivated Oyster Mariculture permit." The definition is necessary because the department will issue each permittee an alphanumeric string that serves to uniquely identify a specific area where cultivated oyster mariculture activities are authorized to take place and which must be attached to various tags, labels, and equipment.

New §58.352(12) defines "permittee" as "a person who holds a permit issued under this subchapter." The definition is necessary to ensure that the term is not misunderstood to refer to any other permit or permits besides the cultivated oyster mariculture permits.

New §58.352(13) defines "Prohibited Area" as having the meaning defined by Health and Safety Code, §436.002(27). The definition is necessary for purposes of establishing conditions under which oysters grown under a cultivated oyster permit must be depurated.

New §58.352(14) defines "Restricted Area" as having the meaning defined by Health and Safety Code, §436.002(30). The definition is necessary for purposes of establishing conditions under which oysters grown under a cultivated oyster permit must be depurated.

New §58.352(15) defines "restricted visibility" as "any condition in which visibility is restricted by fog, mist, falling snow, heavy rainstorm, sandstorms, or any other similar causes." The definition is necessary to establish a reasonable standard for the visual markers delineating a permitted area.

New §58.352(16) defines "shellstock (stock)" as "live eastern oysters (*Crassostrea virginica*) in the shell." The definition establishes the taxonomic identity of the only species of oyster the

rules allow to be grown under a cultivated oyster mariculture permit.

New §58.352(17) defines "wild-caught oyster" as "an oyster harvested from natural oyster beds." The definition establishes the distinction between oysters harvested from cultivated oyster mariculture facilities and any other oyster.

New §58.353, concerning General Provisions, consists of several actions, all of which have general applicability to the provisions of the new subchapter.

New subsection (a) prohibits any person from engaging in cultivated oyster mariculture unless the person either possesses a permit for the activity or is acting as a subpermittee. The department wishes to make it abundantly clear that it is unlawful to engage in oyster cultivation in Texas without the appropriate authorization from the department.

New subsection (b) sets forth the privileges of a Cultivated Oyster Mariculture Permit (COMP), namely, to purchase, receive, grow, and sell cultivated oysters.

New subsection (c) sets forth the privileges of a Cultivated Oyster Mariculture Permit - Nursery Only (nursery permit), namely, to purchase, receive, and grow oyster seed and larvae, and sell oyster seed to a COMP permittee.

New subsection (d) prohibits the conduct of permit activities at any place other than the locations specified by the permit. An activity conducted under a permit issued for a specific location should be conducted only at the specified location; therefore, the new rules stipulate that requirement.

New subsection (e) establishes that permits issued under the new subchapter are valid for 10 years. The 10-year period was selected because it takes several years for mariculture operations to reach optimum production capacity and they are susceptible to a variety of environmental factors that can affect operations. A 10-year period of validity allows for the continuity necessary to sustain operations.

New subsection (f) requires COMP permittees to plant at least 100,000 oyster seed per acre on an annual basis, unless otherwise specifically authorized in writing by the department. Because there is a finite amount of bay bottom that is suitable for cultivated oyster mariculture within the matrix of biological and other parameters, the department reasons that it is prudent to require persons who obtain a cultivated oyster mariculture permit to actually engage in the practice of cultivated oyster mariculture. Otherwise, that opportunity is denied to someone else.

New subsection (g) restricts cultivated oyster mariculture to seed and larvae from native Eastern oyster broodstock collected in Texas waters and propagated in a hatchery located in Texas unless otherwise specifically authorized by the department in writing, including the importation, with a time constraint of December 31, 2027, of triploid oysters, tetraploid oyster seed, oyster larvae, and or oyster semen/eggs (germplasm) produced in permitted out-of-state hatcheries located along the Gulf of Mexico for use in cultivated oyster mariculture in this state and/or oyster seed, oyster larvae, and oyster semen/eggs (germplasm) produced from Texas broodstock at out-of-state hatcheries located along the Gulf of Mexico for use in cultivated oyster mariculture in this state. The department's mission is to protect and conserve the fish and wildlife resources of Texas. For that reason, the new rules do not allow the cultivation of oyster species that are not native to Texas or the cultivation of oysters that are not propagated in Texas from oysters collected in Texas, unless the

department determines that such importation can be done without threatening native oyster stocks. By requiring all oysters in mariculture operations to be native species grown in Texas from native broodstock or department-approved broodstock, the department seeks to ensure that wild oyster populations and the ecosystems they inhabit are not threatened by the escape or accidental release of organisms that are not genetically compatible. The deadline of December 31, 2027 is intended to encourage prospective permittees who seek to utilize genetically acceptable stock obtained outside of Texas to do so within a limited amount of time, after which the department expects all stock to be propagated in Texas facilities.

New subsection (h) sets forth the department's inspection, sampling, and permit provision authority. In order to ensure that the provisions of the new rules are being followed, the department must be able to inspect the permitted areas, facilities, infrastructure, containers, vessels, and vehicles used to engage in cultivated oyster mariculture activities. Similarly, the department must be able to determine the genetic identity of all oysters used in oyster mariculture activities. Therefore, the new rules reflect those priorities. Additionally, it is impossible for the new rules to contemplate and address the unique circumstances that could exist in any given mariculture operation. For this reason, the rules allow the department to include specific permit provisions in any given permit, as circumstances dictate.

New subsection (i) prescribes notification requirements for permittees in the event of disease outbreaks or other disruptions that could result in the release of pathogens or farmed oysters into the surrounding ecosystem. The department believes it is important to be notified as quickly as possible in the event of a condition that could result in an immediate threat to native ecosystems, such as the emergence of contagious disease in a facility transmissible to wild oysters outside of the facility or the physical breaching of infrastructure (which could be caused by severe weather, marine collision, etc.) that could result in the unintentional broadcast of stock or larvae from the facility to surrounding areas. Therefore, the new subsection requires a permittee to notify the department within 24 hours of the discovery within a permitted area of a disease or any condition, man-made or natural, that creates a threat of the unintentional release of stock or larvae. The new provision makes an exception for dermo (*Perkinsis marinus*), a microscopic oyster parasite that is so common in natural ecosystems as to be ubiquitous.

New subsection (j) allows the department to take any appropriate action, including ordering the cessation of activities and the removal of all stock and larvae from a permitted area, in response to a disease condition (other than dermo) or the suspension or revocation by a federal or state entity of a permit or authorization required to be held under the subchapter. Clearly, the presence of disease within a permitted area is a potential threat to native ecosystems and therefore cause for concern, response, and preventative measures, up to and including cessation of operations and the removal of stock, as appropriate. Similarly, failure by the permittee to comply with the rules would be cause for the department to order the suspension of operations, including the removal of all stock, until the deficiency is remedied, and the department authorizes resumption of permitted activities in writing. Therefore, new subsection (k) so stipulates.

New subsection (l) establishes the legal size at which oysters may be harvested and transported from a COMP. The department's rules governing the harvest of wild oysters establish a minimum size of three inches for lawful harvest. Because farmed

oysters grow faster and are meatier than wild oysters, the new rules establish a minimum size of 2.5 inches, but live oysters of less than 2.5 inches could not leave a COMP facility, which is necessary because the NSSP requires the establishment of a maximum size for nursery oysters grown in waters classified as Restricted or Prohibited (given a minimum of 120 days for depuration).

New subsection (m) restricts the harvest of oysters in a COMP to daylight hours, which is necessary to enhance enforcement and inspection activities. It is easier to observe and document harvest activities in daylight.

New subsection (n) addresses subpermittees. The department acknowledges that it is not possible for a single permittee to conduct all the activities authorized by a permit, so the new rules allows permittees to designate subpermittees to perform permitted activities in the absence of the permittee. In order to prevent confusion and misunderstandings, the new rules require subpermittees to be named on the permit, and, at all times they are engaged in a regulated activity, to possess a copy of the permit under which the activity is being performed and a subpermittee authorization signed and dated by both the permittee and the subpermittee. The new subsection also stipulates that permittees and subpermittees are jointly liable for violations. The department reasons that a permittee, as the person to whom a permit is issued, is responsible for compliance with the provisions of the subchapter, and any person the permittee designates to perform permitted activities should be held accountable as well.

New subsection (o) prescribe the marking requirements for a permitted area. The new subsection requires the installation and maintenance of boundary markers, requires the boundary markers to be at least six inches in diameter, extend at least three feet above the water at mean high tide, be of a shape and color visible at one half-mile under conditions that do not constitute restricted visibility, and bear the permittee's identifier. The department considers the standards to be a reasonable way of identifying a permitted area. The new subsection also requires the installation, functionality, and maintenance of any safety lights and signals required by applicable federal regulations, including regulations of the United States Coast Guard (USCG), and requires permittees to repair or otherwise restore to functionality any light or signal within 24 hours of notification by the U.S.C.G or the department. As the state agency with primary responsibility for water safety, the department strongly believes that compliance with applicable federal regulations regarding safety lights and signals is important.

New subsection (p) prohibits the transfer or sale of permits. The department reasons that the permit application process set forth in the new rules exists to ensure that a person who seeks to engage in permitted activities meets all of the requirements of the various governmental entities with regulatory jurisdiction before being allowed to engage in permitted activities. Allowing sale or transfer of permits would defeat the purpose of the application process and introduce administrative complexity.

New subsection (q) requires permittees at their expense to remove all containers, enclosures, and associated infrastructure from public waters within 60 days of permit expiration or revocation. The department believes it is not appropriate to allow a facility to be abandoned in public water, which would constitute a danger, a nuisance, and an impediment to public enjoyment.

Rough weather is not uncommon in coastal waters and, though infrequent, severe events such as tropical storms and hurricanes

are not rare. Such events have the potential to destroy facilities and distribute the detritus and debris over long distances. For this reason, new subsection (r) requires a valid gear tag to be attached to each piece of component infrastructure (e.g., containers, cages, bags, sacks, totes, trays, nursery structures) within a permitted area. The gear tag must bear, in legible fashion, the name and address of the permittee and the permit identifier of the permitted area. The new subsection allows the department to identify components so permittees can retrieve or dispose of them properly.

New subsection (s) requires oysters bound for sale to be in containers that are tagged as required by the NSSP and DSHS regulations and to bear the destination of the container by permit identifier and/or business name and physical address. Shellfish sanitation is strictly regulated at the federal and state levels because of the known health hazards associated with mishandled shellfish. The department believes that oysters destined for the food chain should be handled in accordance with appropriate legal requirements. Additionally, because the department wishes to ensure that cargoes of farmed oysters are not commingled with wild-caught oysters, the new subsection requires information about cargo destination, which allows the department to match records required to be maintained by buyers and sellers of shellfish.

New subsection (t) sets forth the requirements for transporting oyster seed. As discussed elsewhere in this preamble, the department seeks to ensure the separation at all times of farmed oysters from wild-caught oysters. It is unlawful in Texas for anyone to possess a wild-caught oyster less than three inches in size. Because the new rules allow the movement of oysters of less than three inches in size to hatcheries, from hatcheries to nurseries, and from nurseries to COMP facilities, it is therefore necessary to prescribe a documentation mechanism to be used during the transport of oyster seed or larvae for permitted activities. An Oyster Seed Transport Document is required to accompany all oyster seed or larvae that is possessed outside of a permitted area. The document bears the name, address, and permit identifier of each permittee from whom the oyster seed or larvae was obtained, the name, address, and permit identifier of each permittee to whom the oyster seed or larvae is to be delivered, and precisely accounts for and describes all containers in possession. In this way, the department is able to ensure that persons in possession of undersized oysters are able to document the source and destination of the oysters in their possession.

New subsection (u) requires vessels used to engage in activities regulated under the new subchapter to prominently display an identification plate supplied by the department at all times the vessel is being used in such activities. The provision is necessary to enable enforcement personnel to quickly and efficiently identify vessels working on permitted areas or being used to carry farmed oysters.

New §58.354, concerning Oyster Seed Hatchery, allows a person to whom the department has issued a broodstock permit under the provisions of Chapter 57, Subchapter F of this title for the collection of wild oysters to furnish oyster seed or larvae produced from wild-caught oysters to a COMP or nursery permitted under this subchapter, but stipulates that all oyster seed or larvae leaving such a facility must be accompanied by the Oyster Seed Transport Document set forth in §58.352(t), and for the same reasons.

New §58.355, concerning Permit Application, prescribes the application requirements to obtain a permit issued under the new subchapter. New subsection (a) requires an applicant to submit an administratively complete application and stipulate that an application will not be reviewed unless it is administratively complete. As discussed earlier in this preamble with the respect to the definition of "administratively complete," it is inefficient to begin any evaluation of a prospective project unless all pertinent information has been obtained, including evidence that the applicant has obtained or is in the process of obtaining all necessary authorizations and permits from other governmental entities. Therefore, the application requires the key information necessary for the department to determine whether or not permit issuance is feasible. The application requires the applicant to prepare and submit an Operation Plan, evidence of the necessary permits from other governmental entities, and a natural resource survey (using department-approved protocols). New subsections (b) and (c) create a mechanism for public comment on proposed projects. New subsection (b) stipulates that the department publish public notice of a permit application, which is necessary to provide interested and affected members of the public an opportunity to comment on the pending permit application. The department will consider all public comment relevant to matters under the jurisdiction of the department. The department is the primary state agency for fish and wildlife management and water safety and is involved to a lesser extent in several other aspects, such as water quality, environmental flows, and environmental pollution enforcement and response. For these reasons, the department believes it is critical that the public be made aware of permit applications and given comment opportunity; however, the department will only consider comment relevant to matters under the department's jurisdiction, including but not limited to aquatic resource and ecosystem impacts, recreational and commercial user impacts, and water safety impacts. New subsection (c), for prospective projects within or partially within public waters, requires the department to hold a public meeting in the city or municipality closest to the proposed permitted area to take public comment on the proposed project. The department will publish notice of the public meeting at least two weeks prior to the meeting, in print or electronically, in the daily newspaper of general circulation closest to the proposed operational area, and the costs of newspaper notice are to be borne by the applicant. The new subsection also conditions any permit issuance on payment of publication costs to the department. New subsection (d) stipulates the various fees associated with permits issued under the new subchapter must accompany the application. The fee requirements for permits issued under the new subchapter are created in this rulemaking; however, the fee amounts are established in another rulemaking published elsewhere in this issue.

New §58.356 provides for permit renewal, which requires an applicant to submit an administratively complete application for permit renewal, accompanied by the appropriate fee.

New §58.357, concerning Permit Amendment, provides for amendments to an existing permit, provided the permittee has completed and submitted an administratively complete application for permit renewal and possesses all necessary authorizations and permits required by any other state or federal entity for the conduct of the activities for which the amendment is sought. The department considers that a permittee during the course of permit validity might desire to increase the intensity of an operation or alter some other facet of production. The department is not averse to amending permits to accommodate such things, provided the applicant possesses all necessary

authorizations and permits from other regulatory authorities with respect to the prospective amendment. The department will not, however, consider an amendment that would increase the size of a permitted area. In such cases, the applicant will be required to go through the permit application process set forth in §58.355. The new subsection also prohibits amendment of an expired permit, for obvious reasons.

New §58.358, concerning Reporting and Recordkeeping, establishes the necessary administrative responsibilities of permittees. The new section requires permittees to maintain current, accurate records of all shellstock and larvae acquired, introduced, removed, or harvested from a permitted facility and to submit an annual report to the department. For a variety of reasons, not the least of which are public health and the protection of native ecosystems, it is necessary to be able to verify that cultivated oyster mariculture activities are being conducted as set forth in the new subchapter. Therefore, the new rules require permittees to keep and maintain records regarding permitted activities, and to submit an annual report, which enables the department to quickly and accurately identify improper activities, if questions arise. Additionally, under Parks and Wildlife Code, Chapter 47, no person may engage in business as a wholesale or retail fish dealer unless that person has obtained the appropriate license, and under Parks and Wildlife Code, §66.019, no dealer who purchases or receives aquatic products directly from any person other than a licensed dealer may fail to file the report with the department each month on or before the 10th day of the month following the month in which the reportable activity occurred. The new section therefore makes clear that permittees, as persons who buy and sell an aquatic product, are required to comply with the statistical reporting requirements of Parks and Wildlife Code, §66.019. The new subsection also stipulates a records retention requirement of two years. Violations of the new rules are a Class B misdemeanor by statute, and two years is the statute of limitations for Class B misdemeanors.

New §58.359, concerning Agency Decision to Refuse to Issue or Renew Permit; Review of Agency Decision, allows the department to refuse permit issuance or renewal to any person who has been finally convicted of, pleaded *nolo contendere* to, received deferred adjudication, or been assessed an administrative penalty for a violation of: the subchapter; Parks and Wildlife Code, Chapters 47, 66, 76, 77, 78, or 75 (for which a commercial license or permit is required); a provision of the Parks and Wildlife Code that is a Class A or B misdemeanor, state jail felony, or felony; Parks and Wildlife Code, §63.002; or the Lacey Act (16 U.S.C. §§3371-3378). In addition, the new section allows the department to prevent a person from acting on behalf of or as a surrogate for a person prevented from obtaining a permit under the new provisions and provides for a review process for agency decisions to refuse permit issuance or renewal.

The department has determined that the decision to issue a permit to hold protected live wildlife or to collect and possess wildlife for commercial purposes should take into account an applicant's history of violations involving the capture and possession of live animals, major violations of the Parks and Wildlife Code (Class B misdemeanors, Class A misdemeanors, and felonies), and Lacey Act violations. The department reasons that it is appropriate to deny the privilege of taking or allowing the take of wildlife resources to a person who exhibits a demonstrable disregard for laws and regulations governing wildlife. Similarly, it is appropriate to deny the privilege of holding wildlife to a person who has exhibited demonstrable disregard for wildlife law in general



by committing more egregious (Class B misdemeanors, Class A misdemeanors, and felonies) violations of wildlife law.

The Lacey Act (16 U.S.C. §§3371-3378) is a federal law that, among other things, prohibits interstate trade in or movement of wildlife, fish, or plants taken, possessed, transported, or sold in violation of state law. Lacey Act prosecutions are normally conducted by the United States Department of Justice in federal courts. Although a Lacey Act conviction or civil penalty is often predicated on a violation of state law, the federal government need only prove that a state law was violated; there is no requirement for there to be a record of conviction in a state jurisdiction. Rather than expending resources and time conducting concurrent state and federal prosecutions, the department believes that it is reasonable to use a Lacey Act conviction or civil penalty as the basis for refusing to issue or renew a permit. Because the elements of the underlying state criminal offense must be proven to establish a conviction or assessment of a civil penalty for a Lacey Act violation, the department reasons that such conviction or assessment constitutes legal proof that a violation of state law occurred, and it is therefore redundant and wasteful to pursue a conviction in state jurisdiction to prove something that has already been proven in a federal court.

The denial of permit issuance or renewal as a result of an adjudicative status listed in the amendment would not be automatic, but within the discretion of the department. Factors that may be considered by the department in determining whether to refuse permit issuance based on adjudicative status include, but are not limited to: the number of final convictions or administrative violations; the seriousness of the conduct on which the final conviction or administrative violation is based; the existence, number, and seriousness of offenses or administrative violations other than offenses or violations that resulted in a final conviction; the length of time between the most recent final conviction or administrative violation and the application for enrollment or renewal; whether the final conviction, administrative violation, or other offenses or violations were the result of negligence or intentional conduct; whether the final conviction or administrative violations resulted from the conduct committed or omitted by the applicant, an agent of the applicant, or both; the accuracy of information provided by the applicant; for renewal, whether the applicant agreed to any special provisions recommended by the department as conditions; and other aggravating or mitigating factors.

The new section also provides for department review of a decision to refuse permit issuance or renewal. The amendment requires the department to notify an applicant not later than the 10th day following a decision to refuse permit issuance or denial and to set a time and date for conducting a review of an agency decision to refuse permit issuance or renewal within 10 days of receiving a request for a review. The amendment stipulates that a review panel consists of three department managers with appropriate expertise in the activities conducted under the permit in question. The new provision is intended to help ensure that decisions affecting permit issuance and renewal are correct.

New §58.360, concerning Prohibited Acts, identifies specific acts that constitute violations of the new subchapter.

New paragraph (1) makes it a criminal act to possess a commercial oyster dredge or oyster tongs within a permitted area or aboard a vessel transporting oysters under the provisions of this subchapter. The provision is necessary because the department wishes to employ measures to safeguard native oyster populations from exploitation by unscrupulous persons. Prohibiting the possession of common oystering gear on board a

vessel transporting farmed oysters obviates the opportunity for persons to engage in the harvest of native oysters while transporting farmed oysters. For similar reasons, new paragraph (2) creates an offense for commingling or allowing the commingling of wild-caught and farmed oysters.

New paragraphs (3) and (4) clarify that it is an offense for failing to notify the department within 24 hours upon the discovery of a disease condition within a permitted facility and for failing to notify the department within 24 hours upon discovery of any condition that could result in the unintentional release of shellstock or larvae. As discussed previously in this preamble with respect to §58.353(i), the department wishes to prevent the release of farmed oysters and oyster diseases to wild populations.

New paragraph (5) clarifies the offense of failing to maintain all corner markers of the permitted area of a facility within public water as prescribed by the new subchapter, which is necessary for the reasons described earlier in this preamble with respect to new §58.353(o).

New paragraph (6) creates an offense for failing to remove all enclosures and infrastructure from public waters within 60 calendar days of permit expiration or revocation. Under the provisions of new §58.353(q), permittees are required to remove, at the expense of the permittees, all containers, enclosures and associated infrastructure from public waters within 60 calendar days of permit expiration or revocation. The new paragraph clarifies that it is a criminal offense not to do so.

New paragraph (7) clarifies that it is an offense to operate a COMP or nursery facility except as specified by this subchapter and the provisions of a permit. The provision is intended to ensure that criminal liability is not limited to the specific offenses identified throughout the new subchapter, but to any violation of the new subchapter or the provisions of a permit issued under the new subchapter.

Finally, new paragraph (8) clarifies that it is an offense to operate a COMP or nursery facility without all authorizations and permits required by any federal, state, or local governmental authority. Possession of all necessary authorizations and permits is a predicate for facility operation. The department believes that continuing to operate a facility without one or more authorizations or permits constitutes a criminal act.

New section §58.361, concerning Violations and Penalties, provides that a person who violates a provision of this subchapter or a provision of a permit issued under this subchapter commits an offense punishable by the penalty prescribed by the Parks and Wildlife Code, §75.0107. Violations and penalties are prescribed by statute and the department believes it is prudent to reference the applicable statutory provisions for clarity. Finally, the new section provides that a permit issued under this section is not a defense to prosecution for any conduct not specifically authorized by the permit. The department believes it is prudent to reinforce that a permit issued under this section does not relieve a permittee or subpermittee of criminal responsibility as the offenses prescribed by statute constitute a Class B Parks and Wildlife Code Misdemeanor.

The department received three comments regarding adoption of the proposed new rules. Each of the comments provided a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow. Because each commenter presented multiple reasons for opposing adoption, the number of agency responses is greater than the total number of comments.

Two commenters opposed the active use criteria that requires the planting of 100,000 seed oysters per acre per year, stating that this is a new industry and applicants/permittees may need time to grow into their business. The department disagrees with the comment and responds that permits for oyster mariculture will remove the permitted area from use by other users of public waters of the state. As such, the requirement to plant at least 100,000 seed oysters per acre per year is intended to ensure the permitted area is being used for the purpose intended. Additionally, the rules provide that the department may specify another amount, if warranted. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that the movement of oysters and oyster seed produced outside the Lower Laguna Madre back into this area, stating that this would affect the genetic population of oysters in the Southern zone and increase the risk of bringing new unknown pathogens or more virulent strains of pathogens into this area. The department agrees with the comment that movement of oysters originating from outside the Southern zone could affect the unique genetic population of oysters found in this area. This activity is prohibited under the rules. Oyster seed must be produced from oysters originating from either the Northern or Southern zone and can only be placed within a corresponding Northern or Southern permitted area. The primary pathogen of oysters in Texas is dermo (*Perkinsus marinus*) which is transmitted from oyster to oyster. Since broodstock held in hatcheries will be isolated for spawning and oyster seed used for COMP activities are also isolated and would typically be shipped to growers within two months of setting, the risk of dermo infection is considered minimal. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the environmental scope of definitions within the rules should include ecologically significant areas, such as submerged aquatic vegetation, and not be limited to areas designated by the Texas Department of State Health Services for reasons of shellfish sanitation. The department disagrees with the comment and responds that the designation of areas as "Prohibited" or "Restricted" is determined by the Texas Department of State Health Services to identify areas where water quality may result in public health issues if oysters were harvested and consumed from these areas. A condition of a COM permit establishes buffers between permitted mariculture areas and sensitive habitats such as seagrass. A 200-foot buffer for seagrass beds will be used in evaluating proposed cultivated oyster mariculture sites. No changes were made as a result of the comment.

The department received 11 comments supporting adoption of the proposed new rules.

The new sections are adopted under the authority of Parks and Wildlife Code, §75.0103, which requires the commission to adopt rules to establish a program governing cultivated oyster mariculture, which may establish requirements for the location and size of a cultivated oyster mariculture operation; the taking, possession, transport, movement, and sale of cultivated oysters; the taking, possession, transport, and movement of broodstock oysters; marking structures for the cultivation of oysters in a cultivated oyster mariculture operation; fees and conditions for use of public resources, including broodstock oysters and public water; and any other matter necessary to implement and administer Parks and Wildlife Code, Chapter 75; and Parks and Wildlife Code, §75.0104, which requires the commission to adopt rules to establish requirements for permit applications and

application fees; criteria for the approval, transfer, revocation, and suspension of permits; and procedures for hearings related to a permit.

§58.355. *Permit Application.*

(a) An applicant for a permit under this subchapter must submit an administratively complete application to the department. The department will not review an application that is not administratively complete.

(b) The department will publish notice of the application for a permit under this subchapter and provide opportunity for public comment. The department will consider all public comment relevant to matters under the jurisdiction of the department.

(c) For proposed facilities that will be within or partially within public water, the department will hold a public meeting in the city or municipality closest to the proposed permitted area to take public comment on the proposed project. The department will publish notice of the public meeting at least two weeks prior to the meeting, in print or electronically, in the daily newspaper of general circulation closest to the proposed operational area. Costs of newspaper notice are the responsibility of the applicant and no permit will be issued until the department has received payment for the required notice.

(d) An application for a permit under this subchapter shall be accompanied by the applicable permit fee established in §53.13 of this title (relating to Business License and Permits (Fishing)).

(1) The department shall assess a nonrefundable annual fee based on the size of the permitted area for which a COMP or nursery permit is issued. The fee is as specified under §53.13 for a COMP.

(2) For nursery structures located on public waters, a surcharge in addition to the fee imposed by paragraph (1) of this subsection shall be assessed as specified under §53.13.

(3) The fees established in this subsection shall be recalculated at three-year intervals beginning on the effective date of the permit and proportionally adjusted to any change in the Consumer Price Index.

(4) The fees established by this subsection are due annually by the anniversary of the date of permit issuance.

§58.356. *Renewal.*

The department may renew a permit under this subchapter, provided the permittee has submitted an administratively complete application for permit renewal on a form provided or approved by the department, accompanied by the permit renewal fee specified in §53.13 of this title (relating to Business License and Permits (Fishing)).

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

Filed with the Office of the Secretary of State on August 4, 2020.

TRD-202003149

Colette Barron-Bradsby

Acting General Counsel

Texas Parks and Wildlife Department

Effective date: August 24, 2020

Proposal publication date: April 17, 2020

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



CHAPTER 65. WILDLIFE

SUBCHAPTER A. STATEWIDE HUNTING  
PROCLAMATION  
DIVISION 2. OPEN SEASONS AND BAG  
LIMITS

31 TAC §65.49

The Texas Parks and Wildlife Commission in a duly noticed meeting on May 21, 2020, adopted an amendment to §65.49, concerning Alligators, without changes to the proposed text as published in the April 17, 2020, issue of the *Texas Register* (45 TexReg 2498). The rule will not be republished.

The amendment clarifies language regarding the payment of the fee for a CITES hide tag and eliminates obsolete references to department forms. The Convention on International Trade in Endangered Species (CITES) is an international agreement to protect endangered plants and animals. The American alligator, although not endangered, is subject to CITES documentation requirements because of similarity of appearance to other endangered crocodilian species. Under the current rule it is not clear that the fee for a hide tag must be submitted with the application for the tag. The amendment makes it clear that the application for a hide tag must be accompanied by the fee for the hide tag. The amendment also replaces a reference to a specific form number and stipulates that the report be made on a form supplied or approved by the department.

The department received no comments supporting or opposing adoption of the proposed amendment.

The amendment is adopted under the authority of Parks and Wildlife Code, §65.003, which authorizes the commission to regulate taking, possession, propagation, transportation, exportation, importation, sale, and offering for sale of alligators, alligator eggs, or any part of an alligator that the commission considers necessary to manage this species, including regulations to provide for the periods of time when it is lawful to take, possess, sell, or purchase alligators, alligator hides, alligator eggs, or any part of an alligator; and limits, size, means, methods, and places in which it is lawful to take or possess alligators, alligator hides, alligator eggs, or any part of an alligator; and control of nuisance alligators.

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

Filed with the Office of the Secretary of State on August 4, 2020.

TRD-202003150

Colette Barron-Bradsby

Acting General Counsel

Texas Parks and Wildlife Department

Effective date: August 24, 2020

Proposal publication date: April 17, 2020

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



SUBCHAPTER P. ALLIGATOR PROCLAMATION

31 TAC §§65.352, 65.353, 65.357 - 65.362, 65.365

The Texas Parks and Wildlife Commission in a duly noticed meeting on May 21, 2020 adopted amendments to §§65.352, 65.353, 65.357 - 65.362, and 65.365, concerning the Alligator Proclamation. Sections 65.358 and 65.360 are adopted with changes to the proposed text as published in the April 17, 2020, issue of the *Texas Register* (45 TexReg 2511). Sections 65.352, 65.353, 65.357, 65.359 - 65.362, and 65.365 are adopted without changes and will not be republished.

The change to §65.358, concerning Alligator Egg Collection, provides for conditional partial issuance of nest stamps to egg collectors on properties that have historically received nest stamps, based on biological factors and compliance history. The change also clarifies that the notification requirements of the section apply only to the person to whom the nest stamps were issued, not every person in an egg collection party.

The change to §65.360, concerning Reporting and Recordkeeping Requirements, corrects a subject/verb conflict in subsection (b). The change is nonsubstantive.

The amendments make generally applicable changes to language governing references to reports and notifications required by rule. In such cases, the amendments stipulate that the report be made on a form supplied or approved by the department.

The amendment to §57.352, concerning, Definitions, adds definitions for "clutch," "egg," "export," "import," "nest disturbance," "incubation-only facility," and "partially processed alligator," alter the definitions of "egg collection," "farmer," "processed product," "retail dealer," and "wholesale dealer," and eliminate definitions for "gig," "propagation," and "subpermittee."

The current rules governing the collection and incubation of alligator eggs employ the term "clutch" when referring to groups of eggs; however, the rules do not define that term. The amendment defines "clutch" as "the number of alligator eggs, both fertile and infertile, in a single alligator nest." The definition is necessary not only to provide an unambiguous meaning of the term for purposes of compliance and enforcement, but to make clear that all alligator eggs, including infertile eggs, are considered by the department to be part of a wild nest.

The amendment defines "egg" as "an alligator egg" to clarify that when the term "egg" is used in any context in the rules, it means alligator eggs.

The amendment provides definitions for "export" and "import." Although the current rules govern export and import of alligators (which by statute include alligator eggs, parts, and products), the department believes it is prudent to provide unmistakable meanings for those terms. Therefore, the definition for "export" is "the physical transportation of an alligator to any point outside the state of Texas." Similarly, the definition for "import" is "the physical transportation of an alligator from outside of Texas across the state line into Texas."

The amendment defines "nest disturbance" as "the act of physically manipulating, handling, or tampering with an alligator nest in any way." The definition is necessary because the department has identified a deficiency in the current rules governing egg collection. Current rules unintentionally apply only to the removal of eggs and not to associated activities prior to or during removal. Alligator nests and eggs are extremely sensitive to disturbance. Because the department, based on a biological assessment, issues a specific number of nest authorizations for any given property, it is theoretically possible under current rule to disturb a nest without removing eggs, which results in unnecessary mortalities

if the eggs succumb to environmental exposure or the mother abandons the nest. The amendment clarifies that egg collection includes the intrusion that must occur in order to physically remove eggs.

The amendment adds a definition for "incubation-only facility." Under current rule, an alligator farmer may operate a facility solely for the purpose of incubating and hatching alligator eggs for purposes of sale to another farmer. In the amendment to §65.360, concerning Reporting Requirements, the quarterly alligator farm report requirement for farmers operating incubation-only facilities has been eliminated and replaced with a single report. There is no reason to require quarterly reports for incubation-only facilities, because incubation activities occur seasonally, based on the life history of the resource. Therefore, a definition for incubation-only facility is necessary to distinguish such operations from other alligator farming operations.

The amendment defines "partially processed alligator" as "a whole alligator that has been skinned except for the head, or a whole alligator that has been skinned except for the head and feet." Current rules address "processed" and "unprocessed" alligators. The department has become aware of an emerging market for whole alligators that have been prepared for culinary use by consumers, such as tailgate activities at sporting events. Such products are in a regulatory nether region under current rule. In order to eliminate misunderstandings, the amendment defines such products as "partially processed alligators," which, in conjunction with the amendment to §65.357, concerning Purchase and Sale of Alligators, allows wholesale dealers to sell directly to consumers and eliminates any reporting and recordkeeping requirements for the consumer.

The amendment alters the term "egg collection" to "egg collection activities" and alters the definition to include nest disturbance in addition to removal of eggs, or possession of eggs removed from wild nests. The amendment is necessary to clarify that "nest disturbance" is an egg collection activity.

The amendment alters the current definition of "farmer" to clarify that the term applies only to a person possessing a valid permit issued for alligator farming by the department.

The amendment alters the current definition of "processed product" to stipulate that alligator meat that has been removed from the skeleton is a processed product, which is necessary to clarify, in conjunction with the amendment to §65.357, that only wholesale dealers and farmers are permitted to sell alligator meat, except as otherwise provided.

The amendment alters the definitions of "retail dealer" and "wholesale dealer" to simplify the definitions and relocate regulatory provisions to the rules where they more properly belong. A retail dealer is defined as "a person possessing a valid retail dealer permit issued under this subchapter" and a whole dealer is defined as "a person possessing a valid wholesale dealer permit issued under this subchapter."

The amendment eliminates the definitions for "gig," "propagation," and "subpermittee." The definition for gig is an artifact from a time when recreational alligator hunting was regulated under the subchapter and is thus unnecessary. The definition of "propagation" is superfluous, since the alligator farmer permit by rule authorizes permit holders to engage in the practice. The definition of "subpermittee" is unnecessary because it is unique to and defined within another rule regulating nuisance alligator control.

The amendment to §57.353, concerning General Provisions, alters subsection (b) to eliminate confusion by removing verbiage related to common carriers that is addressed by another provision of the rules. The amendment also clarifies that no person other than a wholesale dealer or farmer may process alligator meat for sale. Although alligator meat may be possessed for resale by retail dealers and re-sold to consumers (grocery stores, restaurants, etc.), only wholesale dealers and farmers are allowed to process alligators for purposes of meat production. The amendment also incorporates an existing provision prohibiting alligator eggs collected under the subchapter from being exported. The provision is currently located in §65.358 and is being relocated for reasons of topical consistency. The amendment also includes a provision to make clear the rules do not relieve any person of an obligation imposed by another legal authority regarding food safety. The department wishes to make clear that rules or statutes governing food preparation, handling, distribution, and so forth are in addition to any requirements of the subchapter.

The amendment to §57.357, concerning Purchase and Sale of Alligators, consists of several changes. The amendment clarifies that a retail dealer permit is not required for the purchase of packaged alligator meat for re-sale to consumers, which is necessary to definitively address the circumstances under which chain of custody and permit requirements do not apply. The amendment removes language regarding the applicability of food safety regulations, which is being relocated to another part of the rules and has been addressed earlier in this preamble. The amendment allows wholesale dealers to sell partially processed alligators, for reasons discussed in the amendment to §65.352, concerning Definitions. The amendment makes changes to subsection (d) to clarify the classes of persons from whom a farmer may purchase live or dead alligators. The current rules are confusing because they are predicated on the term "live or dead," which seems to imply that wholesale dealers and recreational hunters are able to sell live or dead alligators to farmers, which isn't the case. Farmers are allowed to purchase live alligators only from another farmer or a control hunter. Farmers are allowed to purchase dead alligators from another farmer, a wholesale dealer, a recreational hunter, or a control hunter. The amendment clearly delineates these distinctions and provides the additional clarification that alligator eggs may be purchased by a farmer only from a person legally authorized to sell eggs. Additionally, the amendment replaces the current provision regarding department notification of impending transport or receipt of live alligators with a provision requiring notification to be effected via fax or email to the department's Law Enforcement Communications Center not less than 24 hours nor more than 48 hours in advance of transport or receipt. The department has determined that the current notification requirements, which require a game warden at the point of origin and at the destination to be notified "at least 24 hours prior to transport," are problematic because they create an open-ended situation in which transportation could occur at any time following notification, indefinitely. The department believes it is prudent to establish a specific timeframe or window within which transport must occur or be cancelled, in order to prevent situations in which department personnel do not know with reasonable certainty when a regulated activity will occur, which interferes with efficiency and the performance of other duties. Additionally, the department believes it is more efficacious to require the notifications to be made to a central location, which allows the department greater flexibility in personnel allocation as well as providing the benefit of creating a single recordkeeping function. Therefore, the new provision requires an alligator

farmer to complete and submit to the department's Law Enforcement Communication Center by fax or email a transfer notification on a form supplied or approved by the department, requires the notification to be submitted not less than 24 hours nor more than 48 hours prior to the transport or receipt, and requires cancellation via notification of the Law Enforcement Communications Center by fax or email prior to the transport in the event that the transport cannot take place. Finally, the amendment alters subsection (e)(2) to replace the current reference to alligators taken on "wildlife management areas" with a reference to alligators taken under "annual public hunting permit," which is more accurate.

The amendment to §57.358, concerning Alligator Egg Collectors, consists of several actions. In addition to the references to department forms addressed earlier in this preamble and a changer to the title of the section to more accurately define the subject of the section, the amendment requires applicants for nest stamp issuance to supply GPS coordinates indicating the locations of alligator nests on a specific tract of land and restates the department's authority to verify the accuracy of application materials. The department authorizes the collection of eggs from nests on the basis of a biological and ecological determination of the portion of reproductive potential can be removed from the ecosystem as harvestable surplus. The department believes that utilization of widely available and extremely accurate GPS technologies to identify exact nest locations will reduce confusion and misunderstandings caused by more rudimentary methods, as well as provide the department with accurate datasets that provide greater resolution for purposes of better resource management. Under Parks and Wildlife Code, §12.103, an authorized employee of the department may, for purposes of enforcing game and fish laws of the state, enter on any land or water where wild game or fish are known to range or stray. Therefore, the amendment restates that authority in terms of nest location verification. The amendment also replaces references to egg collection and collecting with references to egg collection activities, for the reasons explained in the discussion of the amendments to §65.352 earlier in this preamble, concerning Definitions. The amendment also clarifies that egg collection activities shall only be conducted on designated tracts of water in addition to designated tracts of land, which is more accurate as alligator nests are often located in wetland environments. The amendment also establishes lawful hours for the collection of alligator eggs. For purposes of enhancing the department's ability to monitor egg collection activities, if necessary, and to promote the safety of persons engaged in egg collection activities, the department believes it is prudent to restrict egg collection activities to daylight hours. Therefore, the amendment prohibits egg collection between sunset and one half-hour before sunrise. Finally, similar to the amendment to §65.357 regarding notification requirements for farmers, and for the same reason addressed in the discussion of that amendment previously in this preamble, the amendment replaces existing notification requirements for egg collection activities with the requirement that egg collectors complete and submit to the department's Law Enforcement Communication Center by fax or email an egg collection activity notification on a form supplied or approved by the department, requires the notification to be submitted not less than 24 hours nor more than 48 hours prior to the transport or receipt, and requires cancellation via notification of the Law Enforcement Communications Center by fax or email prior to the transport in the event that the activity cannot take place.

The amendment to §57.359, concerning Possession, stipulates that eggs possessed under a farmer's permit must be kept at the permitted farm facility. A farming permit allows the possession, incubation, hatching, and growing of alligators, but it does not authorize egg collection (although farmers may obtain nest authorizations and nest stamps and engage in collection activities); therefore, the amendment makes clear that once an alligator egg is possessed under a farmer's permit, it must remain in the farming facility of the permittee, which is necessary to monitor the movement of alligator eggs from the wild into commercial activities. The amendment also provides that all meat products processed and packaged, rather than meat products finally processed and packaged, by a farmer or wholesale dealer must be accompanied by an invoice, which is necessary because the amendment to §57.357, concerning Purchase and Sale of Alligators, allows wholesale dealers to sell partially processed alligators, for reasons discussed in the amendment to §65.352, concerning Definitions. Finally, the amendment alters the citation to the definition of skull length, which is necessary because the citation has changed as the result of the amendment to §65.352, concerning Definitions.

The amendment to §57.360, concerning Report Requirements, retitles the section Reporting and Recordkeeping, implements the standardized language regarding department forms (discussed previously in this preamble), and replaces the quarterly reporting requirement of farmers operating incubation-only facilities with a one-time reporting requirement (also discussed earlier in this preamble). Finally, the amendment clarifies that a wholesale dealer is required to produce a copy of an Alligator Transaction Report only to a department employee acting in the discharge of official duties.

The amendment to §57.361, concerning Alligator Farm Facility Requirements, implements the standardized language regarding department forms (discussed previously in this preamble), requires applications to be accompanied by the GPS coordinates and a map of the prospective facility, requires alligators in a farm to be kept within the facility, requires set minimum criteria for egg incubators, requires hatchlings to be transferred to a farming facility from an incubator-only facility by October 1 of each year, clarifies that a hide tag issued to a farming facility may not be used on an alligator killed under and hunting license, and that alligators within an alligator farm may not be hunted for sport. The department believes that utilization of widely available and extremely accurate GPS technologies to identify exact boundaries of alligator farm facilities will reduce confusion and misunderstandings as to the exact geographical area under regulation as an alligator farm; therefore, the amendment requires applicants for an alligator farming permit to supply a map and the GPS coordinates of the facility area. The amendment also requires alligators kept under a farming permit to be retained in the facility. Although it is intuitive that alligator stock should be kept within a facility, it is necessary to stipulate that requirement by rule in order to establish a regulatory duty on the part of permittees to prevent escape. The amendment also establishes environmental control standards for egg incubation facilities. Alligator eggs are a public resource and their collection for commercial purposes is a permit privilege. The department believes that basic environmental control standards should exist in order to prevent possible waste of a public resource; therefore, the amendment requires incubators to be capable of maintaining water and air temperatures of 85 to 91 degrees Fahrenheit on a continuous basis when eggs and hatchlings are present. The amendment also establishes that incubator-only facilities are farming facili-

ties for which a farming permit is required and requires hatchlings at such facilities to be transferred to a grow-out farm by October 1 of each year. Although most incubation facilities are located within a grow-out facility, there are incubator-only facilities. The amendment clarifies that such facilities are alligator farms for which a farming permit is necessary. Because such facilities do not meet the facility requirements established by the subchapter for growing alligators to adult size, the amendment stipulates that all hatchlings be moved once they have achieved hatchling status and are capable of surviving in a grow-out facility. The amendment also prohibits recreational hunting within alligator farms. The department believes that alligator farms, as commercial entities, should not be engaged in the offering of recreational hunting opportunity, since the alligators in farms are confined and their hunting within a farm would therefore not be fair chase. There are abundant opportunities in Texas for alligator hunting in the wild. Therefore, the amendment prohibits the use of a hide tag issued to a farming facility to be used on an alligator killed under a recreational hunting license and creates an offense for allowing the sale, offering for sale, or the acceptance of such an offer for the killing of alligator within a farming facility. Finally, the amendment also makes various nonsubstantive grammatical and organizational changes.

The amendment to §57.362, concerning Importation and Exportation, implements the language regarding department forms (discussed earlier in this preamble); clarifies that an alligator import permit is not required for activities authorized under a permit issued under the authority of Parks and Wildlife Code, Chapter 43, Subchapter C; restricts import tag eligibility to wholesale dealers, retail dealers, and farmers; establishes a period of validity for an import permit; establishes a notification requirement similar to those for live alligator transport and egg collection activities (for the same reasons addressed in those discussions earlier in this preamble); updates a reference to a fee amount; and reiterates the prohibition on the export of alligator eggs. Current rules do not specifically identify the classes of permittees authorized to obtain import tags from the department, although for all practical purposes the rules governing possession of alligators restrict such activities to persons holding wholesale, retail, or farming permits. Similarly, current rules do not state the period of validity for an import permit, although again, for all practical purposes it is connected to the period of validity of the permits that must be possessed in order to engage in the activity, all of which are one year. Therefore, for purposes of clarity, the amendment restricts the issuance of import permits to persons holding a wholesale, retail, or farming permit and establishes a period of validity from the date of purchase until the immediately following August 31. The amendment also clarifies provisions governing possession of alligators taken by sport or recreational license in another state. The intent of the current provision is to exempt recreational hunters from provisions that apply to commercial activity; however, the department has encountered situations in which alligators lawfully taken in another state have been sold to a third party and then introduced to Texas for commercial purposes. The amendment clarifies that an alligator lawfully taken in another state may be brought into Texas without an import permit, but it must be accompanied by evidence of lawful possession or take and cannot have been sold or exchanged for anything of value in return, including for transport or delivery of the alligator.

The amendment to §57.365, concerning Management Tag, quantifies the size of alligators for which a management tag could be used to harvest and update a reference to fee amounts.

The department received three comments opposing adoption. Each commenter offered multiple reasons or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow. The department notes that because each comment contained multiple points, the total number of responses is greater than the number of commenters.

One commenter opposed adoption and stated that there should be a definition for "alligator nest." The department disagrees with the comment and responds that a definition of "alligator nest" is unnecessary because the department issues nest stamps based on location received from the landowner and subsequently verified, if necessary, by the department. The common and ordinary meaning of "nest" is "a place where eggs are laid and incubated." Therefore, it is incumbent upon the landowner to ensure that what they report to the department as an alligator nest is, in fact, an alligator nest. No changes were made as a result of the comment.

One commenter opposed adoption and stated that nest disturbance does not result in hatchling mortality. The department disagrees with the comment and responds that there is a strong negative correlation between nest disturbance and hatchling survival. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that the rules should allow for provisional issuance of nest stamps to persons who have a record of compliance in order to take advantage of environmental conditions that are optimal for egg collection. The department agrees with the comment and has made changes accordingly.

Two commenters opposed adoption and stated that the notification "window" for egg collectors (not less than 24 hours nor more than 48 hours prior to engaging in collection activities) will cause hardship because egg collectors do not know how long it will take to complete activities on any given property. The department disagrees with the comments and responds that the rules do not require any collector to estimate how long egg collection efforts will take, only to provide notice to the department that collection activities will occur. No changes were made as a result of the comments.

The department received three comments supporting adoption of the proposed rules.

The amendments are adopted under the authority of Parks and Wildlife Code, §65.003, which authorizes the commission to regulate taking, possession, propagation, transportation, exportation, importation, sale, and offering for sale of alligators, alligator eggs, or any part of an alligator that the commission considers necessary to manage this species, including regulations to provide for the periods of time when it is lawful to take, possess, sell, or purchase alligators, alligator hides, alligator eggs, or any part of an alligator; and limits, size, means, methods, and places in which it is lawful to take or possess alligators, alligator hides, alligator eggs, or any part of an alligator; and control of nuisance alligators.

§65.358. *Alligator Egg Collection.*

(a) A landowner may apply for alligator nest stamps by submitting a completed application for nest stamp issuance to the department on a form supplied or approved by the department. The application must contain the GPS coordinates of each known alligator nest and a map showing the location and dimensions of the property where the nests are located.

(b) The department may make a conditional partial issuance of nest stamps to egg collectors on properties that have historically received nest stamps, based on biological factors and compliance history; however, no further issuance of nest stamps shall take place until the egg collector who has received partial issuance has submitted complete nest location data for the property, including nests disturbed under the partial issuance.

(c) The department may, at its discretion, verify reported nest locations to confirm the accuracy of application materials.

(d) It is unlawful for a landowner to utilize a nest stamp for a tract of land or water other than the tract for which the stamp was originally issued.

(e) An alligator egg collector shall conduct egg collection activities only on the tracts of land or water designated for the stamps in their possession.

(f) Alligator eggs shall be collected from the wild only by hand.

(g) No person may possess alligator eggs without possessing an egg collection permit or a valid alligator farmer permit.

(h) No person may engage in egg collection activities between sunset and one half-hour before sunrise.

(i) When engaged in egg collection activities, an alligator egg collector must possess on his or her person one or more current nest stamps and an Alligator Nest Stamp Authorization on a form supplied or approved by the department. At least one person in possession of a current nest stamp and nest stamp authorization must be present during all collection activities.

(j) No person may collect alligator eggs without possessing a valid hunting license.

(k) Immediately upon collection and throughout transportation and incubation each clutch of eggs must be accompanied by a completed nest stamp.

(l) No person to whom the department has issued a nest stamp may engage in egg collection without having completed and submitted to the department's Law Enforcement Communication Center by fax or email an egg collection activity notification on a form supplied or approved by the department. The notification required by this subsection shall be submitted not less than 24 hours nor more than 48 hours prior to beginning egg collection activities. If for any reason egg collection activities cannot take place after the department has been notified under this subsection, the department's Law Enforcement Communications Center shall be contacted by fax or email to cancel the notification. The cancellation notice must be received by the department prior to the initiation time indicated on the egg collection activity notification.

(m) An alligator egg collector may sell alligator eggs only to a farmer designated by permit.

*§65.360. Reporting and Recordkeeping Requirements.*

(a) A Nuisance Alligator Hide Tag Report shall be completed by a control hunter on a form supplied or approved by the department immediately upon take and shall be submitted to the department within seven days. A dealer or person possessing the alligator hide shall retain a copy of the report until the hide is shipped or sold out of state, at which time the copy shall be forwarded to the department.

(b) A person receiving hide tags from the department shall complete and submit an Annual Hide Target Report on a form supplied or approved by the department accounting for all tags by October 10 following the end of the open season for which tags were issued. Unused tags shall be returned with this report.

(c) A wholesale dealer shall complete and submit an Alligator Transaction Report on a form supplied or approved by the department by October 31 and by the last day of every third month thereafter detailing purchase and sale transactions during the license year. A wholesale dealer shall retain a copy of each report required by this subsection for a minimum of two years and shall produce such records upon the request of a department employee acting in the discharge of official duties.

(d) A retail dealer shall retain records of all purchases from wholesale dealers for a minimum of two years.

(e) An alligator import permit holder shall complete and submit an Alligator Import Report on a form supplied or provided by the department within 30 days following permit period termination.

(f) Except for farmers operating an incubation-only facility under §65.361(e) of this title (relating to Alligator Farm Facility Requirements), a farmer shall submit quarterly reports on a form supplied or approved by the department within 15 days of the end of each quarterly period (February, May, August, and November).

(g) A farmer operating an incubation-only facility under the provisions of §65.361(e) of this title shall file an Incubation Summary on a form supplied or approved by the department no later than October 1 of each year.

(h) An alligator egg collector shall complete and submit an Annual Egg Collection Report provided or approved by the department and return all unused nest stamps by October 1 of each year.

(i) All persons to whom hide tags or nest stamps have been issued shall notify the department in writing within 15 days in the event that any tags or stamps are lost, stolen, mutilated, or destroyed. The department will not replace tags or stamps so reported.

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

Filed with the Office of the Secretary of State on August 4, 2020.

TRD-202003151

Colette Barron-Bradsby

Acting General Counsel

Texas Parks and Wildlife Department

Effective date: August 24, 2020

Proposal publication date: April 17, 2020

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



## **TITLE 34. PUBLIC FINANCE**

### **PART 1. COMPTROLLER OF PUBLIC ACCOUNTS**

#### **CHAPTER 20. STATEWIDE PROCUREMENT AND SUPPORT SERVICES**

##### **SUBCHAPTER B. PUBLIC PROCUREMENT AUTHORITY AND ORGANIZATION**

##### **DIVISION 5. CONTRACT ADVISORY TEAM**

##### **34 TAC §§20.160 - 20.166**

The Comptroller of Public Accounts adopts new §§20.160 concerning definitions, 20.161 concerning scope, 20.162 concerning solicitation review, 20.163 concerning expedited solicitation

review, 20.164 concerning enhanced solicitation review, 20.165 concerning contract formation and award, and 20.166 concerning contract management and termination, with changes to the proposed text as published in the June 26, 2020, issue of the *Texas Register* (45 TexReg 4293). The rules will be republished. These rules will be included in Subchapter B (Public Procurement Authority and Organization), new Division 5 (Contract Advisory Team).

These rules implement Government Code, §2054.158(d) and §2261.258(d), added by Senate Bill 65, 86th Legislature, 2019. This legislation requires the comptroller to provide guidelines for additional and reduced monitoring of certain agencies. In order to accomplish this, these rules describe the Contract Advisory Team monitoring procedure that generally applies to solicitations and contracts subject to CAT monitoring.

Section 20.160 sets out the definitions for Division 5. Paragraph (1) defines "CAT" as the Contract Advisory Team established in Government Code, Chapter 2262, Subchapter C. Paragraph (2) identifies the key terms of a solicitation or contract.

Section 20.161 defines the scope of the division. Subsection (a) clarifies that this division does not apply unless a solicitation or contract is subject to monitoring by the Contract Advisory Team. Subsection (b) implements Government Code, §2054.158(d), by creating a guideline for the monitoring of major information resources projects, which will be governed by rules adopted by the Department of Information Resources.

Section 20.162 describes the requirement for pre-publication review of solicitations by CAT. Subsection (a) requires an agency to obtain solicitation review from CAT before publication, and either comply with each recommendation or explain why it does not apply. Subsection (b) identifies the documents that must be submitted to obtain CAT review. Subsection (c) addresses solicitations that are substantially revised after CAT review and requires them to be resubmitted before publication. The guidelines described in this section generally pre-date Senate Bill 65 and are restated in the rule to provide a baseline for additional or reduced monitoring.

Section 20.163 defines the circumstances under which CAT may conduct an expedited solicitation review. Subsection (a) states that an agency may designate a solicitation as low-risk when submitting it for CAT review. Subsection (b) sets out conditions under which solicitations that follow a template may be designated as low-risk. Subsection (c) sets out conditions under which a solicitation may be designated as low-risk based on an agency risk analysis. Subsection (d) sets out a lesser requirement for agencies subject to reduced monitoring to demonstrate their risk analysis. Subsection (e) states that agencies subject to additional monitoring may not seek review through an expedited procedure.

Section 20.164 requires an enhanced review of solicitations submitted by agencies subject to additional monitoring. It requires those agencies to submit additional documents to facilitate the review.

Section 20.165 provides guidelines for CAT monitoring of contract formation and award. Subsection (a) permits an agency to request recommendations and assistance from CAT. Subsection (b) requires agencies subject to additional monitoring to provide contract documents to CAT upon request, so that CAT can develop recommendations for improving contract formation and award practices.

Section 20.166 provides guidelines for CAT monitoring of contract management and termination. Subsection (a) permits an agency to request recommendations and assistance from CAT. Subsection (b) requires agencies subject to additional monitoring to obtain additional training for their contract managers. Subsection (c) requires agencies subject to additional monitoring to submit documents describing certain contract management procedures to CAT annually. Subsection (d) requires agencies subject to additional monitoring to retain contract closeout documentation and provide it to CAT or auditors upon request.

The comptroller received four suggestions regarding adoption of these rules from The Health and Human Services Commission (HHSC). First, HHSC recommended a clarification that contracts associated with a major information resources project are subject to monitoring by the Quality Assurance Team. The requested clarification is both accurate and consistent with the intent of the rules. The comptroller adopts this suggestion in §20.161(b).

Second, HHSC requested "a definition or other guidance" for the concept of a substantial change to a solicitation in §20.162(c), such as fixing it by rule at a percentage of the anticipated contract value. The comptroller agrees that a bright line boundary would make it easy for agencies to comply. However, the purpose of §20.162(c) is to codify an existing requirement for CAT review. The concept of a substantial change to a solicitation is both implicit in statute and explicit in longstanding comptroller guidance. CAT is required to review solicitations for "contracts of state agencies that have a value of at least \$5 million," pursuant to Government Code, §2262.101(a)(1). Put another way, unless a revised solicitation is substantially the same as one CAT has already reviewed, CAT must review it. The comptroller's Procurement and Contract Management Guide states that a solicitation is substantially changed if its estimated value is increased by 25%, or if there are significant revisions to key terms. Because the comptroller has provided the requested guidance, and because the suggested revision would be inconsistent with the purpose of the rule, the comptroller adopts §20.162(c) without revision.

Third, HHSC proposed to delete the documentation requirement for an agency that bypasses CAT review in an emergency. It noted that §20.82(d)(2)(B) already requires agencies to justify emergency purchases that exceed \$25,000. However, that section applies only to emergency purchases made under the comptroller's delegated authority. The CAT review requirement may apply to purchases made under other sources of authority, as well. Therefore, not every procurement that would be subject to CAT review would trigger the justification requirement in §20.82(d)(2)(B). The comptroller has revised §20.162(d) to make clear that a justification prepared to satisfy §20.82(d)(2)(b) may also justify bypassing CAT review.

Finally, HHSC requested a definition for "descriptive information" in §20.165(b)(1). That section has been revised to clarify that an agency must provide to CAT the information specified in CAT's request.

These rules are adopted under Government Code §2054.158(d) and §2261.258(d).

These rules implement Government Code §2054.158(d) and §2261.258(d). The comptroller consulted the Contract Advisory Team before proposing these rules.

*§20.160. Definitions.*



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

(1) CAT--The Contract Advisory Team established in Government Code, Chapter 2262, Subchapter C.

(2) Key terms--Deliverables, duration, performance standards, amount of compensation or method of computing compensation to the contractor, specification or limitation of remedies, and any other term identified as a "key term" in the procurement manual and contract management guide developed under §20.131 of this chapter (relating to Procurement Manual and Contract Management Guide).

§20.161. *Scope.*

(a) This division applies only to solicitations and contracts subject to monitoring by CAT.

(b) Major information resources projects and any associated contracts, as defined in Government Code, Chapter 2054, are subject to monitoring by the Quality Assurance Team under the rules of the Department of Information Resources.

§20.162. *Solicitation Review.*

(a) An agency may not publish a solicitation on the ESBD or in the *Texas Register* until it obtains a CAT review of the solicitation and either complies with each recommendation or submits a written explanation regarding why the recommendation is not applicable to the solicitation.

(b) To obtain CAT review of a solicitation, an agency must submit all solicitation documents, including the solicitation, any documents that are incorporated by reference into the solicitation, and essential supporting documents such as the proprietary purchase justification.

(c) After obtaining CAT review of a solicitation, if an agency substantially revises the solicitation, it may not publish the revised solicitation until it meets the prerequisites in subsections (a) and (b) of this section.

(d) If an agency cannot obtain CAT review within the amount of time it has to complete a procurement to prevent a hazard to life, health, safety, welfare, or property in an emergency, the requirement to obtain CAT review in this section does not apply. An agency shall justify its reliance on this subsection in the procurement file for each procurement that would otherwise require CAT review. A justification submitted in accordance with §20.82(d)(2)(B) of this title and maintained in the procurement file may be sufficient if it demonstrates that CAT review is not required.

§20.163. *Expedited Solicitation Review.*

(a) Low-risk solicitations. If a solicitation qualifies as low-risk according to this section, an agency may designate it as low-risk when submitting it for CAT review. CAT may review a solicitation that has been designated as low-risk using an expedited process that focuses on key terms, or request additional documentation to determine which level of review to perform.

(b) Template solicitations. An agency may request CAT review of a solicitation template, which must include all key terms for a contemplated contract. For one year after a template has been reviewed, the agency may designate a solicitation following that template without substantial revision as low-risk.

(c) Risk analysis procedure. An agency that has developed a risk analysis procedure as described in Government Code, §2261.256(a), may designate a solicitation as low-risk if it submits its analysis and conclusion that the contractor selection process, contract provisions, and payment and reimbursement rates for the types of

goods and services to be solicited present a low risk of fraud, abuse, or waste.

(d) Reduced monitoring. An agency that is currently reported by the State Auditor's Office as requiring reduced monitoring during contract solicitation and development may designate a solicitation as low-risk without submitting an analysis to CAT.

(e) Additional monitoring. An agency that is currently reported by the State Auditor's Office as requiring additional monitoring during contract solicitation and development may not designate any solicitation as low-risk, even if the solicitation would otherwise qualify under this section.

§20.164. *Enhanced Solicitation Review.*

To obtain CAT review of a solicitation, an agency that is currently reported by the State Auditor's Office as requiring additional monitoring during contract solicitation and development must additionally submit the needs assessment, acquisition plan, and risk assessment for the solicitation.

§20.165. *Contract Formation and Award.*

(a) Recommendations and assistance. An agency may request recommendations and assistance from CAT regarding contract formation and award.

(b) Additional monitoring. An agency that is currently reported by the State Auditor's Office as requiring additional monitoring during contract formation and award shall provide to CAT upon request:

(1) descriptive information specified by CAT on all contracts it has awarded from solicitations that were reviewed by CAT; and

(2) copies of all contract documents requested by CAT for the purpose of providing recommendations and assistance to the agency.

§20.166. *Contract Management and Termination.*

(a) Recommendations and assistance. An agency may request recommendations and assistance from CAT regarding contract management and termination.

(b) Additional monitoring - training requirement. An agency that is reported by the State Auditor's Office as requiring additional monitoring during contract management and termination shall ensure that each of its contract managers has received additional training specified by and provided by the comptroller before December 31st of the year it is reported, or before another date agreed between the agency and the comptroller.

(c) Additional monitoring - submission of procedures. An agency that is reported by the State Auditor's Office as requiring additional monitoring during contract management and termination shall submit to CAT before November 30th of the year it is reported, or before another date agreed between the agency and the comptroller:

(1) the procedure by which it will identify each contract that requires enhanced contract or performance monitoring; and

(2) its handbook of policies and practices for contract management and termination.

(d) Additional Monitoring - Closeout Report. An agency that is currently reported by the State Auditor's Office as requiring additional monitoring during contract management and termination shall, within 30 days of the closeout of a contract it has identified as one that requires enhanced contract or performance monitoring, place the following information in the contract file, and provide it to the State Auditor, the comptroller, or CAT upon request:

- (1) each of its performance expectations for the contract;
- (2) the performance indicators it monitored during the contract;
- (3) the methods it used to monitor performance indicators;
- (4) whether the contractor met its performance expectations;
- (5) a summary of corrective action plans and corrective actions taken by the contractor;
- (6) any liquidated damages assessed or collected from the contractor; and
- (7) a summary of lessons learned during management of the contract that the agency will apply to future procurements.

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

Filed with the Office of the Secretary of State on August 7, 2020.  
 TRD-202003208  
 Don Neal  
 General Counsel, Operations and Support Legal Services  
 Comptroller of Public Accounts  
 Effective date: August 27, 2020  
 Proposal publication date: June 26, 2020  
 For further information, please call: (512) 475-2220



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 15. TEXAS FORENSIC SCIENCE COMMISSION

#### CHAPTER 651. DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES SUBCHAPTER A. ACCREDITATION

##### 37 TAC §651.7

The Texas Forensic Science Commission ("Commission") adopts an amendment to 37 TAC §651.7 which describes forensic disciplines exempt from accreditation requirements without changes to the text as published in the July 3, 2020, issue of the *Texas Register* (45 TexReg 4478). The rules will not be republished. The amendment removes the modifying phrase "including bloodstain pattern analysis and trajectory determination" from the term "crime scene reconstruction," because the term "crime scene reconstruction" is now defined in better detail elsewhere in the Commission rules (§651.202, Definitions). The Commission recently defined the term "crime scene reconstruction" in §651.202 to clarify which types of crime scene activities are considered forensic analysis. The new definition renders the modifying phrase "including bloodstain pattern analysis and trajectory determination" unnecessary, because these activities are covered by the new definition provided in §651.202. The adopted amendment is nonsubstantive. The amendment is necessary to reflect adoptions made by the Commission at its June 12, 2020 quarterly meeting. The adoption is made in accordance with the Commission's accreditation authority

under Code of Criminal Procedure, Article 38.01 §4-d, and the Commission's rulemaking authority under Article 38.01 §3-a.

Summary of Comments. No comments were received regarding the amendments to this section.

Statutory Authority. The adoption is proposed pursuant to Code of Criminal Procedure, Article 38.01 §3-a, which directs the Commission to adopt rules necessary to implement Article 38.01, and §4-d(b) and (c), which authorize the Commission to adopt rules providing, modifying, or removing accreditation exemptions.

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

Filed with the Office of the Secretary of State on August 6, 2020.  
 TRD-202003181  
 Leigh Savage  
 Associate General Counsel  
 Texas Forensic Science Commission  
 Effective date: August 26, 2020  
 Proposal publication date: July 3, 2020  
 For further information, please call: (512) 784-0037



## CHAPTER 651. DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES

The Texas Forensic Science Commission ("Commission") adopts new rule 37 TAC §651.106 to describe the existing process by which accreditation may be reinstated after revocation by the Commission, and adopts conforming amendments to 37 TAC §651.10 which describes the term of Commission accreditation without changes to the text as published in the July 3, 2020, issue of the *Texas Register* (45 TexReg 4480). The adoption also amends §§651.101 - 651.105 to clarify the sources, grounds, and procedures for crime laboratory accreditation-related complaints and reviews by the Commission without changes to the text as published in the July 3, 2020, issue of the *Texas Register* (45 TexReg 4480). The rules will not be republished. The adopted amendments clarify and codify existing procedures. The amendments and additions are necessary to reflect adoptions made by the Commission at its June 12, 2020 quarterly meeting and were made in accordance with the Commission's rulemaking authority under Code of Criminal Procedure, Article 38.01 §3-a, and crime laboratory accreditation authority under Code of Criminal Procedure, Article 38.01 §4-d(b).

Summary of Comments. No comments were received regarding the amendments to this section.

### SUBCHAPTER A. ACCREDITATION

#### 37 TAC §651.10

Statutory Authority. The amendments are adopted under Code of Criminal Procedure, Article 38.01 §§3-a and 4-d(b). Article 38.01 §3-a directs the Commission to adopt rules necessary to implement Article 38.01, and Article 38.01 §4-d(b), which directs the Commission to adopt rules establishing and ensuring compliance with the accreditation process.

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

Filed with the Office of the Secretary of State on August 6, 2020.

TRD-202003182

Leigh Savage

Associate General Counsel

Texas Forensic Science Commission

Effective date: August 26, 2020

Proposal publication date: July 3, 2020

For further information, please call: (512) 784-0037



## SUBCHAPTER B. ACCREDITATION-RELATED ACTIONS AND PROCEDURE FOR HEARING AND APPEAL

### 37 TAC §§651.101 - 651.106

Statutory Authority. The amendments and new rule are adopted under Code of Criminal Procedure, Article 38.01 §§3-a and 4-d(b). Article 38.01 §3-a directs the Commission to adopt rules necessary to implement Article 38.01, and Article 38.01 §4-d(b), which directs the Commission to adopt rules establishing and ensuring compliance with the accreditation process.

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

Filed with the Office of the Secretary of State on August 6, 2020.

TRD-202003183

Leigh Savage

Associate General Counsel

Texas Forensic Science Commission

Effective date: August 26, 2020

Proposal publication date: July 3, 2020

For further information, please call: (512) 784-0037



## SUBCHAPTER C. FORENSIC ANALYST LICENSING PROGRAM

### 37 TAC §§651.207, 651.208, 651.220, 651.221

The Texas Forensic Science Commission ("Commission") adopts amendments to 37 TAC §651.207, describing the requirements for forensic analyst and forensic technician licensure, §651.208, describing the requirements for renewal of a forensic analyst or technician license, and §651.220, which describes the option for an uncommon forensic analysis license issued for purposes of ensuring the availability of uncommon forensic analysis, timeliness of forensic analysis, and/or service to counties with limited access to forensic analysis. The Commission also adopts new §651.221, which moves an existing provision (permitting an out-of-state laboratory to obtain a license for certain purposes) for clarity. The amended rules and new rule are adopted without changes to the text as published in the July 3, 2020, issue of the *Texas Register* (45 TexReg 4483). The rules will not be republished.

The proposed amendments to §651.207 and §651.220 remove the distinction between in-state and out-of-state laboratories and establish a universally applied *de minimis* casework threshold for license category determination. Under the Commission's current

blanket (as revised *de minimis*) rule, a laboratory only qualified if the laboratory was not located in Texas. The amendments apply to all laboratories regardless of geographic location and update qualifying criteria to achieve greater consistency and parity among laboratories regardless of geographic location.

The adopted amendments to §651.207 authorize and set an exam fee of \$50 for forensic analysts practicing in unaccredited forensic disciplines who make a voluntary choice to take the exam. This is the same exam fee charged for forensic analysts retesting after the first three attempts.

The adopted amendments to §651.208 remove the limitation on the number of journal articles a forensic analyst may count towards his or her total credit for continuing forensic education in a license cycle. The current limit on journal articles is 8 of 24 total required credit hours per two-year license cycle, and the proposed rule change removes this limit. The Commission makes this change in light of the current COVID-19 pandemic that has resulted in travel and gathering restrictions preventing analysts from fulfilling their continuing forensic education requirements at in-person or live trainings, many of which have been cancelled. The Commission plans to reinstate the requirement for live training modalities during the next license cycle if the large gathering restrictions are lifted or if analysts are provided access to traditional forensic training conferences and meetings via alternative digital platforms.

Finally, adopted new rule §651.221 moves an existing provision (permitting an out-of-state laboratory to obtain a license for certain purposes) for clarity. It also extends the rule to apply to any laboratory regardless of geographical location. The new rule does not change the requirements for a laboratory to obtain this type of license.

The amendments are necessary to reflect adoptions made by the Commission at its June 12, 2020, quarterly meeting. The amendments are made in accordance with the Commission's forensic analyst licensing authority under Code of Criminal Procedure, Article 38.01 §4-a, and the Commission's rulemaking authority under Code of Criminal Procedure, Article 38.01 §3-a.

Summary of Comments. No comments were received regarding the amendments to this section.

Statutory Authority. The rule is adopted pursuant to Code of Criminal Procedure, Article 38.01 §§3-a and 4-a. Article 38.01 §3-a directs the Commission to adopt rules necessary to implement Article 38.01, and Article 38.01 §4-a, which directs the Commission to adopt rules establishing the requirements for forensic analyst licensure.

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

Filed with the Office of the Secretary of State on August 6, 2020.

TRD-202003180

Leigh Savage

Associate General Counsel

Texas Forensic Science Commission

Effective date: August 26, 2020

Proposal publication date: July 3, 2020

For further information, please call: (512) 784-0037



## 37 TAC §651.219

The Texas Forensic Science Commission ("Commission") adopts an amendment to 37 TAC §651.219 without changes to the text as published in the July 3, 2020 issue of the *Texas Register* (45 TexReg 4491). The rules will not be republished. §651.219 outlines the Commission's Code of Professional Responsibility for Forensic Analysts, Forensic Technicians, and Crime Laboratory Management ("Code"). The adopted amendment removes the distinction to clarify that the Code applies to forensic science-related professional activities engaged in by a licensee regardless of geographic location. The amendment is necessary to reflect adoptions made by the Commission at its June 12, 2020 quarterly meeting. The amendment is made in accordance with the Commission's forensic analyst licensing authority under Code of Criminal Procedure, Article 38.01 §§3-a and 4-(a).

Summary of Comments. No comments were received regarding the amendments to this section.

Statutory Authority. The amendment is adopted under Code of Criminal Procedure, Article 38.01 §3-a, which directs the Commission to adopt rules necessary to implement Article 38.01, and Article 38.01 §4-(a), which directs the Commission to adopt rules to establish the qualifications for a forensic analyst license.

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

Filed with the Office of the Secretary of State on August 6, 2020.

TRD-202003179

Leigh Savage

Associate General Counsel

Texas Forensic Science Commission

Effective date: August 26, 2020

Proposal publication date: July 3, 2020

For further information, please call: (512) 784-0037



## SUBCHAPTER D. PROCEDURE FOR PROCESSING COMPLAINTS AND LABORATORY SELF-DISCLOSURES

### 37 TAC §651.302, §651.309

The Texas Forensic Science Commission ("Commission") adopts new 37 TAC §651.309 to describe the existing process by which a person or party may appeal a final investigative report by the Commission and adopts amendments to 37 TAC §651.302, relating to definitions to add a definition for the term "final investigative report" for clarity. Section 651.309 is adopted without changes to the text as published in the July 3, 2020, issue of the *Texas Register* (45 TexReg 4492). The rule will not be republished. Section 651.302 is adopted with a non-substantive change to the text as published in the July 3, 2020, issue of the *Texas Register* (45 TexReg 4492). The rule will be republished.

The changes are necessary to reflect adoptions made by the Commission at its June 12, 2020, quarterly meeting and are made in accordance with the Commission's rulemaking authority under Code of Criminal Procedure, Article 38.01 §§3-a, and investigative authority under Code of Criminal Procedure, Article 38.01 §4(a).

Summary of Comments. No comments were received regarding the new rule or amendments to this section.

Statutory Authority. The rules are adopted pursuant to Code of Criminal Procedure, Article 38.01 §§3-a and 4(a). Article 38.01 §3-a directs the Commission to adopt rules necessary to implement Article 38.01, and Article 38.01 §4(a) directs the Commission to investigate allegations of professional negligence or professional misconduct.

#### §651.302. Definitions.

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

(1) Accredited field of forensic science--means a specific forensic method or methodology validated or approved by the Commission under Article 38.01, Code of Criminal Procedure §4-d as part of the accreditation process for crime laboratories.

(2) Crime laboratory--has the meaning assigned by Article 38.35, Code of Criminal Procedure.

(3) Forensic analysis--has the meaning assigned by Article 38.01, Code of Criminal Procedure.

(4) Forensic pathology--includes that portion of an autopsy conducted by a medical examiner or other forensic pathologist who is a licensed physician.

(5) Accredited laboratory--includes a public or private laboratory or other entity that conducts forensic analysis as defined in Article 38.35, Code of Criminal Procedure and is accredited by a national accrediting body recognized by the Commission and listed in §651.4 of this title (relating to List of Recognized Accrediting Bodies).

(6) Physical evidence--has the meaning assigned by Article 38.35, Code of Criminal Procedure.

(7) Professional misconduct--means the forensic analyst or crime laboratory, through a material act or omission, deliberately failed to follow a standard of practice that an ordinary forensic analyst or crime laboratory would have followed, and the deliberate act or omission would substantially affect the integrity of the results of a forensic analysis. An act or omission was deliberate if the forensic analyst or crime laboratory was aware of and consciously disregarded an accepted standard of practice.

(8) Professional negligence--means the forensic analyst or crime laboratory, through a material act or omission, negligently failed to follow the standard of practice that an ordinary forensic analyst or crime laboratory would have followed, and the negligent act or omission would substantially affect the integrity of the results of a forensic analysis. An act or omission was negligent if the forensic analyst or crime laboratory should have been but was not aware of an accepted standard of practice.

(9) For purposes of these definitions, the term "standard of practice" includes any of the activities engaged in by a "forensic analyst" as those activities are defined in Article 38.01, Code of Criminal Procedure. "Forensic analyst" means a person who on behalf of a crime laboratory accredited under Article 38.01, Code of Criminal Procedure technically reviews or performs a forensic analysis or draws conclusions from or interprets a forensic analysis for a court or crime laboratory.

(10) The term "would substantially affect the integrity of the results of a forensic analysis" does not necessarily require that a criminal case be impacted or a report be issued to a customer in error. The term includes acts or omissions that would call into question the

integrity of the forensic analysis, the forensic analyst or analysts, or the crime laboratory as a whole regardless of the ultimate outcome in the underlying criminal case.

(11) Final investigative report--means a required, written report issued by the Commission pursuant to Article 38.01, Code of Criminal Procedure §4(b).

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

Filed with the Office of the Secretary of State on August 6, 2020.

TRD-202003178

Leigh Savage

Associate General Counsel

Texas Forensic Science Commission

Effective date: August 26, 2020

Proposal publication date: July 3, 2020

For further information, please call: (512) 784-0037



## **TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

### **PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES**

#### **CHAPTER 700. CHILD PROTECTIVE SERVICES**

##### **SUBCHAPTER J. ASSISTANCE PROGRAMS FOR RELATIVES AND OTHER CAREGIVERS**

###### **DIVISION 1. RELATIVE AND OTHER DESIGNATED CAREGIVER PROGRAM**

###### **40 TAC §700.1003**

The Department of Family and Protective Services (DFPS) adopts an amendment to §700.1003, in Chapter 700, concerning Child Protective Services. The rule is adopted without changes to the proposed text published in the April 10, 2020 issue of the *Texas Register* (45 TexReg 2405). The rule will not be republished.

###### **BACKGROUND AND JUSTIFICATION**

The purpose of the rule change is to comply with House Bill (HB) 3390, which was enacted into law by the 86th Texas Legislature and became effective immediately on June 14, 2019. HB 3390, among other things, amends Family Code Section 264.751, regarding the definitions pertaining to the Relative and Other Designated Caregiver (RODC) Program, or Kinship Program, to expand the statutory definition of a "designated caregiver" to also include an individual with a longstanding and significant relationship to the family of a child that is in DFPS conservatorship. Current statute and agency rule limits the definition to an individual with a longstanding and significant relationship with the child only.

HB 3390 requires rules necessary for implementation to be adopted as soon as practicable after the effective date.

###### **COMMENTS**

The 30-day comment period ended May 8, 2020. During this period, DFPS did not receive any comments regarding the proposed rules.

###### **STATUTORY AUTHORITY**

The amendment is adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall adopt rules for the operation and provision of services by the department.

The adopted amendment implements Family Code section 264.751 per HB 3390.

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

Filed with the Office of the Secretary of State on August 4, 2020.

TRD-202003144

Tiffany Roper

General Counsel

Department of Family and Protective Services

Effective date: August 24, 2020

Proposal publication date: April 10, 2020

For further information, please call: (512) 438-3397



## **TITLE 43. TRANSPORTATION**

### **PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES**

#### **CHAPTER 217. VEHICLE TITLES AND REGISTRATION**

##### **SUBCHAPTER G. INSPECTIONS**

###### **43 TAC §217.144**

**INTRODUCTION.** The Texas Department of Motor Vehicles (department) adopts amendments to Title 43 of the Texas Administrative Code (TAC) §217.144, concerning inspections. The department adopts the amendments to §217.144 without changes to the proposed text as published in the April 17, 2020, issue of the *Texas Register* (45 TexReg 2533). The rule will not be republished.

**REASONED JUSTIFICATION.** The amendments to §217.144 update the citation to Transportation Code §501.0321 for consistency in citation format throughout the section. The amendments to §217.144(1) update the name of a required training from "Motor Vehicle Burglary and Theft Investigator Training" to "Motor Vehicle Crime Investigator Training" to reflect the new name of the training. The substance of the training will not change as a result of the name change. Amendments to §217.144(1) also change the reference to the "Automobile Burglary and Theft Prevention Authority" to the "Motor Vehicle Crime Prevention Authority." The amendments are necessary to implement SB 604.

**SUMMARY OF COMMENTS.** The department received no comments on the proposal.

**STATUTORY AUTHORITY.** The department adopts amended §211.144 under Transportation Code §501.0321, which provides the department authority to adopt rules to determine appropriate training programs for a person who performs vehicle identifica-

tion number inspections, and Transportation Code §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Transportation Code §501.0321 and §1002.001.

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

Filed with the Office of the Secretary of State on August 6, 2020.

TRD-202003192

Tracey Beaver

General Counsel

Texas Department of Motor Vehicles

Effective date: August 26, 2020

Proposal publication date: April 17, 2020

For further information, please call: (512) 465-5665



## SUBCHAPTER I. FEES

### 43 TAC §217.182

INTRODUCTION. The Texas Department of Motor Vehicles adopts amendments to Title 43 Texas Administrative Code (TAC) §217.182, concerning Registration Transactions. These amendments implement Transportation Code §504.002, as amended by House Bill (HB) 1548, 86th Legislature, Regular Session (2019). The department adopts §217.182 without changes to the proposed rule text in the April 17, 2020, issue of the *Texas Register* (45 TexReg 2535).

EXPLANATION. The amendment to §217.182(5) inserts the word "license" before plate. This amendment is necessary to accurately reflect that an administrative fee is being assessed for a golf cart license plate under Transportation Code §551.402, and to achieve consistency throughout the entire rule in the use of the term "license plate."

The amendment to §217.182(6) inserts the word "license" before plate. This amendment is necessary to accurately reflect that an administrative fee is being assessed for a golf cart, neighborhood electric vehicle, or off-highway vehicle issued a package delivery vehicle license plate under Transportation Code §551.452 and to achieve consistency throughout the entire rule in the use of the term "license plate."

New §217.182(7) adds issuance of an off-highway vehicle license plate under Transportation Code §551A.052, to the list of registration transactions. A registration transaction is a transaction for which an administrative fee, called a processing and handling fee, is assessed to cover the costs of collecting fees for issuing license plates and other resignation insignia. The administrative fee to cover the costs of issuing an off-highway vehicle license plate is authorized in Transportation Code §504.002(b) as amended by HB 1548, 86th Legislature, Regular Session (2019). Processing and handling fees are authorized in Transportation Code §502.1911. For purposes of Transportation Code

§551.452 and §551A.052, off-highway vehicles are defined in Transportation Code §551A.001.

SUMMARY OF COMMENTS. The department received one comment on the proposal. The Lubbock County Tax Assessor-Collector commented in support of the proposal with changes.

Comment. A commenter noted that County Road and Bridge Fees were not mentioned in the proposal. The commenter added that the County Road and Bridge Fees should be collected and remitted to each county.

Agency Response. The department agrees with the comment to the extent that County Road and Bridge Fees are not mentioned in the proposal. The proposal provides that an off-highway vehicle license plate under Transportation Code §551A.052 is a registration transaction in §217.182, and makes two changes for consistent references. The proposal does not affect the collection or remittance of County Road and Bridge Fees. Addressing the collection or remittance of county road and bridge fees in this adoption would involve matters not noticed in the proposal. As such, the department makes no changes based on this comment.

STATUTORY AUTHORITY. The department adopts amendments to §217.182 under Transportation Code §§504.002(b), 551.402(c), and 551A.052(c).

Transportation Code §504.002 authorizes the department to charge a fee to cover the costs of issuing license plates for golf carts or off-highway vehicles in an amount established by rule.

Transportation Code §551.402 requires the department to adopt rules establishing a procedure to issue license plates for golf carts and charge a fee not to exceed \$10.

Transportation Code §551A.052 requires the department to adopt rules establishing a procedure to issue license plates for unregistered off-highway vehicles and charge a fee not to exceed \$10.

Transportation Code §1002.001 authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Transportation Code, Chapters 502, 504, and 551A.

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

Filed with the Office of the Secretary of State on August 6, 2020.

TRD-202003193

Tracey Beaver

General Counsel

Texas Department of Motor Vehicles

Effective date: August 26, 2020

Proposal publication date: April 17, 2020

For further information, please call: (512) 465-5665



# REVIEW OF AGENCY RULES

---

---

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039.

Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

---

## Proposed Rule Reviews

State Board for Educator Certification

### Title 19, Part 7

The State Board for Educator Certification (SBEC) proposes the review of Title 19, Texas Administrative Code (TAC), Chapter 234, Military Service Members, Military Spouses, and Military Veterans, pursuant to the Texas Government Code (TGC), §2001.039.

As required by the TGC, §2001.039, the SBEC will accept comments as to whether the reasons for adopting 19 TAC Chapter 234 continue to exist.

The comment period on the review of 19 TAC Chapter 234 begins August 21, 2020, and ends September 21, 2020. A form for submitting

public comments on the proposed rule review is available on the TEA website at [https://tea.texas.gov/About\\_TEA/Laws\\_and\\_Rules/SBEC\\_Rules\\_\(TAC\)/State\\_Board\\_for\\_Educator\\_Certification\\_Rule\\_Review/](https://tea.texas.gov/About_TEA/Laws_and_Rules/SBEC_Rules_(TAC)/State_Board_for_Educator_Certification_Rule_Review/). The SBEC will take registered oral and written comments on the review of 19 TAC Chapter 234 at the October 9, 2020 meeting in accordance with the SBEC board operating policies and procedures.

TRD-202003263

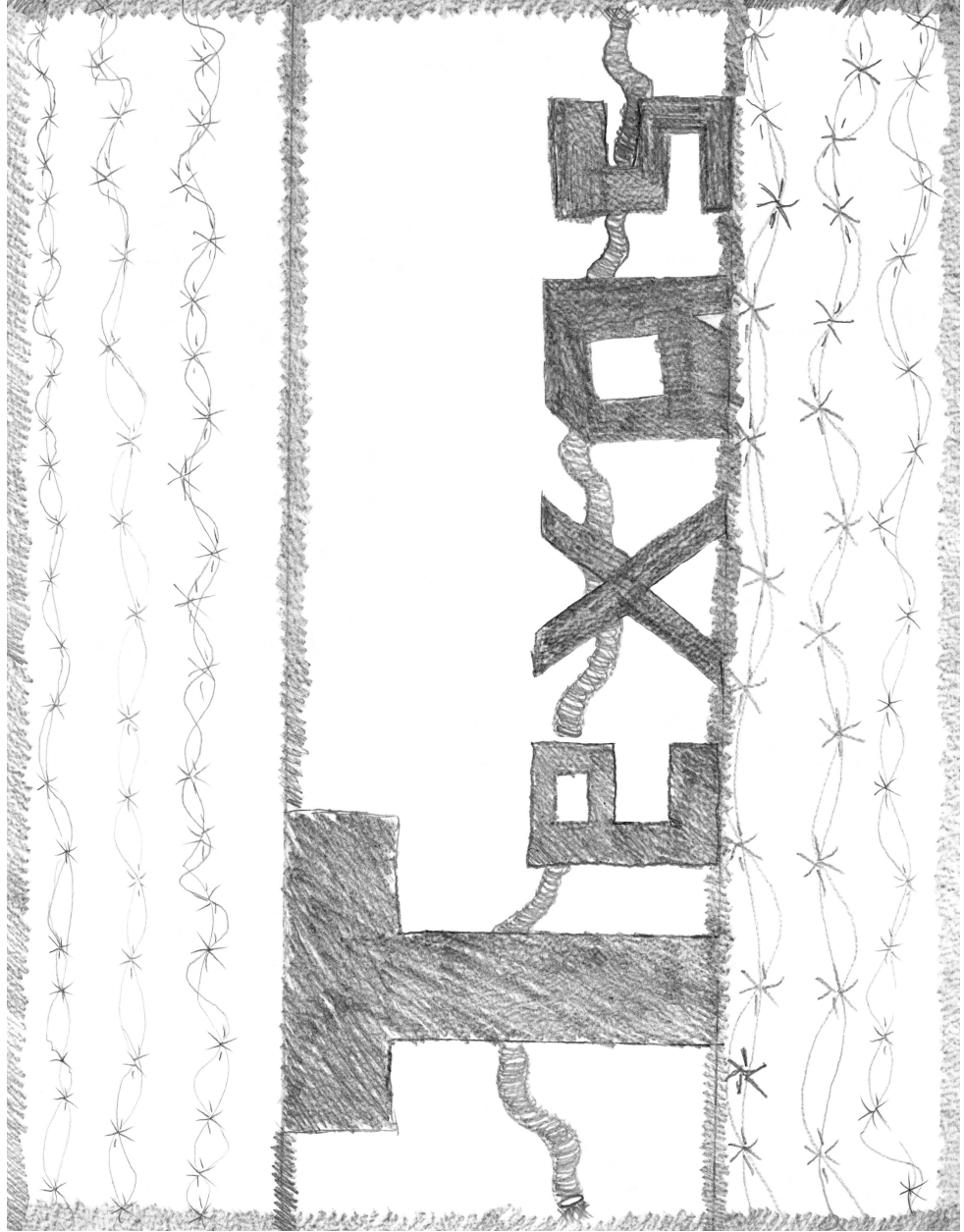
Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Filed: August 10, 2020







# TABLES & GRAPHICS

---

---

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

---

Figure: 16 TAC §402.420

<b>Religious Society:</b>	
<b>Qualifications and Requirements</b>	<b>Necessary Documentation</b>
Must be organized primarily for religious purposes.	<p>A signed and dated copy of the most recent version of all of the organization's organizing instrument(s);</p> <p>Or</p> <p>A copy of the page from the applicant's parent organization religious directory that lists the applicant organization's information.</p> <p>The name of the applicant organization must match the name of the organization on the documents submitted.</p>
Must have been organized in Texas for at least three years.	<p>A copy of a listing in a publication such as a national roster or newspaper article naming the organization;</p> <p>Or</p> <p>A letter or other document provided or issued to the applicant from a government agency.</p> <p>The documents submitted must reflect the applicant's name, Texas address, and <del>either be dated three years prior to the application date or</del> establish <u>at least three years of existence.</u> <del>[the date the organization was founded.]</del></p>
Must demonstrate that the organization has made significant progress toward the accomplishment of its purposes during the 12 months preceding the date of application.	<p>At least three (3) different types of acceptable documents as proof that organization was continuously engaged in furthering its charitable purpose for the time period beginning one year prior to the date the application was signed. Examples of acceptable documentation include copies of:</p> <ol style="list-style-type: none"> <li>1. a letter from the diocese,</li> <li>2. notices of church services, and/or church bulletins,</li> <li>3. canceled checks for clergy salaries, religious books, materials and/or supplies, maintenance of religious building(s), and</li> <li>4. records of marriages performed, or records of funerals performed.</li> </ol> <p>To establish the beginning date, an organization may submit documentation dated up to three months prior to the year before the application was signed in order to prove that the organization has been continuously engaged in furthering its charitable purpose throughout the past twelve months.</p>

	All documents must be dated and indicate the name of the organization.
Must appoint only the organization's members to serve as operators for the organization.	A current membership list with all officers and directors noted. Officers would include a priest, pastor, rabbi, or other head of the church. Membership list will be compared to persons listed on the application to confirm that only members have been named as operators.
Must ensure that none of the organization's officers, directors and operators have been convicted in any jurisdiction of a gambling or gambling-related offense; and have not been convicted of a criminal fraud offense, with the exception of a criminal fraud offense that is a Class C misdemeanor.	<p>A signed and dated copy of the most recent version of all of the organization's organizing instruments(s) that list the officer and director positions;</p> <p>Or</p> <p>If officers and/or directors are not listed in organizing instruments, a current membership list identifying officers and directors.</p> <p>If officer and/or director positions are unfilled, a statement signed by an officer indicating which positions are vacant.</p> <p>The Commission will compare the number of officers and directors included in the documents to the application to ensure all officers and directors have been disclosed.</p> <p>The Department of Public Safety will conduct a criminal history check on all officers, directors, and operators.</p> <p>Any officer, director, or operator not meeting the criminal history background requirement must resign before a license may be issued.</p>
Section 2001.102 License Application Requirements.	<p>Most recent copy of Internal Revenue Service (IRS) Form 990 if organization is required to file it with the IRS.</p> <p>Indicate on application if organization is not required to file Form 990;</p> <p>And</p> <p>If the organization is organized under the law of this state, the organization must be in good standing with the Secretary of State (SOS). The Commission will request additional documentation from the applicant if unable to validate good standing directly with the SOS.</p>
<b>Non-Profit Medical Organization:</b>	
<b>Qualifications and Requirements</b>	<b>Necessary Documentation</b>

Main activities must be in support of medical research or treatment programs.	<p>A signed and dated copy of the most recent version of all of the organization's organizing instruments.</p> <p>The name of the applicant organization must match the name of the organization on the organizing instruments.</p>
Must have had a governing body or officers elected by the vote of the members or delegates elected by the members for at least three years.	<p>Copies of meeting minutes recording officer elections for <del>the past</del> three years showing the date of each meeting and signature of an officer;</p> <p>Or</p> <p>A dated list of officers and positions held for <del>each year of the past</del> three years.</p> <p>A statement signed by an officer indicating which positions were left open if the organization had positions defined in organizing instrument(s) that the organization did not fill.</p> <p>Organizing instrument(s) will be reviewed to ensure that the organization has members who elect officers and to confirm the officer positions.</p>
Must have been affiliated with a state or national organization organized to perform the same purposes for at least three years.	<p>Verification by Parent for Charitable Organization Conductor;</p> <p>And</p> <p>A copy of a listing in a publication such as a national roster or newspaper article naming the organization or a letter or other document provided or issued to the applicant from a government agency.</p> <p>The document submitted must reflect the applicant's name, Texas address, and <del>either be dated three years prior to the application date or</del> establish the date the organization was founded <u>and at least three years of existence.</u></p>
Must hold a valid 501(c) exemption through the Internal Revenue Service.	<p>If the Commission is unable to validate directly with the Internal Revenue Service that the organization has a 501(c) designation, the Commission will request additional documentation from the applicant.</p>
May not distribute any income to members, officers, or governing body except as reasonable	<p>Most recent copy of Internal Revenue Service (IRS) Form 990 if organization is required to file it with the IRS.</p> <p>Indicate on application if organization is not required to file Form 990.</p> <p>A signed and dated copy of the most recent version of all of the organization's organizing instruments.</p>

compensation for services.	
Must demonstrate significant progress toward the accomplishment of the organization's purposes during the 12 months preceding the date of application.	<p>At least three (3) different types of acceptable documents as proof that organization was engaged in furthering its charitable purpose for the time period beginning one year prior to the date the application was signed.</p> <p>Acceptable documentation may include:</p> <ol style="list-style-type: none"> <li>1. canceled checks in support of medical treatment or research programs, i.e., American Cancer Society, Muscular Dystrophy Association, or other recognized organizations dedicated to the elimination of disease;</li> <li>2. canceled checks for the purchase of medical equipment or to provide medical care for the needy;</li> <li>3. letters of appreciation from individuals or organizations receiving benefits for treatment;</li> <li>4. IRS Form 990; and</li> <li>5. newspaper articles.</li> </ol> <p>To establish the beginning date, an organization may submit documentation dated up to three months prior to the year before the application was signed in order to prove that the organization has been engaged in furthering its charitable purposes throughout the past twelve months.</p> <p>All documents must be dated and indicate the name of the organization.</p>
May appoint only the organization's members to serve as operators.	A current membership list with officers and directors noted. Membership list will be compared to the persons listed on the application to confirm that only members have been named as operators.
Must ensure that none of the organization's officers, directors and operators have been convicted in any jurisdiction of a gambling or gambling-related offense; and have not been convicted of a	<p>A signed and dated copy of the most recent version of all of the organization's organizing instruments that list the officer and director positions;</p> <p>Or</p> <p>If officers and/or directors are not listed in organizing instruments, a current membership list identifying officers and directors.</p> <p>If officer and/or director positions are unfilled, a statement signed by an officer indicating which positions are vacant.</p> <p>The Commission will compare the number of officers and directors included</p>

<p>criminal fraud offense, with the exception of a criminal fraud offense that is a Class C misdemeanor.</p>	<p>in the documents to the application to ensure all officers and directors have been disclosed.</p> <p>The Department of Public Safety will conduct a criminal history check on all officers, directors, and operators.</p> <p>Any officer, director, or operator not meeting the criminal history background requirement must resign before a license may be issued.</p>
<p>Section 2001.102 License Application Requirements.</p>	<p>If the organization is organized under the law of this state, the organization must be in good standing with the Secretary of State (SOS) The Commission will request additional documentation from the applicant if unable to validate good standing directly with the SOS.</p>
<p><b>Volunteer Fire Department:</b></p>	
<p><b>Qualifications and Requirements</b></p>	<p><b>Necessary Documentation</b></p>
<p>Organized primarily to provide fire-fighting services.</p>	<p>Proof of membership in a professional fire-fighting organization;</p> <p>Or</p> <p>Copy of a publication that lists the organization and its phone number to call in case of fire;</p> <p>Or</p> <p>A letter from a local government agency recognizing the organization as a volunteer fire department;</p> <p>Or</p> <p>A copy of all organizing instrument(s) which list this purpose for the organization;</p> <p>Or</p> <p>A dated newspaper article which details the organization's activities.</p> <p>The name of the applicant organization must match the name of the applicant on the documents submitted.</p>
<p>Must have been organized in Texas for at least three years.</p>	<p>A copy of a listing in a publication such as a national roster or newspaper article naming the organization;</p> <p>Or</p> <p>A letter or other document provided or issued to the applicant from a</p>

	<p>government agency.</p> <p>The document submitted must reflect the applicant's name, Texas address, and <del>either be dated three years before the application date or</del> establish the date the organization was founded <u>and at least three years of existence.</u></p>
Must operate fire-fighting equipment.	<p>Pictures of fire equipment reflecting the name of the volunteer fire department;</p> <p>Or</p> <p>Copies of canceled checks or invoices for fire-fighting equipment.</p>
May not pay members other than nominal compensation.	<p>Most recent copy of Internal Revenue Service (IRS) Form 990 if organization is required to file it with the IRS.</p> <p>Indicate on application if organization is not required to file Form 990.</p> <p>If not required to file Form 990, a copy of a volunteer fire fighter application;</p> <p>Or</p> <p>Copy of an organizing instrument that describes compensation of members.</p>
Must demonstrate significant progress toward the accomplishment of the organization's purposes during the 12 months preceding the date of application.	<p>Call List which shows the type of incident and location for the 12 month period prior to the date the application was signed.</p>
May appoint only the organization's members to serve as operators.	<p>Current membership list with all officers and directors noted.</p> <p>Membership list will be compared to the persons listed on application to confirm that only members have been named as operators.</p>
Must ensure that none of the organization's officers, directors and operators have been	<p>A signed and dated copy of the most recent version of all of the organization's organizing instruments that list the officer and director positions;</p> <p>Or</p>

<p>convicted in any jurisdiction of a gambling or gambling-related offense; and have not been convicted of a criminal fraud offense, with the exception of a criminal fraud offense that is a Class C misdemeanor.</p>	<p>If officers and/or directors are not listed in organizing instruments, a current membership list identifying officers and directors.</p>
	<p>If officer and/or director positions are unfilled, a statement signed by an officer indicating which positions are vacant.</p>
	<p>The Commission will compare the number of officers and directors included in the documents to the application to ensure all officers and directors have been disclosed.</p>
	<p>The Department of Public Safety will conduct a criminal history check on all officers, directors and operators.</p> <p>Any officer, director, or operator not meeting the criminal history background requirement must resign before a license may be issued.</p>
<p>Section 2001.102 License Application Requirements.</p>	<p>A signed copy of the applicant organization's organizing instruments, including any bylaws, constitution, charter, and articles of incorporation.</p> <p>If the organization is organized under the law of this state the organization must be in good standing with the Secretary of State (SOS). The Commission will request additional documentation from the applicant if unable to validate good standing directly with the SOS.</p>
<p><b>Veteran Organization:</b></p>	
<p><b>Qualifications and Requirements</b></p>	<p><b>Necessary Documentation</b></p>
<p>Must be an unincorporated association or corporation.</p>	<p>A signed copy of the organization's organizing instruments, including any bylaws, constitution, charter, and articles of incorporation.</p> <p>The name of the applicant organization must match the name of the organization on the organizing instruments.</p>
<p>Must hold a valid 501(c) exemption through the Internal Revenue Service.</p>	<p>If the Commission is unable to validate directly with the Internal Revenue Service that the organization has a 501(c) designation, the Commission will request additional documentation from the applicant.</p> <p>Verification by Parent for Charitable Organization Conductor.</p>
<p>Must have been organized in Texas for at least three years.</p>	<p>A copy of a listing in a publication such as a national roster or newspaper article naming the organization;</p> <p>Or</p> <p>A letter or other document provided or issued to the applicant from a government agency.</p>



	The document submitted must reflect the applicant's name, Texas Address, and either be dated three years before the application date or establish the date the organization as founded.
May not distribute any income to members, officers, or governing body except as reasonable compensation for services.	Most recent copy of Internal Revenue Service (IRS) Form 990 if organization is required to file it with the IRS.  Indicate on application if organization is not required to file Form 990.
Members must be veterans or dependents of veterans of the United States armed forces.	Verification by Parent for Charitable Organization Conductor.
Must be chartered by the United States Congress.	The Commission will review the list of chartered veteran organizations maintained by the United States Department of Veteran Affairs. Its website link is: <a href="http://www1.va.gov/vso/index.cfm?template=view">http://www1.va.gov/vso/index.cfm?template=view</a> .
Must be organized to advance the interest of veterans or active duty personnel of the US armed forces and their dependents.	A signed and dated copy of the applicant organization's organizing instruments, including any bylaws, constitution, charter, and articles of incorporation.  The name of the applicant organization must match the name of the organization on the organizing instruments.
Must demonstrate significant progress toward the accomplishment of the organization's purposes during the 12 months preceding the date of application.	At least three (3) different types of acceptable documents as proof that organization was engaged in furthering its charitable purpose for the time period beginning one year prior to the date the application was signed. Examples of acceptable documentation include copies of:  1. activity reports filed with the state and/or national organization,  2. monetary donations to Veterans Administration (VA) hospitals,  3. letters of appreciation from veterans and/or organizations receiving benefits,  4. support of and/or contributions to veterans' funerals and/or their families,

	<p>5. visits to veteran's hospitals,</p> <p>6. newspaper articles, and</p> <p>7. Form 990.</p> <p>To establish the beginning date, an organization may submit documentation dated up to three months prior to the year before the application was signed in order to prove that the organization has been engaged in furthering its charitable purpose throughout the past twelve months.</p> <p>All documents must be dated and indicate the name of the organization.</p>
May appoint only the organization's members to serve as operators.	A current membership list with all officers and directors noted. Membership list will be compared to the persons listed on the application to confirm that only members have been named as operators.
Must ensure that none of the organization's officers, directors and operators have been convicted in any jurisdiction of a gambling or gambling-related offense; and have not been convicted of a criminal fraud offense, with the exception of a criminal fraud offense that is a Class C misdemeanor.	<p>A signed copy of the applicant organization's organizing instruments, including any bylaws, constitution, charter, and articles of incorporation that list the officer and director positions;</p> <p>Or</p> <p>If officers and/or directors are not listed in organizing instruments, a current membership list identifying officers and directors.</p> <p>If officer and/or director positions are unfilled, a statement signed by an officer indicating which positions are vacant.</p> <p>The Commission will compare the number of officers and directors included in the documents to the application to ensure all officers have been disclosed.</p> <p>The Department of Public Safety will conduct a criminal history check on all officers, directors and operators.</p> <p>Any officer, director, or operator not meeting the criminal history background requirement must resign before a license may be issued.</p>
Section 2001.102 License Application Requirements.	If the organization is organized under the law of this state, the organization must be in good standing with the Secretary of State (SOS). The Commission will request additional documentation from the applicant if unable to validate good standing directly with the SOS.
<b>Fraternal Organization:</b>	
<b>Qualifications and Requirements</b>	<b>Necessary Documentation</b>

Must be an Unincorporated Association or Corporation.	<p>A signed copy of the applicant organization's organizing instruments, including any bylaws, constitution, charter, and articles of incorporation.</p> <p>The name of the applicant organization must match the name of the organization on the organizing instruments.</p>
Must be organized to perform and engage in charitable work.	<p>A signed copy of the applicant organization's organizing instruments, including any bylaws, constitution, charter, and articles of incorporation.</p> <p>The name of the applicant organization must match the name of the organization on the organizing instruments.</p>
Must hold a valid 501(c) exemption through the Internal Revenue Service.	<p>If the Commission is unable to validate directly with the Internal Revenue Service that the organization has a 501(c) designation, the Commission will request additional documentation from the applicant;</p> <p>Or</p> <p>Verification by Parent for Charitable Organization Conductor if affiliated with a state or national organization.</p>
May not distribute any income to members, officers, or governing body except as reasonable compensation.	<p>Most recent copy of Internal Revenue Service (IRS) Form 990 if organization is required to file it with the IRS.</p> <p>Indicate on application if organization is not required to file Form 990.</p> <p>A signed copy of the applicant organization's organizing instruments, including any bylaws, constitution, charter, and articles of incorporation.</p>
Must have been organized in Texas for at least three years.	<p>A copy of a listing in a publication such as a national roster or newspaper article if not affiliated with a state or national organization;</p> <p>Or</p> <p>A letter or other document provided or issued to the applicant from a government agency. The document submitted to confirm the requirement must reflect organization's name, Texas address, and be either dated prior to the three year period or establish the date the organization was founded.</p>
Must have a bona fide membership.	Current membership list with all officers and directors noted.
Membership actively and continuously engaged in furthering its authorized purposes for the past three years.	<p>Organizing instrument(s) describing the organization's purposes.</p> <p>Copies of minutes from three annual membership meetings reflecting that the organization voted on the election of officers and reported on matters related to furthering the organization's purpose.</p> <p>Collectively, the three meeting minutes must encompass a (36) thirty-six month period (i.e. one per year).</p>

	The meeting minutes must be dated and signed by an officer of the organization.
May not authorize or support a public office candidate.	Organizing instrument(s) reflecting that organization has not authorized support or opposition of a public office candidate.
Must demonstrate significant progress toward the accomplishment of the organization's purposes during the 12 months preceding the date of application.	<p>At least three (3) different types of acceptable documents as proof that organization was engaged in furthering its charitable purpose for the time period beginning one year prior to the date the application was signed.</p> <p>Examples of acceptable documentation include copies of:</p> <ol style="list-style-type: none"> <li>1. canceled checks,</li> <li>2. newspaper articles,</li> <li>3. brochures,</li> <li>4. receipts,</li> <li>5. meeting minutes, and</li> <li>6. IRS Form 990.</li> </ol> <p>All documents must be dated and indicate the organization's name.</p> <p>To establish the beginning date, an organization may submit documentation dated up to three months prior to the year before the application was signed in order to prove that the organization has been engaged in furthering its charitable purposes throughout the past twelve months.</p>
May appoint only the organization's members to serve as operators.	A current membership list with all officers and directors noted. Membership list will be compared to the persons listed on the application to confirm that only members have been named as operators.
Must ensure that none of the organization's officers, directors and operators have been convicted in any jurisdiction of a gambling or gambling-related offense; and have not been convicted of a criminal fraud	<p>A signed copy of the applicant organization's organizing instruments, including any bylaws, constitution, charter, and articles of incorporation that list the officer and director positions;</p> <p>Or</p> <p>If officers and/or directors are not listed in organizing instruments, a current membership list identifying officers and directors.</p> <p>If officer and/or director positions are unfilled, a statement signed by an officer indicating which positions are vacant.</p> <p>The Commission will compare the number of officers and directors included in the documents to the application to ensure all officers and directors have</p>

offense, with the exception of a criminal fraud offense that is a Class C misdemeanor.	<p>been disclosed. The Department of Public Safety will conduct a criminal history check on all officers, directors and operators.</p> <p>Any officer, director, or operator not meeting the criminal history background requirement must resign before a license may be issued.</p>
Section 2001.102 License Application Requirements.	If the organization is organized under the law of this state, the organization must be in good standing with the Secretary of State (SOS). The Commission will request additional documentation from the applicant if unable to validate good standing directly with the SOS.
<b>Volunteer Emergency Medical Services Provider:</b>	
<b>Qualifications and Requirements</b>	<b>Necessary Documentation</b>
Must have been organized in Texas for at least three years.	<p>A copy of a listing in a publication such as a national roster or newspaper article naming the organization;</p> <p>Or</p> <p>A letter or other document provided or issued to the applicant from a government agency.</p> <p>The document submitted must reflect the applicant's name, Texas address, and either be dated three years before the application date or establish the date the organization was founded.</p>
Must demonstrate that the organization has made significant progress toward the accomplishment of its purposes during the 12 months preceding the date of application.	A Call List which shows the type of incident and location for the 12 month period prior to the date the application was signed.
Must appoint only the organization's members to serve as operators for the organization.	A current membership list with all officers and directors noted. Membership list will be compared to the persons listed on the application to confirm that only members have been named as operators.

<p>Must ensure that none of the organization's officers, directors and operators have been convicted in any jurisdiction of a gambling or gambling-related offense; and have not been convicted of a criminal fraud offense, with the exception of a criminal fraud offense that is a Class C misdemeanor.</p>	<p>A signed copy of the applicant organization's organizing instruments, including any bylaws, constitution, charter, and articles of incorporation, that list the officer and director positions;</p> <p>Or</p> <p>If officers and/or directors are not listed in organizing instruments, a current membership list identifying officers and directors.</p> <p>If officer and/or director positions are unfilled, a statement signed by an officer indicating which positions are vacant.</p> <p>The Commission will compare the number of officers and directors included in the documents to the application to ensure all officers and directors have been disclosed.</p> <p>The Department of Public Safety will conduct a criminal history check on all officers, directors and operators.</p> <p>Any officer, director or operator not meeting the criminal history background requirement must resign before a license may be issued.</p>
<p>Section 2001.102 License Application Requirements.</p>	<p>Most recent copy of Internal Revenue Service (IRS) Form 990 if organization is required to file it with the IRS.</p> <p>Indicate on application if organization is not required to file Form 990;</p> <p>And</p> <p>A signed copy of the applicant organization's organizing instruments, including any bylaws, constitution, charter, and articles of incorporation;</p> <p>And</p> <p>If the organization is organized under the law of this state the organization must be in good standing with the Secretary of State (SOS). The Commission will request additional documentation from the applicant if unable to validate good standing directly with the SOS.</p>

Figure: 22 TAC §344.1(c)  
 [Figure: 22 TAC §344.1(c)]

**Schedule of Sanctions**

Failing to document physical therapy services, inaccurately recording, falsifying, or altering patient/client records	Sec. 453.351(a)(7) §322.4(b)(1)	15-30 day license suspension +up to \$100 per violation [++investigation costs]	45-90 day license suspension +up to \$150 per violation [++investigation costs]	Revocation or Surrender of license +up to \$200 per violation [++investigation costs]	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Obtaining or attempting to obtain or deliver medications through means of misrepresentation, fraud, forgery, deception, and/or subterfuge	Sec. 453.351(a)(7) §322.4(b)(2)	30-60 day license suspension +up to \$100 per violation [++investigation costs]	30-60 day license suspension with restricted practice +up to \$150 per violation [++investigation costs]	Revocation or Surrender of license +up to \$200 per violation [++investigation costs]	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Failing to supervise and maintain the supervision of supportive personnel, licensed or unlicensed, in compliance with the Act and rule requirements	Sec. 453.351(a)(7)(1) §322.4(b)(3)	30-60 hours community service +up to \$100 per violation [++investigation costs]	30-60 day license suspension +up to \$150 per violation [++investigation costs]	Revocation or Surrender of license +up to \$200 per violation [++investigation costs]	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Aiding, abetting, authorizing, condoning, or allowing the practice of physical therapy by any person not licensed to practice physical therapy	Sec. 453.351(a)(7) §322.4(b)(4)	30-60 day license suspension +up to \$100 per violation [++investigation costs]	30-60 day license suspension with restricted practice +up to \$150 per violation [++investigation costs]	Revocation or Surrender of license +up to \$200 per violation [++investigation costs]	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Permitting another person to use an individual's physical therapist's or physical therapist assistant's license for any purpose	Sec. 453.351(a)(7) §322.4(b)(5)	30-60 day license suspension +up to \$100 per violation [++investigation costs]	30-60 day license suspension with restricted practice +up to \$150 per violation [++investigation costs]	Revocation or Surrender of license +up to \$200 per violation [++investigation costs]	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Failing to cooperate with the agency by not furnishing papers or documents requested or by not responding to subpoenas issued by the agency	Sec. 453.351(a)(7) §322.4(b)(6)	30-60 hours community service +up to \$100 per violation [++investigation costs]	30-60 day license suspension +up to \$150 per violation [++investigation costs]	Revocation or Surrender of license +up to \$200 per violation [++investigation costs]	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.

**Schedule of Sanctions**

Disciplinary Violations	PT Act/Rule	Minimum Discipline	Intermediate Discipline	Maximum Discipline	Remarks
Interfering with an investigation or disciplinary proceeding by willful misrepresentation of facts before the agency or the board, or by the use of threats or harassment against any patient/client or witness to prevent them from providing evidence in a disciplinary proceeding or any other legal action	Sec. 453.351(a)(7) §322.4(b)(7)	30-60 hours community service +up to \$100 per violation [++investigation costs]	30-60 day license suspension +up to \$150 per violation [++investigation costs]	Revocation or Surrender of license +up to \$200 per violation [++investigation costs] conditions are met or indefinitely]	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Engaging in sexual contact with a patient/client as the result of the patient/client relationship	Sec. 453.351(a)(7) §322.4(b)(8)	30-60 day license suspension +up to \$100 per violation [++investigation costs]	30-60 day license suspension with restricted practice +up to \$150 per violation [++investigation costs]	Revocation or Surrender of license +up to \$200 per violation [++investigation costs] conditions are met or indefinitely]	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Practicing or having practiced with an expired temporary or permanent license	Sec. 453.351(a)(7) §322.4(b)(9)	30-60 hours community service +up to \$100 per violation [++investigation costs]	30-60 day license suspension +up to \$150 per violation [++investigation costs]	Revocation or Surrender of license +up to \$200 per violation [++investigation costs] conditions are met or indefinitely]	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Failing to conform to the minimal standards of acceptable prevailing practice, regardless of whether or not actual injury to any person was sustained, including, but not limited to: (A) failing to assess and evaluate a patient's/client's status; (B) performing or attempting to perform techniques or procedures or both in which the physical therapist or physical therapist assistant is untrained by education or experience; (C) delegating physical therapy functions or responsibilities to an	Sec. 453.351(a)(7) §322.4(b)(10)	30-60 hours community service +up to \$100 per violation [++investigation costs]	30-60 day license suspension +up to \$150 per violation [++investigation costs]	Revocation or Surrender of license +up to \$200 per violation [++investigation costs] conditions are met or indefinitely]	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.



Schedule of Sanctions

Disciplinary Violations	PT Act/Rule	Minimum Discipline	Intermediate Discipline	Maximum Discipline	Remarks
individual lacking the ability or knowledge to perform the function or responsibility in question; or (D) causing, permitting, or allowing physical or emotional injury or impairment of dignity or safety to the patient/client					
Intentionally or knowingly offering to pay or agreeing to accept any remuneration directly or indirectly, overtly or covertly, in cash or in kind, to or from any person, firm, association of persons, partnership, or corporation for receiving or soliciting patients or patronage, regardless of source of reimbursement, unless said business arrangement or payments practice is acceptable under 42 United States Code §1320a-7(b) or its regulations	Sec. 453.351(a)(7) §322.4(b)(11)	30-60 hours community service +up to \$100 per violation [+investigation costs]	30-60 day license suspension +up to \$150 per violation [+investigation costs]	Revocation or Surrender of license +up to \$200 per violation [+investigation costs-are met or indefinitely]	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat nature of violation, or development.
Advertising in a manner which is false, misleading, or deceptive	Sec. 453.351(a)(7) §322.4(b)(12)	Letter to cease and desist; if licensed, 30-60 hours community service +up to \$100 per violation [+investigation costs]	If licensed, 30-60 day license suspension +up to \$150 per violation [+investigation costs]	Revocation or Surrender of license +up to \$200 per violation [+investigation costs-are met or indefinitely]	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat nature of violation, or development.
Knowingly falsifying and/or forging a referring practitioner's referral for physical therapy	Sec. 453.351(a)(7) §322.4(b)(13)	30-60 day license suspension +up to \$100 per violation [+investigation costs]	30-60 day license suspension with restricted practice +up to \$150 per violation [+investigation costs]	Revocation or Surrender of license +up to \$200 per violation [+investigation costs-are met or indefinitely]	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat nature of violation, or development.
[Failing to register a physical therapy facility which is not exempt or failing to renew the registration of a physical therapy facility which is not exempt]	[Sec. 453.351(a)(7) §322.4(b)(14)]	[Letter to cease and desist; if licensed, letter of reprimand to the TIG, all PTs, all PTAs, and	[30-60-day facility suspension +investigative costs]	[Revocation or Surrender of license +investigative costs]	[Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation;

Schedule of Sanctions

Disciplinary Violations	PT Act/Rule	Minimum Discipline	Intermediate Discipline	Maximum Discipline	Remarks
[Practicing in an unregistered physical therapy facility which is not exempt]	[See: 453.351(a)(7) §322.4(b)(15)]	facility +investigative costs] [letter to cease and desist; if licensed, letter of reprimand to the ITC; all PTCs, all PTCs, and facility +investigative costs]	[30-60 hours community service; 30-60 day license suspension +investigative costs]	[Revocation or Surrender of license +investigative costs (until conditions are met or indefinitely)]	repeat of violation, or developments.] [Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or developments.]
Failing to notify the board of any conduct by another licensee which reasonably appears to be a violation of the Practice Act and rules, or aids or causes another person, directly or indirectly, to violate the Practice Act or rules of the board	Sec. 453.351(a)(7) §322.4(b)(14) [46]	30-60 hours community service +up to \$100 per violation [investigative costs]	30-60 day license suspension +up to \$150 per violation [investigative costs]	Revocation or Surrender of license +up to \$200 per violation [until conditions are met or indefinitely]	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Abandoning or neglecting a patient under current care without making reasonable arrangements or the continuation of such care	Sec. 453.351(a)(7) §322.4(b)(15) [47]	30 days suspension [30-60 hours community service] +up to \$100 per violation [investigative costs]	30-60 day license suspension +up to \$150 per violation [investigative costs]	Revocation or Surrender of license +up to \$200 per violation [until conditions are met or indefinitely]	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Failing to maintain the confidentiality of all verbal, written, electronic, augmentative, and nonverbal communication, including compliance with HIPAA regulations	Sec. 453.351(a)(7) §322.4(b)(16) [48]	30-60 hours community service +up to \$100 per violation [investigative costs]	30-60 day license suspension +up to \$150 per violation [investigative costs]	Revocation or Surrender of license +up to \$200 per violation [until conditions are met or indefinitely]	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Failed CCU Audit	§341.2(g)	30-60 hours community service + CE hours completed +up to \$100 per violation [investigative costs]	30-60 day license suspension + CE hours completed +up to \$150 per violation [investigative costs]	Revocation or Surrender of license +up to \$200 per violation [until conditions are met or indefinitely]	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Failed to properly renew license	§341.2(c)(d)	30-60 hours community service + CE hours completed	30-60 day license suspension + CE hours completed	Revocation or Surrender of license	Alternative disciplinary decisions or pursuing other courses of action may depend on the

**Schedule of Sanctions**

Disciplinary Violations	PT Act/Rule	Minimum Discipline	Intermediate Discipline	Maximum Discipline	Remarks
Except as provided by Section 453.301 or 453.302, provided physical therapy to a person without a referral from a referring practitioner	Sec. 453.351 (a)(1)	up to \$100 per violation [investigation costs]	30-60 hours community service up to \$100 per violation [investigation costs]	up to \$150 per violation [investigation costs] Revocation or Surrender of license up to \$200 per violation [investigation costs]	nature of the situation, repeat of violation, or development. Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Used drugs or intoxicating liquors to an extent that affects the license holder's or applicant's professional competence	Sec. 453.351(a)(2) §343.5	30-60 day license suspension up to \$100 per violation [investigation costs]	30-60 day license suspension with restricted practice up to \$150 per violation [investigation costs]	Revocation or Surrender of license up to \$200 per violation [investigation costs]	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Failure to report felony conviction; been convicted of a felony, including a finding or verdict of guilty, an admission of guilt, or a plea of nolo contendere, in this state or in any other state or nation	Sec. 453.351 (a)(3) §343.6(a)(1) §343.9	30 day license suspension up to \$100 per violation [investigation costs]	2-6 month license suspension with restricted practice up to \$150 per violation [investigation costs]	Revocation or Surrender of license up to \$200 per violation [investigation costs]	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Obtained or attempted to obtain a license by fraud or deception	Sec. 453.351 (a)(4) §343.6(a)(1)	Letter to cease and desist; if licensed, 60-90 day license suspension up to \$100 per violation [investigation costs]	2-6 month license suspension with restricted practice up to \$150 per violation [investigation costs]; referral for criminal investigative entity	Revocation or Surrender of license up to \$200 per violation [investigation costs]	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Been grossly negligent in the practice of physical therapy or in acting as a physical therapist assistant	Sec. 453.351 (a)(5) §343.7	30-60 day license suspension up to \$100 per violation [investigation costs]	30-60 day license suspension with restricted practice	Revocation or Surrender of license up to \$200 per violation [investigation costs]	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.

Schedule of Sanctions

Disciplinary Violations	PT Act/Rule	Minimum Discipline	Intermediate Discipline	Maximum Discipline	Remarks
Been found to be mentally incompetent by a court	Sec. 453.351 (a)(6) §343.8	30-60 day license suspension with provisional restricted practice +up to \$100 per violation [++investigation costs]	+up to \$150 per violation [++investigation costs] 6-12 month license suspension with provisional restricted practice +up to \$150 per violation [++investigation costs]	Revocation or Surrender of license +up to \$200 per violation [++investigation costs] conditions are met or indefinitely]	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Having a license to practice physical therapy or a license to practice another health care profession revoked or suspended or had other disciplinary action taken against him or had his/her application for license refused, revoked, or suspended by the proper licensing authority of another state, territory, or nation	Sec. 453.351(a)(8)(9) §343.6(a)(2)	30 day license suspension +up to \$100 per violation [++investigation costs]	2-6 month license suspension with restricted practice +up to \$150 per violation [++investigation costs]	Revocation or Surrender of license +up to \$200 per violation [++investigation costs] conditions are met or indefinitely]	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Noncompliance professionally and/or ethically in conduct not otherwise specified	APTA guide for professional conduct	30-60 [8-30] hours community service; complete additional course in ethics +up to \$100 per violation [++investigation costs]	30-60 day license suspension +up to \$150 per violation [++investigation costs]	Revocation or Surrender of license +up to \$200 per violation [++investigation costs] conditions are met or indefinitely]	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.

Figure: 40 TAC §374.1(c)

**Schedule of Sanctions**

Disciplinary Violations	OT Act/Rule	Minimum Discipline	Intermediate Discipline	Maximum Discipline	Remarks
Impersonating another person holding an occupational therapy license or allowing another person to use his or her license	Sec. 454.301(a)(6) <u>Sec. 454.201 §374.2(1)</u>	30-45 day license suspension <u>+up to \$100 per violation</u> [ <u>+investigative costs</u> ] / Cease and desist letter to the impersonator	45-90 day license suspension <u>+up to \$150 per violation</u> [ <u>+investigative costs</u> ]	Revocation or Surrender of license <u>+up to \$200 per violation</u> [(until conditions are met or indefinitely)]	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Using occupational therapy techniques or modalities for purposes not consistent with the development of occupational therapy as a profession, as a science, or as a means for promoting the public health and welfare	Sec. 454.301(a)(6) <u>§374.2(2)</u>	30-60 hours community service <u>+up to \$100 per violation</u> [ <u>+investigative costs</u> ]	30-60 day license suspension <u>+up to \$150 per violation</u> [ <u>+investigative costs</u> ]	Revocation or Surrender of license <u>+up to \$200 per violation</u> [(until conditions are met or indefinitely)]	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Failing to report or otherwise concealing information related to violations of the Act, or rules and regulations pursuant to the Act, which could therefore result in harm to the public health and welfare or damage the reputation of the profession	Sec. 454.301(a)(6) <u>§374.2(3)</u>	30-60 hours community service <u>+up to \$100 per violation</u> [ <u>+investigative costs</u> ]	30-60 day license suspension <u>+up to \$150 per violation</u> [ <u>+investigative costs</u> ]	Revocation or Surrender of license <u>+up to \$200 per violation</u> [(until conditions are met or indefinitely)]	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Intentionally making or filing a false or misleading report, or failing to file a report when it is required by law or third person, or intentionally obstructing or attempting to obstruct another person from filing such a report	Sec. 454.301(a)(6) <u>§374.2(4)</u>	30-60 hours community service <u>+up to \$100 per violation</u> [ <u>+investigative costs</u> ]	30-60 day license suspension <u>+up to \$150 per violation</u> [ <u>+investigative costs</u> ]	Revocation or Surrender of license <u>+up to \$200 per violation</u> [(until conditions are met or indefinitely)]	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Intentionally harassing,	Sec. 454.301(a)(6)	30-60 hours community	30-60 day license	Revocation or Surrender	Alternative disciplinary

**Schedule of Sanctions**

Disciplinary Violations	OT Act/Rule	Minimum Discipline	Intermediate Discipline	Maximum Discipline	Remarks
abusing, or intimidating a patient either physically or verbally	§374.2(5)	service <u>up to \$100 per violation</u> [ <del>investigative costs</del> ]	suspension with restricted practice <u>up to \$150 per violation</u> [ <del>investigative costs</del> ]; referral for criminal investigative entity	of license <u>up to \$200 per violation</u> [ <del>until conditions are met or indefinitely</del> ]	decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Intentionally or knowingly offering to pay or agreeing to accept any remuneration directly or indirectly, overtly or covertly, in cash or in kind, to or from any person, firm, association of persons, partnership, or corporation for receiving or soliciting patients or patronage, regardless of source of reimbursement, unless said business arrangement or payments practice is acceptable under the Texas Health and Safety Code, §§161.091 - 161.094, the Social Security Act, §1128B, 42 United States Code 1320a-7b, or the Social Security Act, §1877, 42 United States Code 1395nn or its regulations	Sec. 454.301(a)(6) §374.2(6)	30-60 hours community service <u>up to \$100 per violation</u> [ <del>investigative costs</del> ]	30-60 day license suspension <u>up to \$150 per violation</u> [ <del>investigative costs</del> ]	Revocation or Surrender of license <u>up to \$200 per violation</u> [ <del>until conditions are met or indefinitely</del> ]	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Recommending or prescribing therapeutic devices or modalities sold by a third person for	Sec. 454.301(a)(6) §374.2(7)	30-60 hours community service <u>up to \$100 per violation</u>	30-60 day license suspension <u>up to \$150 per violation</u>	Revocation or Surrender of license <u>up to \$200 per violation</u>	Alternative disciplinary decisions or pursuing other courses of action may depend on

**Schedule of Sanctions**

Disciplinary Violations	OT Act/Rule	Minimum Discipline	Intermediate Discipline	Maximum Discipline	Remarks
the purpose or with the result of receiving a fee or other consideration from the third person		[+investigative costs]	[+investigative costs]	[(until conditions are met or indefinitely)]	the nature of the situation, repeat of violation, or development.
Breaching the confidentiality of the patient/therapist relationship	Sec. 454.301(a)(6) §374.2(8)	30-60 hours community service <u>+up to \$100 per violation</u> [+investigative costs]	30-60 day license suspension <u>+up to \$150 per violation</u> [+investigative costs]	Revocation or Surrender of license <u>+up to \$200 per violation</u> [(until conditions are met or indefinitely)]	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Failing to obtain informed consent prior to engaging in scientific research involving patients, or otherwise violating ethical principles of research as defined by the TBOTE Code of Ethics, §374.4 of this title (relating to Code of Ethics), or other occupational therapy standards	Sec. 454.301(a)(6) §374.2(9)	30-60 hours community service and additional course in ethics <u>+up to \$100 per violation</u> [+investigative costs]	30-60 day license suspension and additional course in ethics <u>+up to \$150 per violation</u> [+investigative costs]	Revocation or Surrender of license <u>+up to \$200 per violation</u> [(until conditions are met or indefinitely)]	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Practicing occupational therapy after the expiration of a temporary, provisional, or regular license	Sec. 454.301(a)(6) Sec. 454.201 §374.2(10)	30-60 hours community service <u>+up to \$100 per violation</u> [+investigative costs]	30-60 day license suspension <u>+up to \$150 per violation</u> [+investigative costs]	Revocation or Surrender of license <u>+up to \$200 per violation</u> [(until conditions are met or indefinitely)]	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Violation of Chapter 373 of this title (relating to Supervision)	Sec. 454.301(a)(6) §374.2(11)	30-60 hours community service <u>+up to \$100 per violation</u> [+investigative costs]	30-60 day license suspension <u>+up to \$150 per violation</u> [+investigative costs]	Revocation or Surrender of license <u>+up to \$200 per violation</u> [(until conditions are met or indefinitely)]	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Advertising in a manner which is	Sec. 454.301(a)(6)	Letter to cease and desist; if	Letter to cease and	Revocation or Surrender	Alternative disciplinary

**Schedule of Sanctions**

Disciplinary Violations	OT Act/Rule	Minimum Discipline	Intermediate Discipline	Maximum Discipline	Remarks
false, misleading, or deceptive / Advertised in a manner that in any way tends to deceive or defraud the public	§374.2(12) / Sec. 454.301(7)	licensed, 30-60 hours community service <u>+up to \$100 per violation</u> [ <del>+investigative costs</del> ]	desist; if licensed, 30-60 day license suspension <u>+up to \$150 per violation</u> [ <del>+investigative costs</del> ]	of license <u>+up to \$200 per violation</u> [ <del>(until conditions are met or indefinitely)</del> ]	decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Failing to give sufficient prior written notice of resignation of employment (or termination of contract) resulting in loss or delay of patient treatment for those patients/clients under the licensee's care	Sec. 454.301(a)(6) §374.2(13)	30-60 hours community service <u>+up to \$100 per violation</u> [ <del>+investigative costs</del> ]	30-60 day license suspension <u>+up to \$150 per violation</u> [ <del>+investigative costs</del> ]	Revocation or Surrender of license <u>+up to \$200 per violation</u> [ <del>(until conditions are met or indefinitely)</del> ]	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Failing to maintain the confidentiality of all verbal, written, electronic, augmentative, and nonverbal communication, including compliance with HIPAA regulations	Sec. 454.301(a)(6) §374.2(14)	30-60 hours community service <u>+up to \$100 per violation</u> [ <del>+investigative costs</del> ]	30-60 day license suspension <u>+up to \$150 per violation</u> [ <del>+investigative costs</del> ]	Revocation or Surrender of license <u>+up to \$200 per violation</u> [ <del>(until conditions are met or indefinitely)</del> ]	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Failed CE Audit	§367.3	30-60 hours community service and completion of CE hours <u>+up to \$100 per violation</u> [ <del>+investigative costs</del> ]	30-60 day license suspension and completion of CE hours <u>+up to \$150 per violation</u> [ <del>+investigative costs</del> ]	Revocation or Surrender of license <u>+up to \$200 per violation</u> [ <del>(until conditions are met or indefinitely)</del> ]	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Failed to properly renew license	Sec. 454.252 Sec. 454.255 §367.1[(b)] §370.1	30-60 hours community service and completion of CE hours <u>+up to \$100 per violation</u> [ <del>+investigative costs</del> ]	30-60 day license suspension and completion of CE hours <u>+up to \$150 per violation</u> [ <del>+investigative costs</del> ]	Revocation or Surrender of license <u>+up to \$200 per violation</u> [ <del>(until conditions are met or indefinitely)</del> ]	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Used drugs or intoxicating liquors to an extent that	Sec. 454.301(1)	30-90 day license suspension	6-12 month license suspension	Revocation or Surrender of license	Alternative disciplinary decisions or



**Schedule of Sanctions**

Disciplinary Violations	OT Act/Rule	Minimum Discipline	Intermediate Discipline	Maximum Discipline	Remarks
affects the applicant's or license holder's professional competence		with restricted practice <u>+up to \$100 per violation</u> [ <del>+investigative costs</del> ]	with [ <del>provisional</del> ] restricted practice <u>+up to \$150 per violation</u> [ <del>+investigative costs</del> ]	<u>+up to \$200 per violation</u> [ <del>(until conditions are met or indefinitely)</del> ]	pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Been convicted of a crime, other than a minor offense defined as a "minor misdemeanor," "violation," or "offense," in any court if the act for which the applicant or license holder was convicted is determined by the board to have a direct bearing on whether the applicant or license holder should be entrusted to serve the public in the capacity of an occupational therapist or occupational therapy assistant	Sec. 454.301(2)	Restricted practice <u>+up to \$100 per violation</u>	30-60 day license suspension with [ <del>provisional</del> ] restricted practice <u>+up to \$150 per violation</u> [ <del>+investigative costs</del> ]	Revocation or Surrender of license <u>+up to \$200 per violation</u> [ <del>(until conditions are met or indefinitely)</del> ]	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Obtained or attempted to obtain a license by fraud or deception	Sec. 454.301(3)	Letter of cease and desist for attempter / 30-60 day <u>licensee</u> suspension <u>+up to \$100 per violation</u> [ <del>+investigative costs</del> ]	60-90 day license suspension with restricted practice <u>+up to \$150 per violation</u> [ <del>+investigative costs</del> ]; referral for criminal investigative entity	Revocation or Surrender of license <u>+up to \$200 per violation</u> [ <del>(until conditions are met or indefinitely)</del> ]	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Been grossly negligent in the practice of occupational therapy or in acting as an occupational therapy assistant	Sec. 454.301(4)	30-60 hours community service <u>+up to \$100 per violation</u> [ <del>+investigative costs</del> ]	30-90 day license suspension with restricted practice <u>+up to \$150 per violation</u> [ <del>+investigative costs</del> ]	Revocation or Surrender of license <u>+up to \$200 per violation</u> [ <del>(until conditions are met or indefinitely)</del> ]	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.

**Schedule of Sanctions**

Disciplinary Violations	OT Act/Rule	Minimum Discipline	Intermediate Discipline	Maximum Discipline	Remarks
			<del>costs</del> ]; referral for criminal investigative entity	<del>are met or indefinitely</del> ]	of violation, or development.
Been found mentally incompetent by a court	Sec. 454.301(5)	30-60 day license suspension with <del>[provisional]</del> restricted practice <u>+up to \$100 per violation</u> [ <del>+</del> investigative costs]	6-12 month license suspension with <del>[provisional]</del> restricted practice <u>+up to \$150 per violation</u> [ <del>+</del> investigative costs]	Revocation or Surrender of license <u>+up to \$200 per violation</u> [ <del>(until conditions are met or indefinitely)</del> ]	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Had a license to practice occupational therapy revoked or suspended or had other disciplinary action taken against the applicant or license holder by the proper licensing authority of another state, territory, or nation	Sec. 454.301(8)	30-60 hours community service <u>+up to \$100 per violation</u> [ <del>+</del> investigative costs]	30-60 day license suspension with restricted practice <u>+up to \$150 per violation</u> [ <del>+</del> investigative costs]	Revocation or Surrender of license <u>+up to \$200 per violation</u> [ <del>(until conditions are met or indefinitely)</del> ]	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.

Figure: 43 TAC Chapter 219 - Preamble

<b>Method of Payment</b>	<b>Indirect Costs for Method of Payment, based on Examples Provided by Third-Party Vendors or Sample Calculations</b>	<b>Hay Permit – \$10</b>	<b>General Single-Trip Permit for Gross Weight between 120,001 and 160,000 Pounds – \$285</b>	<b>Intermodal Shipping Container Port Permit – \$6,000</b>
<b>Credit Card</b>	Only accepted via Texas.gov, which charges 25¢ plus 2.25% of total transaction.	\$10.48	\$291.67	\$6,135.26
<b>ACH</b>	Elavon fee:  \$0.15 per transaction up to 250,000 transactions per year	\$10.15	\$285.15	\$6,000.15
<b>Check</b>	NA	\$10.00	\$285.00	\$6,000.00
<b>Money Order</b>	The U.S. Postal Service fee, based on dollar amount:  \$1.25 for \$0.01 to \$500.00  \$1.75 for \$500.01 to \$1,000.00  Cost to drive to Post Office.	\$22.75	\$297.75	\$6,022.00
<b>Cashier's Check</b>	Wells Fargo fee: \$10.00 each  Cost to drive to bank.	\$31.50	\$306.50	\$6021.50
<b>Cash</b>	Cost to drive to one of the department's 16 Regional Service Centers	\$38.75	\$313.75	\$6028.75
<b>Escrow Account Administered by the Department</b>	\$5.00 administrative fee for each deposit. Deposits are made via check, money order, cashier's check,	\$15, plus any costs for method of payment used for deposit.	\$290, plus any costs for method of payment used for deposit.	\$6,005, plus any costs for method of payment used for deposit.

<b>Method of Payment</b>	<b>Indirect Costs for Method of Payment, based on Examples Provided by Third-Party Vendors or Sample Calculations</b>	<b>Hay Permit – \$10</b>	<b>General Single-Trip Permit for Gross Weight between 120,001 and 160,000 Pounds – \$285</b>	<b>Intermodal Shipping Container Port Permit – \$6,000</b>
	commercial check, cash, and wire.			
<b>PAC</b>	Frost Bank charges \$1.00 per permit transaction.	\$11.00	\$286.00	\$6,001.00

# IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

## Office of the Attorney General

Texas Health and Safety Code and Texas Water Code  
Settlement Notice

The State of Texas gives notice of the following proposed resolution of an environmental enforcement action under the Texas Water Code and the Texas Health and Safety Code. Before the State may enter into a voluntary settlement agreement, pursuant to section 7.110 of the Texas Water Code, the State shall permit the public to comment in writing. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreement if the comments disclose facts or considerations indicating that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the law.

Case Title and Court: *State of Texas v. Community Utility Company*;  
Cause No. D-1-GN-14-003386 in the 353rd Judicial District Court,  
Travis County, Texas.

Background: Defendant Community Utility Company owned and operated public drinking water systems at the Heathergate Estates Subdivision in Crosby, and the Forest Manor Subdivision in Huffman, Harris County, Texas, from at least 2012 through July 2019. The State filed suit in 2014 on behalf of the Texas Commission on Environmental Quality for Defendant's alleged failure to comply with numerous operational, maintenance, and reporting requirements pertaining to public water systems under chapter 341 of the Texas Health and Safety Code and chapter 7 of the Texas Water Code. In July 2019, the water systems were sold with the approval of the Texas Public Utility Commission.

Proposed Settlement: The parties propose an Agreed Final Judgment which provides for an award to the State of \$100,000 in civil penalties and \$10,000 in attorney's fees.

For a complete description of the proposed settlement, the Agreed Final Judgment should be reviewed in its entirety. Requests for copies of the proposed judgment and settlement, and written comments on the same, should be directed to Ekaterina DeAngelo, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, MC-066, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911; email: Ekaterina.DeAngelo@oag.texas.gov. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-202003296

Lesley French

General Counsel

Office of the Attorney General

Filed: August 11, 2020

◆ ◆ ◆  
**State Bar of Texas**

Committee on Disciplinary Rules and Referenda Proposed  
Rule Changes: Proposed Rule 1.00, Texas Disciplinary Rules  
of Professional Conduct

# Committee on Disciplinary Rules and Referenda Proposed Rule Changes

## Texas Disciplinary Rules of Professional Conduct

### Rule 1.00. Terminology

*The Committee on Disciplinary Rules and Referenda, or CDRR, was created by Government Code section 81.0872 and is responsible for overseeing the initial process for proposing a disciplinary rule. Pursuant to Government Code section 81.0876, the Committee publishes the following proposed rule. The Committee will accept comments concerning the proposed rule through October 6, 2020. Comments can be submitted at [texasbar.com/cdrr](http://texasbar.com/cdrr) or by email to [cdrr@texasbar.com](mailto:cdrr@texasbar.com). The Committee will hold a public hearing on the proposed rule by teleconference at 10:30 a.m. CDT on September 17, 2020. For teleconference participation information, please go to [texasbar.com/cdrr/participate](http://texasbar.com/cdrr/participate).*

#### Proposed Rule (Redline Version)

#### **Rule 1.00. Terminology**

- (a) “Adjudicatory Official” denotes a person who serves on a Tribunal.
- (b) “Adjudicatory Proceeding” denotes the consideration of a matter by a Tribunal.
- (c) “Belief” or “Believes” denotes that the person involved actually supposed the fact in question to be true. A person’s belief may be inferred from circumstances.
- (d) “Competent” or “Competence” denotes possession or the ability to timely acquire the legal knowledge, skill, and training reasonably necessary for the representation of the client.
- (e) “Consult” or “Consultation” denotes communication of information and advice reasonably sufficient to permit the client to appreciate the significance of the matter in question.
- (f) “Confirmed in writing.” when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See paragraph (j) for the definition of “informed consent.” If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.
- (g) “Firm” or “Law firm” denotes a lawyer or lawyers in a private firm; or a lawyer or lawyers employed in the legal department of a corporation, legal services organization, or other organization, or in a unit of government.

(h) “Fitness” denotes those qualities of physical, mental and psychological health that enable a person to discharge a lawyer’s responsibilities to clients in conformity with the Texas Disciplinary Rules of Professional Conduct. Normally a lack of fitness is indicated most clearly by a persistent inability to discharge, or unreliability in carrying out, significant obligations.

(i) “Fraud” or “Fraudulent” denotes conduct having a purpose to deceive and not merely negligent misrepresentation or failure to apprise another of relevant information.

(j) “Informed consent” denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about material risks of and reasonably available alternatives to the proposed course of conduct.

(k) “Knowingly,” “Known,” or “Knows” denotes actual knowledge of the fact in question. A person’s knowledge may be inferred from circumstances.

(l) “Law firm”: see “Firm.”

(m) “Partner” denotes an individual or corporate member of a partnership or a shareholder in a law firm organized as a professional corporation.

(n) “Person” includes a legal entity as well as an individual.

(o) “Reasonable” or “Reasonably” when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.

(p) “Reasonable belief” or “Reasonably believes” when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.

(q) “Should know” when used in reference to a lawyer denotes that a reasonable lawyer under the same or similar circumstances would know the matter in question.

(r) “Screened” denotes the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these Rules or other law.

(s) “Substantial” when used in reference to degree or extent denotes a matter of meaningful significance or involvement.

(t) “Tribunal” denotes any governmental body or official or any other person engaged in a process of resolving a particular dispute or controversy. “Tribunal” includes such institutions as courts and administrative agencies when engaging in adjudicatory or licensing activities as defined by applicable law or rules of practice or procedure, as well as judges, magistrates, special masters, referees, arbitrators, mediators, hearing officers and comparable persons empowered to resolve or to recommend a resolution of a particular matter; but it does not include jurors, prospective jurors,

legislative bodies or their committees, members or staffs, nor does it include other governmental bodies when acting in a legislative or rule-making capacity.

(u) “Writing” or “written” denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or videorecording, and electronic communications. A “signed” writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

## **Proposed Rule (Clean Version)**

### **Rule 1.00. Terminology**

- (a) “Adjudicatory Official” denotes a person who serves on a Tribunal.
- (b) “Adjudicatory Proceeding” denotes the consideration of a matter by a Tribunal.
- (c) “Belief” or “Believes” denotes that the person involved actually supposed the fact in question to be true. A person’s belief may be inferred from circumstances.
- (d) “Competent” or “Competence” denotes possession or the ability to timely acquire the legal knowledge, skill, and training reasonably necessary for the representation of the client.
- (e) “Consult” or “Consultation” denotes communication of information and advice reasonably sufficient to permit the client to appreciate the significance of the matter in question.
- (f) “Confirmed in writing,” when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See paragraph (j) for the definition of “informed consent.” If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.
- (g) “Firm” or “Law firm” denotes a lawyer or lawyers in a private firm; or a lawyer or lawyers employed in the legal department of a corporation, legal services organization, or other organization, or in a unit of government.
- (h) “Fitness” denotes those qualities of physical, mental and psychological health that enable a person to discharge a lawyer’s responsibilities to clients in conformity with the Texas Disciplinary Rules of Professional Conduct. Normally a lack of fitness is indicated most clearly by a persistent inability to discharge, or unreliability in carrying out, significant obligations.
- (i) “Fraud” or “Fraudulent” denotes conduct having a purpose to deceive and not merely negligent misrepresentation or failure to apprise another of relevant information.
- (j) “Informed consent” denotes the agreement by a person to a proposed course of conduct after



the lawyer has communicated adequate information and explanation about material risks of and reasonably available alternatives to the proposed course of conduct.

(k) “Knowingly,” “Known,” or “Knows” denotes actual knowledge of the fact in question. A person’s knowledge may be inferred from circumstances.

(l) “Law firm”: see “Firm.”

(m) “Partner” denotes an individual or corporate member of a partnership or a shareholder in a law firm organized as a professional corporation.

(n) “Person” includes a legal entity as well as an individual.

(o) “Reasonable” or “Reasonably” when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.

(p) “Reasonable belief” or “Reasonably believes” when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.

(q) “Should know” when used in reference to a lawyer denotes that a reasonable lawyer under the same or similar circumstances would know the matter in question.

(r) “Screened” denotes the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these Rules or other law.

(s) “Substantial” when used in reference to degree or extent denotes a matter of meaningful significance or involvement.

(t) “Tribunal” denotes any governmental body or official or any other person engaged in a process of resolving a particular dispute or controversy. “Tribunal” includes such institutions as courts and administrative agencies when engaging in adjudicatory or licensing activities as defined by applicable law or rules of practice or procedure, as well as judges, magistrates, special masters, referees, arbitrators, mediators, hearing officers and comparable persons empowered to resolve or to recommend a resolution of a particular matter; but it does not include jurors, prospective jurors, legislative bodies or their committees, members or staffs, nor does it include other governmental bodies when acting in a legislative or rule-making capacity.

(u) “Writing” or “written” denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or videorecording, and electronic communications. A “signed” writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

TRD-202003188  
Brad Johnson  
Disciplinary Rules and Referenda Attorney  
State Bar of Texas  
Filed: August 6, 2020

Committee on Disciplinary Rules and Referenda Proposed  
Rule Changes: Proposed Rule 1.18, Texas Disciplinary Rules  
of Professional Conduct



# Committee on Disciplinary Rules and Referenda Proposed Rule Changes

## Texas Disciplinary Rules of Professional Conduct

### Rule 1.18. Duties to Prospective Client

*The Committee on Disciplinary Rules and Referenda, or CDRR, was created by Government Code section 81.0872 and is responsible for overseeing the initial process for proposing a disciplinary rule. Pursuant to Government Code section 81.0876, the Committee publishes the following proposed rule. The Committee will accept comments concerning the proposed rule through October 6, 2020. Comments can be submitted at [texasbar.com/cdrd](http://texasbar.com/cdrd) or by email to [cdrr@texasbar.com](mailto:cdrr@texasbar.com). The Committee will hold a public hearing on the proposed rule by teleconference at 10:30 a.m. CDT on September 17, 2020. For teleconference participation information, please go to [texasbar.com/cdrd/participate](http://texasbar.com/cdrd/participate).*

#### **Proposed Rule (Redline Version)**

#### **Rule 1.18. Duties to Prospective Client**

(a) A person who consults with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.

(b) Even when no client-lawyer relationship ensues, a lawyer who has learned information from a prospective client shall not use or reveal that information, except as these Rules would permit or require with respect to a client, or if the information has become generally known or would not be disadvantageous to the former prospective client.

(c) A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (d). If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).

(d) When the lawyer has received disqualifying information as defined in paragraph (c), representation is permissible if:

(1) both the affected client and the prospective client have given informed consent, confirmed in writing, or:

(2) the lawyer who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client; and

- (i) the disqualified lawyer is timely screened from any participation in the matter and is not directly apportioned any part of the fee therefrom; and
- (ii) written notice is promptly given to the prospective client.

## **Proposed Rule (Clean Version)**

### **Rule 1.18. Duties to Prospective Client**

(a) A person who consults with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.

(b) Even when no client-lawyer relationship ensues, a lawyer who has learned information from a prospective client shall not use or reveal that information, except as these Rules would permit or require with respect to a client, or if the information has become generally known or would not be disadvantageous to the former prospective client.

(c) A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (d). If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).

(d) When the lawyer has received disqualifying information as defined in paragraph (c), representation is permissible if:

(1) both the affected client and the prospective client have given informed consent, confirmed in writing, or:

(2) the lawyer who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client; and

(i) the disqualified lawyer is timely screened from any participation in the matter and is not directly apportioned any part of the fee therefrom; and

(ii) written notice is promptly given to the prospective client.

TRD-202003189  
Brad Johnson  
Disciplinary Rules and Referenda Attorney  
State Bar of Texas  
Filed: August 6, 2020

Committee on Disciplinary Rules and Referenda Proposed  
Rule Changes: Proposed Rule 13.05, Texas Rules of  
Disciplinary Procedure



# Committee on Disciplinary Rules and Referenda Proposed Rule Changes

## Texas Rules of Disciplinary Procedure

### Rule 13.05. Termination of Custodianship

*The Committee on Disciplinary Rules and Referenda, or CDRR, was created by Government Code section 81.0872 and is responsible for overseeing the initial process for proposing a disciplinary rule. Pursuant to Government Code section 81.0876, the Committee publishes the following proposed rule. The Committee will accept comments concerning the proposed rule through October 6, 2020. Comments can be submitted at [texasbar.com/cdrr](http://texasbar.com/cdrr) or by email to [cdrr@texasbar.com](mailto:cdrr@texasbar.com). The Committee will hold a public hearing on the proposed rule by teleconference at 10:30 a.m. CDT on September 17, 2020. For teleconference participation information, please go to [texasbar.com/cdrr/participate](http://texasbar.com/cdrr/participate).*

#### Proposed Rule (Redline Version)

**13.05. Termination of Custodianship:** A custodianship conducted by an appointed custodian under Rule 13.04 shall terminate upon one or more of the following events:

- A. The transfer of all active files and other client property in the possession of the custodian in accordance with the Texas Disciplinary Rules of Professional Conduct, in one or more of the following means:
  - 1. To attorneys assuming the responsibility for ongoing matters; or
  - 2. To the client or client's authorized representative, to the extent that the client is lawfully entitled to such materials.
- B. Entry of an order terminating the custodianship from a court with jurisdiction over the practice under Rules 13.02 and 13.03.
- C. The return of the appointing attorney to his or her practice prior to completion of the custodianship and resumption of representation of active client matters with the competence to conduct such representation.

In the event there is disagreement about whether the appointing attorney is competent to resume representation of a client matter upon return to the practice, either the appointed custodian or the appointing attorney may petition for a determination and order of a court under Rules 13.02 and 13.03 concerning the resumption of the practice by the appointing attorney and termination of the custodianship. An appointed custodian may also petition the court for an order concerning the proper disposition of dormant or closed client files, distribution of active files for which a client is nonresponsive or cannot be located, and for proper distribution of any client property or other

property being held pursuant to a representation by the appointing attorney, including client funds held in an IOLTA account.

### Proposed Rule (Clean Version)

**13.05. Termination of Custodianship:** A custodianship conducted by an appointed custodian under Rule 13.04 shall terminate upon one or more of the following events:

- A. The transfer of all active files and other client property in the possession of the custodian in accordance with the Texas Disciplinary Rules of Professional Conduct, in one or more of the following means:
  - 1. To attorneys assuming the responsibility for ongoing matters; or
  - 2. To the client or client's authorized representative, to the extent that the client is lawfully entitled to such materials.
- B. Entry of an order terminating the custodianship from a court with jurisdiction over the practice under Rules 13.02 and 13.03.
- C. The return of the appointing attorney to his or her practice prior to completion of the custodianship and resumption of representation of active client matters with the competence to conduct such representation.

In the event there is disagreement about whether the appointing attorney is competent to resume representation of a client matter upon return to the practice, either the appointed custodian or the appointing attorney may petition for a determination and order of a court under Rules 13.02 and 13.03 concerning the resumption of the practice by the appointing attorney and termination of the custodianship. An appointed custodian may also petition the court for an order concerning the proper disposition of dormant or closed client files, distribution of active files for which a client is nonresponsive or cannot be located, and for proper distribution of any client property or other property being held pursuant to a representation by the appointing attorney, including client funds held in an IOLTA account.

TRD-202003190  
Brad Johnson  
Disciplinary Rules and Referenda Attorney  
State Bar of Texas  
Filed: August 6, 2020



### Office of Consumer Credit Commissioner

#### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/17/20 - 08/23/20 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup> credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/17/20 - 08/23/20 is 18% for Commercial over \$250,000.

<sup>1</sup> Credit for personal, family or household use.

<sup>2</sup> Credit for business, commercial, investment or other similar purpose.

TRD-202003304  
Leslie L. Pettijohn  
Commissioner  
Office of Consumer Credit Commissioner  
Filed: August 11, 2020



## Texas Commission on Environmental Quality

### Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **September 22, 2020**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commissions orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commissions central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **September 22, 2020**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: Aqua Utilities, Incorporated; DOCKET NUMBER: 2020-0545-MLM-E; IDENTIFIER: RN101244697; LOCATION: Willis, Montgomery County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(b)(1)(C)(i) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide a well capacity of 0.6 gallons per minute (gpm) per connection; 30 TAC §290.45(b)(1)(C)(iii) and THSC, §341.0315(c), by failing to provide two or more pumps having a total capacity of 2.0 gpm per connection at each pump station or pressure plane; 30 TAC §290.45(b)(1)(C)(iv) and THSC, §341.0315(c), by failing to provide a pressure tank capacity of 20 gallons per connection; 30 TAC §290.45(b)(1)(D)(i) and THSC, §341.0315(c), by failing to provide a well capacity of 0.6 gpm per connection; 30 TAC §290.45(b)(1)(D)(ii) and THSC, §341.0315(c), by failing to provide a total storage tank capacity of 200 gallons per connection; 30 TAC §290.45(b)(1)(D)(iii) and THSC, §341.0315(c), by failing to provide two or more pumps having a total capacity of 2.0 gpm per connection at each pump station or pressure plane; 30 TAC §290.45(b)(1)(D)(iv) and THSC, §341.0315(c), by failing to provide a pressure tank capacity of 20 gallons per connection; and 30 TAC §291.93(3)(A) and TWC, §13.139(d), by failing to provide a written planning report for a utility possessing a Certificate of Convenience and Necessity that has reached or exceeded 85% of all or part of its capacity; PENALTY: \$4,400; ENFORCEMENT COORDINATOR: Marla Waters, (512) 239-4712; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: City of Aransas Pass; DOCKET NUMBER: 2019-0453-MWD-E; IDENTIFIER: RN102076452; LOCATION: Aransas Pass, San Patricio County; TYPE OF FACILITY: wastewater

treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010521002, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, by failing to comply with permitted effluent limitations; 30 TAC §305.125(1) and §319.5(b), and TPDES Permit Number WQ0010521002, Effluent Limitations and Monitoring Requirements Numbers 1, 2, 3, 6, and 7, by failing to collect and analyze all effluent samples at the intervals specified in the permit; and 30 TAC §305.125(1) and (17) and §319.7(d), and TPDES Permit Number WQ0010521002, Monitoring and Reporting Requirements Number 1, by failing to timely submit monitoring results at intervals specified in the permit; PENALTY: \$95,512; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$95,512; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(3) COMPANY: City of De Leon; DOCKET NUMBER: 2020-0712-MWD-E; IDENTIFIER: RN101920569; LOCATION: De Leon, Comanche County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010078001, Effluent Limitations and Monitoring Requirements Numbers 1 and 6, by failing to comply with permitted effluent limitations; PENALTY: \$2,875; ENFORCEMENT COORDINATOR: Stephanie Frederick, (512) 239-1001; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(4) COMPANY: City of Mount Calm; DOCKET NUMBER: 2019-1290-MWD-E; IDENTIFIER: RN101919835; LOCATION: Mount Calm, Hill County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.65 and §305.125(2) and TWC, §26.121(a)(1), by failing to maintain authorization for the discharge of wastewater into or adjacent to any water in the state; PENALTY: \$6,250; ENFORCEMENT COORDINATOR: Christopher Moreno, (254) 761-3038; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(5) COMPANY: City of Plains; DOCKET NUMBER: 2020-0532-MWD-E; IDENTIFIER: RN101919819; LOCATION: Plains, Yoakum County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1) and Texas Pollutant Discharge Elimination System Permit Number WQ0010114001, Special Provision Number 14, by failing to provide certification by a Texas Licensed Professional Engineer that the pond liners meet the appropriate criteria within 60 days of issuance; PENALTY: \$1,063; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (361) 825-3425; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(6) COMPANY: DA COSTA HERMANN SONS HOME ASSOCIATION and Dacosta Sons of Hermann Lodge 265; DOCKET NUMBER: 2020-0036-PWS-E; IDENTIFIER: RN101256774; LOCATION: Victoria, Victoria County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(d)(2)(A)(ii) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide a minimum pressure tank capacity of 220 gallons; 30 TAC §290.46(n)(3), by failing to keep on file copies of well completion data, as defined in 30 TAC §290.41(c)(3)(A), for as long as the well remains in service; and 30 TAC §290.110(d)(1), by failing to measure the free chlorine residual to a minimum accuracy of plus or minus 0.1 milligram per liter using methods that conform to the requirements of 30 TAC §290.119; PENALTY: \$787; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (361) 825-3425; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(7) COMPANY: Diego Cardenas and Saira P. Cardenas; DOCKET NUMBER: 2019-1560-IHW-E; IDENTIFIER: RN110825593; LOCATION: Scurry, Kaufman County; TYPE OF FACILITY: unauthorized municipal solid waste disposal site; RULES VIOLATED: 30 TAC §327.5(a) and TWC, §26.121(a)(1), by failing to immediately abate and contain a spill or discharge of industrial solid waste or municipal hazardous waste into or adjacent to any water of the state; PENALTY: \$3,937; ENFORCEMENT COORDINATOR: Berenice Munoz, (915) 834-4976; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: Fort Bend County Municipal Utility District Number 134A; DOCKET NUMBER: 2020-0331-MWD-E; IDENTIFIER: RN104956511; LOCATION: Richmond, Fort Bend County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1) and (4), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0014715001, Permit Conditions Number 2.d, by failing to take all reasonable steps to minimize or prevent any discharge that has a reasonable likelihood of adversely affecting human health or the environment; PENALTY: \$12,000; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$12,000; ENFORCEMENT COORDINATOR: Christopher Moreno, (254) 761-3038; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: Guinn Enterprises, Incorporated; DOCKET NUMBER: 2020-0825-AIR-E; IDENTIFIER: RN100651298; LOCATION: Spring, Montgomery County; TYPE OF FACILITY: auto body repair and refinishing shop; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; PENALTY: \$938; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: Harris County Municipal Utility District Number 449; DOCKET NUMBER: 2019-1517-MWD-E; IDENTIFIER: RN104670021; LOCATION: Katy, Harris County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), Texas Pollutant Discharge Elimination System Permit Number WQ0014635001, Interim I and Interim III Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$6,750; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$5,400; ENFORCEMENT COORDINATOR: Caleb Olson, (817) 588-5856; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(11) COMPANY: Kyle Doby; DOCKET NUMBER: 2020-0844-WQ-E; IDENTIFIER: RN110955762; LOCATION: Abilene, Taylor County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit (stormwater); PENALTY: \$875; ENFORCEMENT COORDINATOR: Ellen Ojeda, (512) 239-2581; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(12) COMPANY: LOTSA LOOT 1, LLC; DOCKET NUMBER: 2020-0823-AIR-E; IDENTIFIER: RN110957941; LOCATION: Magnolia, Montgomery County; TYPE OF FACILITY: paint and body shop; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; PENALTY: \$938; ENFORCEMENT COORDINATOR: Toni Red, (512) 239-1704; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(13) COMPANY: LOTSA LOOT 3, LLC; DOCKET NUMBER: 2020-0833-AIR-E; IDENTIFIER: RN102517844; LOCATION: Magnolia, Montgomery County; TYPE OF FACILITY: auto body repair and refinishing facility; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; PENALTY: \$938; ENFORCEMENT COORDINATOR: Toni Red, (512) 239-1704; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(14) COMPANY: LOTSA LOOT, LLC; DOCKET NUMBER: 2020-0814-AIR-E; IDENTIFIER: RN100572130; LOCATION: Spring, Montgomery County; TYPE OF FACILITY: paint and body shop; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; PENALTY: \$938; ENFORCEMENT COORDINATOR: Toni Red, (512) 239-1704; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(15) COMPANY: Mauser USA, LLC; DOCKET NUMBER: 2020-0440-AIR-E; IDENTIFIER: RN100211002; LOCATION: Houston, Harris County; TYPE OF FACILITY: a steel and plastic drum manufacturing plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.145(2)(C), Federal Operating Permit (FOP) Number O3319, General Terms and Conditions (GTC), and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit a deviation report no later than 30 days after the end of each reporting period; and 30 TAC §122.143(4) and §122.146(2), FOP Number O3319, GTC and Special Terms and Conditions Number 9, and THSC, §382.085(b), by failing to submit a permit compliance certification within 30 days of any certification period; PENALTY: \$9,713; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(16) COMPANY: Nerro Supply, LLC; DOCKET NUMBER: 2020-0340-PWS-E; IDENTIFIER: RN102677069; LOCATION: Bryan, Brazos County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.43(c)(6), by failing to ensure that clearwells and potable water storage tanks, including associated appurtenances such as valves, pipes, and fittings, are thoroughly tight against leakage; and 30 TAC §290.46(m)(1)(B), by failing to inspect the interior of the facility's pressure tank at least once every five years; PENALTY: \$2,593; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (361) 825-3425; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(17) COMPANY: POYNOR COMMUNITY WATER SUPPLY CORPORATION; DOCKET NUMBER: 2020-0403-PWS-E; IDENTIFIER: RN101450336; LOCATION: Poynor, Henderson County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.44(d) and §290.46(r), by failing to operate the system to maintain a minimum pressure of 35 pounds per square inch (psi) throughout the distribution system under normal operating conditions and a minimum pressure of 20 psi during emergencies such as fire-fighting; and 30 TAC §290.45(b)(1)(C)(iv), by failing to provide an elevated storage capacity of 100 gallons per connection or a pressure tank capacity of 20 gallons per connection; PENALTY: \$1,500; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(18) COMPANY: Ryan Beane; DOCKET NUMBER: 2020-0860-WOC-E; IDENTIFIER: RN109229849; LOCATION: Columbus, Colorado County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license;



PENALTY: \$175; ENFORCEMENT COORDINATOR: Aaron Vincent, (512) 239-0855; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(19) COMPANY: SKILL S CORPORATION dba Rozis Mini Mart; DOCKET NUMBER: 2020-0046-PST-E; IDENTIFIER: RN100929124; LOCATION: Alvin, Brazoria County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (B), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; 30 TAC §334.10(b)(2), by failing to assure that all UST recordkeeping requirements are met; 30 TAC §334.42(i) and TWC, §26.3475(c)(2), by failing to inspect all sumps, manways, overspill containers, or catchment basins associated with a UST system at least once every 60 days to ensure that their sides, bottoms, and any penetration points are maintained liquid-tight; and 30 TAC §334.48(c) and §334.50(b)(1) and (2)(A) and (d)(1)(B), and TWC, §26.3475(a) and (c)(1), by failing to conduct effective inventory control procedures for all USTs involved in the retail sales of petroleum substances used as motor fuel, and failing to monitor the UST in a manner which will detect a release at a frequency of at least once every 30 days, also, failing to provide release detection for the pressurized piping of the UST system; PENALTY: \$6,945; ENFORCEMENT COORDINATOR: Berenice Munoz, (915) 834-4976; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(20) COMPANY: Universal Pressure Pumping, Incorporated; DOCKET NUMBER: 2019-0386-IHW-E; IDENTIFIER: RN109716191; LOCATION: Pearsall, Frio County; TYPE OF FACILITY: oilfield vehicle and machinery maintenance facility; RULES VIOLATED: 30 TAC §335.2(b), by failing to not cause, suffer, allow, or permit the disposal of industrial solid waste (ISW) at an unauthorized facility; and 30 TAC §335.6(a) and (c), by failing to notify the commission of the generation and disposal of ISW at least 90 days prior to engaging in such activities; PENALTY: \$34,287; ENFORCEMENT COORDINATOR: Berenice Munoz, (915) 834-4976; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-202003297

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: August 11, 2020



## Enforcement Orders

A default order was adopted regarding Brian Smith, Docket No. 2018-0843-PST-E on August 12, 2020, assessing \$15,187 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Taylor Pearson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding J.P. GAS & MEGAMART, INC. dba J P Truckstop, Docket No. 2018-1071-PST-E on August 12, 2020, assessing \$18,924 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jake Marx, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Greenville USA Investments Inc dba Prime Stop USA, Docket No. 2018-1634-PST-E on August 12, 2020, assessing \$5,124 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Kevin R. Bartz, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding NA Group LLC dba Lewisville Chevron, Docket No. 2019-0230-PST-E on August 12, 2020, assessing \$9,212 in administrative penalties with \$1,842 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie McCurley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding HEART O' TEXAS COUNCIL OF THE BOY SCOUTS OF AMERICA dba Longhorn Council, Boy Scouts of America, Docket No. 2019-0517-PWS-E on August 12, 2020, assessing \$21,990 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Honeywell International Inc., Docket No. 2019-0728-AIR-E on August 12, 2020, assessing \$190,518 in administrative penalties with \$38,103 deferred. Information concerning any aspect of this order may be obtained by contacting Richard Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Khaled Hassan dba Corner Store, Docket No. 2019-0744-PST-E on August 12, 2020, assessing \$4,921 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Taylor Pearson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Chevron Phillips Chemical Company LP, Docket No. 2019-0751-AIR-E on August 12, 2020, assessing \$25,542 in administrative penalties with \$5,108 deferred. Information concerning any aspect of this order may be obtained by contacting Carol McGrath, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Jim Eanes dba Midway Grocery, Docket No. 2019-0769-PST-E on August 12, 2020, assessing \$42,750 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Carlos Molina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding The Lubrizol Corporation, Docket No. 2019-0977-AIR-E on August 12, 2020, assessing \$26,250 in administrative penalties with \$5,250 deferred. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Crandall, Docket No. 2019-1077-MWD-E on August 12, 2020, assessing \$47,250 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Legacy Reserves Operating LP, Docket No. 2019-1248-AIR-E on August 12, 2020, assessing \$26,405 in administrative penalties with \$5,281 deferred. Information concerning any aspect of this order may be obtained by contacting Carol McGrath, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Specht's Operations, LLC dba Specht's Store, Docket No. 2019-1264-PWS-E on August 12, 2020, assessing \$242 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Samantha Salas, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding GrubTubs, Inc, Docket No. 2019-1277-MLM-E on August 12, 2020, assessing \$18,375 in administrative penalties with \$13,868 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie McCurley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Odfjell Terminals (Houston) Inc., Docket No. 2019-1280-AIR-E on August 12, 2020, assessing \$31,500 in administrative penalties with \$6,300 deferred. Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Motiva Chemicals LLC fka Flint Hills Resources Port Arthur, LLC, Docket No. 2019-1289-AIR-E on August 12, 2020, assessing \$19,238 in administrative penalties with \$3,847 deferred. Information concerning any aspect of this order may be obtained by contacting Carol McGrath, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding JAMERA CUSTOM HOMES, INC., Docket No. 2019-1338-WQ-E on August 12, 2020, assessing \$18,000 in administrative penalties with \$3,600 deferred. Information concerning any aspect of this order may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding BEACH RV PARTNERSHIP, LTD., Docket No. 2019-1452-PWS-E on August 12, 2020, assessing \$5,195 in administrative penalties with \$3,900 deferred. Information concerning any aspect of this order may be obtained by contacting Samantha Salas, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Paper Retriever of Texas, LLC, Docket No. 2019-1547-MLM-E on August 12, 2020, assessing \$10,596 in administrative penalties with \$2,119 deferred. Information concerning any aspect of this order may be obtained by contacting Berenice Munoz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Riviana Foods Inc., Docket No. 2019-1595-AIR-E on August 12, 2020, assessing \$8,438 in administrative penalties with \$1,687 deferred. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Texas Water Systems, Inc., Docket No. 2019-1653-PWS-E on August 12, 2020, assessing \$1,012 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jee Willis, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SAM RAYBURN WATER, INC., Docket No. 2019-1730-PWS-E on August 12, 2020, assessing \$250 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Julianne Dewar, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Jim Wells County Fresh Water Supply District 1, Docket No. 2020-0021-PWS-E on August 12, 2020, assessing \$1,769 in administrative penalties with \$1,592 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding MarkWest Javelina Company, L.L.C., Docket No. 2020-0056-AIR-E on August 12, 2020, assessing \$11,408 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Mackenzie Mehlmann, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202003319  
Bridget C. Bohac  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: August 12, 2020



#### Notice of Costs to Administer the Voluntary Cleanup Program and the Innocent Owner/Operator Program

In accordance with Texas Health and Safety Code, §361.613 (pertaining to the Voluntary Cleanup Program (VCP)) and 30 Texas Administrative Code §333.43 (pertaining to the Innocent Owner/Operator Program (IOP)), the executive director of the Texas Commission on Environmental Quality (TCEQ or commission) annually shall calculate the commission's costs to administer the VCP and the IOP, and shall publish in the *Texas Register* the rates established for the purpose of identifying the costs recoverable by the commission. The TCEQ has calculated and is publishing the bill rate for both the VCP and the IOP as \$115 per hour for the commission's Fiscal Year 2021.

The VCP and the IOP are implemented by the same TCEQ staff. Therefore, a single hourly bill rate for both programs is appropriate. The hourly bill rate is determined based upon current projections for staff salaries for the Fiscal Year 2021, including the fringe benefit rate and the indirect cost rate, minus anticipated federal funding that the commission will receive, and then divided by the estimated number of staff hours necessary to complete the program tasks. Fringe benefits include retirement, social security, and insurance expenses and are calculated at a set rate for the entire agency. The current fringe benefit rate is 38.51% of the budgeted salaries. Indirect costs include allowable overhead expenses and also are calculated at a set rate for the entire agency. The current indirect cost rate is 33.72% of the budgeted salary. The hourly bill rate was calculated and then rounded to the nearest whole dollar amount. The commission will use an hourly bill rate of \$115 for both the VCP and the IOP for the Fiscal Year 2021. After an applicant's initial \$1,000 application fee has been depleted for the VCP or the IOP

review and oversight costs, invoices will be sent monthly to the applicant, or designee, for payment.

The commission anticipates receiving federal funding during Fiscal Year 2021 for the continued development and enhancement of the VCP and the IOP. If the federal funding anticipated for Fiscal Year 2021 does not become available, the commission may calculate and publish a new hourly bill rate. Federal funding of the VCP and the IOP should occur prior to October 1, 2020.

For more information, please contact Ms. Merrie Smith, P.G., VCP-CA Section, Remediation Division, Texas Commission on Environmental Quality, MC 221, 12100 Park 35 Circle, Austin, Texas 78753, or call (512) 239-5051, or email [merrie.smith@tceq.texas.gov](mailto:merrie.smith@tceq.texas.gov).

TRD-202003305  
Charmaine Backens  
Director, Litigation Division  
Texas Commission on Environmental Quality  
Filed: August 11, 2020



### Notice of Water Quality Application

The following notice was issued on August 5, 2020.

The following does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711-3087 WITHIN 30 DAYS OF THIS NOTICE ISSUED IN THE *TEXAS REGISTER*.

#### INFORMATION SECTION

INVISTA S.A. R.L., which operates a chemicals and plastics manufacturing facility, has applied to the Texas Commission on Environmental Quality for a minor amendment to Texas Pollutant Discharge Elimination System Permit No. WQ0000476000, to authorize a change in the effluent monitoring location of Outfall 003; change the grab sample pH testing at internal Outfalls 151b and 101 to allow either online continuous pH monitoring or grab sample monitoring for compliance reporting; modify the description of monitoring location of internal Outfall 101; change the location of the visual inspection point for of Outfall 001; optional effluent monitoring location at Outfall 001; optional continuous online monitoring of the total residual chlorine effluent limitations at internal Outfall 101 and Outfall 001; optional manual effluent monitoring at internal Outfalls 101 and 151, and Outfall 001; redefine the authorized stormwater under Other Requirement No. 18; the option to use electronic surveillance to conduct both routine and non-routine visual inspections of the outfalls; reduce the review schedule of the stormwater pollution prevention plan at Outfalls 005 and 006; change the name of DuPont plant to Performance Materials NA, Inc.; revise the effluent monitoring location description for Outfall 006; allowance for non-compliance with monitoring of the total residual chlorine effluent limitations at internal Outfall 101 and Outfall 001; change the weather induced overflow report requirement from the current within 24-hr reporting to entries in on-site operating records only; an exception to report de minimis volume of unauthorized discharges; exception to naturally occurring foam; and allow unplanned and non-routine discharges. The facility is located at 2695 Old Bloomington Road North, near the City of Victoria in Victoria County, Texas 77905.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. General information about the TCEQ can be found at our web site at [www.TCEQ.texas.gov](http://www.TCEQ.texas.gov). Si desea información en español, puede llamar al (800) 687-4040.

TRD-202003317  
Bridget C. Bohac  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: August 12, 2020



### Texas Health and Human Services Commission

#### Notice of Public Hearing on Health and Human Services System Coordinated Strategic Plan 2021-2025

**Hearing.** The Health and Human Services Commission (HHSC) and the Department of State Health Services (DSHS) will conduct a public hearing on September 1, 2020, at 1:00 p.m. Central Daylight Time, to receive stakeholder input on the Health and Human Services (HHS) Draft Strategic Planning Elements for 2021-2025.

Due to the COVID-19 pandemic, this hearing will be conducted online using Microsoft Teams only. To attend the hearing, go to [https://texas-hhsmeetings.org/HHSSP\\_Sept2020](https://texas-hhsmeetings.org/HHSSP_Sept2020).

There is not a physical location for this meeting.

**Topic.** The HHS Coordinated Strategic Plan covers both health and human services agencies. Please see <https://hhs.texas.gov/about-hhs/budget-planning/health-human-services-system-strategic-plans-2021-2025> for the HHS Draft Strategic Planning Elements for 2021-2025.

**Public Comment.** HHSC and DSHS welcome public comments pertaining to HHS Strategic Planning. Members of the public who would like to provide comment are encouraged to participate by providing written public comment to HHSC by emailing [strategicplancomments@hhsc.state.tx.us](mailto:strategicplancomments@hhsc.state.tx.us) no later than 5:00 p.m. Central Daylight Time on September 1, 2020. Please include your name and either the organization you are representing or a statement that you are writing as a private citizen.

If you would like to register to provide oral comments at the hearing, please go to [https://texas-hhsmeetings.org/HHSSP\\_PCReg\\_Sept2020](https://texas-hhsmeetings.org/HHSSP_PCReg_Sept2020) and fill out the online form, marking the correct box on the Public Comment item. Instructions for providing oral comment will be emailed to you. Registration should be completed no later than 5:00 p.m. Central Daylight Time on August 28, 2020. Members of the public may also use the Microsoft Teams Live Event Q&A section to submit a request to provide public comment. The request must contain your name, either the name of the organization you are representing or a statement that you are speaking as a private citizen, and your direct phone number.

Public comment is limited to three minutes. Speakers must state their name and any affiliation or that they are speaking on their own behalf. Speakers who are using handouts are asked to provide an electronic copy in accessible pdf format that will be distributed to the appropriate State staff. Handouts must be emailed to HHSC immediately after registering and include the name of the person who will be commenting.

**Contact:** Questions regarding agenda items, content, or hearing arrangements should be directed to Laura Lucinda in the Office of Transformation and Innovation, HHSC, (512) 487-3334 or [strategicplancomments@hhsc.state.tx.us](mailto:strategicplancomments@hhsc.state.tx.us).

*This hearing is open to the public. No reservations are required, and there is no cost to attend.*

*Persons with disabilities who wish to attend the hearing and require assistive aids or services should contact Lucinda at (512) 487-3334 or [strategicplancomments@hhsc.state.tx.us](mailto:strategicplancomments@hhsc.state.tx.us) at least 72 hours before the hearing so appropriate arrangements can be made.*

TRD-202003320  
Karen Ray  
Chief Counsel  
Texas Health and Human Services Commission  
Filed: August 12, 2020

◆ ◆ ◆  
**Texas Department of Insurance**

**Company Licensing**

Application for incorporation in the state of Texas for Insurors Indemnity Select Insurance Company, a domestic fire and/or casualty company. The home office is in Waco, Texas.

Application to do business in the state of Texas for Branch Insurance exchange, a foreign Lloyds/reciprocal company. The home office is in Columbus, Ohio.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Robert Rudnai, 333 Guadalupe Street, MC 103-CL, Austin, Texas 78701.

TRD-202003318  
James Person  
General Counsel  
Texas Department of Insurance  
Filed: August 12, 2020

◆ ◆ ◆  
**Texas Department of Insurance, Division of Workers' Compensation**

**Proposed Fiscal Year 2021 Research Agenda**

**Workers' Compensation Research and Evaluation Group**

**Introduction**

Texas Labor Code §405.0026 requires the commissioner of workers' compensation to adopt a research agenda each year for the Workers' Compensation Research and Evaluation Group (REG) at the Texas Department of Insurance (TDI).

Labor Code §405.0025 requires the REG to conduct professional studies and research related to the operational effectiveness of the workers' compensation system.

Labor Code §405.0026 requires the REG to prepare a research agenda each year for the commissioner to review, approve, and publish in the *Texas Register*.

Texas Insurance Code §1305.502 requires the REG to develop and issue an informational report card each year that identifies and compares, on an objective basis, certified health care networks with each other and with claims not in the network.

**Proposed Fiscal Year 2021 Research Agenda**

The REG proposes the following research projects:

--complete and publish the 2021 Workers' Compensation Health Care Network Report Card (required under Insurance Code §1305.502 and Labor Code §405.0025);

--analyze the preliminary impact of COVID-19 on the Texas workers' compensation system, including claim frequency, claim costs, disputes, and return-to-work outcomes; and

--study the use of telemedicine in the Texas workers' compensation system, including trends regarding the types and cost of services being performed, the types of health care providers providing these services, and the demographic trends of injured employees receiving telemedicine services.

The REG will consider expanding the scope of the research projects or conducting more projects to accommodate stakeholder suggestions, subject to the resources and data available.

**Request for Comments or Public Hearing**

You may submit comments on the Proposed Fiscal Year 2021 Research Agenda or request a public hearing in writing no later than 5:00 p.m., Central time, on September 21, 2020. A hearing request must be on a separate page from any written comments.

Send your comments or hearing request by email to RuleComments@tdi.texas.gov or mail them to: Cynthia Guillen, DWC Legal Services, MS-4D, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645.

Copies of the proposed research agenda are on the TDI website. Please email any questions about this agenda to Amy Lee at wcresearch@tdi.texas.gov.

TRD-202003298  
Kara Mace  
Deputy Commissioner of Legal Services  
Texas Department of Insurance, Division of Workers' Compensation  
Filed: August 11, 2020

◆ ◆ ◆  
**Texas Lottery Commission**

**Notice of Public Comment Hearing**

A public hearing to receive comments regarding proposed amendments to 16 TAC §§402.200 (General Restrictions on the Conduct of Bingo), 402.300 (Pull-Tab Bingo), 402.301 (Bingo Card/Paper), 402.400 (General Licensing Provisions), 402.401 (Temporary License), 402.404 (License Classes and Fees), 402.408 (Designation of Members), 402.420 (Qualifications and Requirements for Conductor's License), 402.450 (Request for Waiver), 402.451 (Operating Capital), 402.502 (Charitable Use of Net Proceeds Recordkeeping), 402.503 (Bingo Gift Certificates), 402.511 (Required Inventory Records), 402.601 (Interest on Delinquent Tax), 402.602 (Waiver of Penalty, Settlement of Prize Fees, Rental Tax, Penalty and/or Interest), 402.700 (Denials; Suspensions; Revocations; Hearings), 402.702 (Disqualifying Convictions), and 402.703 (Audit Policy) will be conducted on Wednesday, September 9, 2020, at 9:00 a.m. via Zoom webinar.

Members of the public will not be able to attend the hearing in person. Instead, the public will have access and a means to participate in this hearing, by two-way audio, via the following link:

<https://txlottery.zoom.us/j/95936144307?pwd=SFhueURn-WjhJcGFkODQ0eVksSFZKdz09>

Passcode: 765772, Webinar ID: 959 3614 4307, or by calling +1 (346) 248-7799.

If you wish to provide public comment at the hearing, notify Tyler Vance, Assistant General Counsel, by email at tyler.vance@lottery.state.tx.us or by phone at (512) 344-5126 no later than 5:00 p.m. on Tuesday, September 8, 2020, indicating your name, address and phone number; who you are representing, if applicable; and whether your comments are for, against, or neutral regarding the proposal.

An archived recording of the meeting will be available by the close of business on September 10 on the Commission's YouTube channel at <https://www.youtube.com/user/TheTexasLottery>.

TRD-202003276

Bob Biard

General Counsel

Texas Lottery Commission

Filed: August 10, 2020



#### Scratch Ticket Game Number 2271 "COOL RICHES"

##### 1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2271 is "COOL RICHES". The play style is "multiple games".

##### 1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2271 shall be \$10.00 per Scratch Ticket.

##### 1.2 Definitions in Scratch Ticket Game No. 2271.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize.

Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: CHERRY SYMBOL, GOLD BAR SYMBOL, BANANA SYMBOL, DICE SYMBOL, SPADE SYMBOL, COW SYMBOL, KEY SYMBOL, DAISY SYMBOL, DIAMOND SYMBOL, CLOVER SYMBOL, LIGHTNING BOLT SYMBOL, HORSESHOE SYMBOL, POT OF GOLD SYMBOL, FISH SYMBOL, BUTTERFLY SYMBOL, SLED SYMBOL, 2X SYMBOL, FROG SYMBOL, FIRE SYMBOL, TREE SYMBOL, ACORN SYMBOL, HEART SYMBOL, ICE CREAM SYMBOL, BOOT SYMBOL, WALLET SYMBOL, LADYBUG SYMBOL, SAFE SYMBOL, FEATHER SYMBOL, SUN SYMBOL, STRAWBERRY SYMBOL, PIGGY BANK SYMBOL, WISHBONE SYMBOL, HAT SYMBOL, 3X SYMBOL, LEMON SYMBOL, MOON SYMBOL, RAINBOW SYMBOL, BIRD SYMBOL, ANCHOR SYMBOL, ELEPHANT SYMBOL, WATERMELON SYMBOL, DRUM SYMBOL, TROPHY SYMBOL, STAR SYMBOL, UMBRELLA SYMBOL, RING SYMBOL, STACK OF BILLS SYMBOL, COIN SYMBOL, CROWN SYMBOL, CABIN SYMBOL, 5X SYMBOL, \$10.00, \$20.00, \$30.00, \$50.00, \$100, \$150, \$300 and \$250,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2271 - 1.2D

<b>GAME 1 PLAY SYMBOL</b>	<b>CAPTION</b>
CHERRY SYMBOL	CHERRY
GOLD BAR SYMBOL	BAR
BANANA SYMBOL	BANANA
DICE SYMBOL	DICE
SPADE SYMBOL	SPADE
COW SYMBOL	COW
KEY SYMBOL	KEY
DAISY SYMBOL	DAISY
DIAMOND SYMBOL	DIMND
CLOVER SYMBOL	CLOVER
LIGHTNING BOLT SYMBOL	BOLT
HORSESHOE SYMBOL	HRSHOE
POT OF GOLD SYMBOL	GOLD
FISH SYMBOL	FISH
BUTTERFLY SYMBOL	BTRFLY
SLED SYMBOL	SWIN\$
2X SYMBOL	DBL
<b>GAME 2 PLAY SYMBOL</b>	<b>CAPTION</b>
FROG SYMBOL	FROG
FIRE SYMBOL	FIRE
TREE SYMBOL	TREE
ACORN SYMBOL	ACORN
HEART SYMBOL	HEART
ICE CREAM SYMBOL	ICECRM
BOOT SYMBOL	BOOT
WALLET SYMBOL	WALLET
LADYBUG SYMBOL	LDYBUG
SAFE SYMBOL	SAFE
FEATHER SYMBOL	FTHER
SUN SYMBOL	SUN
STRAWBERRY SYMBOL	STRWBY
PIGGY BANK SYMBOL	PIGBNK
WISHBONE SYMBOL	WSHBN
HAT SYMBOL	HWIN\$
3X SYMBOL	TRP
<b>GAME 3 PLAY SYMBOL</b>	<b>CAPTION</b>
LEMON SYMBOL	LEMON
MOON SYMBOL	MOON

RAINBOW SYMBOL	RNBOW
BIRD SYMBOL	BIRD
ANCHOR SYMBOL	ANCHOR
ELEPHANT SYMBOL	ELPHANT
WATERMELON SYMBOL	WTMLN
DRUM SYMBOL	DRUM
TROPHY SYMBOL	TROPHY
STAR SYMBOL	STAR
UMBRELLA SYMBOL	UMBLLA
RING SYMBOL	RING
STACK OF BILLS SYMBOL	BILLS
COIN SYMBOL	COIN
CROWN SYMBOL	CROWN
CABIN SYMBOL	CWIN\$
5X SYMBOL	WINX5
<b>PRIZE SYMBOL</b>	<b>CAPTION</b>
\$10.00	TEN\$
\$20.00	TWY\$
\$30.00	TRTY\$
\$50.00	FFTY\$
\$100	ONHN
\$150	ONFF
\$300	THHN
\$250,000	250TH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2271), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 050 within each Pack. The format will be: 2271-0000001-001.

H. Pack - A Pack of the "COOL RICHES" Scratch Ticket Game contains 050 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one. Ticket 001 will be shown on the front of the pack; the back of ticket 050 will be revealed on the back of the pack. All packs will be tightly shrink-wrapped. There will be no breaks between the tickets in a pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does

not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "COOL RICHES" Scratch Ticket Game No. 2271.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "COOL RICHES" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose seventy-two (72) Play Symbols. GAME 1: If a player reveals a "SLED" Play Symbol, the player wins the PRIZE for that symbol. If the player reveals a "2X" Play Symbol, the player wins DOUBLE the PRIZE for that symbol. GAME 2: If the player reveals a "HAT" Play Symbol, the player wins the PRIZE for that symbol. If the player reveals a "3X" Play Symbol, the player wins TRIPLE the PRIZE for that symbol. GAME 3: If the player reveals a "CABIN" Play Symbol, the player wins the PRIZE for that symbol. If the player reveals a "5X" Play Symbol, the player wins 5 TIMES the PRIZE for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

## 2.1 Scratch Ticket Validation Requirements.

- A. To be a valid Scratch Ticket, all of the following requirements must be met:
1. Exactly seventy-two (72) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
  2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
  3. Each of the Play Symbols must be present in its entirety and be fully legible;
  4. Each of the Play Symbols must be printed in black ink except for dual image games;
  5. The Scratch Ticket shall be intact;
  6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;
  7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
  8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
  9. The Scratch Ticket must not be counterfeit in whole or in part;
  10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
  11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;
  12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;
  13. The Scratch Ticket must be complete and not miscut, and have exactly seventy-two (72) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;
  14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;
  15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
  16. Each of the seventy-two (72) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
  17. Each of the seventy-two (72) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
  18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
  19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.
- B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the

award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

## 2.2 Programmed Game Parameters.

A. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. GENERAL: A Ticket can win as indicated by the prize structure.

C. GENERAL: A Ticket can win up to thirty-six (36) times.

D. GENERAL: On winning and Non-Winning Tickets, the top cash prize of \$250,000 will appear at least once, except on Tickets winning thirty-six (36) times.

E. GENERAL: On all Tickets, a Prize Symbol will not appear more than six (6) times, except as required by the prize structure to create multiple wins.

F. GENERAL: Non-winning Prize Symbols will not match a winning Prize Symbol on a Ticket.

G. GENERAL: All non-winning Play Symbols will be different.

H. GENERAL: The "SLED" (SWIN\$) Play Symbol and the "2X" (DBL) Play Symbol will only appear in GAME 1 and will never appear in GAME 2 or GAME 3.

I. GENERAL: The "HAT" (HWINS\$) Play Symbol and the "3X" (TRP) Play Symbol will only appear in GAME 2 and will never appear in GAME 1 or GAME 3.

J. GENERAL: The "CABIN" (CWINS\$) Play Symbol and the "5X" (WINX5) Play Symbol will only appear in GAME 3 and will never appear in GAME 1 or GAME 2.

K. GAME 1: The "SLED" (SWIN\$) Play Symbol will win the PRIZE for that symbol.

L. GAME 1: The "2X" (DBL) Play Symbol will win DOUBLE the PRIZE for that Play Symbol and will win as per the prize structure.

M. GAME 1: The "2X" (DBL) Play Symbol will never appear more than once on a Ticket.

N. GAME 1: The "SLED" (SWIN\$) Play Symbol and the "2X" (DBL) Play Symbol will never appear on Non-Winning Tickets.

O. GAME 2: The "HAT" (HWINS\$) Play Symbol will win the PRIZE for that symbol.

P. GAME 2: The "3X" (TRP) Play Symbol will win TRIPLE the PRIZE for that Play Symbol and will win as per the prize structure.

Q. GAME 2: The "3X" (TRP) Play Symbol will never appear more than once on a Ticket.

R. GAME 2: The "HAT" (HWINS\$) Play Symbol and the "3X" (TRP) Play Symbol will never appear on Non-Winning Tickets.

S. GAME 3: The "CABIN" (CWINS\$) Play Symbol will win the PRIZE for that symbol.



T. GAME 3: The "5X" (WINX5) Play Symbol will win 5 TIMES the PRIZE for that Play Symbol and will win as per the prize structure.

U. GAME 3: The "5X" (WINX5) Play Symbol will never appear more than twice on a Ticket.

V. GAME 3: The "CABIN" (CWIN\$) Play Symbol and the "5X" (WINX5) Play Symbol will never appear on Non-Winning Tickets.

### 2.3 Procedure for Claiming Prizes.

A. To claim a "COOL RICHES" Scratch Ticket Game prize of \$10.00, \$20.00, \$30.00, \$50.00, \$100, \$150 or \$300, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$30.00, \$50.00, \$100, \$150 or \$300 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "COOL RICHES" Scratch Ticket Game prize of \$3,000 or \$250,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "COOL RICHES" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is \$1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
2. in default on a loan made under Chapter 52, Education Code;
3. in default on a loan guaranteed under Chapter 57, Education Code; or
4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "COOL RICHES" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "COOL RICHES" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

### 3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 8,040,000 Scratch Tickets in Scratch Ticket Game No. 2271. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2271 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$10.00	938,000	8.57
\$20.00	670,000	12.00
\$30.00	241,200	33.33
\$50.00	134,000	60.00
\$100	104,520	76.92
\$150	48,240	166.67
\$300	2,010	4,000.00
\$3,000	134	60,000.00
\$250,000	4	2,010,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.76. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2271 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2271, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202003291

Bob Biard

General Counsel

Texas Lottery Commission

Filed: August 10, 2020



Scratch Ticket Game Number 2286 "MONEY MONEY MONEY"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2286 is "MONEY MONEY MONEY". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2286 shall be \$5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2286.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 03, 04, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 2X SYMBOL, 5X SYMBOL, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$250, \$500, \$1,000 and \$100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2286 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
03	THR
04	FOR
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY

41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
50	FFTY
2X SYMBOL	DBL
5X SYMBOL	WINX5
\$5.00	FIV\$
\$10.00	TEN\$
\$20.00	TWY\$
\$50.00	FFTY\$
\$100	ONHN
\$250	TOFF
\$500	FVHN
\$1,000	ONTH
\$100,000	100TH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2286), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 2286-0000001-001.

H. Pack - A Pack of the "MONEY MONEY MONEY" Scratch Ticket Game contains 075 Tickets, packed in plastic shrink-wrapping and fan-folded in pages of one (1). Ticket 001 will be shown on the front of the Pack; the back of Ticket 075 will be revealed on the back of the Pack. All packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other Pack will reverse; i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 075 will be shown on the back of the Pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable

rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "MONEY MONEY MONEY" Scratch Ticket Game No. 2286.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "MONEY MONEY MONEY" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose forty-five (45) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a "2X" Play Symbol, the player wins DOUBLE the prize for that symbol. If the player reveals a "5X" Play Symbol, the player wins 5 TIMES the prize for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly forty-five (45) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;
10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Scratch Ticket must be complete and not miscut, and have exactly forty-five (45) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;
14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;
15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the forty-five (45) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the forty-five (45) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or

a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

## 2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. A Ticket can win as indicated by the prize structure.

C. A Ticket can win up to twenty (20) times.

D. On winning and Non-Winning Tickets, the top cash prizes of \$1,000 and \$100,000 will each appear at least once, except on Tickets winning twenty (20) times, with respect to other parameters, play action or prize structure.

E. No matching non-winning YOUR NUMBERS Play Symbols will appear on a Ticket.

F. Tickets winning more than one (1) time will use as many WINNING NUMBERS Play Symbols as possible to create matches, unless restricted by other parameters, play action or prize structure.

G. No matching WINNING NUMBERS Play Symbols will appear on a Ticket.

H. All YOUR NUMBERS Play Symbols will never equal the corresponding Prize Symbol (i.e., \$10 and 10, \$20 and 20 and \$50 and 50).

I. On all Tickets, a Prize Symbol will not appear more than three (3) times, except as required by the prize structure to create multiple wins.

J. On Non-Winning Tickets, a WINNING NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.

K. The "2X" (DBL) Play Symbol will never appear more than two (2) times on a Ticket.

L. The "2X" (DBL) Play Symbol will win DOUBLE the prize for that Play Symbol and will win as per the prize structure.

M. The "2X" (DBL) Play Symbol will never appear on a Non-Winning Ticket.

N. The "2X" (DBL) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

O. The "5X" (WINX5) Play Symbol will never appear more than once on a Ticket.

P. The "5X" (WINX5) Play Symbol will win 5 TIMES the prize for that Play Symbol and will win as per the prize structure.

Q. The "5X" (WINX5) Play Symbol will never appear on a Non-Winning Ticket.

R. The "5X" (WINX5) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

## 2.3 Procedure for Claiming Prizes.

A. To claim a "MONEY MONEY MONEY" Scratch Ticket Game prize of \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$250 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00, \$100, \$250 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and in-

struct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "MONEY MONEY MONEY" Scratch Ticket Game prize of \$1,000 or \$100,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "MONEY MONEY MONEY" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is \$1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
2. in default on a loan made under Chapter 52, Education Code;
3. in default on a loan guaranteed under Chapter 57, Education Code; or
4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "MONEY MONEY MONEY" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "MONEY MONEY MONEY" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 9,000,000 Scratch Tickets in Scratch Ticket Game No. 2286. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2286 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$5.00	920,000	9.78
\$10.00	840,000	10.71
\$20.00	260,000	34.62
\$50.00	151,950	59.23
\$100	24,250	371.13
\$250	3,250	2,769.23
\$500	1,800	5,000.00
\$1,000	50	180,000.00
\$100,000	6	1,500,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 4.09. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

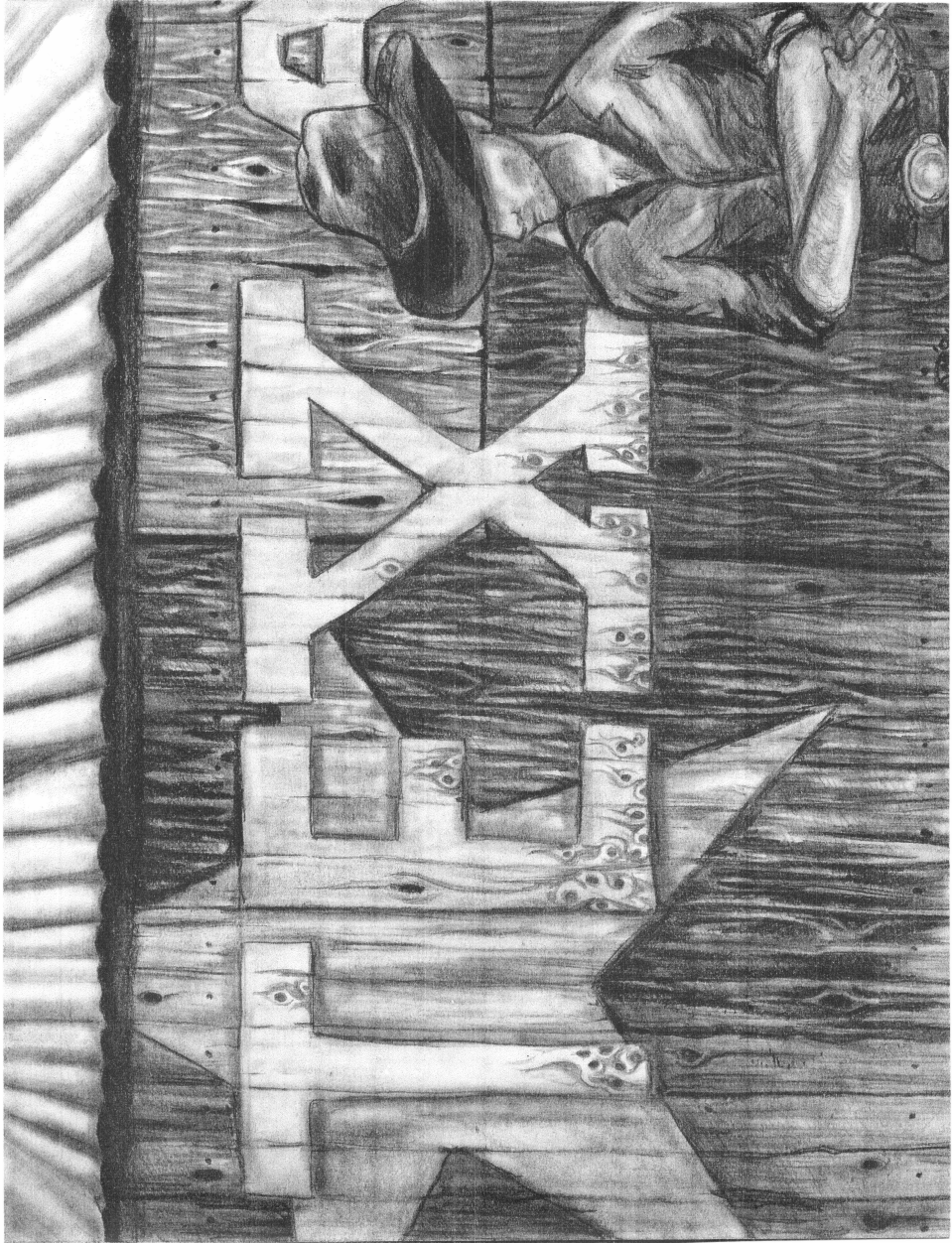
5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2286 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket

Game No. 2286, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202003293  
 Bob Biard  
 General Counsel  
 Texas Lottery Commission  
 Filed: August 10, 2020







## How to Use the Texas Register

**Information Available:** The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules** - sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Review of Agency Rules** - notices of state agency rules review.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Transferred Rules** - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words “TexReg” and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 43 (2018) is cited as follows: 43 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written “43 TexReg 2 issue date,” while on the opposite page, page 3, in the lower right-hand corner, would be written “issue date 43 TexReg 3.”

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

## Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State’s website at <http://www.sos.state.tx.us/tac>.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite:** Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to Update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule’s *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

### TITLE 1. ADMINISTRATION Part 4. Office of the Secretary of State Chapter 91. Texas Register

1 TAC §91.1.....950 (P)

## SALES AND CUSTOMER SUPPORT

Sales - To purchase subscriptions or back issues, you may contact LexisNexis Sales at 1-800-223-1940 from 7 a.m. to 7 p.m., Central Time, Monday through Friday. Subscription cost is \$502 annually for first-class mail delivery and \$340 annually for second-class mail delivery.

Customer Support - For questions concerning your subscription or account information, you may contact LexisNexis Matthew Bender Customer Support from 7 a.m. to 7 p.m., Central Time, Monday through Friday.

Phone: (800) 833-9844

Fax: (518) 487-3584

E-mail: [customer.support@lexisnexis.com](mailto:customer.support@lexisnexis.com)

Website: [www.lexisnexis.com/printedsc](http://www.lexisnexis.com/printedsc)



**LexisNexis**