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register@sos.texas.gov

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Secretary of State - John B. Scott

Director - Je T'aime Swindell

Editor-in-Chief - Jill S. Ledbetter

Editors

Leti Benavides

Eddie Feng

Brandy M. Hammack

Belinda Kirk

Joy L. Morgan

Breanna Mutschler

Barbara Strickland

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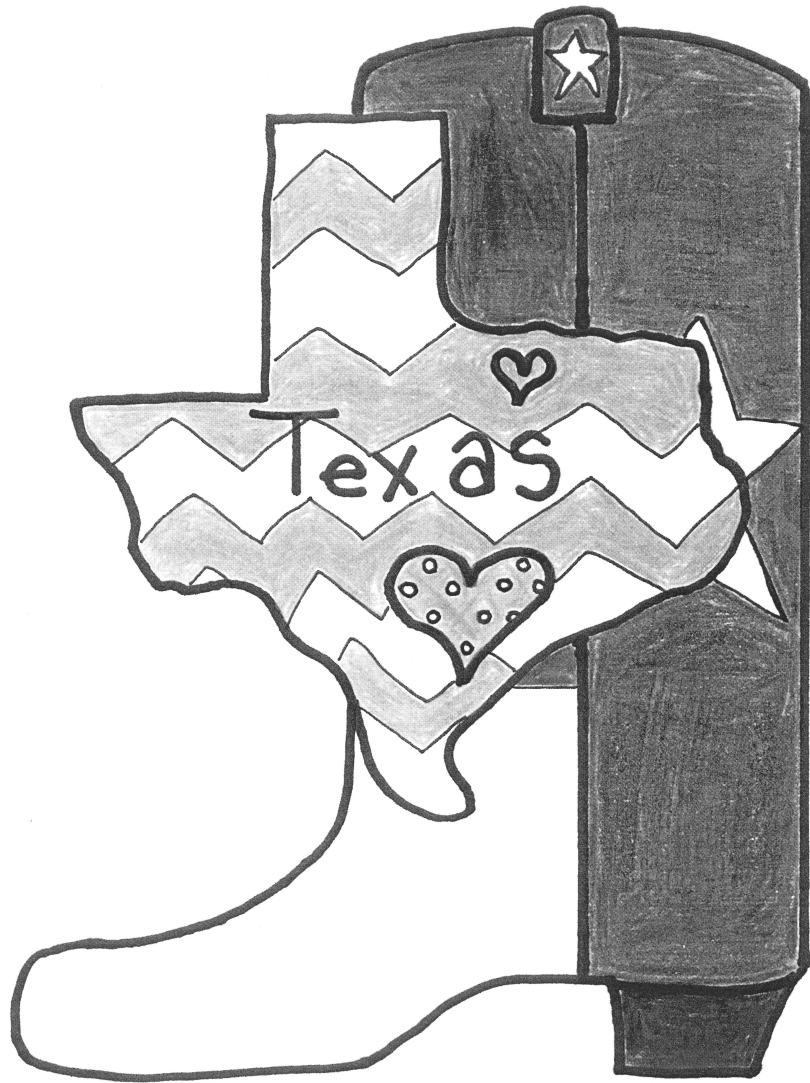
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THE GOVERNOR

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

Appointments

Appointments for February 10, 2022

Appointed as the Canadian River Compact Commissioner for a term to expire December 31, 2027, Roger S. Cox of Amarillo, Texas (Mr. Cox is being reappointed).

Appointments for February 11, 2022

Appointed to the Continuing Advisory Committee for Special Education for a term to expire February 1, 2025, April Estrada, Ed.D. of Wylie, Texas (replacing Jana S. Burns of Saginaw, whose term expired).

Appointed to the Continuing Advisory Committee for Special Education for a term to expire February 1, 2025, Barbara E. "Barbie" Ezell of Portland, Texas (replacing Laurie Goforth Rodriguez of Houston, whose term expired).

Appointed to the Continuing Advisory Committee for Special Education for a term to expire February 1, 2025, Amy E. Litzinger of Austin, Texas (Ms. Litzinger is being reappointed).

Appointed to the Continuing Advisory Committee for Special Education for a term to expire February 1, 2025, Susan M. Nichols, Ph.D. of Carrollton, Texas (Dr. Nichols is being reappointed).

Appointed to the Continuing Advisory Committee for Special Education for a term to expire February 1, 2025, Agata K. "Agatha" Thibodeaux of Katy, Texas (Ms. Thibodeaux is being reappointed).

Appointed to the Continuing Advisory Committee for Special Education for a term to expire February 1, 2025, Jo Ann Garza Wofford of New Braunfels, Texas (Ms. Wofford is being reappointed).

Appointments for February 14, 2022

Appointed to the State Board for Educator Certification for a term to expire February 1, 2027, Cristina I. Galindo of Houston, Texas (replacing Melissa A. Isaacs of Jewett, who resigned).

Appointments for February 15, 2022

Appointed to the Sabine River Authority of Texas Board of Directors for a term to expire July 6, 2027, Elton D. Brock of Marshall, Texas (replacing Cary M. "Mac" Abney of Marshall, whose term expired).

Appointed to the Sabine River Authority of Texas Board of Directors for a term to expire July 6, 2027, Darrin R. "Rudy" Rudolph of Longview, Texas (replacing Laurie Etzel Woloszyn of Longview, whose term expired).

Appointed to the Sabine River Authority of Texas Board of Directors for a term to expire July 6, 2027, Jeanette L. Sterner of Holly Lake Ranch, Texas (Ms. Sterner is being reappointed).

Appointments for February 16, 2022

Appointed to the Texas Council on Alzheimer's Disease and Related Disorders for a term to expire August 31, 2027, Joe A. Evans, Jr. of Beaumont, Texas (Mr. Evans is being reappointed).

Appointed to the Texas Council on Alzheimer's Disease and Related Disorders for a term to expire August 31, 2027, Eddie L. Patton, Jr., M.D. of Houston, Texas (Dr. Patton is being reappointed).

Greg Abbott, Governor

TRD-202200570



Proclamation 41-3883

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, the resignation of the Honorable Eddie Lucio III, and its acceptance, have caused a vacancy to exist in Texas State House of Representatives District No. 38, which is wholly contained within Cameron County; and

WHEREAS, Article III, Section 13 of the Texas Constitution and Section 203.002 of the Texas Election Code require that a special election be ordered upon such a vacancy, and Section 3.003 of the Texas Election Code requires the special election to be ordered by proclamation of the Governor; and

WHEREAS, Section 203.004(a) of the Texas Election Code provides that the special election generally must be held on the first uniform election date occurring on or after the 36th day after the date the election is ordered; and

WHEREAS, pursuant to Section 41.001 of the Texas Election Code, the first uniform election date occurring on or after the 36th day after the date the special election is ordered is Saturday, May 7, 2022;

NOW, THEREFORE, I, GREG ABBOTT, Governor of Texas, under the authority vested in me by the Constitution and Statutes of the State of Texas, do hereby order a special election to be held in Texas State House of Representatives District No. 38 on Saturday, May 7, 2022, for the purpose of electing a state representative to serve out the unexpired term of the Honorable Eddie Lucio III.

Candidates who wish to have their names placed on the special election ballot must file their applications with the Secretary of State no later than 5:00 p.m. on Monday, March 7, 2022, in accordance with Section 201.054(a)(1) of the Texas Election Code.

Early voting by personal appearance shall begin on Monday, April 25, 2022 and end on Tuesday, May 3, 2022 in accordance with Sections 85.001(a) and (e) of the Texas Election Code.

A copy of this order shall be mailed immediately to the Cameron County Judge, which is the county within which Texas State House of Representatives District No. 38 is wholly contained, and all appropriate writs shall be issued and all proper proceedings shall be followed to the end that said election may be held, to fill the vacancy in Texas State House of Representatives District No. 38 and its result proclaimed in accordance with law.

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 10th day of February, 2022.



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-0446-KP

Requestor:

Ms. Jackie Skinner

Tyler County Auditor

Post Office Box 2039

Woodville, Texas 75979

Re: Whether a payment to county officials from funds received under the American Rescue Plan Act requires notice as set forth in the Local Government Code (RQ-0446-KP)

Briefs requested by March 16, 2022

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

TRD-202200549

Austin Kinghorn

General Counsel

Office of the Attorney General

Filed: February 15, 2022





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 22. EXAMINING BOARDS

PART 36. COUNCIL ON SEX OFFENDER TREATMENT

CHAPTER 810. COUNCIL ON SEX OFFENDER TREATMENT

SUBCHAPTER A. LICENSED SEX OFFENDER TREATMENT PROVIDERS

22 TAC §810.4

The Council on Sex Offender Treatment (Council) adopts on an emergency basis an amendment to Title 22, Texas Administrative Code, §810.4, concerning License Issuance and/or Renewal, to provide Licensed Sex Offender Treatment Providers (LSOTPs) with the flexibility to obtain additional continuing education hours online for licensure renewal requirements.

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 response to the COVID-19 outbreak and national, state, and local community efforts to contain the spread of the virus, including social distancing, the Council amends §810.4(7) to increase the maximum number of allowable online continuing education hours for license renewal from 12 hours to 24 hours. Under this emergency rule, online hours accrued to satisfy the continuing education ethics requirement do not count toward the maximum of 24 online hours.

As authorized by Texas Government Code §2001.034, the Council 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.

The Council finds that an imminent peril to the public health, safety, and welfare requires immediate adoption of this emergency rule. The emergency rule amendment is necessary to provide LSOTPs applicants with the flexibility to satisfy continuing education requirements for licensure online.

SECTION-BY-SECTION SUMMARY

The emergency rule amendment to §810.4(7) increases the maximum number of online continuing education hours for

license renewal from 12 hours to 24 hours. There are no further changes to §810.4.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §2001.034, which 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; under Texas Occupations Code, §110.158, which authorizes the Council to adopt rules necessary for the performance of its duties; and under Texas Occupations Code, §110.302, which requires the Council to adopt licensing requirements for sex offender treatment providers.

The emergency rule implements Texas Occupations Code Chapter 110.

§810.4. License Issuance and/or Renewal.

All new initial licenses shall expire on the last day of the licensee's birth month. The initial licensing period shall be at least 13 months and no more than 24 months. Subsequent licensing periods will be 24 months. In order to maintain eligibility for the licensure as a sex offender treatment provider, the mental health or medical license of each renewal shall be current and active. All renewal applicants shall comply with the following:

(1) - (6) (No change.)

(7) Licensees shall request pre-approval from the council for all online courses and courses taken at an institution of higher learning. All renewal applicants may count a maximum of 24 [12] online hours per biennial renewal period, not including ethics hours.

(8) - (11) (No change.)

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 February 15, 2022.

TRD-202200545

Aaron Pierce, PhD, LPC, LSOTP-S

Chairman

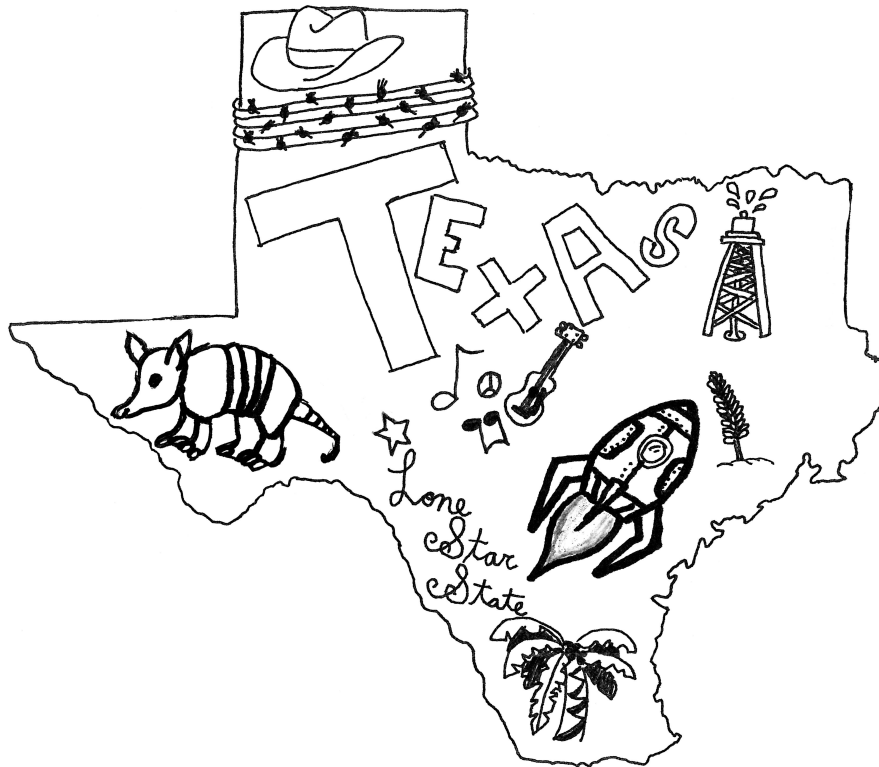
Council on Sex Offender Treatment

Effective date: February 18, 2022

Expiration date: June 17, 2022

For further information, please call: (512) 438-5112





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 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION

SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §1.1

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.1 Reasonable Accommodation Requests to the Department. The purpose of the proposed repeal is to eliminate the current rule while replacing it with a more current version of the rule.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal would be in effect:

1. The repeal does not create or eliminate a government program but relates to the handling of requests for reasonable accommodations.
2. The repeal does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The repeal does not require additional future legislative appropriations.
4. The repeal will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.
6. The repeal will not expand or contract the applicability of an existing regulation.
7. The repeal will not increase or decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated the repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed and new sections would be an updated and more germane rule. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held February 25, 2022, to March 25, 2022, to receive input on the proposed action. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or by email to bboston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, March 25, 2022.

STATUTORY AUTHORITY. The proposed repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed action affects no other code, article, or statute.

§1.1. Reasonable Accommodation Requests to the Department.

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 February 11, 2022.

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Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

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For further information, please call: (512) 475-3959



10 TAC §1.1

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.1 Reasonable Accommodation Requests to the Department. The purpose of the proposed rule is to: update definitions including bringing several definition into concurrence with definitions in other Department rules, include phone number and email as requested contact information, clarify the process to be used in the handling of Reasonable Accommodations by staff, allow staff to grant approvals of Reasonable Accommodation requests, and make other minor non-substantive revisions.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson has determined that, for the first five years the new section would be in effect:

1. The new section does not create or eliminate a government program but relates to the handling of requests for reasonable accommodations.
2. The new section does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The new section does not require additional future legislative appropriations.
4. The new section will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The new section does not create a new regulation, except that it is replacing a section being repealed simultaneously to provide for revisions.
6. The new section will not expand nor contract an existing regulation.
7. The new section will not increase or decrease the number of individuals subject to the rule's applicability.

8. The new section will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated the new section and determined that the action will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043.

The new section does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the new section as to its possible effect on local economies and has determined that for the first five years the new section would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5).

Mr. Wilkinson has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section would be an updated and more germane rule. There will not be economic costs to individuals required to comply with the new section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4).

Mr. Wilkinson also has determined that for each year of the first five years the new section are in effect, enforcing or administering the rule does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held February 25, 2022, to March 25, 2022, to receive input on the proposed action. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or by email to bboston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, March 25, 2022.

STATUTORY AUTHORITY. The proposed new section is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed new section affects no other code, article, or statute.

§1.1. Reasonable Accommodation Requests to the Department.

(a) Purpose. The purpose of this section is to establish the procedures by which a Requestor may ask that a Reasonable Accommodation is made to the Department. For rules governing the handling of reasonable accommodation requests and responsibilities of entities receiving funds or resources from the Department see Subchapter B, §1.204 of this Chapter, relating to Reasonable Accommodations. This rule is statutorily authorized by Tex. Gov't Code, 2306.066(e), which requires the Executive Director to prepare a written plan to provide persons with disabilities an opportunity to participate in the Department's programs, and in accordance with the Fair Housing Act, and other federal and state civil rights laws.

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

(1) Board--The Governing Board of the Texas Department of Housing and Community Affairs.

(2) Disability--A physical or mental impairment that substantially limits one or more major life activities; or having a record of such an impairment; or being regarded as having such an impairment. Included in this meaning is the term handicap as defined in the Fair Housing Act, or the term disability as defined in the Americans with Disabilities Act.

(3) Fair Housing Act--Fair Housing Act of 1968, also known as Title VIII of the Civil Rights Act of 1968.

(4) Program Manager or Director--Department staff member supervising the division or area of a division containing the program for which a Reasonable Accommodation is being requested.

(5) Reasonable Accommodation--An accommodation and/or modification that is an alteration, change, exception, or adjustment to a program, policy, service, building, or dwelling unit, that will allow a qualified person with a Disability to:

- (A) Participate fully in a program;
- (B) Take advantage of a service;
- (C) Live in a dwelling; or
- (D) Use and enjoy a dwelling.

(6) Requestor--Includes applicants, members of the public, clients of Department programs, program participants, or their representatives.

(7) Section 504--Section 504 of the Rehabilitation Act of 1973, as amended.

(c) Procedures.

(1) The Requestor of the Reasonable Accommodation shall submit a request to the Division Manager or Director or their designee. A request does not have to be in writing. A request can be made in a face-to-face conversation with a Division Manager or Director or their designee, or using any other method of communication. A request is any communication in which an individual clearly asks or states that they need the Department to provide or to change something because of a Disability.

(2) The request, whether oral or written, must contain, at minimum:

(A) The Department program or procedure for which an accommodation is being requested;

(B) Household information to include name, address, phone number and email address, if available;

(C) Description of the Reasonable Accommodation being requested; and

(D) Reason the Reasonable Accommodation is necessary.

(E) In the case of oral requests, the Division Manager or Director will create a written summary of the request.

(3) The Division Director may coordinate with the Department's Fair Housing subject matter experts as needed. The supervising Director may ask for additional information from the Requestor. Staff should address Reasonable Accommodations requests promptly.

If making the requested Reasonable Accommodation would require the Department to incur an expense, the Division Director will first confirm that the Reasonable Accommodation expense will not cause the Division to exceed their approved budget or, if additional measures beyond those within budget are required, that they are promptly considered and a compliant decision made. Upon having the applicable information, the Division Director or Manager and Fair Housing subject matter experts, as needed, will determine:

(A) If the proposed Reasonable Accommodation is covered under Section 504 and/or the Fair Housing Act, or any other federal or state law; and

(B) Whether to approve the request, or recommend to the Executive Director an alternative Reasonable Accommodation or denial. Any approval that would require Board action will first be presented to the Executive Director.

(4) If not approved as requested or if the approval requires Board action, the request and recommendation will then be sent to the Executive Director or their designee, resulting in one of the following steps:

(A) The Executive Director proposes an alternative Reasonable Accommodation to the Requestor;

(B) The Executive Director concurs that Board action is necessary and presents the request and recommendation at an ensuing Board meeting. The Executive Director can choose to include a recommendation for or against the request; or

(C) The Executive Director denies the request. In the case of a denial, the Requestor can ask that their request be placed on the agenda for the next available Board meeting for a final Board determination.

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 February 11, 2022.

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Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: March 27, 2022

For further information, please call: (512) 475-3959



10 TAC §1.2

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.2 Department Complaint System to the Department. The purpose of the proposed repeal is to eliminate the current rule while replacing it with a more current version of the rule.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal would be in effect:

1. The repeal does not create or eliminate a government program but relates to the process to be used for persons wishing to file a complaint with the Department.
2. The repeal does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The repeal does not require additional future legislative appropriations.
4. The repeal will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.
6. The repeal will not expand or contract the applicability of an existing regulation.
7. The repeal will not increase or decrease the number of individuals subject to the rule's applicability.
8. The repeal will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated the repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed and new sections would be an updated and more germane rule. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held February 25, 2022, to March 25, 2022, to receive input on the proposed action. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or by email to bboston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, March 25, 2022.

STATUTORY AUTHORITY. The proposed repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed action affects no other code, article, or statute.

§1.2. *Department Complaint System to the Department.*

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 February 11, 2022.

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Bobby Wilkinson
Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: March 27, 2022

For further information, please call: (512) 475-3959



10 TAC §1.2

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.2, concerning Department Complaint Process. The purpose of the proposed rule is to: update definitions, clarify the applicability of the rule, improve the organization of the rule, clarify what occurs upon receipt of a complaint including when no contact information has been provided and when the complaint may involve a reasonable accommodation request, and make other procedural and minor revisions.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson has determined that, for the first five years the new section would be in effect:

1. The new section does not create or eliminate a government program but relates to the process to be used for persons wishing to file a complaint with the Department.
2. The new section does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.

3. The new section does not require additional future legislative appropriations.

4. The new section will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The new section does not create a new regulation, except that it is replacing a section being repealed simultaneously to provide for revisions.

6. The new section will not expand nor contract an existing regulation.

7. The new section will not increase or decrease the number of individuals subject to the rule's applicability.

8. The new section will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated the new section and determined that the action will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043.

The new section does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the new section as to its possible effect on local economies and has determined that for the first five years the new section would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5).

Mr. Wilkinson has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section would be an updated and more germane rule. There will not be economic costs to individuals required to comply with the new section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4).

Mr. Wilkinson also has determined that for each year of the first five years the new section are in effect, enforcing or administering the rule does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT.

The public comment period will be held February 25, 2022, to March 25, 2022, to receive input on the proposed action. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or by email to bboston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, March 25, 2022.

STATUTORY AUTHORITY. The proposed new section is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed new section affects no other code, article, or statute.

§1.2. Department Complaint Process.

(a) Purpose. The purpose of this section is to establish the procedures by which complaints are filed with the Department and how the Department handles those complaints under Department jurisdiction in compliance with Tex. Gov't Code §2306.066, Tex. Gov't Code, Chapter 2105, Subchapter C, and 24 CFR §91.115(h), as applicable.

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

(1) Complainant--A Person filing a Complaint.

(2) Complaint--A complaint submitted to the Department in writing (via mailed letter, fax, email, or submitted online through the Department website) from a person that believes the Department has the authority to resolve the issue.

(3) Complaint Coordinator--Department employee designated by the Executive Director or their designee to monitor the Public Complaint System and coordinate activities related to complaints.

(4) Complaint Liaison--The Department employee(s) designated by each division or program to handle each division or program's complaint-related issues.

(5) Department--The Texas Department of Housing and Community Affairs.

(6) Person--Any individual, other than an employee of the Department, and any partnership, corporation, association, governmental subdivision, or public or private organization of any character.

(7) Public Complaint System--Department-created system used to track complaints received by the Department.

(c) Applicability. Except as specifically adopted in whole or in part by rule or contractual provision this rule is not applicable to:

(1) Consumer complaints relating to manufactured housing which are alternatively addressed by §80.73 of this title (relating to Manufactured Housing Procedures for Handling Consumer Complaints); and

(2) Complaints filed in association with temporary Department programs for which a separate Complaint process has been established.

(d) Procedures.

(1) Complaint Submission. A Person who has a Complaint may submit such Complaint in writing to the Department, which will be directed to a Complaint Coordinator. If an accommodation because of a disability is needed in relation to the process of filing of a Complaint, the Person interested in filing the Complaint should refer to §1.1 of this title (relating to Reasonable Accommodation Requests to the Department); if assistance is needed for non-English speaking persons, the Person interested in filing the Complaint should access the Department's Language Assistance webpage (<https://www.tdhca.state.tx.us/lap.htm>).

(2) Upon receipt of a Complaint:

(A) A Complaint Coordinator will enter the complaint in the Public Complaint System.

(B) A Complaint Coordinator will review the Complaint and as needed, forward the Complaint to the appropriate program or division Complaint Liaison(s).

(C) Notwithstanding any other provisions of this subsection, in the case of Complaints received by the Department in which no method of contacting the Complainant was provided, the Complaint Coordinator will close the Complaint in the Public Complaint System and provide a copy of the Complaint to the applicable program or division for informational purposes only.

(D) A Complaint Coordinator may also identify whether a Complaint received involves a potential Reasonable Accommodation request involving a Department recipient or property; in such cases the Complaint will be handled as provided for in §1.204 of this chapter (relating to Reasonable Accommodations).

(E) Complaints that have potential Fair Housing Act violations may, at the Department's discretion, be also referred to the Texas Workforce Commission's Civil Rights Division.

(F) The Department will notify the Complainant of the status of the Complaint at least quarterly until there is a disposition of the Complaint, which is the final determination; there is no further process available, except as otherwise provided in state or federal law.

(3) A Complaint Liaison will research and evaluate the issues identified in the Complaint, and then resolve and close the Complaint. The Complaint Liaison will enter in the Public Complaint System summaries of each contact made with the Complainant and any actions taken leading to complaint resolution.

(4) The Complaint Coordinator may submit periodic summary reports or analysis to the Executive Director or designee.

(5) The Department will provide to the Person filing the Complaint, and to each Person who is a subject of the Complaint (to the extent contact information is available), a link to this rule, which serves as the Department's policy and procedures relating to complaint investigation and resolution.

(6) The Department will either notify the Complainant of the resolution of the Complaint within 15 business days after the date the Complaint was received by the Department, or notify the Complainant, within such period, of the date the Complainant can expect a response to the Complaint.

(7) Additional Complaints submitted by the same Complainant describing an issue which has previously been closed, had a final resolution, and for which there is no substantively new information presented, will be considered resolved by the Department. A letter to this effect will be sent to the Complainant by the Department. In such cases, a new Complaint will not be opened in the system.

(8) An information file about each Complaint will be maintained. The file must include:

- (A) the Complaint number;
- (B) the name of the Complainant;
- (C) the date the Complaint was received by the Department;
- (D) the subject matter of the Complaint;
- (E) the name of each Person contacted in relation to the Complaint, if applicable;
- (F) a summary of the results of the review of the Complaint;
- (G) the date the Complaint was closed; and

(H) an explanation of the final resolution of the Complaint including the reason the file was closed.

(9) A Complaint may be withdrawn by the Complainant at any time.

(10) A Complainant may request and receive from the Department copies of any documentation or records collected by the Department with regard to the Complaint, subject to the Texas Public Information Act.

(11) Adherence to these procedures is not required by the Department if another procedure is required by law, or if the following of a procedure above would jeopardize an audit or Government investigation.

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 February 11, 2022.

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Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

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For further information, please call: (512) 475-3959



10 TAC §1.13

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.13, Contested Case Hearing Procedures. The purpose of the proposed repeal is to eliminate the current rule while replacing it with a more current version of the rule.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal would be in effect:

1. The repeal does not create or eliminate a government program but relates to the procedures to be used in the case of contested case hearings.
2. The repeal does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The repeal does not require additional future legislative appropriations.
4. The repeal will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.
6. The repeal will not expand or contract the applicability of an existing regulation.
7. The repeal will not increase or decrease the number of individuals subject to the rule's applicability.
8. The repeal will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated the repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed and new sections would be a more clear rule. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held February 25, 2022, to March 25, 2022, to receive input on the proposed action. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or by email to bboston@tdhca.state.tx.us. **ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, March 25, 2022.**

STATUTORY AUTHORITY. The proposed repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed action affects no other code, article, or statute.

§1.13. Contested Case Hearing Procedures.

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

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Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

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10 TAC §1.13

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.13, Contested Case Hearing Procedures. The purpose of the proposed rule is to improve clarity, revise how notice will be served, and to denote that a hearing may be initiated at the request of the Board.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson has determined that, for the first five years the new section would be in effect:

1. The new section does not create or eliminate a government program but relates to the procedures to be used in the case of contested case hearings.
2. The new section does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The new section does not require additional future legislative appropriations.
4. The new section will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The new section does not create a new regulation, except that it is replacing a section being repealed simultaneously to provide for revisions.
6. The new section will not expand nor contract an existing regulation.
7. The new section will not increase or decrease the number of individuals subject to the rule's applicability.
8. The new section will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated the new section and determined that the action will not create an economic effect on small or micro-businesses or rural communities.

c. **TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043.** The new section does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. **LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).**

The Department has evaluated the new section as to its possible effect on local economies and has determined that for the first five years the new section would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. **PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5).** Mr. Wilkinson has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section would be a more clear rule. There will not be economic costs to individuals required to comply with the new section.

f. **FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4).** Mr. Wilkinson also has determined that for each year of the first five years the new section are in effect, enforcing or administering the rule does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held February 25, 2022, to March 25, 2022, to receive input on the proposed action. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or by email to bboston@tdhca.state.tx.us. **ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, March 25, 2022.**

STATUTORY AUTHORITY. The proposed new section is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed new section affects no other code, article, or statute.

§1.13. Contested Case Hearing Procedures.

(a) **Purpose.** The purpose of this section is to provide procedures for contested case hearings. This section does not apply to matters such as appeals to the Board of staff decisions or waivers, and this section does not in itself create any right to a contested case hearing, but merely provides the process to be used for contested case hearings that are otherwise expressly provided for by law or rule.

(b) **SOAH Designation.** The Governing Board (the Board) of the Texas Department of Housing and Community Affairs (the Department) designates the State Office of Administrative Hearings (SOAH) to hold all contested case hearings on the Board's behalf.

(c) Initiation of Hearing.

(1) Upon request from the Board or upon receipt of a pleading or other document that is intended to initiate a contested case proceeding, the Department shall determine if a contested case hearing is indicated under the relevant statutory provisions and rules. If so, staff will mark the file as a pending proceeding and refer the matter to SOAH for hearing generally within 45 calendar days, or such other lesser time

as an applicable state or federal statute, rule, or regulation may require. The Department will notify the opposing party of any delay.

(2) SOAH shall acquire jurisdiction over a case when the Department completes and files a Request to Docket Case form or other form acceptable to SOAH, together with the notice of report to the Board required under Tex. Gov't. Code §2306.043 or other pertinent documents giving rise to the case. Once SOAH acquires jurisdiction, all subsequent documents created, sent, or received in connection with the proceeding that SOAH requires to be filed with it are to be filed with SOAH, with appropriate service upon the opposing party in accordance with this section and the rules of SOAH.

(3) Except upon a showing of good cause or as an applicable statute or federal regulation may require, all contested case hearings in which the Department is a party shall be held at the location so determined by SOAH.

(4) Nothing in this subchapter shall in any way limit, alter, or abridge the ability of the Department to enter into mediation or alternative dispute resolution at any time prior to or after the holding of the administrative hearing but prior to the adoption by the Board of a final order.

(d) Service of Notice of Hearing, Pleadings and Other Documents on Parties.

(1) Service of a notice of hearing or of pleadings or other documents shall be made electronically using the EFileTexas system (found at efiletexas.gov). If EFileTexas is not available to a party, hand delivery, courier-receipted delivery, regular first class mail or certified mail to the party's last known address as shown on the Department's records, in accordance with §1.22 of this Title (relating to Providing Contact Information to the Department) shall be used.

(2) Service of pleadings and other documents shall be made in any manner provided for in SOAH rules.

(e) Proposal for Decision.

(1) After the conclusion of a hearing, the Administrative Law Judge (ALJ) shall prepare and serve on the parties a proposal for decision that includes the ALJ's findings of fact and conclusions of law, as modified by the ALJ's addressing of any exceptions and replies to exceptions timely filed with the ALJ in accordance with Tex. Gov't. Code §2001.062 and SOAH rules. The Executive Director shall place the proposal for decision and a proposed final order on the Board's agenda for discussion and possible action at a subsequent meeting of the Board.

(2) At a meeting of the Board where the proposed final order may be adopted, parties may provide testimony based on the record only, for changes to the proposal for decision or the proposed final order. No new evidence shall be submitted at the Board meeting. The Board may, on its own motion, remand to SOAH for any additional fact finding it determines is necessary, or, the Board may change a finding of fact or conclusion of law made by the ALJ, but only for reasons stated in Tex. Gov't. Code §2001.058(e). The Board may adopt a final order if it finds that the findings of fact and conclusions of law are supported by the evidence. Motions for rehearing may be filed and served in accordance with the Tex. Gov't. Code Chapter 2001 and the rules of SOAH.

(f) Disposition of Contested Cases on a Default Basis.

(1) In contested cases where the party not bearing the burden of proof at the hearing fails to appear, the ALJ may issue an order finding that adequate notice has been given, deeming factual allegations in the notice of hearing admitted, if appropriate, conditionally

dismissing the case from the SOAH docket, and conditionally remanding the case to TDHCA for disposition on a default basis. Pursuant to SOAH rules, a party has 15 calendar days after the issuance of a conditional order of dismissal and remand to file with SOAH a motion to set aside the order of dismissal and remand. On the sixteenth day after issuance, if no motion to set aside has been timely filed or if such a motion to set aside is not granted within the time limits provided for in SOAH's rules, the conditional order of dismissal and remand becomes final.

(2) When the order of dismissal and remand is final, the Executive Director shall prepare a proposed order for the Board's action containing findings of fact, as set forth in the notice of hearing, conclusions of law, and granting the relief requested by staff. The matter shall be placed on the Board's agenda for discussion and possible action at a subsequent meeting. Although public testimony is allowed, argument and evidence on the merits will not be considered at the Board meeting. Motions for rehearing shall be filed and served in accordance with Tex. Gov't. Code Chapter 2001 and the rules of SOAH.

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 February 11, 2022.

TRD-202200485
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: March 27, 2022
For further information, please call: (512) 475-3959



10 TAC §1.19

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.19, Reallocation of Financial Assistance. The purpose of the proposed repeal is to eliminate the current rule while replacing it with a more current version of the rule.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal would be in effect:

1. The repeal does not create or eliminate a government program but relates to how the Department will reallocate financial assistance.
2. The repeal does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.

3. The repeal does not require additional future legislative appropriations.

4. The repeal will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The repeal will not expand or contract the applicability of an existing regulation.

7. The repeal will not increase or decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated the repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed and new sections would be an updated and more germane rule. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held February 25, 2022, to March 25, 2022, to receive input on the proposed action. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or by email to bboston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, March 25, 2022.

STATUTORY AUTHORITY. The proposed repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed action affects no other code, article, or statute.

§1.19. *Reallocation of Financial Assistance.*

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 February 11, 2022.

TRD-202200494

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: March 27, 2022

For further information, please call: (512) 475-3959



10 TAC §1.19

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.19, Reallocation of Financial Assistance. The purpose of the proposed rule is to: add to the list of circumstances in which reallocation may be warranted, to clarify the documents that may address deobligation and reallocation, and to make other administrative clarifications.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson has determined that, for the first five years the new section would be in effect:

1. The new section does not create or eliminate a government program but relates to how the Department will reallocate financial assistance.
2. The new section does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The new section does not require additional future legislative appropriations.
4. The new section will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The new section does not create a new regulation, except that it is replacing a section being repealed simultaneously to provide for revisions.
6. The new section will not expand nor contract an existing regulation.
7. The new section will not increase or decrease the number of individuals subject to the rule's applicability.
8. The new section will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated the new section and determined that the action will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new section does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the new section as to its possible effect on local economies and has determined that for the first five years the new section would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section would be an updated and more germane rule. There will not be economic costs to individuals required to comply with the new section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new section are in effect, enforcing or administering the rule does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held February 25, 2022, to March 25, 2022, to receive input on the proposed action. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or by email to bboston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, March 25, 2022.

STATUTORY AUTHORITY. The proposed new section is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed new section affects no other code, article, or statute.

§1.19. *Reallocation of Financial Assistance.*

(a) Purpose. As provided for by Tex. Gov't Code §2306.111(h), this rule provides the policy for the reallocation of financial assistance, including assistance related to bonds, administered by the Department if the Department's obligation with respect to that assistance is prematurely terminated.

(b) It is the policy of the Department to take prudent measures to ensure that, when funds are provided to recipients for assistance, the funds are timely and lawfully utilized and that, if they cannot be timely and lawfully utilized by the initial recipient, there are mechanisms in place to reallocate those funds to other recipients in order to ensure their full utilization in assisting beneficiaries.

(c) The reallocation of federal or state financial assistance administered by the Department may be required when:

(1) an administrator, subrecipient, owner, or contractor returns contracted funds;

(2) reserved funds are not fully utilized at completion of an activity;

(3) balances on contracts remain unused;

(4) funds in a contract or reservation are partially or fully recaptured or terminated;

(5) funds in a contract that were used for an ineligible activity and have been repaid to the Department and the federal oversight agency is allowing the Department to still utilize the funds;

(6) required benchmarks or expenditure deadlines have not been achieved within the time frames agreed;

(7) there is program income; or

(8) other circumstances arise that prompt an initial recipient to be unable to utilize contracted funds.

(d) Reallocation of financial assistance for specific federal or state funding sources or programs administered by the Department is also governed by or provided for in:

(1) federal regulations and requirements;

(2) state rules relating to deobligation and reobligation adopted in other sections of this title;

(3) funding plans authorized by the Board governing federal or state resources that may have been reviewed and approved by the federal funding agency;

(4) Notices of Funding Availability (NOFAs) and Requests for Applications (RFAs); or

(5) written agreements and contracts relating to the administration of such funds.

(e) To the extent that programs or funding sources are governed by any of the items provided for in subsection (d) of this section, and the specific documents listed in subsection (d) of this section do not require further Board approval, no additional Board approval to follow the reallocation as provided for in those items is required. Reallocation of funding not governed by subsection (d) of this section will require Board approval.

(f) To the extent that certain programs are required to regionally allocate their annual allocations of funds, funds having originally been regionally allocated and needing to be reallocated under this section do not require that regional allocation be performed again.

(g) Funds made available under this section may be aggregated over a period of time prior to being reallocated.

(h) Consistent with the requirements of Tex. Gov't Code §2306.111(h), if the Department's obligation of financial assistance related to bonds is terminated prior to issuance, the assistance will be reallocated among other activities permitted by that bond issuance and any indenture associated with those bonds, as approved 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 February 11, 2022.

TRD-202200493

Bobby Wilkinson
Executive Director

Texas Department of Housing and Community Affairs
Earliest possible date of adoption: March 27, 2022
For further information, please call: (512) 475-3959



10 TAC §1.22

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.22 Providing Contact Information to the Department. The purpose of the proposed repeal is to eliminate the current rule while replacing it with a more current version of the rule.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal would be in effect:

1. The repeal does not create or eliminate a government program but relates to the requirement that any person or entities doing business with the Department must notify the Department of any change in contact information.
2. The repeal does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The repeal does not require additional future legislative appropriations.
4. The repeal will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.
6. The repeal will not expand or contract the applicability of an existing regulation.
7. The repeal will not increase or decrease the number of individuals subject to the rule's applicability.
8. The repeal will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated the repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate

or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed and new sections would be an updated and more germane rule. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held February 25, 2022, to March 25, 2022, to receive input on the proposed action. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or by email to bboston@tdhca.state.tx.us. **ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, March 25, 2022.**

STATUTORY AUTHORITY. The proposed repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed action affects no other code, article, or statute.

§1.22. Providing Contact Information to the Department.

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 February 11, 2022.

TRD-202200512

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: March 27, 2022

For further information, please call: (512) 475-3959



10 TAC §1.22

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.22, concerning Providing Contact Information to the Department. The purpose of the proposed rule is to change how updated contact information is provided to the Department and make other minor non-substantive revisions.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson has determined that, for the first five years the new section would be in effect:

1. The new section does not create or eliminate a government program but relates to the requirement that any person or entities doing business with the Department must notify the Department of any change in contact information.

2. The new section does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.

3. The new section does not require additional future legislative appropriations.

4. The new section will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The new section does not create a new regulation, except that it is replacing a section being repealed simultaneously to provide for revisions.

6. The new section will not expand nor contract an existing regulation.

7. The new section will not increase or decrease the number of individuals subject to the rule's applicability.

8. The new section will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated the new section and determined that the action will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new section does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the new section as to its possible effect on local economies and has determined that for the first five years the new section would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section would be

an updated and more germane rule. There will not be economic costs to individuals required to comply with the new section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new section are in effect, enforcing or administering the rule does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held February 25, 2022, to March 25, 2022, to receive input on the proposed action. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or by email to bboston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, March 25, 2022.

STATUTORY AUTHORITY. The proposed new section is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed new section affects no other code, article, or statute.

§1.22. Providing Contact Information to the Department.

(a) Any person or entities doing business with the Department shall notify the Department, of any change in contact information, including names, addresses, telephone numbers, email addresses and fax numbers. In addition, the notification shall include all Department contract numbers, project numbers or property names of any type. The notification shall be made as described in paragraphs (1) and (2) of this subsection:

(1) by email sent to the director or manager of the applicable program; or

(2) sent via the CMTS Attachment System.

(b) Only in cases in which email or access to the CMTS Attachment System is not available may the notification be sent by mail to Texas Department of Housing and Community Affairs, Contact Information Update, P.O. Box 13941, Austin, Texas 78711-3941.

(c) All persons or entities doing business with the Department are responsible for keeping their contact information current pursuant to subsection (a) of this section and as required by other Department rules. The Department is entitled to rely solely on the most recent contact information on file with the Department at the time any notice or other communication is sent.

(d) The notification requirements of this section are in addition to any other change of contact information notification requirements specific to certain divisions, funding sources or programs of the Department.

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 February 11, 2022.

TRD-202200511

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: March 27, 2022

For further information, please call: (512) 475-3959



TITLE 13. CULTURAL RESOURCES

PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 11. ADMINISTRATION DEPARTMENT

SUBCHAPTER A. ADMINISTRATION

13 TAC §11.25

The Texas Historical Commission (Commission) proposes new rule §11.25, related to State Employee Family Leave Pool within Title 13, Part 2, Chapter 11 of the Texas Administrative Code.

Section 11.25 creates a process for State Employee Family Leave Pool.

FISCAL NOTE. Mark Wolfe, Executive Director, has determined that for each of the first five-years the proposed amendment is in effect, there will not be a fiscal impact on state or local government as a result of enforcing or administering the new rule as proposed. The related policy and procedure are in place for this rule and there is no anticipated additional cost as a result of the rulemaking.

PUBLIC BENEFIT/COST NOTE. Mr. Wolfe has also determined that for the first five year period the rule is in effect, the anticipated public benefit will be enhanced transparency on agency policy and procedure.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT. There are no anticipated economic costs to persons who are required to comply with the amendments to this rule, as proposed. There is no effect on local economy for the first five years that the proposed new section is in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022 and §2001.024(a)(6).

COSTS TO REGULATED PERSONS. The proposed new section does not impose a cost on regulated persons, including another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES. Mr. Wolfe has also determined that there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing this new rule and, therefore, no regulatory flexibility analysis, as specified in Texas Government Code §2006.002, is required. The proposed new rule does not affect small businesses, micro-businesses, or rural communities because the new rule only clarifies the administrative procedures with which to carry out existing statutes.

GOVERNMENT GROWTH IMPACT STATEMENT. During the first five years that the amendments would be in effect, the pro-

posed amendments: will not create or eliminate a government program; will not result in the addition or reduction of employees; will not require an increase or decrease in future legislative appropriations; will not lead to an increase or decrease in fees paid to a state agency; will not create a new regulation; will not repeal an existing regulation; and will not result in an increase or decrease in the number of individuals subject to the rule. During the first five years that the amendments would be in effect, the proposed amendments will not positively or adversely affect the Texas economy.

REQUEST FOR PUBLIC COMMENT. Comments on the proposed amendments may be submitted to Mark Wolfe, Executive Director, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register*.

STATUTORY AUTHORITY AND STATEMENT ON AUTHORITY. This new rule is proposed under the authority of Texas Government Code §442.005(q), which provides the Commission with the authority to promulgate rules to reasonably affect the purposes of that chapter.

This rule is also authorized under Texas Government Code §442.0045 (included in HB 1422 from the 86th Legislative Session to be effective September 1, 2019), which allows the Commission to delegate its authority to the executive director by rule or order.

§11.25. State Employee Family Leave Pool.

A state employee family leave pool is established to provide eligible employees more flexibility in bonding and caring for children during a child's first year following birth, adoption, or foster placement, and caring for a seriously ill family member or the employee, including pandemic-related illnesses or complications caused by a pandemic.

(1) The Commission's Executive Director shall designate a pool administrator.

(2) The pool administrator will recommend a policy, operating procedures, and forms for the administration of this section for approval by the Executive Director.

(3) Operation of the pool shall be consistent with Texas Government Code, Chapter 661, Subchapter A-1. State Employee Family Leave Pool.

(4) Adoption of this rule is required of state agencies by Texas Government Code §661.022.

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 February 14, 2022.

TRD-202200518

Mark Wolfe

Executive Director

Texas Historical Commission

Earliest possible date of adoption: March 27, 2022

For further information, please call: (512) 463-6100



TITLE 16. ECONOMIC REGULATION

PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 401. ADMINISTRATION OF STATE LOTTERY ACT

SUBCHAPTER D. LOTTERY GAME RULES

16 TAC §§401.304, 401.305, 401.307, 401.312, 401.315 - 401.317, 401.320

The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §401.304 (Draw Game Rules (General)), §401.305 ("Lotto Texas" Draw Game Rule), §401.307 ("Pick 3" 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), and §401.320 ("All or Nothing" Draw Game Rule).

The proposed amendments to §401.305 and §401.317 increase the number of consecutive draws a player can purchase in the Lotto Texas and Powerball draw games, respectively. The proposed amendments also consolidate various provisions regarding a player's verification of numbers and other selection(s) on a lottery ticket from the individual draw game rules (§§401.305, 401.307, 401.312, 401.315, 401.316, 401.317, 401.320) into the general draw game rule (§401.304).

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).

Ryan Mindell, Lottery Operations Director, has determined that for each year of the first five years the proposed amendments will be in effect, the public benefit expected is greater player convenience as a result of increasing the number of consecutive Lotto Texas and Powerball drawings a player can purchase, and greater understanding of the Commission's rules and draw games by licensed lottery retailers and lottery players through increased uniformity and clarity in game rules.

Pursuant to Texas Government Code §2001.0221, the Commission provides the following Government Growth Impact Statement for the proposed amendments. For each year of the first five years the proposed amendments will be in effect, 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 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 on the proposed amendments may be submitted to Kyle Wolfe, 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. Comments must be received within 30 days after publication of this proposal in the *Texas Register* to be considered.

These amendments are proposed under Texas Government Code §466.015(c), 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.

This proposal is intended to implement Texas Government Code Chapter 466.

§401.304. *Draw Game Rules (General).*

(a) (No change.)

(b) Sale of tickets.

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

(6) Player Responsibility. It shall be the sole responsibility of the player to verify the accuracy of the game Play or Plays and other data printed on the ticket. The placing of Plays is done at the player's own risk through the licensed sales agent who is acting on behalf of the player in entering the Play or Plays.

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

§401.305. *"Lotto Texas" Draw Game Rule.*

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

(c) Lotto Texas Plays and tickets.

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

(3) A player may use a single playslip or other commission-approved method of play to purchase the same Lotto Texas or Lotto Texas With Extra! Play(s) [play(s)] for up to 15 [10] consecutive drawings, to begin with the next drawing after the purchase.

(4) - (5) (No change.)

~~[(6) It shall be the exclusive responsibility of the player to verify the accuracy of the player's selection(s) and other data printed on the ticket.]~~

(6) [(7)] An unsigned winning ticket is payable to the holder or bearer of the ticket if the ticket meets all applicable validation requirements.

(d) - (h) (No change.)

§401.307. *"Pick 3" Draw Game Rule.*

(a) - (c) (No change.)

(d) Plays and tickets.

(1) - (10) (No change.)

~~[(11) The purchaser is responsible for verifying the accuracy of the numbers and other selections shown on a ticket.]~~

(11) [(12)] An unsigned winning ticket is payable to the holder or bearer of the ticket if the ticket meets all applicable validation requirements.

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

§401.312. *"Texas Two Step" Draw Game Rule.*

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

(c) Plays and tickets.

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

~~[(5) The purchaser is responsible for verifying the accuracy of the numbers and other selections shown on a ticket.]~~

(5) [(6)] An unsigned winning ticket is payable to the holder or bearer of the ticket if the ticket meets all applicable validation requirements.

(d) - (f) (No change.)

§401.315. *"Mega Millions" Draw Game Rule.*

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

(c) Game Description. Mega Millions is a five (5) out of seventy (70) plus one (1) out of twenty-five (25) lottery game drawn on the day(s), time(s) and location(s) as determined by the Mega Millions Lotteries, and which pays the Grand Prize, at the election of the player made in accordance with this section, or by a default election made in accordance with this section, either on a graduated annuitized annual pari-mutuel basis or as a cash value option using a rate determined by the Mega Millions Finance Committee on a pari-mutuel basis. Except as provided in this section, all other prizes are paid on a single payment basis. During the Drawing event, five (5) numbers shall be drawn from the first set of seventy (70) numbers, and one (1) number shall be drawn from the second set of twenty-five (25) numbers, which shall constitute the Winning Numbers.

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

~~[(4) Player Responsibility. It shall be the sole responsibility of the player to verify the accuracy of the game Play or Plays and other data printed on the ticket. The placing of Plays is done at the player's own risk through the licensed sales agent who is acting on behalf of the player in entering the Play or Plays.]~~

(4) [(5)] Maximum Purchase. The maximum number of consecutive drawings on a single Play purchase is ten (10).

(5) [(6)] Subscription sales. A subscription sales program may be offered, at the discretion of the executive director.

(d) - (l) (No change.)

§401.316. *"Daily 4" Draw Game Rule.*

(a) - (c) (No change.)

(d) Plays and tickets.

(1) - (7) (No change.)

~~[(8) The purchaser is responsible for verifying the accuracy of the numbers and other selections shown on a ticket.]~~

(8) [(9)] An unsigned winning ticket is payable to the holder or bearer of the ticket if the ticket meets all applicable validation requirements.

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

§401.317. "Powerball" Draw Game Rule.

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

(c) Game Description.

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

~~[(4) Player Responsibility. It shall be the sole responsibility of the player to verify the accuracy of the game Play or Plays and other data printed on the ticket. The placing of Plays is done at the player's own risk through the licensed sales agent who is acting on behalf of the player in entering the Play or Plays.]~~

~~(4) [(5) Subscription Sales. A subscription sales program may be offered, at the discretion of the executive director.~~

~~(5) [(6) Maximum Purchase. The maximum number of consecutive Drawings on a single PB Play purchase is fifteen (15) [ten (10)], including Power Play Plays if purchased.~~

(d) - (k) (No change.)

§401.320. "All or Nothing" Draw Game Rule.

(a) - (c) (No change.)

(d) Plays and tickets.

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

~~[(5) It shall be the exclusive responsibility of the player to verify the accuracy of the player's selection(s) and other data printed on the ticket.]~~

~~(5) [(6) An unsigned winning ticket is payable to the holder or bearer of the ticket if the ticket meets all applicable validation requirements.~~

(e) - (g) (No change.)

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

Filed with the Office of the Secretary of State on February 11, 2022.

TRD-202200462

Bob Biard

General Counsel

Texas Lottery Commission

Earliest possible date of adoption: March 27, 2022

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



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS

SUBCHAPTER A. BOARD OF TRUSTEES

RELATIONSHIP

19 TAC §61.3

The State Board of Education (SBOE) proposes new §61.3, concerning school safety training for school board members. The proposed new section would reflect changes made by House Bill

(HB) 690, 87th Texas Legislature, Regular Session, 2021, to the SBOE's duty to provide training courses for independent school district trustees.

BACKGROUND INFORMATION AND JUSTIFICATION: Texas Education Code (TEC), §11.159, Member Training and Orientation, requires the SBOE to provide a training course for school board trustees. Chapter 61, Subchapter A, addresses this statutory requirement. School board trustee training under current SBOE rule includes a local school district orientation session, a basic orientation to the TEC, an annual team-building session with the local school board and the superintendent, specified hours of continuing education based on identified needs based on the SBOE's Framework for School Board Development, training on evaluating student academic performance, and training on identifying and reporting potential victims of sexual abuse, human trafficking, and other maltreatment of children.

HB 690, 87th Texas Legislature, Regular Session, 2021, added new TEC, §11.159(b-1), which obligates the SBOE to require trustees to complete training on school safety. Proposed new §61.3 would codify the school safety training requirement in rule.

New TEC, §11.159(b-1), also required that the SBOE, in coordination with the Texas School Safety Center, develop the curriculum and materials for the training by January 1, 2022. At the September 2021 SBOE meeting, the board discussed an outline of the school safety training curriculum proposed by the Texas School Safety Center and provided feedback on the outline. The SBOE approved the school safety training curriculum and materials developed by the Texas School Safety Center at its November 2021 meeting.

The SBOE approved the proposed new section for first reading and filing authorization at its January 28, 2022 meeting.

FISCAL IMPACT: Jeffrey Cottrill, deputy commissioner for governance and accountability, has determined that there are no additional costs to state or local government required to comply with the proposal.

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

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: Texas Education Agency (TEA) staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would create a new regulation by adding training on school safety to the existing required trustee training. The school safety training is required by TEC, §11.159(b-1), as added by HB 690, 87th Texas Legislature, Regular Session, 2021.

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 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: Dr. 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 the implementation of legislation by describing the requirements for a new school safety training for school district trustees established by TEC, §11.159(b-1), as added by HB 690, 87th Texas Legislature, Regular Session, 2021. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins February 25, 2022, and ends at 5:00 p.m. on April 1, 2022. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_\(TAC\)/Proposed_State_Board_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_(TAC)/Proposed_State_Board_of_Education_Rules/). The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in April 2022 in accordance with the SBOE board operating policies and procedures. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on February 25, 2022.

STATUTORY AUTHORITY. The new section is proposed under Texas Education Code, §11.159(b-1), as added by House Bill 690, 87th Texas Legislature, Regular Session, 2021, which obligates the State Board of Education (SBOE) to require trustees to complete training on school safety. The SBOE, in coordination with the Texas School Safety Center, was required to develop the curriculum and materials for the training by January 1, 2022.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §11.159(b-1).

§61.3. School Safety Training for School Board Members.

(a) The continuing education required under Texas Education Code, §11.159(b-1), applies to each member of an independent school district board of trustees.

(b) Each member of an independent school district board of trustees shall complete the training on school safety adopted by the State Board of Education (SBOE).

(1) The purpose of the training is to provide research-based information to trustees on ensuring a safe learning environment conducive to improving student outcomes.

(2) A candidate for school board may complete the training up to one year before he or she is elected or appointed. A newly elected or appointed trustee who did not complete the training under

this section in the year preceding his or her election or appointment must complete the training within 120 calendar days after election or appointment.

(3) The training requirement shall be fulfilled by completing the online course adopted by the SBOE and made available by the commissioner of education.

(4) The training shall be completed every two years.

(5) Each school district shall maintain verification of completion for each trustee.

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 February 14, 2022.

TRD-202200514

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: March 27, 2022

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



CHAPTER 74. CURRICULUM REQUIREMENTS

SUBCHAPTER B. GRADUATION REQUIREMENTS

19 TAC §§74.11 - 74.14

The State Board of Education (SBOE) proposes amendments to §§74.11-74.14, concerning graduation requirements. The proposed amendments would update the high school graduation requirements to align with Senate Bill (SB) 369 and SB 1063, 87th Texas Legislature, Regular Session, 2021; update course titles; add new courses to satisfy specific graduation requirements; update information related to performance acknowledgements; and make technical edits.

BACKGROUND INFORMATION AND JUSTIFICATION: SB 369, 87th Texas Legislature, Regular Session, 2021, amended Texas Education Code (TEC), §28.0256(d), to specify that a school counselor may not indicate that a student has not complied with the financial aid requirement for high school graduation if the school district or open-enrollment charter school fails to provide an opt-out form to the student or the student's parent or other person standing in parental relation to the student. Section 74.11 would be updated to add the new statutory provision.

SB 1063, 87th Texas Legislature, Regular Session, 2021, amended TEC, §28.025(b-1), to add a personal financial literacy and economics course as an option to satisfy graduation requirements for social studies under the foundation high school program. Section 74.12 would be updated to add the new credit option.

At the November 2020 SBOE meeting, the board approved for second reading and final adoption 19 TAC Chapter 116, Texas Essential Knowledge and Skills for Physical Education. The effective date for the new Texas Essential Knowledge

and Skills (TEKS) for physical education is August 1, 2022. The board approved the inclusion of new TEKS for three new high school physical education courses in Lifetime Fitness and Wellness Pursuits, Lifetime Recreation and Outdoor Pursuits, and Skill-based Lifetime Activities that will replace Foundations of Personal Fitness, Adventure/Outdoor Education, Aerobic Activities, and Team or Individual Sports. Section 74.12 would be updated to add the new physical education courses to satisfy specific graduation requirements.

At the June 2021 SBOE meeting, the board approved for second reading and final adoption 19 TAC §112.51, Specialized Topics in Science, with an effective date of August 1, 2022. The board also amended the title of the Earth and Space Science course to Earth Systems Science. Section 74.12 and §74.13 would be updated to add the new course and update the course title to satisfy specific graduation requirements.

At the September 2021 SBOE meeting, the board began revising career and technical education (CTE) courses currently codified in 19 TAC Chapter 130. Due to the current structure of Chapter 130, there are not enough section numbers available to add all of the proposed new courses in their assigned subchapters. To accommodate the addition of these new courses and future courses, the CTE TEKS in Chapter 130 are being moved to existing 19 TAC Chapter 127, Texas Essential Knowledge and Skills for Career Development, and that chapter is being renamed "Texas Essential Knowledge and Skills for Career Development and Career and Technical Education." The move of CTE subchapters from Chapter 130 to Chapter 127 will take place over time as the TEKS in each subchapter are revised. The board approved new 19 TAC Chapter 127, Subchapters G, I, J, M, and O, for second reading and final adoption at the November 2021 SBOE meeting. Section 74.11 and §74.13 would be updated to reflect the move of CTE TEKS from Chapter 130 to Chapter 127 as well as the proposed new title for Chapter 127.

A student may earn a performance acknowledgment on the student's transcript for outstanding performance on an established, valid, reliable, and nationally norm-referenced preliminary college preparation assessment instrument used to measure a student's progress toward readiness for college and the workplace or on an established valid, reliable, and nationally norm-referenced assessment instrument used by colleges and universities. Section 74.14 would be amended to update references to two College Board programs and to adjust scores that would qualify for a performance acknowledgment to ensure all scores reflect outstanding performance.

The SBOE approved the proposed amendments for first reading and filing authorization at its January 28, 2022 meeting.

FISCAL IMPACT: Monica Martinez, associate commissioner for standards and programs, has determined that there are no additional costs to state or local government required to comply with the proposal.

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

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: Texas Education Agency (TEA) staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking would expand an existing regulation by updating the high school graduation requirements to align with SB 369 and SB 1063, 87th Texas Legislature, Regular Session, 2021; update course titles; add new courses to satisfy specific graduation requirements; and make technical edits.

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

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Martinez has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be added flexibility in course options for students to meet high school graduation requirements. 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.

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 February 25, 2022 and ends at 5:00 p.m. on April 1, 2022. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_\(TAC\)/Proposed_State_Board_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_(TAC)/Proposed_State_Board_of_Education_Rules/). The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in April 2022 in accordance with the SBOE board operating policies and procedures. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on February 25, 2022.

STATUTORY AUTHORITY. The amendments are proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.025(a), which requires the SBOE to determine by rule the curriculum requirements for the foundation high school program that are consistent with the required curriculum and requires the SBOE to designate specific courses that are required for the foundation high school program; TEC, §28.025(b-1), as amended by SB 1063, 87th Texas Legis-

lature, Regular Session, 2021, which requires the SBOE to determine by rule specific courses for graduation under the foundation high school program; TEC, §28.025(b-3), which requires the SBOE to approve a variety of advanced English, mathematics, and science courses that can be taken to fulfill the foundation high school program; TEC, §28.025(b-14), which requires the SBOE to allow a student receiving special education services to substitute the languages other than English requirement with two credits in English language arts, mathematics, science, or social studies or two credits in career and technology education, technology applications, or other academic electives; TEC, §28.025(b-17), which requires the SBOE to adopt rules that ensure a student who successfully completes an advanced career and technical education course, including a course that may lead to an industry-recognized credential or certificate or an associate degree may comply with elective requirements for graduation; TEC, §28.025(c), which requires that, in order to receive a high school diploma, a student must complete the curriculum requirements identified by the SBOE and comply with the financial aid application requirement in accordance with TEC, §28.0256; TEC, §28.025(c-1), which requires the SBOE to adopt rules regarding earning an endorsement; TEC, §28.025(c-2), which requires the SBOE to adopt rules for earning an endorsement that include four credits in mathematics and four credits in science; TEC, §28.025(c-5), which permits a student to earn a performance acknowledgment for outstanding performance in a dual credit course; in bilingualism and biliteracy; on a college advanced placement test or international baccalaureate examination; on an established, valid, reliable, and nationally norm-referenced preliminary college preparation assessment instrument used to measure a student's progress toward readiness for college and the workplace; or on an established, valid, reliable, and nationally norm-referenced assessment instrument used by colleges and universities as part of their undergraduate admissions process by satisfying the requirements for that acknowledgment adopted by the State Board of Education by rule; TEC, §28.0256(a), which requires each student to complete and submit a free application for federal student aid (FAFSA) or a Texas application for state financial aid (TASFA) before graduating from high school; TEC, §28.0256(b), which provides an exception to students to opt out of the financial aid application requirement under TEC, §28.0256(a), by submitting a form signed by a parent, guardian, or student aged 18 years old or older, that authorizes the student to decline to comply with the financial aid application graduation requirement. A high school counselor may also authorize a student to decline to comply with the financial aid application graduation requirement for good cause; and TEC, §28.0256(d), as amended by SB 369, 87th Texas Legislature, Regular Session, 2021, which specifies that if a school counselor notifies a school district whether a student has complied with the requirement under TEC, §28.0256(a) or (b), the school counselor may only indicate whether the student has complied with this section and may not indicate the manner in which the student complied. A school counselor may not indicate that a student has not complied with the requirement if the school district or charter school fails to provide the form.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §§7.102(c)(4); 28.025(a), (b-1), as amended by Senate Bill (SB) 1063, 87th Texas Legislature, Regular Session, 2021, (b-3), (b-14), (b-17), (c), (c-1), (c-2), and (c-5); and 28.0256(a) and (b) and (d), as amended by SB 369, 87th Texas Legislature, Regular Session, 2021.

§74.11. *High School Graduation Requirements.*

(a) To receive a high school diploma, a student entering Grade 9 in the 2014-2015 school year and thereafter must complete the following:

(1) in accordance with subsection (d) of this section, requirements of the Foundation High School Program specified in §74.12 of this title (relating to Foundation High School Program);

(2) testing requirements for graduation as specified in Chapter 101 of this title (relating to Assessment); and

(3) demonstrated proficiency, in Grade 8 or higher, as determined by the district in which the student is enrolled, in delivering clear verbal messages; choosing effective nonverbal behaviors; listening for desired results; applying valid critical-thinking and problem-solving processes; and identifying, analyzing, developing, and evaluating communication skills needed for professional and social success in interpersonal situations, group interactions, and personal and professional presentations.

(b) Beginning with students enrolled in Grade 12 during the 2021-2022 school year, each student in Grade 12 must complete and submit a free application for federal student aid (FAFSA) or a Texas application for state financial aid (TASFA) before graduating from high school.

(1) A student may graduate under the Foundation High School Program without completing a financial aid application if:

(A) ~~[(1)]~~ the student's parent or other person standing in parental relation submits a signed form, approved by the Texas Education Agency (TEA), indicating that the parent or other person declines to complete and submit the application or authorizes the student to decline to complete and submit the financial aid application;

(B) ~~[(2)]~~ the student signs and submits the form described by paragraph (1) of this subsection on the student's own behalf if the student is 18 years of age or older or has been emancipated under Texas Family Code, Chapter 31; or

(C) ~~[(3)]~~ a school counselor authorizes the student to decline to complete and submit the financial aid application for good cause, as determined by the school counselor. ~~[If a school counselor notifies a school district that a student has declined to complete and submit a financial aid application for good cause, the school counselor may not indicate details regarding what constitutes good cause.]~~

(2) A school counselor may not indicate that a student has not complied with this subsection if the school district or open-enrollment charter school fails to provide the form described by paragraph (1)(A) of this subsection to the student or the student's parent or guardian.

(c) A school district shall clearly indicate the distinguished level of achievement under the Foundation High School Program, an endorsement, and a performance acknowledgment on the transcript or academic achievement record (AAR) of a student who satisfies the applicable requirements.

(d) A student entering Grade 9 in the 2014-2015 school year and thereafter shall enroll in the courses necessary to complete the curriculum requirements for the Foundation High School Program specified in §74.12 of this title and the curriculum requirements for at least one endorsement specified in §74.13 of this title (relating to Endorsements).

(e) A student may graduate under the Foundation High School Program without earning an endorsement if, after the student's sophomore year:

(1) the student and the student's parent or person standing in parental relation to the student are advised by a school counselor of the specific benefits of graduating from high school with one or more endorsements; and

(2) the student's parent or person standing in parental relation to the student files with a school counselor written permission, on a form adopted by the TEA, allowing the student to graduate under the Foundation High School Program without earning an endorsement.

(f) A student may earn a distinguished level of achievement by successfully completing the curriculum requirements for the Foundation High School Program and the curriculum requirements for at least one endorsement required by the Texas Education Code (TEC), §28.025(b-15), including four credits in science and four credits in mathematics to include Algebra II.

(g) An out-of-state or out-of-country transfer student (including foreign exchange students) or a transfer student from a Texas nonpublic school is eligible to receive a Texas diploma but must complete all requirements of this section to satisfy state graduation requirements. Any course credit required in this section that is not completed by the student before he or she enrolls in a Texas school district may be satisfied through the provisions of §74.23 of this title (relating to Correspondence Courses and Distance Learning) and §74.24 of this title (relating to Credit by Examination) or by completing the course or courses according to the provisions of §74.26 of this title (relating to Award of Credit).

(h) Elective credits may be selected from the following:

(1) high school courses not required for graduation that are listed in the following chapters of this title:

(A) Chapter 110 of this title (relating to Texas Essential Knowledge and Skills for English Language Arts and Reading);

(B) Chapter 111 of this title (relating to Texas Essential Knowledge and Skills for Mathematics);

(C) Chapter 112 of this title (relating to Texas Essential Knowledge and Skills for Science);

(D) Chapter 113 of this title (relating to Texas Essential Knowledge and Skills for Social Studies);

(E) Chapter 114 of this title (relating to Texas Essential Knowledge and Skills for Languages Other Than English);

(F) Chapter 115 of this title (relating to Texas Essential Knowledge and Skills for Health Education);

(G) Chapter 116 of this title (relating to Texas Essential Knowledge and Skills for Physical Education);

(H) Chapter 117 of this title (relating to Texas Essential Knowledge and Skills for Fine Arts);

(I) Chapter 127 of this title (relating to Texas Essential Knowledge and Skills for Career Development and Career and Technical Education); and

(J) Chapter 130 of this title (relating to Texas Essential Knowledge and Skills for Career and Technical Education);

(2) state-approved innovative courses as specified in §74.27 of this title (relating to Innovative Courses and Programs);

(3) Junior Reserve Officer Training Corps (JROTC)--one to four credits;

(4) Driver Education--one-half credit; and

(5) College preparatory English language arts or mathematics courses developed and offered pursuant to the TEC, §28.014.

(i) Courses offered for dual credit at or in conjunction with an institution of higher education that provide advanced academic instruction beyond, or in greater depth than, the essential knowledge and skills for the equivalent high school course required for graduation may satisfy graduation requirements, including requirements for required courses, advanced courses, and courses for elective credit as well as requirements for endorsements.

(j) A student may not be enrolled in a course that has a required prerequisite unless:

(1) the student has successfully completed the prerequisite course(s);

(2) the student has demonstrated equivalent knowledge as determined by the school district; or

(3) the student was already enrolled in the course in an out-of-state, an out-of-country, or a Texas nonpublic school and transferred to a Texas public school prior to successfully completing the course.

(k) A district may exempt a student from a specific career and technical education (CTE) course prerequisite for a CTE course that satisfies a mathematics or science credit if the district determines the student is not using the course to complete a CTE program of study.

~~(l)~~ [(k)] A district may award credit for a course a student completed without meeting the prerequisites if the student completed the course in an out-of-state, an out-of-country, or a Texas nonpublic school where there was not a prerequisite.

~~(m)~~ [(4)] A district shall allow a student who successfully completes AP Computer Science A or IB Computer Science Higher Level to satisfy both one advanced mathematics requirement and one languages other than English requirement for graduation.

~~(n)~~ [(m)] Each school district shall annually report to the TEA the names of the locally developed courses, programs, institutions of higher education, and internships in which the district's students have enrolled as authorized by the TEC, §28.002(g-1). The TEA shall make available information provided under this subsection to other districts. If a district chooses, it may submit any locally developed course for approval under §74.27 of this title as an innovative course.

~~(o)~~ [(n)] Each school district shall annually report to the TEA the names of cybersecurity courses approved by the board of trustees for credit and the institutions of higher education in which the district's students have enrolled as authorized by the TEC, §28.002(g-3). The TEA shall make available information provided under this subsection to other districts. If a district chooses, it may submit any locally developed course for approval under §74.27 of this title as an innovative course.

~~(p)~~ [(o)] A school district shall permit a student to comply with the curriculum requirements under the Foundation High School Program by successfully completing appropriate courses in the core curriculum of an institution of higher education (IHE). A student who has completed the core curriculum of an IHE in accordance with TEC, §61.822, as certified by the IHE in accordance with §4.28 of this title (relating to Core Curriculum):

(1) is considered to have earned an endorsement by successfully completing the appropriate courses for that endorsement;

(2) is considered to have earned a distinguished level of achievement under the Foundation High School Program; and

(3) is entitled to receive a high school diploma.

§74.12. *Foundation High School Program.*

(a) Credits. A student must earn at least 22 credits to complete the Foundation High School Program.

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

(1) English language arts--four credits. Two of the credits must consist of English I and II. (Students with limited English proficiency who are at the beginning or intermediate level of English language proficiency, as defined by §74.4(d) of this title (relating to English Language Proficiency Standards), may satisfy the English I and English II graduation requirements by successfully completing English I for Speakers of Other Languages and English II for Speakers of Other Languages.) A third credit must consist of English III, a comparable Advanced Placement (AP) English language arts course that does not count toward another credit required for graduation, or a comparable International Baccalaureate (IB) English language arts course that meets all the requirements in §110.33 of this title (relating to English Language Arts and Reading, English III (One Credit), Beginning with School Year 2009-2010). A fourth credit may be selected from one full credit or a combination of two half credits from two different courses, subject to prerequisite requirements, from the following courses:

- (A) English IV;
- (B) Independent Study in English;
- (C) Literary Genres;
- (D) Creative Writing;
- (E) Research and Technical Writing;
- (F) Humanities;
- (G) Public Speaking III;

(H) Communication Applications, which must be combined with another half credit from the other courses listed in subparagraphs (A)-(G) and (I)-(S) of this paragraph;

- (I) Oral Interpretation III;
- (J) Debate III;
- (K) Independent Study in Speech;
- (L) Independent Study in Journalism;
- (M) Advanced Broadcast Journalism III;
- (N) Advanced Journalism: Newspaper III;
- (O) Advanced Journalism: Yearbook III;

(P) a comparable Advanced Placement (AP) English language arts course that does not count toward another credit required for graduation;

(Q) a comparable International Baccalaureate (IB) English language arts course that meets all the requirements in §110.34 of this title (relating to English Language Arts and Reading, English IV (One Credit), Beginning with School Year 2009-2010);

(R) after the successful completion of English I, II, and III, a locally developed English language arts course or other activity, including an apprenticeship or training hours needed to obtain an industry-recognized credential or certificate that is developed pursuant to the Texas Education Code (TEC), §28.002(g-1);

(S) Business English; and

(T) a college preparatory English language arts course that is developed pursuant to the TEC, §28.014.

(2) Mathematics--three credits. Two of the credits must consist of Algebra I and Geometry.

(A) The additional credit may be selected from one full credit or a combination of two half credits from two different courses, subject to prerequisite requirements, from the following courses or a credit selected from the courses listed in subparagraph (B) of this paragraph:

- (i) Mathematical Models with Applications;
- (ii) Mathematical Applications in Agriculture, Food, and Natural Resources;
- (iii) Digital Electronics;
- (iv) Robotics Programming and Design;
- (v) Financial Mathematics;
- (vi) Applied Mathematics for Technical Professionals;
- (vii) Accounting II;
- (viii) Manufacturing Engineering Technology II;
- (ix) Robotics II.

(B) The additional credit may be selected from one full credit or a combination of two half credits from two different courses, subject to prerequisite requirements, from the following courses:

- (i) Algebra II;
- (ii) Precalculus;
- (iii) Advanced Quantitative Reasoning;
- (iv) Independent Study in Mathematics;
- (v) Discrete Mathematics for Problem Solving;
- (vi) Algebraic Reasoning;
- (vii) Statistics;
- (viii) a comparable AP mathematics course that does not count toward another credit required for graduation;
- (ix) AP Computer Science A;
- (x) IB Computer Science Higher Level;
- (xi) Engineering Mathematics;
- (xii) Statistics and Business Decision Making;
- (xiii) Mathematics for Medical Professionals;
- (xiv) Discrete Mathematics for Computer Science;
- (xv) pursuant to the TEC, §28.025(b-5), after the successful completion of Algebra II, a mathematics course endorsed by an institution of higher education as a course for which the institution would award course credit or as a prerequisite for a course for which the institution would award course credit. The Texas Education Agency (TEA) shall maintain a current list of courses offered under this clause; and

(xvi) after the successful completion of Algebra I and Geometry, a locally developed mathematics course or other activity, including an apprenticeship or training hours needed to obtain an industry-recognized credential or certificate that is developed pursuant to the TEC, §28.002(g-1).

(C) One credit of a two-credit IB mathematics course selected from Chapter 111 of this title (relating to Texas Essential Knowledge and Skills for Mathematics) may satisfy the additional mathematics credit.

(3) Science--three credits. One credit must consist of Biology or a comparable AP or IB biology course.

(A) One credit must be selected from the following laboratory-based courses:

- (i) Integrated Physics and Chemistry;
- (ii) Chemistry;
- (iii) Physics;
- (iv) Principles of Technology; and
- (v) a comparable AP or IB chemistry or physics course that does not count toward another credit required for graduation.

(B) The additional credit may be selected from one full credit or a combination of two half credits from two different courses, subject to prerequisite requirements, from the following laboratory-based courses:

- (i) Chemistry;
- (ii) Physics;
- (iii) Aquatic Science;
- (iv) Astronomy;
- (v) Earth Systems [~~and Spaae~~] Science;
- (vi) Environmental Systems;
- (vii) Specialized Topics in Science;
- (viii) [~~(viii)~~] a comparable AP science course that does not count toward another credit required for graduation;
- (ix) [~~(viii)~~] Advanced Animal Science;
- (x) [~~(ix)~~] Advanced Plant and Soil Science;
- (xi) [~~(x)~~] Anatomy and Physiology;
- (xii) [~~(xi)~~] Medical Microbiology;
- (xiii) [~~(xii)~~] Pathophysiology;
- (xiv) [~~(xiii)~~] Food Science;
- (xv) [~~(xiv)~~] Forensic Science;
- (xvi) [~~(xv)~~] Biotechnology I;
- (xvii) [~~(xvi)~~] Biotechnology II;
- (xviii) [~~(xvii)~~] Principles of Technology;
- (xix) [~~(xviii)~~] Scientific Research and Design;
- (xx) [~~(xix)~~] Engineering Design and Problem Solving;

ing;

- (xxi) [~~(xx)~~] Engineering Science;
- (xxii) [~~(xxi)~~] pursuant to the TEC, §28.025(b-5), after the successful completion of physics, a science course endorsed by an institution of higher education as a course for which the institution would award course credit or as a prerequisite for a course for which the institution would award course credit. The TEA shall maintain a current list of courses offered under this clause;

(~~xxiii~~) [~~(xxii)~~] a locally developed science course or other activity, including an apprenticeship or training hours needed to obtain an industry-recognized credential or certificate that is developed pursuant to the TEC, §28.002(g-1); and

(~~xxiv~~) [~~(xxiii)~~] one credit of a two-credit IB science course selected from Chapter 112 of this title (relating to Texas Essential Knowledge and Skills for Science).

(C) Credit may not be earned for both physics and Principles of Technology to satisfy science credit requirements.

(4) Social studies--three credits. [~~Two of the credits must consist of United States History Studies Since 1877 (one credit), United States Government (one-half credit), and Economics with Emphasis on the Free Enterprise System and Its Benefits (one-half credit). The additional credit may be selected from the following courses:]~~

(A) One credit must consist of United States History Studies Since 1877.

(B) One-half credit must consist of United States Government.

(C) One-half credit must be selected from the following:

(i) Economics with Emphasis on the Free Enterprise System and Its Benefits; or

(ii) Personal Financial Literacy/Economics.

(D) One credit must be selected from the following:

(i) [~~(A)~~] World History Studies; [~~or~~]

(ii) [~~(B)~~] World Geography Studies; or

(iii) [~~(C)~~] a comparable AP or IB world history or world geography course that does not count toward another credit required for graduation.

(5) Languages other than English (LOTE)--two credits.

(A) The credits may be selected from the following:

(i) any two levels in the same language, including comparable AP or IB language courses that do not count toward another credit required for graduation; or

(ii) two credits in computer programming languages, including computer coding, to be selected from Computer Science I, II, and III, AP Computer Science Principles, AP Computer Science A, IB Computer Science Standard Level, and IB Computer Science Higher Level.

(B) A single two-credit IB LOTE course may only satisfy one LOTE requirement.

(C) If a student, in completing the first credit of LOTE, demonstrates that the student is unlikely to be able to complete the second credit, the student may substitute another appropriate course as follows:

(i) Special Topics in Language and Culture;

(ii) World History Studies or World Geography Studies for a student who is not required to complete both by the local district;

(iii) another credit selected from Chapter 114 of this title (relating to Texas Essential Knowledge and Skills for Languages Other Than English); or

(iv) computer programming languages, including computer coding.

(D) The determination regarding a student's ability to complete the second credit of LOTE must be agreed to by:

(i) the teacher of the first LOTE credit course or another LOTE teacher designated by the school district, the principal or designee, and the student's parent or person standing in parental relation;

(ii) the student's admission, review, and dismissal (ARD) committee if the student receives special education services under the TEC, Chapter 29, Subchapter A; or

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

(E) A student, who due to a disability, is unable to complete two credits in the same language in a language other than English, may substitute a combination of two credits that are not being used to satisfy another specific graduation requirement selected from English language arts, mathematics, science, or social studies or two credits in career and technical education [~~or technology applications~~] for the LOTE credit requirements. The determination regarding a student's ability to complete the LOTE credit requirements will be made by:

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

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

(F) A student who successfully completes a dual language immersion/two-way or dual language immersion/one-way program in accordance with §89.1210(d)(3) and (4) of this title (relating to Program Content and Design), §89.1227 of this title (relating to Minimum Requirements for Dual Language Immersion Program Model), and §89.1228 of this title (relating to Two-Way Dual Language Immersion Program Model Implementation) at an elementary school may satisfy one credit of the two credits required in a language other than English.

(i) To successfully complete a dual language immersion program, a student must:

(I) have participated in a dual language immersion program for at least five consecutive school years;

(II) achieve high levels of academic competence as demonstrated by performance of meets or masters grade level on both the mathematics and reading State of Texas Assessments of Academic Readiness (STAAR®) in English or Spanish, as applicable, in at least one grade level; and

(III) achieve proficiency in both English and a language other than English as demonstrated by scores of proficient or higher in the reading and speaking domains on language proficiency or achievement tests in both languages.

(ii) The second credit of a language other than English must be in the same language as the successfully completed dual language immersion program.

(G) A student who successfully completes a course in American Sign Language while in elementary school may satisfy one credit of the two credits required in a language other than English.

(6) Physical education--one credit.

(A) The required credit may be selected from any combination of the following one-half to one credit courses:

(i) Lifetime Fitness and Wellness Pursuits;

~~[(i) Foundations of Personal Fitness;]~~

(ii) Lifetime Recreation and Outdoor Pursuits; and

~~[(ii) Adventure/Outdoor Education;]~~

(iii) Skill-Based Lifetime Activities.

~~[(iii) Aerobic Activities; and]~~

~~[(iv) Team or Individual Sports.]~~

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

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

(i) Athletics;

(ii) Junior Reserve Officer Training Corps (JROTC); and

(iii) appropriate private or commercially sponsored physical activity programs conducted on or off campus. The district must apply to the commissioner of education for approval of such programs, which may be substituted for state graduation credit in physical education. Such approval may be granted under the following conditions.

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

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

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

(i) Drill Team;

(ii) Marching Band; and

(iii) Cheerleading.

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

(F) Credit may not be earned more than once for any course identified in subparagraph (A) of this paragraph. No more than four substitution credits may be earned through any combination of substitutions allowed in subparagraphs (B)-(D) of this paragraph.

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

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

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

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

(7) Fine arts--one credit.

(A) The credit may be selected from the following courses subject to prerequisite requirements:

- (i) Art, Level I, II, III, or IV;
- (ii) Dance, Level I, II, III, or IV;
- (iii) Music, Level I, II, III, or IV;
- (iv) Music Studies;
- (v) Theatre, Level I, II, III, or IV;
- (vi) Musical Theatre, Level I, II, III, or IV;
- (vii) Technical Theatre, Level I, II, III, or IV;
- (viii) IB Film Standard or Higher Level;
- (ix) Floral Design;
- (x) Digital Art and Animation; and
- (xi) 3-D Modeling and Animation.

(B) In accordance with local district policy, credit may be earned through participation in a community-based fine arts program not provided by the school district in which the student is enrolled. The district must apply to the commissioner of education for approval of such programs, which may be substituted for state graduation credit in fine arts. Approval may be granted if the fine arts program provides instruction in the essential knowledge and skills identified for a fine arts course as defined by Chapter 117, Subchapter C, of this title (relating to High School, Adopted 2013).

(c) Elective courses--five credits. The credits must be selected from the list of courses specified in §74.11(g) or (h) of this title (relating to High School Graduation Requirements) or from a locally developed course or activity developed pursuant to the TEC, §28.002(g-1), for which a student may receive credit and that does not satisfy a specific course requirement.

(d) Substitutions. No substitutions are allowed in the Foundation High School Program, except as specified in this chapter.

§74.13. *Endorsements.*

(a) A student shall specify in writing an endorsement the student intends to earn upon entering Grade 9.

(b) A district shall permit a student to enroll in courses under more than one endorsement before the student's junior year and to choose, at any time, to earn an endorsement other than the endorsement the student previously indicated. This section does not entitle a student to remain enrolled to earn more than 26 credits.

(c) A student must earn at least 26 credits to earn an endorsement.

(d) A school district may define advanced courses and determine a coherent sequence of courses for an endorsement area, provided that prerequisites in Chapters 110-117, 127, and 130 of this title are followed.

(e) To earn an endorsement a student must demonstrate proficiency in the following.

(1) The curriculum requirements for the Foundation High School Program as defined by §74.12 of this title (relating to Foundation High School Program).

(2) A fourth credit in mathematics that may be selected from one full credit or a combination of two half credits from two different courses, subject to prerequisite requirements, from the following courses:

- (A) Algebra II;
- (B) Precalculus;
- (C) Advanced Quantitative Reasoning;
- (D) Independent Study in Mathematics;
- (E) Discrete Mathematics for Problem Solving;
- (F) Algebraic Reasoning;
- (G) Statistics;
- (H) a comparable Advanced Placement (AP) mathematics course that does not count toward another credit required for graduation;
- (I) AP Computer Science A;
- (J) International Baccalaureate (IB) Computer Science Higher Level;
- (K) Engineering Mathematics;
- (L) Statistics and Business Decision Making;
- (M) Mathematics for Medical Professionals;
- (N) Discrete Mathematics for Computer Science;
- (O) pursuant to the Texas Education Code (TEC), §28.025(b-5), after the successful completion of Algebra II, a mathematics course endorsed by an institution of higher education as a course for which the institution would award course credit or as a prerequisite for a course for which the institution would award course credit. The Texas Education Agency (TEA) shall maintain a current list of courses offered under this subparagraph; and
- (P) after the successful completion of Algebra I and Geometry, a locally developed mathematics course or other activity, including an apprenticeship or training hours needed to obtain an indus-

try-recognized credential or certificate that is developed pursuant to the TEC, §28.002(g-1).

(3) A student may complete a course listed in paragraph (2) of this subsection before or after completing a course listed in §74.12(b)(2)(A) of this title.

(4) The fourth mathematics credit may be a college preparatory mathematics course that is developed and offered pursuant to the TEC, §28.014.

(5) The fourth mathematics credit may be satisfied with one credit of a two-credit IB mathematics course selected from Chapter 111 of this title (relating to Texas Essential Knowledge and Skills for Mathematics) that does not count toward another credit required for graduation.

(6) An additional credit in science that may be selected from one full credit or a combination of two half credits from two different courses, subject to prerequisite requirements, from the following courses:

- (A) Chemistry;
- (B) Physics;
- (C) Aquatic Science;
- (D) Astronomy;
- (E) Earth Systems [~~and Space~~] Science;
- (F) Environmental Systems;
- (G) Specialized Topics in Science;

(H) [~~G~~] a comparable AP science course that does not count toward another credit required for graduation;

- (I) [~~H~~] Advanced Animal Science;
- (J) [~~I~~] Advanced Plant and Soil Science;
- (K) [~~J~~] Anatomy and Physiology;
- (L) [~~K~~] Medical Microbiology;
- (M) [~~L~~] Pathophysiology;
- (N) [~~M~~] Food Science;
- (O) [~~N~~] Forensic Science;
- (P) [~~O~~] Biotechnology I;
- (Q) [~~P~~] Biotechnology II;
- (R) [~~Q~~] Principles of Technology;
- (S) [~~R~~] Scientific Research and Design;
- (T) [~~S~~] Engineering Design and Problem Solving;
- (U) [~~T~~] Engineering Science;

(V) [~~U~~] pursuant to the TEC, §28.025(b-5), after the successful completion of physics, a science course endorsed by an institution of higher education as a course for which the institution would award course credit or as a prerequisite for a course for which the institution would award course credit. The TEA shall maintain a current list of courses offered under this subparagraph;

(W) [~~V~~] a locally developed science course or other activity, including an apprenticeship or training hours needed to obtain an industry-recognized credential or certificate that is developed pursuant to the TEC, §28.002(g-1);

(X) [~~W~~] pursuant to the TEC, §28.025(c-3), a student pursuing an arts and humanities endorsement who has the written permission of the student's parent or a person standing in parental relation to the student may substitute a course that is not being used to satisfy another specific graduation requirement selected from:

- (i) Chapter 110 of this title (relating to Texas Essential Knowledge and Skills for English Language Arts and Reading);
- (ii) Chapter 113 of this title (relating to Texas Essential Knowledge and Skills for Social Studies);
- (iii) Chapter 114 of this title (relating to Texas Essential Knowledge and Skills for Languages Other Than English); or
- (iv) Chapter 117 of this title (relating to Texas Essential Knowledge and Skills for Fine Arts); and

(Y) [~~X~~] credit may not be earned for both physics and Principles of Technology to satisfy science credit requirements.

(Z) [~~Y~~] The fourth science credit may be satisfied with one credit of a two-credit IB science course selected from Chapter 112 of this title (relating to Texas Essential Knowledge and Skills for Science) that does not count toward another credit required for graduation.

(7) Two additional elective credits that may be selected from the list of courses specified in §74.11(g) or (h) of this title (relating to High School Graduation Requirements).

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

(1) Science, technology, engineering, and mathematics (STEM). A student may earn a STEM endorsement by completing the requirements specified in subsection (e) of this section, including Algebra II, chemistry, and physics or Principles of Technology and:

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

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

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

(D) four credits in science by successfully completing chemistry, physics, and two additional science courses by selecting courses from subsection (e)(6) of this section; or

(E) in addition to Algebra II, chemistry, and physics, a coherent sequence of three additional credits from no more than two of the categories or disciplines represented by subparagraphs (A), (B), (C), and (D) of this paragraph.

(2) Business and industry. A student may earn a business and industry endorsement by completing the requirements specified in subsection (e) of this section and:

(A) a coherent sequence of courses for four or more credits in CTE that consists of at least two courses in the same career cluster and at least one advanced CTE course. The courses may be selected from Chapter 130 of this title, Chapter 127 of this title, or CTE innovative courses approved by the commissioner. The final course in the sequence must be selected from one of the following:

(i) Chapter 130, Subchapter A, of this title (relating to Agriculture, Food, and Natural Resources); or

(ii) Chapter 130, Subchapter B, of this title (relating to Architecture and Construction); or

(iii) Chapter 130, Subchapter C, of this title (relating to Arts, Audio/Video Technology, and Communications); or

(iv) Chapter 130, Subchapter D, of this title (relating to Business Management and Administration); or

(v) Chapter 130, Subchapter F, of this title (relating to Finance); or

(vi) Chapter 127, Subchapter J, of this title (relating to Hospitality and Tourism); or

~~(vi) Chapter 130, Subchapter I, of this title (relating to Hospitality and Tourism); or~~

(vii) Chapter 130, Subchapter K, of this title (relating to Information Technology); or

(viii) Chapter 130, Subchapter M, of this title (relating to Manufacturing); or

(ix) Chapter 130, Subchapter N, of this title (relating to Marketing); or

(x) Chapter 130, Subchapter P, of this title (relating to Transportation, Distribution, and Logistics); or

(xi) Chapter 130, Subchapter Q, of this title (relating to Energy); or

(xii) Career Preparation I or II and Project-Based Research in Chapter 127, Subchapter B, of this title if the course addresses a career from a field listed in clauses (i)-(xi) of this subparagraph; or

(B) courses required to complete a TEA-designated program of study related to business and industry; or

(C) four English credits by selecting courses from Chapter 110 of this title to include three levels in one of the following areas:

(i) public speaking; or

(ii) debate; or

(iii) advanced broadcast journalism; or

(iv) advanced journalism: newspaper; or

(v) advanced journalism: yearbook; or

(vi) advanced journalism: literary magazine; or

(D) a coherent sequence of four credits from subparagraph (A), (B), or (C) of this paragraph.

(3) Public services. A student may earn a public services endorsement by completing the requirements specified in subsection (e) of this section and:

(A) a coherent sequence of courses for four or more credits in CTE that consists of at least two courses in the same career

cluster and at least one advanced CTE course. The courses may be selected from Chapter 130 of this title, Chapter 127 of this title, or CTE innovative courses approved by the commissioner. The final course in the sequence must be selected from one of the following:

~~(i) Chapter 127, Subchapter G, of this title (relating to Education and Training); or~~

~~{(i) Chapter 130, Subchapter E, of this title (relating to Education and Training); or}~~

(ii) Chapter 130, Subchapter G, of this title (relating to Government and Public Administration); or

~~(iii) Chapter 127, Subchapter I, of this title (relating to Health Science); or~~

~~{(iii) Chapter 130, Subchapter H, of this title (relating to Health Science); or}~~

(iv) Chapter 130, Subchapter J, of this title (relating to Human Services); or

~~(v) Chapter 127, Subchapter M, of this title (relating to Law and Public Service); or~~

~~{(v) Chapter 130, Subchapter L, of this title (relating to Law, Public Safety, Corrections, and Security); or}~~

(vi) Career Preparation I or II and Project-Based Research in Chapter 127, Subchapter B, of this title if the course addresses a field from a cluster listed in clauses (i)-(v) of this subparagraph; or

(B) courses required to complete a TEA-designated program of study related to public services; or

(C) four courses in Junior Reserve Officer Training Corps (JROTC).

(4) Arts and humanities. A student may earn an arts and humanities endorsement by completing the requirements specified in subsection (e) of this section and:

(A) five social studies credits by selecting courses from Chapter 113 of this title; or

(B) four levels of the same language in a language other than English by selecting courses in accordance with Chapter 114 of this title, which may include Advanced Language for Career Applications; or

(C) two levels of the same language in a language other than English and two levels of a different language in a language other than English by selecting courses in accordance with Chapter 114 of this title; or

(D) four levels of American sign language by selecting courses in accordance with Chapter 114 of this title; or

(E) a coherent sequence of four credits by selecting courses from one or two categories or disciplines in fine arts from Chapter 117 of this title or innovative courses approved by the commissioner; or

(F) four English credits by selecting from the following:

(i) English IV; or

(ii) Independent Study in English; or

(iii) Literary Genres; or

(iv) Creative Writing; or

(v) Research and Technical Writing; or

- (vi) Humanities; or
- (vii) Communication Applications; or
- (viii) AP English Literature and Composition; or
- (ix) AP English Language and Composition; or
- (x) IB Language Studies A: Language and Literature Standard Level; or
- (xi) IB Language Studies A: Language and Literature Higher Level; or
- (xii) IB Language Studies A: Literature Standard Level; or
- (xiii) IB Language Studies A: Literature Higher Level; or
- (xiv) IB Literature and Performance Standard Level.

(5) Multidisciplinary studies. A student may earn a multidisciplinary studies endorsement by completing the requirements specified in subsection (e) of this section and:

(A) four advanced courses that prepare a student to enter the workforce successfully or postsecondary education without remediation from within one endorsement area or among endorsement areas that are not in a coherent sequence; or

(B) four credits in each of the four foundation subject areas to include chemistry and/or physics and English IV or a comparable AP or IB English course; or

(C) four credits in Advanced Placement, International Baccalaureate, or dual credit selected from English, mathematics, science, social studies, economics, languages other than English, or fine arts.

(g) A course completed as part of the set of four courses needed to satisfy an endorsement requirement may also satisfy a requirement under §74.12(b) and (c) of this title and subsection (e)(2), (4), (5), and (6) of this section, including an elective requirement. The same course may count as part of the set of four courses for more than one endorsement.

§74.14. *Performance Acknowledgments.*

(a) A student may earn a performance acknowledgment on the student's transcript for outstanding performance in a dual credit course by successfully completing:

- (1) at least 12 hours of college academic courses, including those taken for dual credit as part of the Texas core curriculum, and advanced technical credit courses, including locally articulated courses, with a grade of the equivalent of 3.0 or higher on a scale of 4.0; or
- (2) an associate degree while in high school.

(b) A student may earn a performance acknowledgment on the student's transcript for outstanding performance in bilingualism and biliteracy as follows.

(1) A student may earn a performance acknowledgment by demonstrating proficiency in accordance with local school district grading policy in two or more languages by:

- (A) completing all English language arts requirements and maintaining a minimum grade point average (GPA) of the equivalent of 80 on a scale of 100; and
- (B) satisfying one of the following:

(i) completion of a minimum of three credits in the same language in a language other than English with a minimum GPA of the equivalent of 80 on a scale of 100; or

(ii) demonstrated proficiency in the Texas Essential Knowledge and Skills for Level IV or higher in a language other than English with a minimum GPA of the equivalent of 80 on a scale of 100; or

(iii) completion of at least three credits in foundation subject area courses in a language other than English with a minimum GPA of 80 on a scale of 100; or

(iv) demonstrated proficiency in one or more languages other than English through one of the following methods:

(I) a score of 3 or higher on a College Board Advanced Placement examination for a language other than English; or

(II) a score of 4 or higher on an International Baccalaureate examination for a higher-level languages other than English course; or

(III) performance on a national assessment of language proficiency in a language other than English of at least Intermediate High or its equivalent.

(2) In addition to meeting the requirements of paragraph (1) of this subsection, to earn a performance acknowledgment in bilingualism and biliteracy, an English language learner must also have:

(A) participated in and met the exit criteria for a bilingual or English as a second language (ESL) program; and

(B) scored at the Advanced High level on the Texas English Language Proficiency Assessment System (TELPAS).

(c) A student may earn a performance acknowledgment on the student's transcript for outstanding performance on a College Board Advanced Placement test or International Baccalaureate examination by earning:

(1) a score of 3 or above on a College Board Advanced Placement examination; or

(2) a score of 4 or above on an International Baccalaureate examination.

(d) A student may earn a performance acknowledgment on the student's transcript for outstanding performance on an established, valid, reliable, and nationally norm-referenced preliminary college preparation assessment instrument used to measure a student's progress toward readiness for college and the workplace or on an established valid, reliable, and nationally norm-referenced assessment instrument used by colleges and universities as part of their undergraduate admissions process by:

(1) earning a score on the Preliminary SAT/National Merit Scholarship Qualifying Test (PSAT/NMSQT®) that qualifies the student for recognition as a commended scholar or higher by the [College Board and] National Merit Scholarship Corporation or as an awardee [; as part] of the National [Hispanic] Recognition Programs [Program (NHRP)] of the College Board [or as part of the National Achievement Scholarship Program of the National Merit Scholarship Corporation] ;

(2) earning a composite score of 41 [achieving the ACT® readiness benchmark score on at least three of the five subject tests] on the ACT Aspire™ examination;

(3) earning a composite score of 29 on the ACT PreACT® examination;

(4) [(3)] earning a total score of at least 1350 [1310] on the SAT®; or

(5) [(4)] earning a composite score on the ACT® examination of 29 [28] (excluding the writing subscore).

(e) A student may earn a performance acknowledgment on the student's transcript for earning a state-recognized or nationally or internationally recognized business or industry certification or license as follows.

(1) A student may earn a performance acknowledgment with:

(A) performance on an examination or series of examinations sufficient to obtain a nationally or internationally recognized business or industry certification; or

(B) performance on an examination sufficient to obtain a government-required credential to practice a profession.

(2) Nationally or internationally recognized business or industry certification shall be defined as an industry-validated credential that complies with knowledge and skills standards promulgated by a nationally or internationally recognized business, industry, professional, or government entity representing a particular profession or occupation that is issued by or endorsed by:

(A) a national or international business, industry, or professional organization;

(B) a state agency or other government entity; or

(C) a state-based industry association.

(3) Certifications or licensures for performance acknowledgements shall:

(A) be age appropriate for high school students;

(B) represent a student's substantial course of study and/or end-of-program knowledge and skills;

(C) include an industry-recognized examination or series of examinations, an industry-validated skill test, or demonstrated proficiency through documented, supervised field experience; and

(D) represent substantial knowledge and multiple skills needed for successful entry into a high-skill occupation.

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 February 14, 2022.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: March 27, 2022

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



CHAPTER 120. OTHER TEXAS ESSENTIAL KNOWLEDGE AND SKILLS

SUBCHAPTER A. CHARACTER TRAITS

The State Board of Education (SBOE) proposes the repeal of §120.1 and amendments to §§120.3, 120.5, 120.7, and 120.9, concerning Texas Essential Knowledge and Skills (TEKS) for character traits. The proposed revisions would update the standards for positive character traits to align with the requirements of Senate Bill (SB) 123, 87th Texas Legislature, Regular Session, 2021.

BACKGROUND INFORMATION AND JUSTIFICATION: In 2019, the 86th Texas Legislature passed House Bill 1026, requiring the SBOE to integrate positive character traits into the essential knowledge and skills adopted for Kindergarten-Grade 12, as appropriate. The legislation required the SBOE to include the following positive character education traits in the standards: courage; trustworthiness, including honesty, reliability, punctuality, and loyalty; integrity; respect and courtesy; responsibility, including accountability, diligence, perseverance, and self-control; fairness, including justice and freedom from prejudice; caring, including kindness, empathy, compassion, consideration, patience, generosity, and charity; good citizenship, including patriotism, concern for the common good and the community, and respect for authority and the law; school pride; and gratitude. The legislation also required school districts and open-enrollment charter schools to adopt a character education program that includes the required positive character traits. At the January 2020 SBOE meeting, a discussion item on character traits instruction was presented to the Committee of the Full Board. The committee requested that staff prepare a proposal to add essential knowledge and skills for positive character traits as a new chapter in the TAC. The SBOE adopted the TEKS for positive character traits effective August 1, 2019. The new TEKS were implemented beginning with the 2021-2022 school year.

The 87th Texas Legislature, Regular Session, 2021, passed SB 123, which requires the SBOE to add personal skills to the TEKS for positive character traits. The legislation added responsible decision-making skills, interpersonal skills, and self-management skills to the required topics to be addressed in the standards.

The proposed amendments to §§120.3, 120.5, 120.7, and 120.9 would add the required new topics to the TEKS for positive character traits in Kindergarten-Grade 12.

In addition, §120.1, which contains implementation language for the subchapter, is proposed for repeal. Implementation language would be added as new subsection (a) for each course.

The SBOE approved the proposed revisions for first reading and filing authorization at its January 28, 2022 meeting.

FISCAL IMPACT: Monica Martinez, associate commissioner for standards and programs, has determined that there are no additional costs to state or local government required to comply with the proposal.

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

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state

agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: Texas Education Agency (TEA) staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking would expand existing regulations by updating the standards for positive character traits to align with the requirements of SB 123, 87th Texas Legislature, Regular Session, 2021, and adding implementation language to each course. The proposed rulemaking would also repeal an existing regulation by removing separate implementation language in §120.1.

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

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Martinez has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be updated standards for positive character traits to align with statute. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no new data and reporting impact.

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 February 25, 2022, and ends at 5:00 p.m. on April 1, 2022. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_\(TAC\)/Proposed_State_Board_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_(TAC)/Proposed_State_Board_of_Education_Rules/). The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in April 2022 in accordance with the SBOE board operating policies and procedures. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on February 25, 2022.

19 TAC §120.1

STATUTORY AUTHORITY. The repeal is proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to identify by rule the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; and TEC, §29.906, as amended by Senate Bill 123, 87th Texas Legislature, Regular Session, 2021, which requires

the SBOE to integrate positive character traits and personal skills into the essential knowledge and skills adopted for Kindergarten-Grade 12, as appropriate.

CROSS REFERENCE TO STATUTE. The repeal implements Texas Education Code, §§7.102(c)(4); 28.002(a) and (c); and 29.906, as amended by Senate Bill 123, 87th Texas Legislature, Regular Session, 2021.

§120.1. Implementation of Texas Essential Knowledge and Skills for Positive Character Traits.

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 February 14, 2022.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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

19 TAC §§120.3, 120.5, 120.7, 120.9

STATUTORY AUTHORITY. The amendments are proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to identify by rule the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; and TEC, §29.906, as amended by Senate Bill 123, 87th Texas Legislature, Regular Session, 2021, which requires the SBOE to integrate positive character traits and personal skills into the essential knowledge and skills adopted for Kindergarten-Grade 12, as appropriate.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §§7.102(c)(4); 28.002(a) and (c); and 29.906, as amended by Senate Bill 123, 87th Texas Legislature, Regular Session, 2021.

§120.3. Texas Essential Knowledge and Skills for Positive Character Traits and Personal Skills, Kindergarten-Grade 2, Adopted 2020.

(a) Implementation. The provisions of this section shall be implemented by school districts beginning with the 2021-2022 school year.

(1) School districts and open-enrollment charter schools are required to provide instruction in the essential knowledge and skills for positive character traits and personal skills outlined in this subchapter at least once in the following grade bands: Kindergarten-Grade 2, Grades 3-5, Grades 6-8, and Grades 9-12.

(2) School districts may provide the required instruction in a variety of arrangements, including through a stand-alone course or by integrating the positive character traits standards in the essential knowledge and skills for one or more courses or subject areas at the appropriate grade levels.

(b) [(a)] Introduction.

(1) Character education introduces students to character traits and personal skills that empower them to be good citizens who are trustworthy, responsible, and caring. The character traits and personal skills reflect positive beliefs, attitudes, and mindsets; provide opportunities for self-reflection; and permit students to apply effective strategies to make decisions, solve problems, and behave responsibly.

(2) The standards for positive character traits and personal skills are comprised of four strands: trustworthiness, responsibility, caring, and citizenship. Each strand consists of the following character traits and personal skills.

(A) Trustworthiness: honesty [~~loyalty~~], integrity, loyalty, punctuality, and reliability [~~and punctuality~~].

(B) Responsibility: accountability, diligence, perseverance, and self-control, and self-management.

(C) Caring: interpersonal skills, including kindness, empathy, charity, compassion, consideration, cooperation, empathy, generosity, kindness, and patience [~~; consideration, and compassion~~].

(D) Good citizenship: having respect for authority, [fairness, freedom from prejudice, justice, patriotism, school pride, respect for authority and] law, justice, and the rights of others; being free from prejudice; having gratitude and school pride; being courteous, fair, and patriotic; and making responsible decisions.

(3) Students are expected to develop an awareness of self-identity as well as recognize multiple perspectives, differences, [~~difference and~~] diversity, biases, and the social and cultural context in which they live.

(4) The knowledge and skills for positive character traits and personal skills are organized in the following grade bands: Kindergarten-Grade 2, Grades 3-5, Grades 6-8, and Grades 9-12. However, due to the complexity of the concepts, student expectations and knowledge and skills statements cannot be taught, discussed, or viewed in isolation.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) [(b)] Knowledge and skills.

(1) Trustworthiness. The student understands how personal skills, choices, and actions relate to character building. The student is expected to:

(A) describe how personal choices lead to personal actions;

(B) explain what it means to be trustworthy; and

(C) identify personal actions that build trustworthiness, including being honest and punctual.

(2) Responsibility. The student understands the concept of responsibility and how personal actions and self-management skills demonstrate responsibility. The student is expected to:

(A) describe and give examples of how feelings and beliefs influence personal actions;

(B) describe how to make personal choices before speaking and acting; [~~and~~]

(C) define self-control and discuss effective self-management skills, including listening to others, managing one's emotions,

and setting goals; and [~~identify instances in which self-control is important.~~]

(D) identify instances in which self-management skills are important.

(3) Caring. The student understands how personal actions and interpersonal skills demonstrate characteristics of caring. The student is expected to:

(A) listen actively when sharing and cooperating with others;

(B) [~~(A)~~] define patience and identify actions that demonstrate patience; and

(C) [~~(B)~~] explain and identify examples of how actions can demonstrate kindness to others.

(4) Good citizenship [~~Citizenship~~]. The student understands how personal actions and responsible decision making can demonstrate good citizenship. The student is expected to:

(A) define fairness and identify examples of fairness when making decisions in a variety of situations;

(B) define and identify examples of school pride and patriotism;

(C) explain what it means to demonstrate respect and courtesy and why it is important to demonstrate respect and courtesy to others; and

(D) describe ways in which individuals demonstrate respect for authority and law.

[(D) define good citizenship.]

§120.5. *Texas Essential Knowledge and Skills for Positive Character Traits and Personal Skills*, Grades 3-5, Adopted 2020.

(a) Implementation. The provisions of this section shall be implemented by school districts beginning with the 2021-2022 school year.

(1) School districts and open-enrollment charter schools are required to provide instruction in the essential knowledge and skills for positive character traits and personal skills outlined in this subchapter at least once in the following grade bands: Kindergarten-Grade 2, Grades 3-5, Grades 6-8, and Grades 9-12.

(2) School districts may provide the required instruction in a variety of arrangements, including through a stand-alone course or by integrating the positive character traits standards in the essential knowledge and skills for one or more courses or subject areas at the appropriate grade levels.

(b) [(a)] Introduction.

(1) Character education introduces students to character traits and personal skills that empower them to be good citizens who are trustworthy, responsible, and caring. The character traits and personal skills reflect positive beliefs, attitudes, and mindsets; provide opportunities for self-reflection; and permit students to apply effective strategies to make decisions, solve problems, and behave responsibly.

(2) The standards for positive character traits and personal skills are comprised of four strands: trustworthiness, responsibility, caring, and citizenship. Each strand consists of the following character traits and personal skills.

(A) Trustworthiness: honesty [~~loyalty~~], integrity, loyalty, punctuality, and reliability [~~and punctuality~~].

(B) Responsibility: accountability, diligence, perseverance, [~~diligence, and~~] self-control, and self-management.

(C) Caring: interpersonal skills, including [kindness, empathy,] charity, compassion, consideration, cooperation, empathy, generosity, kindness, and patience[; ~~consideration; and compassion~~].

(D) Good citizenship: having [Citizenship: respect, courtesy,] concern for the common good and the community; having respect for authority, [fairness, freedom from prejudice, justice, patriotism, school pride, respect for authority and] law, justice, and the rights of others; being free from prejudice; having gratitude and school pride; being courteous, fair, and patriotic; and making responsible decisions.

(3) Students are expected to develop an awareness of self-identity as well as recognize multiple perspectives, differences, [~~difference and~~] diversity, biases, and the social and cultural context in which they live.

(4) The knowledge and skills for positive character traits and personal skills are organized in the following grade bands: Kindergarten-Grade 2, Grades 3-5, Grades 6-8, and Grades 9-12. However, due to the complexity of the concepts, student expectations and knowledge and skills statements cannot be taught, discussed, or viewed in isolation.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) [(b)] Knowledge and skills.

(1) Trustworthiness. The student understands how personal skills, choices, and actions build trustworthiness [responsibility relates to being trustworthy]. The student is expected to:

(A) identify and define traits of trustworthiness, including reliability and loyalty;

(B) identify and practice strategies for being honest and punctual; and

(C) define and identify examples of unethical behavior.

(2) Responsibility. The student understands how personal choices are associated with responsibility. The student is expected to:

(A) explain what it means to be responsible for personal decisions and actions;

(B) describe positive and negative consequences of personal decisions and actions;

(C) identify and demonstrate effective self-management skills, including acting on feedback constructively and setting and working toward goals [ways to practice self-control]; and

(D) describe the relationship between being responsible and being accountable.

(3) Caring. The student understands how personal actions and interpersonal skills demonstrate characteristics of caring. The student is expected to:

(A) describe how feelings impact decision making and behaviors;

(B) identify and practice interpersonal skills, including showing consideration and compassion through listening, sharing, and cooperating with others; and

[(B) explain how one can show patience, consideration, and compassion; and]

(C) define empathy and discuss the connection between empathy and charity.

(4) Good citizenship [Citizenship]. The student understands that personal responsibility and responsible decision making are [~~is~~] associated with good citizenship. The student is expected to:

(A) describe the differences and similarities among gratitude, respect, and courtesy;

(B) compare fairness and justice; [~~and~~]

(C) demonstrate responsibility and courage when making decisions for the common good of the classroom and community; and

(D) [(C)] discuss the importance of obeying laws and rules.

§120.7. *Texas Essential Knowledge and Skills for Positive Character Traits and Personal Skills, Grades 6-8, Adopted 2020.*

(a) Implementation. The provisions of this section shall be implemented by school districts beginning with the 2021-2022 school year.

(1) School districts and open-enrollment charter schools are required to provide instruction in the essential knowledge and skills for positive character traits and personal skills outlined in this subchapter at least once in the following grade bands: Kindergarten-Grade 2, Grades 3-5, Grades 6-8, and Grades 9-12.

(2) School districts may provide the required instruction in a variety of arrangements, including through a stand-alone course or by integrating the positive character traits standards in the essential knowledge and skills for one or more courses or subject areas at the appropriate grade levels.

(b) [(a)] Introduction.

(1) Character education introduces students to character traits and personal skills that empower them to be good citizens who are trustworthy, responsible, and caring. The character traits and personal skills reflect positive beliefs, attitudes, and mindsets; provide opportunities for self-reflection; and permit students to apply effective strategies to make decisions, solve problems, and behave responsibly.

(2) The standards for positive character traits and personal skills are comprised of four strands: trustworthiness, responsibility, caring, and citizenship. Each strand consists of the following character traits and personal skills.

(A) Trustworthiness: honesty [loyalty], integrity, loyalty, punctuality, and reliability[; ~~and punctuality~~].

(B) Responsibility: accountability, diligence, perseverance, [~~diligence, and~~] self-control, and self-management.

(C) Caring: interpersonal skills, including [kindness, empathy,] charity, compassion, consideration, cooperation, empathy, generosity, kindness, and patience[; ~~consideration; and compassion~~].

(D) Good citizenship: having [Citizenship: respect, courtesy,] concern for the common good and the community; having respect for authority, [fairness, freedom from prejudice, justice, patriotism, school pride, respect for authority and] law, justice, and the rights of others; being free from prejudice; having gratitude and school pride; being courteous, fair, and patriotic; and making responsible decisions.

(3) Students are expected to develop an awareness of self-identity as well as recognize multiple perspectives, differences,

[difference and] diversity, biases, and the social and cultural context in which they live.

(4) The knowledge and skills for positive character traits and personal skills are organized in the following grade bands: Kindergarten-Grade 2, Grades 3-5, Grades 6-8, and Grades 9-12. However, due to the complexity of the concepts, student expectations and knowledge and skills statements cannot be taught, discussed, or viewed in isolation.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) [(b)] Knowledge and skills.

(1) Trustworthiness. The student understands how personal skills, choices, and actions build trustworthiness. The student is expected to:

- (A) describe what it means to be reliable and loyal;
- (B) define and give examples of honesty and integrity;
- (C) examine the benefits of being trustworthy; and
- (D) describe personal actions that demonstrate trustworthiness at school, home, with peers, and within the community.

(2) Responsibility. The student understands how personal beliefs and feelings and self-management skills influence one's [our] sense of responsibility. The student is expected to:

- (A) examine how personal beliefs, thoughts, and feelings about self can build responsibility;
- (B) identify and describe personal role models who demonstrate what it means to be accountable for words and actions;
- (C) discuss the benefits of practicing self-management skills [self-control]; and
- (D) compare the benefits of responsible behavior with the consequences of irresponsible behavior.

(3) Caring. The student understands how interpersonal skills and characteristics of caring impact personal relationships. The student is expected to:

- (A) evaluate one's personal attitudes and mindsets about self and others;
- (B) discuss how feelings, decision making, [and] personal behaviors, and interpersonal skills can influence relationships with others; and
- (C) explain and identify examples of how a person can demonstrate empathy through kindness, charity, generosity, and courtesy.

(4) Good citizenship [Citizenship]. The student understands how responsible decision making and good [the character trait of] citizenship impact [impacts] personal relationships. The student is expected to:

- (A) differentiate between personal responsibility and responsible decision making and give examples of each;
 - [(A) discuss the roles and responsibilities of citizens;]
- (B) explain how one's personal actions can impact the perception of others; and
- [(C) describe how justice, fairness, and freedom are related; and]

(C) [(D)] identify and practice a variety of conflict-resolution skills and strategies.

§120.9. *Texas Essential Knowledge and Skills for Positive Character Traits and Personal Skills*, Grades 9-12, Adopted 2020.

(a) Implementation. The provisions of this section shall be implemented by school districts beginning with the 2021-2022 school year.

(1) School districts and open-enrollment charter schools are required to provide instruction in the essential knowledge and skills for positive character traits and personal skills outlined in this subchapter at least once in the following grade bands: Kindergarten-Grade 2, Grades 3-5, Grades 6-8, and Grades 9-12.

(2) School districts may provide the required instruction in a variety of arrangements, including through a stand-alone course or by integrating the positive character traits standards in the essential knowledge and skills for one or more courses or subject areas at the appropriate grade levels.

(b) [(a)] Introduction.

(1) Character education introduces students to character traits and personal skills that empower them to be good citizens who are trustworthy, responsible, and caring. The character traits and personal skills reflect positive beliefs, attitudes, and mindsets; provide opportunities for self-reflection; and permit students to apply effective strategies to make decisions, solve problems, and behave responsibly.

(2) The standards for positive character traits and personal skills are comprised of four strands: trustworthiness, responsibility, caring, and citizenship. Each strand consists of the following character traits and personal skills.

(A) Trustworthiness: honesty [loyalty], integrity, loyalty, punctuality, and reliability; and punctuality].

(B) Responsibility: accountability, diligence, perseverance, [diligence, and] self-control, and self-management.

(C) Caring: interpersonal skills, including [kindness, empathy,] charity, compassion, consideration, cooperation, empathy, generosity, kindness, and patience; [consideration, and compassion].

(D) Good citizenship: having [Citizenship: respect, courtesy,] concern for the common good and the community; having respect for authority, [fairness, freedom from prejudice, justice, patriotism, school pride, respect for authority and] law, justice, and the rights of others; being free from prejudice; having gratitude and school pride; being courteous, fair, and patriotic; and making responsible decisions.

(3) Students are expected to develop an awareness of self-identity as well as recognize multiple perspectives, differences, [difference and] diversity, biases, and the social and cultural context in which they live.

(4) The knowledge and skills for positive character traits and personal skills are organized in the following grade bands: Kindergarten-Grade 2, Grades 3-5, Grades 6-8, and Grades 9-12. However, due to the complexity of the concepts, student expectations and knowledge and skills statements cannot be taught, discussed, or viewed in isolation.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) [(b)] Knowledge and skills.

(1) Trustworthiness. The student understands how trustworthiness is viewed in society, politics, and the local and global community. The student is expected to:

(A) examine how the power to make decisions relates to personal actions;

(B) analyze how the decisions and actions of leaders in society, government, [~~polities~~] and the local and global community demonstrate loyalty and integrity; and

(C) examine the legal and social consequences of unethical behavior.

(2) Responsibility. The student understands how leaders demonstrate responsibility in relationships, families, societies, politics, and the global community. The student is expected to:

(A) identify and describe personal role models who demonstrate what it means to be accountable for words and actions;

(B) identify and discuss real-world examples of taking personal responsibility for one's words and actions;

(C) identify and evaluate strategies for practicing self-management skills [~~self-control~~] in a variety of situations; and

(D) differentiate between and give examples of diligence and [~~define~~] perseverance and identify strategies for demonstrating perseverance.

(3) Caring. The student understands how interpersonal skills and characteristics of caring influence society and impact the global community. The student is expected to:

(A) evaluate one's personal attitudes and mindsets about self and others;

(B) discuss how feelings, decision making, [~~and~~] personal behaviors, and interpersonal skills can impact professional and social relationships [~~within society~~]; and

(C) identify strategies for how a person can show empathy through one's actions.

(4) Good citizenship [Citizenship]. The student understands how responsible decision making and good [~~character traits of~~] citizenship influence one's [~~own~~] personal view of society and the local and global community. The student is expected to:

(A) explain the impact of personal actions and responsible decision making on the family, school, and local and global community;

(B) describe how justice, fairness, and freedom are related;

~~(B) practice the roles and responsibilities of citizenship in a variety of settings;~~

(C) apply conflict resolution [~~resolutions~~] skills; and

(D) participate in constructive dialogues with those of differing viewpoints.

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 February 14, 2022.

TRD-202200517

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: March 27, 2022

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

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CHAPTER 127. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR CAREER DEVELOPMENT

The State Board of Education (SBOE) proposes new §§127.317, 127.318, 127.323, 127.783, and 127.784, concerning Texas Essential Knowledge and Skills (TEKS) for career development and career and technical education (CTE). The proposed new sections would update the CTE TEKS for courses in the career clusters for education and training and science, technology, engineering, and mathematics (STEM) to ensure the standards are up to date.

BACKGROUND INFORMATION AND JUSTIFICATION: In accordance with statutory requirements that the SBOE identify by rule the essential knowledge and skills of each subject in the required curriculum, the SBOE follows a board-approved cycle to review and revise the essential knowledge and skills for each subject.

At the January 2021 meeting, the board held a work session to discuss the timeline for the TEKS review and revision process and associated activities, including updates to State Board for Educator Certification teacher assignment rules and certification examinations, adoption of instructional materials, and the completion of the Texas Resource Review. Texas Education Agency (TEA) staff provided an overview of CTE programs of study and a skills gap analysis that is being completed to inform review and revision of the CTE TEKS.

Also during the January 2021 meeting, staff provided an update on plans for the review and revision of CTE courses that satisfy a science graduation requirement as well as certain courses in the health science; education and training; and STEM programs of study. Applications to serve on these CTE TEKS review work groups were posted on the TEA website in December 2020. TEA staff provided SBOE members applications for approval to serve on a CTE work group at the January 2021 SBOE meeting. Additional applications were provided to SBOE members in February and March 2021. Work groups were convened from March-July 2021 to develop recommendations for the CTE courses. At the June 2021 SBOE meeting, a discussion item for proposed new 19 TAC Chapter 130 was presented to the board. At the September 2021 SBOE meeting, one representative from each CTE TEKS review work group provided invited testimony to the SBOE Committee of the Full Board.

The SBOE postponed first reading and filing authorization for a selection of courses from the education and training and STEM programs of study: §127.317, Child Development; §127.318, Child Guidance; §127.323, Human Growth and Development; §127.783, Engineering Design and Presentation I; and §127.784, Engineering Design and Presentation II, to allow additional time to review and finalize recommendations. Education and training CTE TEKS work groups met in October and November 2021 to continue finalizing their recommendations for revisions to the CTE TEKS.

Proposed new 19 TAC §§127.317, 127.318, 127.323, 127.783, and 127.784 would update the CTE TEKS to ensure the standards for the courses are up to date. In order to avoid confusion regarding the year of implementation, the proposed new sections would include an implementation subsection with specific implementation language for each course.

Currently, CTE courses are codified in 19 TAC Chapter 130. Due to the current structure of 19 TAC Chapter 130, there are not enough section numbers available in Chapter 130 to add all of the proposed new courses in their assigned subchapters. To accommodate the addition of these new courses and future courses, the CTE TEKS in Chapter 130 are being moved to existing 19 TAC Chapter 127, Texas Essential Knowledge and Skills for Career Development, and that chapter is being renamed "Texas Essential Knowledge and Skills for Career Development and Career and Technical Education." The move of CTE subchapters from Chapter 130 to Chapter 127 will take place over time as the TEKS in each subchapter are revised.

The SBOE approved the proposed new sections for first reading and filing authorization at its January 28, 2022 meeting.

FISCAL IMPACT: Monica Martinez, associate commissioner for standards and programs, has determined that for the first five years the proposal is in effect (2022-2026), there are no fiscal implications to the state. However, there will be implications for TEA if the state develops professional development to help teachers and administrators understand the revised TEKS. Any professional development that is created would be based on whether TEA received an appropriation for professional development in the next biennium. There may be fiscal implications for school districts and charter schools to implement the proposed revisions to the TEKS, which may include the need for professional development and revisions to district-developed databases, curriculum, and scope and sequence documents. Since curriculum and instruction decisions are made at the local district level, it is difficult to estimate the fiscal impact on any given district.

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 by proposing new CTE TEKS required to be taught by school districts and charter schools offering the courses.

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 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: Ms. Martinez has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be better alignment of the TEKS and coordination of the standards with the adoption of instructional materials. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins February 25, 2022, and ends at 5:00 p.m. on April 1, 2022. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_\(TAC\)/Proposed_State_Board_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_(TAC)/Proposed_State_Board_of_Education_Rules/). The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in April 2022 in accordance with the SBOE board operating policies and procedures. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on February 25, 2022.

SUBCHAPTER G. EDUCATION AND TRAINING

19 TAC §§127.317, 127.318, 127.323

STATUTORY AUTHORITY. The new sections are proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; TEC, §28.002(n), which allows the SBOE to by rule develop and implement a plan designed to incorporate foundation curriculum requirements into the career and technical education (CTE) curriculum required in TEC, §28.002; TEC, §28.002(o), which requires the SBOE to determine that at least 50% of the approved CTE courses are cost effective for a school district to implement; TEC, §28.025(a), which requires the SBOE to determine by rule the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under TEC, §28.002; TEC, §28.025(b-2), which requires the SBOE to allow by rule a student to comply with the curriculum requirements for the third and fourth mathematics credits under TEC, §28.025(b-1)(2), or the third and fourth science credits under TEC, §28.025(b-1)(3), by successfully completing a CTE course designated by the SBOE as containing substantially

similar and rigorous content; and TEC, §28.025(b-17), which requires the SBOE to ensure by rule that a student may comply with curriculum requirements under TEC, §28.025(b-1)(6), by successfully completing an advanced CTE course, including a course that may lead to an industry-recognized credential or certificate or an associate degree.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §§7.102(c)(4); 28.002(a), (c), (n), and (o); and 28.025(a), (b-2) and (b-17).

§127.317. Child Development (One Credit), Adopted 2021.

(a) Implementation. The provisions of this section shall be implemented by school districts beginning with the 2022-2023 school year.

(1) No later than August 31, 2022, the commissioner of education shall determine whether instructional materials funding has been made available to Texas public schools for materials that cover the essential knowledge and skills identified in this section.

(2) If the commissioner makes the determination that instructional materials funding has been made available this section shall be implemented beginning with the 2022-2023 school year and apply to the 2022-2023 and subsequent school years.

(3) If the commissioner does not make the determination that instructional materials funding has been made available under this subsection, the commissioner shall determine no later than August 31 of each subsequent school year whether instructional materials funding has been made available. If the commissioner determines that instructional materials funding has been made available, the commissioner shall notify the State Board of Education and school districts that this section shall be implemented for the following school year.

(b) General requirements. This course is recommended for students in Grades 10-12. Recommended prerequisite: Principles of Human Services or Principles of Education and Training. Students shall be awarded one credit for successful completion of this course.

(c) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards, industry-relevant technical knowledge, and college and career readiness skills for students to further their education and succeed in current and emerging professions.

(2) The Education and Training Career Cluster focuses on planning, managing, and providing education and training services and related learning support services.

(3) Child Development is a course that addresses knowledge and skills related to child growth and development from prenatal through school-age children. Students use these skills to promote the well-being and healthy development of children and investigate careers related to the care and education of children.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(d) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) apply interpersonal communication skills in business and industry settings;

(B) explain the value of and demonstrate collaboration within the work environment;

(C) apply productive work habits, including time management, organization, initiative, and self-direction;

(D) identify work ethics and professional skills needed in a work environment; and

(E) identify and demonstrate problem-solving, creativity, and critical-thinking skills needed within the work environment.

(2) The student analyzes roles and responsibilities of caregivers or guardians. The student is expected to:

(A) compare parenting styles and the potential influence of each style on a child's development;

(B) investigate the legal rights and responsibilities of parents;

(C) analyze positive relationship characteristics and developmentally appropriate communication skills needed for parenting; and

(D) analyze the parental responsibilities of educating children through the continuum of developmental stages.

(3) The student examines the care, protection, and safety of children. The student is expected to:

(A) analyze the effects of childhood trauma at each developmental stage;

(B) describe the counseling and therapeutic services available to children such as pharmacotherapy and cognitive-behavioral, family, trauma-focused, and play therapy;

(C) demonstrate first aid and cardiopulmonary resuscitation skills;

(D) analyze community resources relevant to the care and protection of children, including childcare services, health care services, and auxiliary service organizations;

(E) examine suggested preventative health care recommendations for children such as American Academy of Pediatrics (AAP) and Centers for Disease Control and Prevention (CDC) guidelines and recommendations for immunizations, physical exams, and oral hygiene;

(F) assess the safety of children's cribs, toys, clothing, food, and travel safety equipment; and

(G) identify current legislation and public policies affecting the care, protection, and safety of children.

(4) The student investigates components of optimal prenatal care and development. The student is expected to:

(A) identify signs and stages of pregnancy;

(B) analyze the effect of environmental and hereditary factors on conception and fetal development, including prenatal brain development;

(C) identify characteristics of, contributing factors to, and treatment of various fetal birth defects, including defects of unknown ideology;

(D) analyze nutritional needs prior to and during pregnancy;

(E) analyze appropriate medical care and good health practices prior to and during pregnancy;

(F) explain how technological advances in prenatal care can impact child development;

(G) explore careers that provide service to those receiving prenatal care; and

(H) analyze the process of labor and delivery methods.

(5) The student investigates strategies for optimizing the development of children ages birth through 12 months, including those with special needs. The student is expected to:

(A) analyze the physical, emotional, social, intellectual, and moral developmental needs of children ages birth through twelve months;

(B) investigate the impact of children ages birth through twelve months on the family such as the impact on roles, finances, responsibilities, and relationships in the family;

(C) analyze the impact of technology such as personal usage or exposure and assistive technologies on the growth and development of children ages birth through 12 months;

(D) explore careers that provide service to children ages birth through twelve months; and

(E) identify appropriate nutrition and ways to meet nutritional needs, including breast feeding and formula feeding, and considerations related to food allergies for children ages birth through twelve months.

(6) The student investigates strategies for optimizing the development of children ages 13 months through 35 months, including those with special needs. The student is expected to:

(A) analyze the physical, emotional, social, intellectual, and moral developmental needs of children ages 13 months through 35 months;

(B) create play activities such as pre-literacy, social emotional learning, mathematics, science, physical movement, outdoor play, art, and music activities that enhance the growth and development of children ages 13 months through 35 months;

(C) analyze the impact of technology such as personal usage and assistive technologies on the growth and development of children ages 13 months through 35 months;

(D) analyze appropriate nutritional guidelines that promote wellness in children ages 13 months through 35 months;

(E) explore careers that provide service to children ages 13 months through 35 months; and

(F) prepare or plan developmentally appropriate snacks or meals that meet appropriate nutritional guidelines for children ages 13 months through 35 months.

(7) The student analyzes the growth and development of children ages 3 through 5 years, including those with special needs. The student is expected to:

(A) analyze the physical, emotional, social, intellectual, and moral development needs of the children ages 3 through 5 years;

(B) describe the role of play in the development of children ages 3 through 5 years;

(C) develop activities such as physical exercise or group play activities that meet developmental needs of children ages 3 through 5 years;

(D) prepare or plan developmentally appropriate snacks or meals that meet appropriate nutritional guidelines for children ages 3 through 5 years;

(E) identify minimum standards for licensing regulations of various preschools and childcare settings such as in-home, private, public, and religious organizations;

(F) explore careers that provide service to children ages 3 through 5 years; and

(G) analyze the impact of technology on the growth and development of children ages 3 through 5 years such as personal usage, assistive technologies, and digital citizenship.

(8) The student analyzes the growth and development of children ages 6 through 11 years, including those with special needs. The student is expected to:

(A) analyze the physical, emotional, social, intellectual, and moral development needs of children ages 6 through 11 years;

(B) compare the roles of various school environments such as public, private, and home settings in the growth and development of children ages 6 through 11 years;

(C) evaluate the importance of and influences on individual and group identity such as self-concept theories, learning styles, group dynamics, cultural influences, and societal norms in relation to the growth and development of children ages 6 through 11 years;

(D) develop appropriate activities for meeting developmental needs of children ages 6 through 11 years such as physical exercise, language development, communication, listening skills, independence, conflict resolution, and self-discipline;

(E) create balanced meal plans that are developmentally appropriate for children ages 6 through 11 years, including children with special dietary needs such as food allergies and type I diabetes;

(F) explore careers that provide service to children ages 6 through 11 years;

(G) discuss legislation and public policies affecting children ages 6 through 11 years; and

(H) analyze the impact of technology on the growth and development of children ages 6 through 11 years such as personal usage, assistive technologies, and digital citizenship.

(9) The student analyzes the growth and development of children ages 12 through 19 years, including those with special needs. The student is expected to:

(A) summarize the physical, emotional, social, intellectual, and moral needs of children ages 12 through 19 years;

(B) assess the role of the various school environments such as public, private, and home environments on the growth and development of children ages 12 through 19 years;

(C) evaluate the importance of and influences on individual and group identity such as self-concept theories, group dynamics, cultural influences, and societal norms in relation to the growth and development of children ages 12 through 19 years;

(D) develop appropriate activities for meeting developmental needs of children ages 12 through 19 years such as physical, academic, professional, and social skills;

(E) create recipes for nutritious snacks or meals appropriate for preparation by children ages 12 through 19 years, including snacks or meals for individuals with special dietary needs such as food allergies or type I diabetes;

(F) explore careers that provide service to children ages 12 through 19 years;

(G) discuss legislation, child labor laws, and public policies affecting children ages 12 through 19 years;

(H) analyze the impact of technology such as personal usage, assistive technologies, digital citizenship, digital footprints, and social media on the growth and development of children ages 12 through 19 years; and

(I) propose short- and long-term career goals in child development.

§127.318. Child Guidance (Two Credits), Adopted 2021.

(a) Implementation. The provisions of this section shall be implemented by school districts beginning with the 2024-2025 school year.

(1) No later than August 31, 2024, the commissioner of education shall determine whether instructional materials funding has been made available to Texas public schools for materials that cover the essential knowledge and skills identified in this section.

(2) If the commissioner makes the determination that instructional materials funding has been made available this section shall be implemented beginning with the 2024-2025 school year and apply to the 2024-2025 and subsequent school years.

(3) If the commissioner does not make the determination that instructional materials funding has been made available under this subsection, the commissioner shall determine no later than August 31 of each subsequent school year whether instructional materials funding has been made available. If the commissioner determines that instructional materials funding has been made available, the commissioner shall notify the State Board of Education and school districts that this section shall be implemented for the following school year.

(b) General requirements. This course is recommended for students in Grades 11 and 12. Prerequisite: Child Development or Child Development Associate Foundations. Students shall be awarded two credits for successful completion of this course.

(c) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards, industry-relevant technical knowledge, and college and career readiness skills for students to further their education and succeed in current and emerging professions.

(2) The Education and Training Career Cluster focuses on planning, managing, and providing education and training services and related learning support services.

(3) Child Guidance is a course that addresses the knowledge and skills related to child growth and guidance, equipping students to develop positive relationships with children and effective caregiver skills. Students use these skills to promote the well-being and healthy development of children, strengthen a culturally diverse society, and pursue careers related to the care, guidance, and education of children, including those with special needs. Instruction may be delivered through school-based laboratory training or through work-based delivery arrangements such as cooperative education, mentoring, and job shadowing.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(d) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) demonstrate effective verbal, nonverbal, written, and electronic communication skills;

(B) demonstrate effective collaboration skills within the workplace;

(C) identify characteristics of effective leaders and team members;

(C) explain the importance of time management to succeed in the workforce;

(D) apply work ethics and professionalism in a job setting; and

(E) use appropriate problem-solving and critical-thinking skills.

(2) The student practices ethical and legal responsibilities associated with providing childcare services. The student is expected to:

(A) apply ethical codes of conduct in a childcare setting;

(B) create coherent written communication between parents and childcare staff;

(C) identify regulatory and compliance guidelines for maintaining documentation in childcare settings, including educational, personnel, and public records;

(D) advocate through appropriate means for children when necessary;

(E) comply with laws and regulations related to childcare services;

(F) determine potential uses and management of technology, media, and resources to foster healthy child development; and

(G) employ safeguards to prevent misuse and abuse of technology and media with children.

(3) The student analyzes childcare options for children of various ages. The student is expected to:

(A) compare the financial considerations of childcare options;

(B) examine criteria for selecting quality childcare; and

(C) review minimum standards for licensing and regulations for center-based and home-based programs.

(4) The student analyzes responsibilities that promote health and wellness of children. The student is expected to:

(A) monitor student behavior for signs of physical illness and emotional disturbances in children;

(B) practice child guidance techniques that contribute to the health and wellness of children such as adequate rest, exercise, safety, and sanitation;

(C) apply procedures for creating safe environments for children; and

(D) create a meal plan for children, including nutritious snacks, following appropriate food guidelines.

(5) The student analyzes the effect of play in the development of children. The student is expected to:

(A) create examples of play that promote the physical, intellectual, emotional, and social development of children; and

(B) implement strategies to encourage socially appropriate constructive and creative play, including indoor and outdoor activities.

(6) The student applies appropriate guidance techniques for children of various ages and developmental levels, including those with special needs. The student is expected to:

(A) discuss the various types of guidance and their effects on children;

(B) determine and apply appropriate guidance techniques; and

(C) distinguish between guidance techniques and behavior that could be considered inappropriate, harmful, or abusive.

(7) The student will implement appropriate strategies and practices for optimizing the development of children ages birth through twelve months, including those with special needs. The student is expected to:

(A) create and implement activities for the development of sensory skills;

(B) create and implement activities for the development of language skills;

(C) create and implement activities for the development of physical and motor skills; and

(D) create and implement activities for the development of social skills.

(8) The student will implement appropriate strategies and practices for optimizing the development of children ages 13 months through 35 months, including those with special needs. The student is expected to:

(A) create and implement lesson plans for the development of physical skills;

(B) create and implement lesson plans for the development of vocabulary and language skills;

(C) create and implement lesson plans for the development of appropriate mathematics skills;

(D) create and implement lesson plans for the development of appropriate science skills; and

(E) create and implement lesson plans for the development of social and emotional skills.

(9) The student will implement appropriate strategies and practices for optimizing the development of children ages 3 through 5 years, including those with special needs. The student is expected to:

(A) create and implement lesson plans for the development of physical skills;

(B) create and implement lesson plans for the development of appropriate reading and language skills;

(C) create and implement lesson plans for the development of appropriate mathematics and problem-solving skills;

(D) create and implement lesson plans for the development of appropriate science skills; and

(E) create and implement lesson plans for the development of social and emotional skills.

(10) The student makes informed career decisions that reflect personal, family, and career goals. The student is expected to:

(A) analyze the impact of career decisions on personal and family goals;

(B) assess personal interests, aptitudes, and abilities needed in the childcare profession;

(C) develop short- and long-term career goals;

(D) evaluate employment and entrepreneurial opportunities; and

(E) evaluate educational requirements for early childhood development and services.

§127.323. Human Growth and Development (One Credit), Adopted 2021.

(a) Implementation. The provisions of this section shall be implemented by school districts beginning with the 2024-2025 school year.

(1) No later than August 31, 2024, the commissioner of education shall determine whether instructional materials funding has been made available to Texas public schools for materials that cover the essential knowledge and skills identified in this section.

(2) If the commissioner makes the determination that instructional materials funding has been made available this section shall be implemented beginning with the 2024-2025 school year and apply to the 2024-2025 and subsequent school years.

(3) If the commissioner does not make the determination that instructional materials funding has been made available under this subsection, the commissioner shall determine no later than August 31 of each subsequent school year whether instructional materials funding has been made available. If the commissioner determines that instructional materials funding has been made available, the commissioner shall notify the State Board of Education and school districts that this section shall be implemented for the following school year.

(b) General requirements. This course is recommended for students in Grades 10-12. Recommended prerequisite: Principles of Education and Training or Principles of Human Services. Students shall be awarded one credit for successful completion of this course.

(c) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards, industry-relevant technical knowledge, and college and career readiness skills for students to further their education and succeed in current and emerging professions.

(2) The Education and Training Career Cluster focuses on planning, managing, and providing education and training services and related learning support services.

(3) Human Growth and Development is an examination of human development across the lifespan with emphasis on research, theoretical perspectives, and common physical, cognitive, emotional, and social developmental milestones. Students use the knowledge and skills gained in this course to prepare for a career path working with children in an educational or service learning setting. The course covers material that is generally taught in a postsecondary, one-semester introductory course in developmental psychology or human development.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(d) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) demonstrate written communication skills;

(B) perform job-appropriate numerical and arithmetic applications;

(C) practice various forms of communication such as verbal and non-verbal communication used in educational and career settings;

(D) exhibit teamwork skills;

(E) apply decision-making skills;

(F) implement problem-solving techniques;

(G) describe and apply conflict management skills;

(H) describe and demonstrate effective leadership skills;

(I) update a professional portfolio with portfolio components such as a resume and samples of work;

(J) demonstrate professionalism; and

(K) describe effective work ethic practices.

(2) The student understands historical, theoretical, and research perspectives of human growth and development throughout the lifespan. The student is expected to:

(A) explain the role of theories in understanding human development;

(B) describe theoretical perspectives regarding influences on human development throughout the lifespan;

(C) summarize how historical theories influence modern theories of human development;

(D) compare research methods commonly used to study human development; and

(E) compare pedagogy and andragogy.

(3) The student understands the importance of prenatal care in the development of a child. The student is expected to:

(A) describe nutritional needs prior to and during pregnancy;

(B) explain reasons for medical care and good health practices prior to and during pregnancy;

(C) outline stages of prenatal development;

(D) discuss the role of genetics in prenatal development; and

(E) identify environmental factors affecting development of the fetus.

(4) The student understands the development of children ages newborn through two years. The student is expected to:

(A) analyze the physical, emotional, social, and cognitive development of infants and toddlers;

(B) analyze various developmental theories relating to infants and toddlers;

(C) investigate the influences of the family and society on the infant and toddler;

(D) summarize strategies for optimizing the development of infants and toddlers, including those with special needs;

(E) determine techniques that promote the health and safety of infants and toddlers; and

(F) determine developmentally appropriate guidance techniques for children in the first two years of life.

(5) The student understands the development of children ages 3 through 5 years. The student is expected to:

(A) analyze the physical, emotional, social, and cognitive development of preschoolers;

(B) analyze various developmental theories relating to preschoolers;

(C) investigate the influences of the family and society on preschoolers;

(D) summarize strategies for optimizing the development of preschoolers, including those with special needs;

(E) determine techniques that promote the health and safety of preschoolers; and

(F) compare and suggest developmentally appropriate guidance techniques for preschoolers.

(6) The student understands the development of children ages 6 through 11 years. The student is expected to:

(A) analyze the physical, emotional, social, and cognitive development of children in the early to middle childhood stage of development;

(B) analyze various developmental theories relating to children in the early to middle childhood stage of development;

(C) investigate the influences of the family and society on children in the early to middle childhood stage of development;

(D) summarize strategies for optimizing the development of children in the early to middle childhood stage of development, including those with special needs;

(E) determine techniques that promote the health and safety of children in the early to middle childhood stage of development; and

(F) compare and suggest developmentally appropriate guidance techniques for children in the early to middle childhood stage of development.

(7) The student understands the development of adolescents ages 12 through 19 years. The student is expected to:

(A) analyze the biological and cognitive development of adolescents;

(B) analyze the emotional and social development of adolescents;

(C) discuss various theoretical perspectives relevant to adolescent growth and development;

(D) investigate the influences of the family and society on adolescents;

(E) summarize strategies for optimizing the development of adolescents, including those with special needs;

(F) determine techniques that promote the health and safety of adolescents; and

(G) compare and suggest developmentally appropriate guidance techniques for adolescents.

(8) The student understands the importance of care and protection of children and adolescents. The student is expected to:

(A) determine services provided by agencies that protect the rights of children and adolescents;

(B) summarize various resources focusing on the care and protection of children and adolescents;

(C) discuss the impact of changing demographics and cultural diversity on the health and welfare of children and adolescents;

(D) analyze forms, causes, effects, prevention, and treatment of child abuse;

(E) explain the impact of appropriate health care and importance of safety for children and adolescents; and

(F) discuss responsibilities of community members, legislation, and public policies related to care and protection of children and adolescents.

(9) The student understands the development of adults ages 20 through 39 years. The student is expected to:

(A) analyze various development theories relating to early adults, including biological and cognitive development;

(B) analyze various development theories relating to early adults, including emotional, moral, and psychosocial development;

(C) investigate the influences of society and culture on early adults; and

(D) discuss the importance of family, human relationships, and social interaction for early adults.

(10) The student understands the development of adults ages 40 through 65 years. The student is expected to:

(A) analyze various development theories relating to middle adults, including biological and cognitive development;

(B) analyze various development theories relating to middle adults, including emotional, moral, and psychosocial development;

(C) investigate the influences of society and culture on middle adults; and

(D) discuss the importance of family, human relationships, and social interaction for middle adults.

(11) The student understands the development of adults ages 66 years and older. The student is expected to:

(A) analyze various development theories relating to those within the stage of late adulthood, including biological and cognitive development;

(B) analyze various development theories relating to those within the stage of late adulthood, including emotional, moral, and psychosocial development;

(C) investigate the influences of society and culture on those within the stage of late adulthood; and

(D) discuss the importance of family, human relationships, and social interaction for those within the stage of late adulthood.

(12) The student explores career opportunities available in education and training and human services. The student is expected to:

(A) assess personal interests, aptitudes, and abilities as related to the various occupations within education and training and human services;

(B) evaluate employment and entrepreneurial opportunities, including education requirements in a field of interest; and

(C) identify effective methods for securing part-time or entry-level employment in positions that prepare students for careers in education and training or human services.

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

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: March 27, 2022

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



SUBCHAPTER O. SCIENCE, TECHNOLOGY, ENGINEERING, AND MATHEMATICS

19 TAC §127.783, §127.784

STATUTORY AUTHORITY. The new sections are proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; TEC, §28.002(n), which allows the SBOE to by rule develop and implement a plan designed to incorporate foundation curriculum requirements into the career

and technical education (CTE) curriculum required in TEC, §28.002; TEC, §28.002(o), which requires the SBOE to determine that at least 50% of the approved CTE courses are cost effective for a school district to implement; TEC, §28.025(a), which requires the SBOE to determine by rule the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under TEC, §28.002; TEC, §28.025(b-2), which requires the SBOE to allow by rule a student to comply with the curriculum requirements for the third and fourth mathematics credits under TEC, §28.025(b-1)(2), or the third and fourth science credits under TEC, §28.025(b-1)(3), by successfully completing a CTE course designated by the SBOE as containing substantially similar and rigorous content; and TEC, §28.025(b-17), which requires the SBOE to ensure by rule that a student may comply with curriculum requirements under TEC, §28.025(b-1)(6), by successfully completing an advanced CTE course, including a course that may lead to an industry-recognized credential or certificate or an associate degree.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §§7.102(c)(4); 28.002(a), (c), (n), and (o); and 28.025(a), (b-2) and (b-17).

§127.783. Engineering Design and Presentation I (One Credit), Adopted 2022.

(a) Implementation. The provisions of this section shall be implemented by school districts beginning with the 2024-2025 school year.

(1) No later than August 31, 2024, the commissioner of education shall determine whether instructional materials funding has been made available to Texas public schools for materials that cover the essential knowledge and skills identified in this section.

(2) If the commissioner makes the determination that instructional materials funding has been made available this section shall be implemented beginning with the 2024-2025 school year and apply to the 2024-2025 and subsequent school years.

(3) If the commissioner does not make the determination that instructional materials funding has been made available under this subsection, the commissioner shall determine no later than August 31 of each subsequent school year whether instructional materials funding has been made available. If the commissioner determines that instructional materials funding has been made available, the commissioner shall notify the State Board of Education and school districts that this section shall be implemented for the following school year.

(b) General requirements. This course is recommended for students in Grades 10-12. Prerequisite: Algebra I and at least one credit in a course from the science, technology, engineering, and mathematics career cluster. Recommended prerequisite: Principles of Applied Engineering. Students shall be awarded one credit for successful completion of this course.

(c) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards, industry-relevant technical knowledge, and college and career readiness skills for students to further their education and succeed in current and emerging professions.

(2) The Science, Technology, Engineering, and Mathematics (STEM) Career Cluster focuses on planning, managing, and providing scientific research and professional and technical services, including laboratory and testing services, and research and development services.

(3) Students enrolled in Engineering Design and Presentation I will demonstrate knowledge and skills of the design process as it applies to engineering fields and project management using multiple software applications and tools necessary to produce and present working drawings, solid model renderings, and prototypes. Through implementation of the design process, students will transfer advanced academic skills to component designs. Additionally, students will explore career opportunities in engineering, technology, and drafting and what is required to gain and maintain employment in these areas.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(d) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) demonstrate knowledge of how to dress appropriately, speak politely, and conduct oneself in a manner appropriate for the profession and work site;

(B) cooperate, contribute, and collaborate as a member of a group to attain agreement and achieve a collective outcome;

(C) present written and oral communication in a clear, concise, and effective manner, including explaining and justifying actions;

(D) use time-management skills in prioritizing tasks, following schedules, and tending to goal-relevant activities in a way that optimizes efficiency and results; and

(E) demonstrate punctuality, dependability, reliability, and responsibility in reporting for duty and performing assigned tasks as directed.

(2) The student gains knowledge of and demonstrates the skills necessary for success in the workplace. The student is expected to:

(A) distinguish between an engineering technician, engineering technologist, and engineer;

(B) identify employment and career opportunities in engineering and describe the educational requirements for each;

(C) investigate and describe the requirements of industry-based certifications in engineering;

(D) demonstrate the principles of teamwork related to engineering and technology;

(E) research and describe governmental regulations, including health and safety;

(F) analyze ethical issues related to engineering and technology and incorporate proper ethics in submitted projects;

(G) demonstrate respect for diversity in the workplace;

(H) identify consequences relating to discrimination, harassment, and inequality;

(I) demonstrate effective oral and written communication skills using a variety of software applications and media; and

(J) investigate and present on career preparation learning experiences, including job shadowing, mentoring, and apprenticeship training.

(3) The student participates in team projects in various roles. The student is expected to:

(A) describe the various roles on an engineering team and discuss how teams function;

(B) apply teamwork to solve problems; and

(C) serve as both a team leader and member and demonstrate appropriate attitudes while participating in team projects.

(4) The student develops skills for managing a project. The student is expected to:

(A) implement project management methodologies, including initiating, planning, executing, monitoring and controlling, and closing a project;

(B) develop a project schedule and complete work according to established criteria;

(C) participate in the organization and operation of a real or simulated engineering project; and

(D) develop a plan for production of an individual product.

(5) The student practices safe and proper work habits. The student is expected to:

(A) master relevant safety tests;

(B) comply with safety guidelines as described in various manuals, instructions, and regulations;

(C) identify and classify hazardous materials and wastes according to Occupational Safety and Health Administration (OSHA) regulations;

(D) describe the appropriate disposal of hazardous materials and wastes appropriately;

(E) perform maintenance on selected tools, equipment, and machines;

(F) handle and store tools and materials correctly; and

(G) describe the results of negligent or improper maintenance.

(6) The student applies skills associated with computer-aided drafting and design. The student is expected to:

(A) use single and multi-view projections;

(B) use orthographic and pictorial views;

(C) use auxiliary views;

(D) use section views;

(E) use advanced construction techniques;

(F) prepare and revise annotated multi-dimensional production drawings in computer-aided drafting and design to industry standards;

(G) apply best practices for effective file structure and management;

(H) use advanced dimensioning techniques;

(I) construct and use basic 3D parametric drawings; and

(J) develop and use prototype drawings for presentation.

(7) The student uses engineering design methodologies. The student is expected to:

(A) describe principles of ideation and apply ideation techniques for an engineering project;

(B) demonstrate critical thinking, identify the solution constraints, and make fact-based decisions;

(C) develop or improve a product using rational thinking;

(D) apply decision-making strategies when developing solutions;

(E) use an engineering notebook to record prototypes, corrections, and/or mistakes in the design process; and

(F) use an engineering notebook or portfolio to record the final design, construction, and manipulation of finished projects.

(8) The student applies concepts of engineering to specific problems. The student is expected to:

(A) design components using a variety of technologies;

(B) investigate the applications of different types of computer-aided drafting and design software for various engineering problems; and

(C) use multiple software applications for concept presentations.

(9) The student designs products using appropriate design processes and techniques. The student is expected to:

(A) interpret engineering drawings;

(B) identify areas where quality, reliability, and safety can be designed into a product;

(C) modify a product design to meet a specified need;

(D) produce engineering drawings to industry standards; and

(E) describe potential patents and the patenting process.

(10) The student builds a prototype using the appropriate tools, materials, and techniques. The student is expected to:

(A) identify and describe the steps needed to produce a prototype;

(B) identify and use appropriate tools, equipment, machines, and materials to produce the prototype; and

(C) present the prototype using a variety of media.

(11) The student creates justifiable solutions to open-ended real-world problems using engineering design practices and processes. The student is expected to:

(A) identify and define an engineering problem;

(B) formulate goals, objectives, and requirements to solve an engineering problem;

(C) determine the design parameters such as materials, personnel, resources, funding, manufacturability, feasibility, and time associated with an engineering problem;

(D) establish and evaluate constraints, including health, safety, social, environmental, ethical, political, regulatory, and legal, pertaining to a problem;

(E) identify or create alternative solutions to a problem using a variety of techniques such as brainstorming, reverse engineering, and researching engineered and natural solutions;

(F) test and evaluate proposed solutions using tools and methods such as models, prototypes, mock-ups, simulations, critical design review, statistical analysis, or experiments; and

(G) apply structured techniques such as a decision tree, design matrix, or cost-benefit analysis to select and justify a preferred solution to a problem.

§127.784. Engineering Design and Presentation II (Two Credits), Adopted 2022.

(a) Implementation. The provisions of this section shall be implemented by school districts beginning with the 2024-2025 school year.

(1) No later than August 31, 2024, the commissioner of education shall determine whether instructional materials funding has been made available to Texas public schools for materials that cover the essential knowledge and skills identified in this section.

(2) If the commissioner makes the determination that instructional materials funding has been made available this section shall be implemented beginning with the 2024-2025 school year and apply to the 2024-2025 and subsequent school years.

(3) If the commissioner does not make the determination that instructional materials funding has been made available under this subsection, the commissioner shall determine no later than August 31 of each subsequent school year whether instructional materials funding has been made available. If the commissioner determines that instructional materials funding has been made available, the commissioner shall notify the State Board of Education and school districts that this section shall be implemented for the following school year.

(b) General requirements. This course is recommended for students in Grades 11 and 12. Prerequisites: Principles of Applied Engineering or Engineering Design and Presentation I, Algebra I, and Geometry. Students shall be awarded two credits for successful completion of this course.

(c) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards, industry-relevant technical knowledge, and college and career readiness skills for students to further their education and succeed in current and emerging professions.

(2) The Science, Technology, Engineering, and Mathematics (STEM) Career Cluster focuses on planning, managing, and providing scientific research and professional and technical services, including laboratory and testing services, and research and development services.

(3) Engineering Design and Presentation II is a continuation of knowledge and skills learned in Engineering Design and Presentation I. Students enrolled in this course will demonstrate advanced knowledge and skills of a system design process as it applies to engineering fields and project management using multiple software applications and tools necessary to produce and present working drawings, solid model renderings, and prototypes. Students will expand on the use of a variety of computer hardware and software applications to complete assignments and projects. Through implementation

of a system design process, students will transfer advanced academic skills to component designs and engineering systems. Emphasis will be placed on transdisciplinary and integrative approaches using skills from ideation, prototyping, and project management methods.

(4) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(5) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(d) Knowledge and skills.

(1) The student demonstrates professional standards/employability skills as required by business and industry. The student is expected to:

(A) distinguish between an engineering technician, engineering technologist, and engineer;

(B) identify employment and career opportunities in engineering and describe the educational requirements for each;

(C) investigate and describe the requirements of industry-based certifications in engineering;

(D) demonstrate the principles of teamwork related to engineering and technology;

(E) research and describe governmental regulations, including health and safety;

(F) analyze ethical issues related to engineering and technology and incorporate proper ethics in submitted projects;

(G) demonstrate respect for diversity in the workplace;

(H) identify consequences relating to discrimination, harassment, and inequality;

(I) demonstrate effective oral and written communication skills using a variety of software applications and media; and

(J) investigate and present on career preparation learning experiences, including job shadowing, mentoring, and apprenticeship training.

(2) The student participates in team projects in various roles. The student is expected to:

(A) describe the various roles on an engineering team and discuss how teams function;

(B) demonstrate teamwork to solve problems; and

(C) serve as a team leader and member and demonstrate appropriate attitudes while participating in team projects.

(3) The student develops skills for managing a project. The student is expected to:

(A) create, implement, and evaluate project management methodologies, including initiating, planning, executing, monitoring and controlling, and closing a project;

(B) develop a project schedule and complete projects according to established criteria;

(C) use strategies such as decision matrices, flow charts, or Gantt charts to maintain the project schedule and quality of project;

(D) participate in the organization and operation of a real or simulated engineering project; and

(E) develop a plan for production of an individual product.

(4) The student demonstrates principles of project documentation, workflow, and evaluated results. The student is expected to:

(A) complete work orders and related documentation;

(B) identify and defend factors affecting cost and strategies to minimize costs;

(C) formulate a project budget;

(D) develop a production schedule;

(E) identify intellectual property and other legal restrictions; and

(F) read and interpret technical drawings, manuals, and bulletins.

(5) The student applies the concepts and skills of computer-aided drafting and design software to perform the following tasks. The student is expected to:

(A) prepare drawings to American National Standards Institute (ANSI) and International Organization for Standardization (ISO) graphic standards;

(B) customize software user interface;

(C) prepare and use advanced views such as auxiliary, section, and break-away;

(D) draw detailed parts, assembly diagrams, and sub-assembly diagrams;

(E) indicate tolerances and standard fittings using appropriate library functions;

(F) demonstrate understanding of annotation styles and setup by defining units, fonts, dimension styles, notes, and leader lines;

(G) identify and incorporate the use of advanced layout techniques and viewports using paper-space and modeling areas;

(H) use management techniques by setting up properties to define and control individual layers;

(I) create and use custom templates for advanced project management;

(J) prepare and use advanced development drawings;

(K) use advanced polar tracking and blocking techniques to increase drawing efficiency;

(L) create drawings that incorporate external referencing;

(M) create and render objects using parametric modeling tools; and

(N) model individual parts or assemblies and produce rendered or animated output.

(6) The student practices safe and proper work habits. The student is expected to:

(A) master relevant safety tests;

(B) comply with safety guidelines as described in various manuals, instructions, and regulations;

(C) identify and classify hazardous materials and wastes according to Occupational Safety and Health Administration (OSHA) regulations;

(D) describe the appropriate disposal of hazardous materials and wastes appropriately;

(E) perform maintenance on selected tools, equipment, and machines;

(F) handle and store tools and materials correctly; and

(G) describe the results of negligent or improper maintenance.

(7) The student uses engineering design methodologies. The student is expected to:

(A) describe principles of solution ideation and evaluate ideation techniques for an engineering project, including systems-based engineering and advanced prototyping;

(B) demonstrate critical thinking, identify the solution constraints, and make fact-based decisions;

(C) develop or improve a solution using rational thinking;

(D) apply decision-making strategies when developing solutions;

(E) identify quality-control issues in engineering design and production;

(F) describe perceptions of the quality of products and how they affect engineering decisions;

(G) use an engineering notebook to record prototypes, corrections, and/or mistakes in the design process; and

(H) use an engineering notebook or portfolio to record and justify the final design, construction, and manipulation of finished projects.

(8) The student applies concepts of engineering to specific problems. The student is expected to:

(A) design solutions from various engineering disciplines such as electrical, mechanical, structural, civil, or biomedical engineering;

(B) experiment with the use of tools, laboratory equipment, and precision measuring instruments to develop prototypes;

(C) research different types of computer-aided drafting and design software and evaluate their applications for use in design systems and problem solving; and

(D) use multiple software applications for concept presentations.

(9) The student addresses a need or problem using appropriate systems engineering design processes and techniques. The student is expected to:

(A) create and interpret engineering drawings;

(B) identify areas where quality, reliability, and safety and multidisciplinary optimization and stakeholder analysis can be designed into a solution such as a product, process, or system;

(C) improve a system design, including properties of materials selected, to meet a specified need;

(D) produce engineering drawings to industry standards; and

(E) describe potential patents and the patenting process.

(10) The student builds a prototype using the appropriate tools, materials, and techniques. The student is expected to:

(A) implement and delineate the steps needed to produce a prototype such as defining the problem and generating concepts;

(B) identify industry-appropriate tools, equipment, machines, and materials;

(C) fabricate the prototype using a systems engineering approach to compare the performance and use of materials; and

(D) present and validate the prototype using a variety of media and defend engineering practices used in the prototype.

(11) The student creates justifiable solutions to open-ended real-world problems within a multitude of engineering disciplines such as mechanical, electrical, civil, structural, bio, or aerospace using engineering design practices and processes. The student is expected to:

(A) identify and define engineering problems from different engineering disciplines such as mechanical, civil, structural, electrical, bio, or aerospace engineering;

(B) formulate goals, objectives, and requirements to solve an engineering problem;

(C) determine the design parameters such as materials, personnel, resources, funding, manufacturability, feasibility, and time associated with an engineering problem;

(D) establish and evaluate constraints of systems engineering, including health, safety, social, environmental, ethical, political, regulatory, and legal, pertaining to a problem;

(E) identify or create alternative solutions to a problem using a variety of techniques such as brainstorming, reverse engineering, and researching engineered and natural solutions;

(F) test and evaluate proposed solutions using tools and methods such as models, prototypes, mock-ups, simulations, critical design review, statistical analysis, or experiments; and

(G) apply a structured technique problem such as a decision tree, design matrix, or cost-benefit analysis to select and justify a preferred solution to a problem.

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

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: March 27, 2022

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



TITLE 22. EXAMINING BOARDS

PART 36. COUNCIL ON SEX OFFENDER TREATMENT

CHAPTER 810. COUNCIL ON SEX OFFENDER TREATMENT

SUBCHAPTER A. LICENSED SEX OFFENDER TREATMENT PROVIDERS

22 TAC §810.4

The Council on Sex Offender Treatment (Council) proposes amendment to Title 22, Texas Administrative Code, §810.4, concerning License Issuance and/or Renewal, in order to provide licensed sex offender treatment providers with the flexibility to obtain additional continuing education hours online for renewal requirements.

BACKGROUND AND PURPOSE

The Council is required to adopt rules for procedures and eligibility and other requirements for renewal of a sex offender treatment provider license, including requirements related to continuing education.

The amendment to §810.4(7) increases the maximum number of allowable online continuing education hours for license renewal from 12 hours to 24 hours. Online hours accrued to satisfy the continuing education ethics requirement do not count toward the maximum of 24 online hours.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §810.4(7) increases the maximum number of online continuing education hours for license renewal from 12 hours to 24 hours. There are no further changes to §810.4.

FISCAL NOTE

Council staff has determined that for each year of the first five years the proposed rules will be in effect, there will be no fiscal implications to state or local governments as a result of the proposed rule changes.

GOVERNMENT GROWTH IMPACT STATEMENT

As required by Texas Government Code, §2001.0221, relating to government growth impact statements, Council staff has determined that during the first five years these provisions would be in effect, the proposed rule neither creates nor eliminates a government program; implementation of the proposed rule requires neither the creation of new employee positions nor the elimination of existing employee positions; implementation of the proposed rule requires neither an increase nor decrease in future legislative appropriations to the agency; the proposed rule requires neither an increase nor decrease in fees paid to the agency; the proposed rule neither expands, limits, nor repeals an existing regulation; the proposed rule neither increases nor decreases the number of individuals subject to the rule's applicability; and the proposed rule neither positively nor adversely affects this state's economy.

SMALL BUSINESS, MICROBUSINESS AND RURAL ECONOMIC IMPACT ANALYSIS

Council staff has also determined there will be no adverse economic effect on small businesses, micro-businesses or rural communities required to comply with the section as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses or rural communities will not be required to alter their business practices to comply with the section. The rule does not impose any additional costs on small

businesses, micro-businesses, or rural communities required to comply with the rule.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the section as proposed. The proposal will not affect a local economy. There is no anticipated negative impact on local employment.

COSTS TO REGULATED PERSONS

Texas Government Code, §2001.0045 does not apply to this rule because the rule does not impose a fee on regulated persons.

PUBLIC BENEFIT

In addition, Council staff has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The public benefit anticipated as a result of enforcing or administering the section is to continue to ensure public health and safety through the effective licensing and regulation of sex offender treatment providers.

REGULATORY ANALYSIS

Council staff 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 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.

TAKINGS IMPACT ASSESSMENT

Council staff has determined the proposed rule 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

Comments on the proposed rule may be submitted to Pamela Adams, Executive Director, Council on Sex Offender Treatment, Mail Code 1982, P.O. Box 149347, Austin, Texas 78714-9347 or by email to csot@hhs.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule" in the subject line.

To be considered, comments must be submitted no later than 31 days following publication of the proposal in the *Texas Register*. If the last day to submit comments falls on a weekend or a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be considered.

STATUTORY AUTHORITY

The amendment is authorized by Texas Occupations Code §110.158, which authorizes the Council to adopt rules necessary for the performance of its duties; and §110.302, which requires the Council to adopt licensing requirements for sex offender treatment providers.

The rule implements Texas Occupations Code, Chapter 110.

§810.4. *License Issuance and/or Renewal.*

All new initial licenses shall expire on the last day of the licensee's birth month. The initial licensing period shall be at least 13 months and no more than 24 months. Subsequent licensing periods will be 24 months. In order to maintain eligibility for the licensure as a sex offender treatment provider, the mental health or medical license of each renewal shall be current and active. All renewal applicants shall comply with the following:

(1) - (6) (No change.)

(7) Licensees shall request pre-approval from the council for all online courses and courses taken at an institution of higher learning. All renewal applicants may count a maximum of 24 [42] online hours per biennial renewal period, not including ethics hours.

(8) - (11) (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.

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Aaron Pierce, PhD, LPC, LSOTP-S

Chairman

Council on Sex Offender Treatment

Earliest possible date of adoption: March 27, 2022

For further information, please call: (512) 438-5112



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 405. PATIENT CARE--MENTAL HEALTH SERVICES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to the title of Subchapter K in Texas Administrative Code (TAC) Title 25, Chapter 405, relating to Deaths of Persons Served by TXMHMR Facilities or Community Mental Health and Mental Retardation Centers; amendments to §405.261, concerning Purpose, §405.262 concerning Application, §405.263, concerning Definitions, §405.266, concerning Community Centers: Actions Taken upon the Death of Persons Served, §405.268 concerning Facility Community-Based Services and Community Centers: General Guidelines upon Death of a Person Served, §405.269, concerning Facility Campus-Based Programs, Facility Community-Based Services and Community Centers: Administrative Death Review Determination, §405.272, concerning Facility Community-Based Services and Community Centers: Clinical Death Review Determination, §405.274, concerning Community Centers: Clinical Death Review, §405.275, concerning Facility Campus-Based Programs, Facility Community-Based Services, and Community Centers: Administrative Death Review, §405.276 concerning Reporting of Systemic Issues Emerging from Death Reviews; and repeal of §405.264, concerning Facility Campus-Based Programs: Actions Taken upon the Death of Person Served; §405.265, concerning Facility Community-Based Services: Actions Taken upon the Death of Person Served; §405.267, concerning Facility Campus-Based

Programs: Statutory Requirements; §405.270, concerning Facility Campus-Based Programs and Facility Community-Based Services: Clinical Death Review Committee; §405.271, concerning Facility Campus-Based Programs: Clinical Death Review Determination; §405.273, concerning Facility Campus-Based Programs and Facility Community-Based Services: Clinical Death Review, §405.277, concerning Distribution, and §405.279, concerning References.

BACKGROUND AND PURPOSE

The current TAC provisions reflect internal agency practices that are being updated at the discretion of the State Hospital System Administration. Pursuant to Government Code Section 531.008(c)(5) the HHSC facilities division was created "for the purpose of administering state facilities, including state hospitals and state supported living centers." In furtherance of this purpose, the State Hospital System is voluntarily participating in a Patient Safety Evaluation System. The updated agency practices are intended to implement the Patient Safety and Quality Improvement Act (42 U.S.C. §299, et seq.) and related agency regulations by the United States Department of Health and Human Services (42 C.F.R. Part 3).

HHSC is making amendments and repeals to this subchapter related to the facility references (which included state hospitals, state schools and state centers per rule definitions) and is not modifying or repealing language or requirements regarding community center death reviews.

This project will repeal the sections, references, and language related to the internal process by which reviews of deaths in state hospitals occur. The process of reviewing deaths occurs through a federally chartered Patient Safety Organization operated by the Texas A&M University Rural and Community Health Institute. Accordingly, the state hospital system has implemented through its Governing Body an operating procedure that outlines the updated process and procedure for the review process.

SECTION-BY-SECTION SUMMARY

The proposed amendment to the name of 25 TAC 405, Subchapter K, Deaths of Persons Served by TXMHMR Facilities or Community Mental Health and Mental Retardation Centers, updates the agency name to HHSC and the reference to community mental health centers and removes the reference to facilities. The name is amended to read "Deaths of Persons Served by Community Mental Health Centers."

The proposed amendment to §405.261, Purpose, removes the reference to facilities.

The proposed amendment to §405.262, Application, removes the reference to facilities.

The proposed amendment to §405.263, Definitions, deletes "department," "duty physician," "facility," "facility community-based services," "person in charge," and "TXMHMR."

The proposed repeal of §405.264, Facility Campus-Based Programs: Actions Taken upon the Death of Person Served, deletes the rule as no longer necessary.

The proposed repeal of §405.265, Facility Campus-Based Services: Actions Taken upon the Death of Person Served, deletes the rule as no longer necessary.

The proposed amendment to §405.266, Community Centers: Actions Taken upon the Death of Persons Served, removes the reference to facilities and updates the agency name.

The proposed repeal of §405.267, Facility Campus-Based Programs: Statutory Requirements, deletes the rule as no longer necessary.

The proposed amendment to §405.268, Facility Community-Based Services and Community Centers: General Guidelines upon the Death of Persons Served, removes the reference to facilities in the title and text of the rule.

The proposed amendment to §405.269, Facility Campus-Based Programs, Facility Community-Based Services and Community Centers: Administrative Death Review Determination, removes the reference to facilities and updates the agency name to HHSC.

The proposed repeal of §405.270, Facility Campus-Based Programs and Facility Community-Based Services: Clinical Death Review Committee, deletes the rule as no longer necessary.

The proposed repeal of §405.271, Facility Campus-Based Programs: Clinical Death Review Determination, deletes the rule as no longer necessary.

The proposed amendment to §405.272, Facility Community-Based Services and Community Centers: Clinical Death Review Determination, removes the reference to facilities.

The proposed repeal of §405.273, Facility Campus-Based Programs and Facility Community-Based Services: Clinical Death Review, deletes the rule as no longer necessary.

The proposed amendment to §405.274, Community Centers: Clinical Death Review, updates agency name references for HHSC and Department of Family and Protective Services and updates organizational structure references.

The proposed amendment to §405.275, Facility Community-Based Programs, Facility Community-Based Services, and Community Centers: Administrative Death Review, removes the reference to facilities and updates the agency name and organizational structure references.

The proposed amendment to §405.276, Reporting of Systemic Issues Emerging from Death Reviews, removes the reference to facilities and updates the agency name.

The proposed repeal to §405.277, Distribution, deletes the rule as no longer necessary.

The proposed repeal of §405.279, References, deletes the rule as no longer necessary.

Some edits are made to update references.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the amendments and repeals will be in effect, enforcing or administering the amendments and repeals do not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the amendments and repeals will be in effect:

(1) the proposed amendments and repeals will not create or eliminate a government program;

(2) implementation of the proposed amendments and repeals will not affect the number of HHSC employee positions;

(3) implementation of the proposed amendments and repeals will result in no assumed change in future legislative appropriations;

(4) the proposed amendments and repeals will not affect fees paid to HHSC;

(5) the proposed amendments and repeals will not create a new rule;

(6) the proposed amendments and repeals will not expand, limit, or repeal existing rules;

(7) the proposed amendments and repeals will not change the number of individuals subject to the rules; and

(8) the proposed amendments and repeals 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 amendments and repeals do not apply to small or micro-businesses, or rural communities

LOCAL EMPLOYMENT IMPACT

The proposed amendments and repeals will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these amendments and repeals because they do not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Timothy E. Bray, State Hospitals Associate Commissioner, has determined that for each year of the first five years the amendments and repeals are in effect, the public benefit will be clarity regarding the applicability of the death review rules and the state hospital death review process by removing potentially confusing rule provisions.

Trey Wood has also determined that for the first five years the amendments and repeals are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed amendments and repeals because the changes only relate to state hospital operations that would otherwise be conducted, for which there would be no additional costs incurred.

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 HHSC by email to HealthandSpecialtyCare@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) emailed before midnight on the last day of the comment period. If 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 emailing comments, please

indicate "Comments on Proposed Rule 22R065" in the subject line.

SUBCHAPTER K. DEATHS OF PERSONS SERVED BY [TXMHMR FACILITIES OR] COMMUNITY MENTAL HEALTH [AND MENTAL RETARDATION] CENTERS

25 TAC §§405.261 - 405.263, 405.266, 405.268, 405.269, 405.272, 405.274 - 405.276

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Health and Safety Code §552.001, which authorizes HHSC to operate the State Hospital System.

The amendments affect Texas Government Code §531.0055 and Health and Safety Code §552.001. This agency hereby certifies that this proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

§405.261. Purpose.

The purpose of this subchapter is to provide clinical peer review procedures and, separately, administrative review procedures to be followed upon the death of a person receiving services directly operated or contracted for by [a facility of the Texas Department of Mental Health and Mental Retardation or] a community mental health [and mental retardation] center, and their respective contract providers, in order to improve the quality of care.

§405.262. Application.

The provisions of this subchapter apply [to all facilities of the Texas Department of Mental Health and Mental Retardation;] to community mental health [and mental retardation] centers; and to their respective contract providers.

§405.263. Definitions.

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

(1) Administrative death review--An administrative/quality assurance; review activity to identify non-clinically related problems requiring correction and opportunities to improve the quality of care.

(2) Attending physician--A physician licensed to practice medicine in the State of Texas who is responsible for the general medical care and/or psychiatric care of the person served.

(3) Chief executive officer or CEO--The [superintendent or director of a state facility or the] executive director of a community center.

(4) Clinical death review--A clinical quality assurance/peer review activity conducted to identify clinically related problems requiring correction and opportunities to improve the quality of care pursuant to the statutes that authorize peer review activities in the State of Texas.

(5) Community center--A community mental health [and mental retardation] center organized pursuant to the Texas Health and Safety Code, Title 7, Chapter 534, §534.053 [§053] (formerly the Texas Mental Health and Mental Retardation Act, §3, as amended, Texas Civil Statutes, Article 5547-201 et seq.).

(6) Contract provider--An entity which, through written agreement or contract, is providing services to a person served by [a facility or] a community center, including entities regulated by other governmental agencies.

(7) Deceased--A person who, at death, is receiving services directly operated or contracted for by a [facility or] community center.

(8) HHSC--The Texas Health and Human Services Commission.

~~[(8) Department--The Texas Department of Mental Health and Mental Retardation.]~~

~~[(9) Duty physician--The physician designated by the chief executive officer to handle medical care or emergencies outside regular working hours.]~~

~~[(10) Facility--Any state hospital, state school, state center, or other entity which is now or may hereafter be made a part of the department.]~~

~~[(11) Facility community-based services--Community service residential and nonresidential programs under the jurisdiction of a facility.]~~

(9) [(12)] Investigating officer--A physician or registered nurse who is neither the attending physician nor anyone significantly involved as the primary provider of treatment to the deceased immediately preceding the death.

~~[(13) Person in charge--The employee designated as supervisor for a dorm, ward, or other program or residence area.]~~

(10) [(14)] Registered nurse--A nurse licensed by the Texas Board of Nurse Examiners to practice professional nursing in the State of Texas.

~~[(15) TXMHMR--The Texas Department of Mental Health and Mental Retardation, including facilities and community MHMR centers.]~~

(11) [(16)] Unusual circumstances--A death which occurs under circumstances including, but not limited to, the following: unnatural death; death by unlawful means or suspicion of death by unlawful means; absence of witnesses; suicide or suspicion of suicide; or death within 24 hours of admission to the community center [facility/community center].

§405.266. *Community Centers: Actions Taken upon the Death of Person Served.*

(a) Each community center shall develop separate clinical peer review and administrative review procedures consistent with this subchapter to be implemented at the time that a determination has been made to conduct a death review.

(b) When appropriate, the community center CEO or designee shall notify the deceased's personal representative (primary or emergency correspondent(s)) of the death; provide an explanation of the relevant facts related to the death; and inform them of their right to examine the deceased's medical information relevant to the death, death certificate, and autopsy findings, if any. A physician shall request consent to conduct an autopsy when appropriate.

(c) Immediately after determination of the need to conduct an administrative death review, the community center CEO shall be responsible for ensuring that the completed HHSC reporting form is submitted to HHSC [(attached to §405.264 of this title (relating to Facility Campus-Based Programs: Actions Taken upon the Death of Person Served) as Exhibit A) is faxed to the Office of Medical Support Ser-

VICES, central office, which shall be responsible for immediately transmitting the information to the appropriate deputy commissioner. The community center CEO should also initiate direct phone contact with the appropriate deputy commissioner or designee when warranted].

§405.268. *[Facility Community-Based Services and] Community Centers: General Guidelines upon Death of a Person Served.*

(a) When a death has been determined to require an administrative death review, a copy of the certificate of death shall be made a part of the deceased's record, when possible.

(b) When appropriate, the property of the deceased will be disposed of under the provisions of the Texas Probate Code.

§405.269. *[Facility Campus-Based Programs, Facility Community-Based Services and] Community Centers: Administrative Death Review Determination.*

(a) Within one working day of the knowledge of death of a person receiving services in an HHSC-funded or HHSC-contracted [a TXMHMR-funded or TXMHMR-contracted] program, the [facility or] community center CEO is responsible for conducting a preliminary review to determine whether:

(1) the death occurred on the premises of an HHSC-funded or HHSC-contracted [a TXMHMR-funded or TXMHMR-contracted] program (e.g., the individual dies in his/her sleep at an MHA/MRA funded group home);

(2) the death occurred while the person was participating in HHSC-funded or HHSC-contracted [TXMHMR-funded or TXMHMR-contracted] program activities (e.g., the individual dies in a community hospital after being transferred from the community center [facility/community center]; the individual drowns while on a psychosocial program outing[; the individual dies while absent from a facility on a home visit]);

(3) other conditions indicate that the death may reasonably have been related to the individual's care or activities as part of the [facility community-based or] community center program (e.g., the individual overdoses on a psychoactive drug; the individual commits suicide); or

(4) other conditions indicate that although the death is not reasonably related to the individual's care or activities as part of the [facility community-based or] community center program, an evaluation of policy is warranted (e.g., the individual dies of a chronic illness in a community hospital).

(b) If none of the conditions described in subsection (a) of this section is met, then the [facility or] community center CEO may elect not to conduct an administrative death review. Documentation that this preliminary review was conducted must be included in the deceased's record.

(c) If any of the conditions described in subsection (a) of this section are met, an administrative death review must be conducted in compliance with this section. In addition, the need for a clinical death review must be determined as described in [§405.271 of this title (relating to Facility Campus-Based Programs and Facility Community-Based Services: Clinical Death Review Determination) or in] §405.272 of this subchapter [title] (relating to Community Centers: Clinical Death Review Determination).

§405.272. *[Facility Community-Based Services and] Community Centers: Clinical Death Review Determination.*

(a) Upon notification of a death requiring an administrative death review, the community center CEO or designee[; or, for facility community-based services, the chair of the clinical death review

committee,] shall appoint a physician or registered nurse as the investigating officer, as defined in this subchapter, who shall begin a preliminary investigation based upon the deceased's medical record, particularly the circumstances leading to the transfer to a ~~another~~ facility or outpatient status where death occurred, and other information he/she deems appropriate.

(b) Within seven working days of the knowledge of death, the CEO, and investigating officer~~], and additionally for facility community-based services, the chair of the clinical death review committee,~~] shall use the preliminary investigation information to determine whether the death should be reviewed clinically, in compliance with §405.274 of this subchapter ~~[title]~~ (relating to Community Centers: Clinical Death Review).

(1) The determination shall be based upon the possible need for review of clinical policies and procedures, the opportunity for professional education, and/or the opportunity to improve patient care through medical practice.

(2) It shall also be determined whether a preliminary administrative death review should proceed ~~before~~ ~~prior to~~ the completion of the clinical death review, addressing the issue described in §405.275(c)(2) of this subchapter ~~[title]~~ (relating to ~~[Facility Campus-Based Programs, Facility Community-Based Services, and] Community Centers: Administrative Death Review~~) or should be deferred until the submission of the recommendations of the clinical death review committee.

(3) The deliberations and findings of a preliminary administrative death review will be considered at the final administrative death review after receipt of the recommendations of the clinical death review committee.

(c) If it has been determined that a clinical death review is unnecessary, then the CEO shall be responsible for forwarding to the administrative death review committee the following:

- (1) a summary of the preliminary investigation information;
- (2) a copy of the death/discharge summary, if available;
- (3) a copy of the death certificate, bearing a valid diagnosis, if available;
- (4) a copy of the preliminary or full autopsy report, if available; and
- (5) the probable final diagnosis, including contributory causes, and reasons for variance from the death certificate, if any.

§405.274. Community Centers: Clinical Death Review.

(a) Each community center shall develop and implement procedures consistent with this subchapter for the timely reporting and review of deaths.

(b) Deaths subject to a clinical death review will be reviewed by a medical review committee pursuant to the statutes that authorize peer review activities in the State of Texas, consisting of the previously appointed investigating officer and at least two other medical/nursing professionals (M.D., D.O., or R.N.), one of which should be a medical professional whom is neither an employee of the community center nor was the deceased's attending physician (if such medical professional is not available, then the effort to obtain external membership must be documented in the information sent to the administrative death review committee). Of these three committee members, all must be either medical doctors or registered nurses. The community center CEO shall appoint one of the three medical/nursing professionals as chair of the clinical death review committee. For the purposes of this subchapter

the term employee does not refer to consultants or contractors. Additionally, the membership of the clinical death review committee may include the community center CEO and/or the director of clinical quality assurance, designee, or the person who is responsible for clinical quality assurance functions.

(1) Upon determination of the need for a clinical death review, the investigating officer shall provide to the clinical death review committee:

- (A) the individual's medical record;
- (B) a copy of the death certificate, bearing a valid diagnosis, if available;
- (C) a copy of the preliminary or full autopsy report, if available; ~~and]~~
- (D) the probable final diagnosis, including contributory causes, and reasons for variance from the death certificate, if any; and
- (E) a briefing of possible issues involving clinically related community center operational policies and procedures and quality of medical care.

(2) Within 14 calendar days (or 45 days in which an autopsy is performed, or for deaths occurring at medical facilities to which the person was transferred ~~before~~ ~~prior to~~ death) of the determination of the need for a clinical death review, the clinical death review committee shall meet to review the information the investigating officer has provided as described in subsection (b)(1) of this subsection. On the basis of the review, the committee shall evaluate the quality of medical and nursing care given ~~before~~ ~~prior to~~ death and shall formulate written recommendations, if appropriate, for changes in policy and procedures, professional education, operations, or patient care. Suspected abuse or neglect must be reported in accordance with the rules of the Texas Department of Family and Protective ~~[and Regulatory]~~ Services.

(c) Within 21 calendar days of the determination of the need for a clinical death review (or 52 days in cases in which an autopsy is performed, or for deaths occurring at medical facilities to which the person was transferred ~~before~~ ~~prior to~~ death), the clinical death review committee shall submit to the administrative death review committee the following:

- (1) the clinical death review committee's recommendations;
- (2) a copy of the death/discharge summary, if available;
- (3) a copy of the death certificate, bearing a valid diagnosis, if available;
- (4) the probable final diagnosis, including contributory causes, and reasons for variance from the death certificate, if any; and
- (5) documentation of the effort to obtain an external medical professional, if no such person was available.

(d) To maintain the effectiveness of the death review process, HHSC ~~[the TXMHMR medical director or designee]~~ may conduct reviews of the community center's clinical death review process.

(e) The community center CEO is authorized to grant variances from the timelines by this section on a case-by-case basis. Reasons for timeline variances must be justified and documented.

§405.275. [Facility Campus-Based Programs, Facility Community-Based Services, and] Community Centers: Administrative Death Review.

(a) The [facility or] community center CEO shall convene an administrative death review committee:

(1) immediately after the determination of the need for an administrative death review, if a clinical death review was not conducted;

(2) when a preliminary administrative death review is to take place as determined in [§405.271(d) or] §405.272(b) of [off] this subchapter [title] (relating to [Facility Campus-Based Programs; Clinical Death Review Determination; Facility Community-Based Services and] Community Centers: Clinical Death Review Determinations); or

(3) immediately after the receipt of the information from the clinical death review committee as described in [§405.273(e) or] §405.274(c) of this subchapter [title] (relating to [Facility Campus-Based Programs and Facility Community-Based Services; Clinical Death Reviews;] Community Centers: Clinical Death Review).

(b) The membership of the administrative death review committee shall consist of:

(1) three senior administrative and medical personnel (e.g., CEO, medical director, director of nursing, director of quality assurance, etc.) one of whom shall be designated as the chair by the CEO;

(2) a representative of the public, external to HHSC [TXMHMR] and not related to or associated with the deceased (e.g., a member of the public responsibility committee, a member of the [facility or] community hospital's ethics committee, a family member, an advocate, a consumer, etc.). If such representative of the public is not available, then the effort to obtain external membership must be documented in the information sent to HHSC [the TXMHMR medical director]; and

(3) other individuals appropriate to the death being reviewed (e.g., the investigating officer).

(c) The purpose of the administrative death review committee is to:

(1) review the information and recommendations provided by the clinical death review committee and/or from the preliminary investigation;

(2) review operational policies and procedures and continuity of care issues which may have affected the care of the individual and formulate written recommendations for changes in policies and procedures, if appropriate; and

(3) act upon the recommendations described in paragraphs (1) and (2) of this subsection.

(d) If information presented during the administrative review indicates the need for a clinical death review or a re-review, then the administrative death review committee has the authority to request such review.

(e) Suspected abuse or neglect must be reported in accordance with the rules of the Texas Department of Family and Protective [and Regulatory] Services.

(f) Within 14 calendar days of the determination of the need for an administrative death review (or 45 days in cases in which an autopsy is performed, [or for deaths occurring at medical facilities off campus] or for deaths occurring at medical facilities to which the person was transferred before [prior to] death) or within 14 calendar days after the receipt of the information from the clinical death review committee, the administrative death review committee shall submit the following

elements to HHSC [the TXMHMR medical director (who shall forward a copy to the appropriate deputy commissioner)]:

(1) a copy of the death/discharge summary, if available;

(2) a copy of the death certificate, bearing a valid diagnosis, if available;

(3) a copy of the preliminary or full autopsy report, if available;

(4) the probable final diagnosis, including contributory causes, and reasons for variance from the death certificate, if any;

(5) a copy of the clinical death review committee's recommendations, if such review was conducted;

(6) a copy of the administrative death review committee's recommendations; and

(7) if applicable, documentation of the effort to obtain external membership for the clinical death review committee and/or the administrative death review committee, if no such medical professional and/or representative of the public was available.

(g) A summary of the resulting actions taken in response to the recommendations of the administrative and clinical death review committees shall be forwarded by the CEO or designee to HHSC [the TXMHMR medical director (who shall forward a copy to the appropriate deputy commissioner)] within 28 calendar days following the submission of the elements contained in subsection (f)(1)-(7) of this section.

§405.276. *Reporting of Systemic Issues Emerging from Death Reviews.*

[(a) Utilizing information gathered from the elements submitted by the administrative death review committees and reviews of facility and community center's clinical death review process, the TXMHMR medical director shall report to the Texas Board of Mental Health and Mental Retardation any systemic issues emerging from death reviews, on a routine basis at least annually and more often as deemed appropriate and necessary.]

[(b) Utilizing information gathered from the elements submitted in §405.275(f)(6) and (g) of this subchapter [title] (relating to [Facility Campus-Based Programs; Facility Community-Based Services; and] Community Centers: Administrative Death Review), the community center CEO shall report to the community center's board of trustees any systemic issues emerging from death reviews and the corrective actions taken, on a routine basis or when necessary.

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

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Karen Ray

Chief Counsel

Department of State Health Services

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For further information, please call: (512) 438-3049

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SUBCHAPTER K. DEATHS OF PERSONS SERVED BY TXMHMR FACILITIES OR

COMMUNITY MENTAL HEALTH AND MENTAL RETARDATION CENTERS

25 TAC §§405.264, 405.265, 405.267, 405.270, 405.271, 405.273, 405.277, 405.279

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Health and Safety Code §552.001, which authorizes HHSC to operate the State Hospital System.

The repeals affect Texas Government Code §531.0055 and Health and Safety Code §552.001. This agency hereby certifies that this proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

§405.264. *Facility Campus-Based Programs: Actions Taken upon the Death of Person Served.*

§405.265. *Facility Community-Based Services: Actions Taken upon the Death of Person Served.*

§405.267. *Facility Campus-Based Programs: Statutory Requirements.*

§405.270. *Facility Campus-Based Programs and Facility Community-Based Services: Clinical Death Review Committee.*

§405.271. *Facility Campus-Based Programs: Clinical Death Review Determination.*

§405.273. *Facility Campus-Based Programs and Facility Community-Based Services: Clinical Death Review.*

§405.277. *Distribution.*

§405.279. *References.*

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

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Karen Ray

Chief Counsel

Department of State Health Services

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 19. LICENSING AND REGULATION OF INSURANCE PROFESSIONALS

SUBCHAPTER S. FORMS TO REQUEST PRIOR AUTHORIZATION

The Texas Department of Insurance proposes to amend 28 TAC §19.1803 and §19.1820, concerning Texas standard prior authorization request forms and the Texas standard prior authorization request form for prescription drug benefits.

EXPLANATION. Insurance Code §1369.304(a) requires the Commissioner by rule to prescribe a single, standard form for requesting prior authorization of prescription drug benefits. Insurance Code §1369.305(c) authorizes the Commissioner to consult with the Advisory Committee for the Standard Request Form for Prior Authorization of Prescription Drug Benefits (Advisory Committee) as needed on a subsequent amendment of an adopted rule described by §1369.304. Health benefit plan issuers are required by statute to accept the department-adopted form for any prior authorization of prescription drug benefits required by the plan.

Insurance Code §1369.305 provides that the Advisory Committee must meet every two years to review the form, examine the form's effectiveness and impact on patient safety, and determine whether changes are needed. The Advisory Committee met on December 17, 2020, and recommended substantive revisions to the form and rule. It also recommended that an informal draft of the form and rule be posted for public comment. An informal draft was posted on June 16, 2021, with comments due July 1, 2021. The Advisory Committee reconvened on September 8, 2021, in a public meeting to review the comments received and make recommendations in response. Advisory Committee recommendations are incorporated into this proposal.

The amendments to §19.1803 delete the definitions for "BIN" (processor identification number) and "PCN" (processor control number), and the paragraphs in the section are renumbered to reflect deletion of the two definitions.

The amendments to §19.1820 revise subsection (a) to add the words "Texas Standard" for consistency with how the form is referenced in the definition of "form" in §19.1803; delete a redundant use of the word "form"; add a form revision date; and remove a reference to the department mailing address. Amendments to subsection (a) also add a statement describing a signature line in the form for the prescribing provider or the prescribing provider's designee to certify the review requested and add a provision for a non-expedited/non-urgent prior authorization review request, including a certification by the prescribing provider or the prescribing provider's designee that applying the standard review time frame is medically appropriate. In addition, amendments to subsection (a) delete the requirement that the prescribing provider or the prescribing provider's designee provide, if available, the BIN, PCN, and pharmacy ID number and clarify that the name of the prescription drug for which prior approval is being requested is the drug name. Amendments to subsection (a) add a requirement that the prescribing provider or the prescribing provider's designee state, in the case of a request for continuation of therapy, whether the patient is complying with the drug therapy regimen and whether the drug therapy regimen is effective. Finally, amendments to subsection (a) make a change to conform to current department language preferences and drafting practices.

Proposed amendments to §19.1820(c) revise the subsection to require that an issuer accept a request for prior authorization made by a prescribing provider using the form on or after the effective date of the section, require that an issuer accept a request for prior authorization using the form that was in place prior to the effective date of the rule for 90 days after the effective date, and make changes to conform to current department language preferences and drafting practices.

Proposed revisions also update the instruction sheet for the Texas Standard Prior Authorization Request Form for Prescription Drug Benefits by deleting a reference to a specific effective

date and replacing it with a reference to the rule itself and by removing a reference to a specific version of the ICD classification manual. In addition, proposed revisions to the instruction sheet update the form revision date and make changes to conform to current department language preferences and drafting practices.

Proposed revisions to the Texas Standard Prior Authorization Request Form for Prescription Drug Benefits revise its heading to correlate with the heading on the instruction sheet and revise a corresponding reference to the form in the instruction sheet. Revisions also update the section of the form regarding review to add a provision for non-expedited/non-urgent review requests, checkboxes (one for expedited/urgent review requests, one for non-expedited/non-urgent review requests), and a line for the date of the required signature.

In addition, proposed revisions to the Texas Standard Prior Authorization Request Form for Prescription Drug Benefits remove extraneous pharmacy-related data-collection fields. These fields require the prescribing provider or the prescribing provider's designee to provide, if available, the BIN, PCN, and pharmacy ID number. In the case of a request for continuation of therapy, the fields provide opportunity to add statements in Section V of the form for the prescribing provider or the prescribing provider's designee to designate whether the patient is complying with the drug therapy regimen and whether the drug therapy regimen is effective. These statement fields are followed by a note indicating that it is not necessary for the prescribing provider or the prescribing provider's designee to complete Sections VIII or IX of the form unless there has been a material change in the information previously provided.

The revised form is available for inspection on the department's website at www.tdi.texas.gov/forms/form10.html.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Debra Diaz-Lara, associate commissioner, Life and Health Division, has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state or local governments as a result of enforcing or administering them, other than that imposed by statute. Ms. Diaz-Lara made this determination because the proposed changes 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. Diaz-Lara 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 of the first five years the proposed amendments are in effect, Ms. Diaz-Lara expects that the proposed amendments will have the public benefits of (1) reducing the administrative time spent by physicians, pharmacies, hospitals, and other health care providers in completing the Texas Standard Prior Authorization Request Form for Prescription Drug Benefits and (2) expediting the delivery of prescription drug benefits to consumers.

In addition, Ms. Diaz-Lara estimates that, while there may be some initial one-time costs associated with the amendments, for each of the first five years the proposed amendments would be in effect the overall cost of complying with them will be the same as, or lower than, the cost of complying with the current rule. Lower costs for prescribers will result from the elimination of the required completion of certain elements in the form related to continuation of therapy. While some issuers expressed concern

that the new fast-track continuation of therapy part of the form could make it harder for issuers to verify requests for continuation, lower costs for issuers could result from the addition of statements in the form for the prescribing provider or the prescribing provider's designee to designate whether the patient is complying with the drug therapy regimen and whether the drug therapy regimen is effective. This additional information could eliminate the need for the issuer to expend time and resources in obtaining that information after a continuation of therapy. Further, the changes to the form do not prevent issuers from having their own form available for use.

The department anticipates that issuers and prescribers could face one-time costs associated with downloading the revised request form and integrating it into their electronic systems. The department estimates that it will take an administrative assistant between 1/2 and one hour to download the revised request form from the department's website and a computer programmer between 1/2 and one hour to integrate the revised request form into the issuer's or prescriber's electronic system. The department does not anticipate any costs to issuers or prescribers other than the cost of uploading the request form to their website or providing a link to the form.

The department's cost analysis of wages for staff to perform required compliance tasks is based on information from the Labor Market and Career Information (LCMI) Department of the Texas Workforce Commission at texaswages.com/WDAWages. Office and administrative support occupations in Texas earn a mean hourly wage of \$19.23. Computer programmers working in Texas earn a mean hourly wage of \$49.35. In total, the department estimates that issuers and prescribers may spend between \$34 and \$69 in one-time costs for issuers' or prescribers' staff to upload or download the request form and integrate it into their electronic systems. These costs may not be present if these tasks can be handled as part of the regular duties of an issuer's or prescriber's existing staff.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. The department has determined that the proposed amendments will not have an adverse economic effect on small or micro businesses or on rural communities. As previously addressed in the cost note, issuers and prescribers may have initial costs in making the revised form available electronically on their respective websites. But this will not have an adverse economic effect on small or micro business or on rural communities required to comply with the proposed amendments, because anticipated savings from the reduction in data submission for prior authorization requests associated with continuation of drug therapy is expected to exceed any one-time costs imposed by the amendments.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. The Advisory Committee, consistent with Insurance Code §1369.305, has determined that changes are needed to the current prior authorization form and has recommended that TDI adopt this proposal making those changes. The department has determined that, while this proposal may initially impose additional one-time costs on regulated persons, the overall cost of complying with the amendments will be the same as, or lower than, the cost of complying with the current rule. Therefore, no additional rule amendments are required under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT. The department has determined that for each year of the first five years that the proposed amendments are in effect, the rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

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. 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. The department will consider any written comments on the proposal that are received by the department no later than 5:00 p.m., central time, on March 28, 2022. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC-GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. To request a public hearing on the proposal, submit a request before the end of the comment period to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC-GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from a comments and received by the department no later than 5:00 p.m., central time, on March 28, 2022. If the department holds a public hearing, the department will consider written and oral comments presented at the hearing.

DIVISION 1. TEXAS STANDARD PRIOR AUTHORIZATION REQUEST FORMS

28 TAC §19.1803

STATUTORY AUTHORITY. The department proposes amendments to §19.1803 under Insurance Code §1369.304 and §36.001.

Insurance Code §1369.304 requires that the Commissioner by rule prescribe a single, standard form for requesting prior authorization of prescription drug benefits.

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

CROSS-REFERENCE TO STATUTE. The proposed amendments to 28 TAC §19.1803 implement Insurance Code §1369.304.

§19.1803. Definitions.

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

~~{(1) BIN--Processor Identification Number.}~~

~~(1) [(2)] CDT--Current Dental Technology Terminology code set maintained by the American Dental Association.~~

~~(2) [(3)] CPT--Current Procedural Terminology code set maintained by the American Medical Association.~~

~~(3) [(4)] Department or TDI--Texas Department of Insurance.~~

~~(4) [(5)] Form--In Division 2 of this subchapter, the Texas Standard Prior Authorization Request Form for Health Care Services. In Division 3 of this subchapter, the Texas Standard Prior Authorization Request Form for Prescription Drug Benefits.~~

~~(5) [(6)] HCPCS--Healthcare Common Procedure Coding System.~~

~~(6) [(7)] Health benefit plan--~~

~~(A) a plan that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or a small or large employer group contract or similar coverage document offered by a health benefit plan issuer.~~

~~(B) Health benefit plan also includes:~~

~~(i) group health coverage made available by a school district in accord with Education Code §22.004;~~

~~(ii) coverage under the child health program in Health and Safety Code Chapter 62, or the health benefits plan for children in Health and Safety Code Chapter 63;~~

~~(iii) a Medicaid managed care program operated under Government Code Chapter 533, or a Medicaid program operated under Human Resources Code Chapter 32;~~

~~(iv) a basic coverage plan under Insurance Code Chapter 1551;~~

~~(v) a basic plan under Insurance Code Chapter 1575;~~

~~(vi) a primary care coverage plan under Insurance Code Chapter 1579; and~~

~~(vii) basic coverage under Insurance Code Chapter 1601.~~

~~(7) [(8)] Health benefit plan issuer--An entity authorized under the Insurance Code or another insurance law of this state that delivers or issues for delivery a health benefit plan or other coverage described in Insurance Code §1217.002 or Insurance Code §1369.252.~~

~~(8) [(9)] Health care service--A service to diagnose, prevent, alleviate, cure, or heal a human illness or injury that is provided by a physician or other health care provider. The term includes medical or health care treatments, consultations, procedures, drugs, supplies, imaging and diagnostic services, inpatient and outpatient care, medical devices other than those included in the definition of prescription drugs in Occupations Code §551.003, and durable medical equipment. The term does not include prescription drugs or devices as defined by Occupations Code §551.003.~~

~~(9) [(10)] ICD--International Classification of Diseases.~~

~~(10) [(11)] Issuer--A health benefit plan issuer and the agent of a health benefit plan issuer that manages or administers the issuer's health care services or prescription drug benefits.~~

~~(11) [(12)] NDC--National Drug Code.~~

(12) [(13)] NPI number--A provider's or facility's National Provider Identifier.

[(14) PCN--Processor Control Number.]

(13) [(15)] Prescription drug--Has the meaning assigned by Occupations Code §551.003.

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 February 9, 2022.

TRD-202200445

James Person

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: March 27, 2022

For further information, please call: (512) 676-6584



DIVISION 3. TEXAS STANDARD PRIOR AUTHORIZATION REQUEST FORM FOR PRESCRIPTION DRUG BENEFITS

28 TAC §19.1820

STATUTORY AUTHORITY. The department proposes amendments to §19.1820 under Insurance Code §1369.304 and §36.001.

Insurance Code §1369.304 requires that the Commissioner by rule prescribe a single, standard form for requesting prior authorization of prescription drug benefits.

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

CROSS-REFERENCE TO STATUTE. The proposed amendments to 28 TAC §19.1820 implement Insurance Code §1369.304.

§19.1820. Prior Authorization Request Form for Prescription Drug Benefits, Required Acceptance, and Use.

(a) Form requirements. The Commissioner [commissioner] adopts by reference the Texas Standard Prior Authorization Request Form for Prescription Drug Benefits [form], Rev. 10/2021, to be accepted and used by an issuer in compliance with subsection (b) of this section. The form and its instruction sheet are on TDI's website at www.tdi.texas.gov/forms/form10.html; or the form and its instruction sheet can be requested by mail from the Texas Department of Insurance, Rate and Form Review Office, Mail Code 106-1E, P.O. Box 149104, Austin, Texas 78714-9104]. The form must be reproduced without changes. The form provides space for the following information:

- (1) the name of the issuer or the issuer's agent that manages prescription drug benefits, telephone number, and facsimile (fax) number;
- (2) the date the request is submitted;
- (3) identification of whether the review requested is an expedited/urgent review or a non-expedited/non-urgent review with a sig-

nature line for the prescribing provider or the prescribing provider's designee to certify:

(A) in the case of a request for an expedited/urgent review, that applying the standard review time frame may seriously jeopardize the life or health of the patient or the patient's ability to regain maximum function; or

(B) in the case of a request for a non-expedited/non-urgent review, that applying the standard review time frame is medically appropriate [a place to request an expedited or urgent review if the prescribing provider or the prescribing provider's designee certifies that applying the standard review time may seriously jeopardize the life or health of the patient or the patient's ability to regain maximum function];

(4) the patient's name, contact telephone number, date of birth, sex, address, and identifying insurance information[, and, if available, BIN, PCN, and pharmacy ID numbers];

(5) the prescribing provider's name, NPI number, specialty, telephone and fax numbers, address, and contact person's name and telephone number;

(6) for a prescription drug[, its]:

- (A) drug name;
- (B) strength;
- (C) route of administration;
- (D) quantity;
- (E) number of days' supply;
- (F) expected therapy duration; and
- (G) whether the medication is:

- (i) a new therapy; or
- (ii) continuation of therapy, and if so:[,]

(I) the approximate date therapy was initiated;

(II) whether the patient is complying with the drug therapy regimen; and

(III) whether the drug therapy regimen is effective;

(7) for a provider administered drug, the HCPCS code, NDC number, and dose per administration;

(8) for a prescription compound drug, its name, ingredients, and each ingredient's NDC number and quantity;

(9) for a prescription device, its name, expected duration of use, and, if applicable, its HCPCS code;

(10) the patient's clinical information, including:

(A) diagnosis, ICD version number (if more than one version is allowed by the U.S. Department of Health and Human Services), and ICD code;

(B) to the best of the prescribing provider's knowledge, the drugs the patient has taken for this diagnosis, including:

- (i) drug name, strength, and frequency;
- (ii) the approximate dates or duration the drugs were

taken;

(iii) patient's response, reason for failure, or allergic reaction;

- (C) the patient's drug allergies, if any; and
- (D) the patient's height and weight, if relevant;
- (11) a list of relevant lab tests, and their dates and values;

and

- (12) a place for the prescribing provider to:

- (A) include pertinent clinical information to justify requests for initial or ongoing therapy, or increases in current dosage, strength, or frequency;

- (B) explain any comorbid conditions and contraindications for formulary drugs; or

- (C) provide details regarding titration regimen or oncology staging, if applicable.

(13) A prescribing provider may also attach supporting clinical documentation (medical records, progress notes, lab reports, radiology studies, etc.).

- (b) Acceptance and use of the form.

- (1) If a prescribing provider submits the form to request prior authorization of a prescription drug benefit for which the issuer's plan requires prior authorization, the issuer must accept and use the form for that purpose. An issuer may also have on its website another electronic process a prescribing provider may use to request prior authorization of a prescription drug benefit.

- (2) This form may be used by a prescribing provider to request prior authorization of:

- (A) a prescription drug;
- (B) a prescription device;
- (C) formulary exceptions;
- (D) quantity limit overrides; and
- (E) step-therapy requirement exceptions.

- (3) This form may not be used by a prescribing provider to:

- (A) request an appeal;
- (B) confirm eligibility;
- (C) verify coverage;
- (D) ask whether a prescription drug or device requires prior authorization; or

- (E) request prior authorization of a health care service.

- (c) Effective date. An issuer must accept a request for prior authorization of prescription drug benefits made by a prescribing provider using the form on or after the effective date of this section [September 1, 2015]. An issuer must accept a request using the form that was in place prior to the effective date of this section for 90 days after the effective date.

- (d) Availability of the form.

- (1) A health benefit plan issuer must make the form available electronically on its website.

- (2) A health benefit plan issuer's agent that manages or administers prescription drug benefits must make the form available electronically on its website.

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 February 9, 2022.

TRD-202200446

James Person

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: March 27, 2022

For further information, please call: (512) 676-6584

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 15. DRIVER LICENSE RULES SUBCHAPTER I. RELEASE OF DRIVER RECORD INFORMATION

37 TAC §15.149

The Texas Department of Public Safety (the department) proposes new §15.149, concerning Deleting Personal Information When Not An Authorized Recipient. The Eighty-seventh Texas Legislature, enacted Senate Bill 15, which amended Texas Transportation Code, §730.0121, requiring the department by rule to require a requestor to delete from the requestor's records personal information received from the agency under this chapter if the requestor becomes aware that the requestor is not an authorized recipient of that information.

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 this rule will be to protect the personal information from being in the possession of unauthorized recipients.

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 the creation of new employee positions nor eliminate current employee positions; will not require an increase or decrease in future legislative appropriations to the agency; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create a new regulation. The proposed rulemaking does not expand, limit or repeal an existing regulation. The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability. During the first five years the proposed rule is in effect the proposed rule should not impact positively or negatively the state's economy.

Comments on the proposal may be submitted to Kris Krueger, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to DLDrulecomments@dps.texas.gov. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code and §730.0121

Texas Government Code, §411.004(3), and Texas Transportation Code, §521.005 and §730.0121, are affected by this proposal.

§15.149. Deleting Personal Information When Not An Authorized Recipient.

Any recipient of driver record information shall delete from its records any personal information obtained from the department if the requestor becomes aware that it is not an authorized recipient of that information in accordance with Chapter 730 of the Texas Transportation 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 February 11, 2022.

TRD-202200463

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: March 27, 2022

For further information, please call: (512) 424-5848



CHAPTER 16. COMMERCIAL DRIVER LICENSE

SUBCHAPTER B. APPLICATION REQUIREMENTS AND EXAMINATIONS

37 TAC §16.22

The Texas Department of Public Safety (the department) proposes the repeal of §16.22, concerning Substitute Experience for Commercial Driver License (CDL) Driving Skills Exam. This rule is being repealed in conjunction with amendments §16.26 and §16.29 as all relevant information required by 49 Code of Federal Regulations (CFR) Part 383.77 is being incorporated into these sections.

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 clearer understanding of requirements for the substitution of experience for the CDL driving skills exam.

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 the creation of new employee positions nor eliminate current employee positions; will not require an increase or decrease in future legislative appropriations to the agency; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create a new regulation. The proposed rulemaking does not expand, limit or repeal an existing regulation. The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability. During the first five years the proposed rule is in effect the proposed rule should not impact positively or negatively the state's economy.

Comments on this proposal may be submitted to Ron Coleman, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to DLDrulecomments@dps.texas.gov. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the depart-

ment's work and Texas Transportation Code, §522.005, which authorizes the department to adopt rules necessary to administer Chapter 522 of the Texas Transportation Code.

Texas Government Code, §411.004(3), and Texas Transportation Code, §522.005, are affected by this proposal.

§16.22. Substitute Experience for Commercial Driver License (CDL) Driving Skills Exam.

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 February 11, 2022.

TRD-202200464

D. Phillip Adkins
General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: March 27, 2022

For further information, please call: (512) 424-5848



37 TAC §16.26

The Texas Department of Public Safety (the department) proposes amendments to §16.26, concerning Written Exams Required. This rule requires revisions to comply with 49 Code of Federal Regulations (CFR) Part 383.77 related to the substitution and waiver of CDL written exams for drivers with military CMV experience.

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 this rule will be a clearer understanding of requirements for the waiver of the written exam for CDL applicants with military CMV experience.

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 the creation of new employee positions nor eliminate current employee positions; will not require an increase or decrease in future legislative appropriations to the agency; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create a new regulation. The proposed rulemaking does not expand, limit or repeal an existing regulation. The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability. During the first five years the proposed rule is in effect the proposed rule should not impact positively or negatively the state's economy.

Comments on the proposal may be submitted to Ron Coleman, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to DLRulecomments@dps.texas.gov. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code.

Texas Government Code, §411.004(3), and Texas Transportation Code, §521.005, are affected by this proposal.

§16.26. Written Exams Required.

(a) An original applicant for a Texas commercial driver license (CDL) must take the signs, rules, and the appropriate Class A or Class B exams as well as any required and necessary CDL exams. A holder of a valid CDL from another state need not take the CDL exams if the out-of-state license indicates those exams were administered in that other state.

(b) Current Texas license holders will be required to take only required and necessary CDL exams, unless advancing in grade, in which case the appropriate Class A or Class B exams will be required.

(c) All CDL applicants must take and pass the CDL general knowledge exam, except those persons who currently hold a CDL from another state.

(d) Class A CDL applicants must take and pass the combination vehicle exam even though there will be no endorsement for combination vehicles. Those persons currently holding a CDL issued by another state will not be required to take this exam unless they wish to advance in grade.

(e) Applicants holding a valid CDL with a hazardous materials endorsement issued by this state or another state must take and pass the hazardous materials knowledge examination and pass a background check conducted by the appropriate federal agency at the time of issuance or renewal. The department must receive notification of no security threat from the appropriate federal agency conducting the background check within 90-days from the CDL issuance date to maintain this endorsement. [For applicants who already hold a CDE issued by another state and for all applicants for renewals of CDLs, the hazardous materials knowledge examination will be required to maintain this endorsement.]

(f) Persons who do not take and pass the air brake exam will be restricted to driving vehicles without air brakes. Applicants holding an out-of-state CDL will be exempt from this exam unless that license

indicates they are restricted to driving vehicles not equipped with air brakes.

(g) The department shall waive the CDL knowledge exams required by Texas Transportation Code, §522.022 for applicants who meet the conditions and limitations provided by 49 CFR 383.77. The Application for Military Knowledge and Skills Test Waiver must be completed by the applicant and signed by the appropriate authorized military representative. The signatures on the certification must be original signatures.

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 February 11, 2022.

TRD-202200465

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: March 27, 2022

For further information, please call: (512) 424-5848



37 TAC §16.29

The Texas Department of Public Safety (the department) proposes amendments to §16.29, concerning Waivers from Skills Exam. This rule requires revisions to comply with 49 Code of Federal Regulations (CFR) Part 383.77 related to the substitution skills exams for drivers with military CMV experience.

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 this rule will be a clearer understanding of requirements for the waiver of the skills exam for CDL applicants with military CMV experience.

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 the creation of new employee positions nor eliminate current employee positions; will not require an increase or decrease in future legislative appropriations to the agency; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create a new regulation. The proposed rulemaking does not expand, limit or repeal an existing regulation. The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability. During the first five years the proposed rule is in effect the proposed rule should not impact positively or negatively the state's economy.

Comments on the proposal may be submitted to Ron Coleman, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to DLDrulecomments@dps.texas.gov. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code.

Texas Government Code, §411.004(3), and Texas Transportation Code, §521.005, are affected by this proposal.

§16.29. *Waivers from Skills Exam.*

(a) The department shall waive the commercial driver license (CDL) skills exams required by Texas Transportation Code, §522.022 for applicants who meet the conditions and limitations provided by 49 CFR 383.77. The Application for Military Knowledge and/or Skills Test Waiver must be completed by the applicant and signed by the appropriate authorized military representative. The signatures on the certification must be original signatures. [An applicant may be exempted from the skills exam if:]

~~{(1) currently licensed (in Texas or in another state);}~~

~~{(2) for the 2 years preceding application;}~~

~~{(A) has not had more than one license at any one time;}~~

~~{(B) has not had any license suspended, revoked, disqualified, denied, or canceled;}~~

~~{(C) has not had a conviction for any disqualifying offense, such as Driving While Intoxicated, Driving Under the Influence of Drugs, Failure to Give Information and Render Aid, Refusal or Failure of a Blood, Breath, or Urine Exam, failure to comply with any offense as cited in Texas Transportation Code, Chapter 550; a felony involving the use of a commercial motor vehicle (CMV); or use of a CMV in the commission of a felony involving manufacturing, distributing, or dispensing a controlled substance; and}~~

~~{(D) has not been convicted for a serious traffic violation. These convictions may result from the operation of any vehicle; and}~~

~~{(3) regularly employed in a job requiring the operation of a CMV;}~~

~~{(A) has previously taken and passed a skills exam given by a state with a classified licensing system and the exam was}~~

behind-the-wheel in a representative vehicle for the driver license classification; or]

~~[(B) has operated for at least two years immediately preceding application for a commercial driver license (CDL), a vehicle representative of the CMV the applicant operates or expects to operate.]~~

~~(b) Applicants who hold a valid CDL from another U.S. state will not be required to take any knowledge or skills exams when making an application for an original Texas CDL of the same class and with the same restrictions or endorsements excluding the hazardous materials endorsement. [Waivers for the skills exam only apply to original applicants for CDL. Those who subsequently apply for an advance in grade, removal of restriction, or addition of endorsement after receiving a CDL will not be given a second waiver of any required skills exams.]~~

~~(c) Any waiver to substitute experience for the CDL skills exam may only be claimed one time. Any later transaction including advance in grade, removal of restrictions, or addition of an endorsement will necessitate a skills exam if required by law or regulation. [Waivers for the skills exam apply only to CMV operators with an exempt status and those legally operating CMVs such as the operation of CMVs on non-public roads in large company lots such as power or chemical companies.]~~

~~[(d) Applicants who hold a CDL from another state will not be required to take any knowledge or skills exams when making an application for an original Texas CDL of the same class and with the same restrictions or endorsements excluding the hazardous materials endorsement. Applicants desiring to retain the hazardous materials endorsement must take and pass the hazardous materials knowledge examination and pass a background check conducted by the appropriate federal agency. To maintain the hazardous materials endorsement beyond the initial 90 day period from date the CDL is issued, the department must receive a notification of no security threat from the appropriate federal agency conducting the background check. Applicants must surrender a valid CDL license, a valid CDL temporary permit, or other acceptable proof that the person has a valid license from another state in order to have the exams waived.]~~

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

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D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 15. TEXAS VETERANS COMMISSION

CHAPTER 460. FUND FOR VETERANS' ASSISTANCE PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS REGARDING THE FUND FOR VETERANS' ASSISTANCE PROGRAM

40 TAC §460.3

The Texas Veterans Commission (commission) proposes amendment to Chapter 460, Subchapter A, §460.3, Applicant Eligibility.

PART I. PURPOSE AND BACKGROUND

The proposed amendment is made to eliminate language that could inadvertently exclude eligible applicants.

PART II. EXPLANATION OF SECTIONS

SUBCHAPTER A. GENERAL PROVISIONS REGARDING THE FUND FOR VETERANS' ASSISTANCE PROGRAM.

Section 460.3.

Subsection (b)(3) deletes the term "and research institutions."

PART III. IMPACT STATEMENTS

FISCAL NOTE

Michelle Nall, Chief Financial Officer of the Texas Veterans Commission, has determined for each year of the first five years the proposed rule amendment will be in effect, there will not be an increase in expenditures or revenue for state and local government as a result of administering the proposed rule.

COSTS TO REGULATED PERSONS

Ms. Nall, Chief Financial Officer, has also determined there will not be anticipated economic costs to persons required to comply with the proposed rule.

LOCAL EMPLOYMENT IMPACT

Anna Baker, Director, Veterans Employment Services of the Texas Veterans Commission, has determined that there will not be a significant impact upon employment conditions in the state as a result of the proposed rule.

SMALL BUSINESS, MICRO BUSINESS AND RURAL COMMUNITIES IMPACT

Chip Osborne, Division Director of Resource Management and the Veterans Entrepreneur Program of the Texas Veterans Commission, has determined that the proposed rule will not have an adverse economic effect on small businesses, micro businesses or rural communities as defined in Texas Government Code §2006.001. As a result, an Economic Impact Statement and Regulatory Flexibility Analysis is not required.

PUBLIC BENEFIT

Shawn Deabay, Deputy Executive Director of the Texas Veterans Commission, has determined that for each year of the first five years the proposed rule are in effect, the public benefit anticipated as a result of administering the amended rule will increase participation within each of the agency's two remaining advisory committees.

GOVERNMENT GROWTH IMPACT STATEMENT

Mr. Deabay has also determined that for each year of the first five years that the proposed rule amendments are in effect, the following statements will apply:

- (1) The proposed rule amendments will not create or eliminate a government program.
- (2) Implementation of the proposed rule amendments will not require creation of new employee positions, or elimination of existing employee positions.
- (3) Implementation of the proposed rule amendments will not require an increase or decrease in future legislative appropriations to the agency.
- (4) No fees will be created by the proposed rule amendments.
- (5) The proposed rule amendments will not require new regulations.
- (6) The proposed rule amendments have no effect on existing regulations.
- (7) The proposed rule amendments have no effect on the number of individuals subject to the rule's applicability.
- (8) The proposed rule amendments have no effect on this state's economy.

PART IV. COMMENTS

Comments on the proposed amended rule may be submitted to Texas Veterans Commission, Attention: General Counsel, P.O. Box 12277, Austin, Texas 78711; faxed to (512) 475-2395; or emailed to rulemaking@tvc.texas.gov. For comments submitted electronically, please include "Chapter 452 Rules" in the subject line. The commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

PART V. STATUTORY AUTHORITY

The rule amendment is proposed under Texas Government Code §434.010 which authorizes the commission to establish rules it considers necessary for its administration.; and Texas Government Code Section §434.0101, granting the commission authority to establish rules governing the agency's advisory committees.

No other statutes, rules, or regulations are affected.

§460.3. *Applicant Eligibility.*

- (a) (No change.)
- (b) Any of the following are not eligible to apply for grant funds:
 - (1) - (2) (No change.)
 - (3) Units of federal or state government, state agencies, colleges, and universities [~~and research institutions~~];
 - (4) - (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 February 10, 2022.

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Houston John Goodell
 General Counsel
 Texas Veterans Commission
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 For further information, please call: (512) 463-3288



PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 808. YOUTH DRIVER EDUCATION FUNDING PROGRAM

The Texas Workforce Commission (TWC) proposes new Chapter 808, relating to the Youth Driver Education Funding Program, comprising the following subchapters:

Subchapter A. Youth Driver Education Funding Program Eligibility, §808.1

Subchapter B. Use of Youth Driver Education Funds, §808.21

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the Chapter 808 rules is to implement Senate Bill (SB) 2054 from the 87th Texas Legislature, Regular Session (2021). SB 2054 amended Texas Transportation Code, Chapter 521, Subchapter H to add §521.168, Payment of Fees for Certain Foster and Homeless Children and Youths, which states that unless prohibited by Texas Transportation Code, §521.4265(c), TWC shall, upon request from an individual who meets the eligibility criteria outlined in Texas Transportation Code, §521.168, pay the fees associated with obtaining a driver's license imposed under Texas Transportation Code, Chapter 521, Subchapter H, or Texas Education Code, Chapter 1001.

Texas Transportation Code, §521.168(a) lists the following criteria for eligible individuals:

- Individuals eligible for a driver's license fee exemption under Texas Transportation Code, §521.1811; or
- Individuals younger than 26 years of age who were or are:
 - in the managing conservatorship of the Texas Department of Family and Protective Services on the day before the individual's 18th birthday; or
 - a homeless child or youth, as defined by 42 United States Code §11434a.

Texas Transportation Code, §521.168(b) stipulates that TWC shall establish a process by which an eligible individual may apply to TWC for the payment of fees associated with obtaining a driver's license imposed under Texas Transportation Code, Chapter 521, Subchapter H, or Texas Education Code, Chapter 1001, and TWC pays those fees on the eligible individual's behalf.

SB 2054 also amended Texas Transportation Code, §521.4265(b) and (c) and added §521.4265(d). Texas Transportation Code, §521.4265(b) and (c) states that these fees will be paid for through the Texas Department of Public Safety's (DPS) identification fee exemption account. Texas Transportation Code, §521.4265(b) stipulates that DPS shall request that the Texas Comptroller of Public Accounts transfer to TWC amounts sufficient to cover the cost of implementing the Youth Driver Education Funding Program under Texas

Transportation Code, §521.168, including amounts sufficient for TWC's payment of fees to entities other than DPS.

Texas Transportation Code, §521.4265(c)(1) states that fund transfers for the Youth Driver Education Funding Program may not be requested if the balance of the account for the fiscal year is less than three times the amount expended in the previous fiscal year for fee waivers provided by Texas Transportation Code, §521.1015(e) and §521.1811.

Texas Transportation Code, §521.4265(d) requires DPS, in consultation with TWC, to establish rules for a process governing these fund transfers.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

SUBCHAPTER A. YOUTH DRIVER EDUCATION FUNDING PROGRAM ELIGIBILITY

TWC proposes new Subchapter A:

§808.1. Eligible Population

New §808.1 states that TWC shall pay the fees associated with obtaining a driver's license imposed under Texas Transportation Code, Chapter 521, Subchapter H, or Texas Education Code, Chapter 1001, for eligible individuals who meet the criteria listed in Texas Transportation Code, §521.168(a).

SUBCHAPTER B. USE OF YOUTH DRIVER EDUCATION FUNDS

TWC proposes new Subchapter B:

§808.21. Verification Process

New §808.21 describes the verification process by which eligible individuals may apply to have fees associated with obtaining a driver's license--imposed under Texas Transportation Code, Chapter 521, Subchapter H, or Texas Education Code, Chapter 1001--paid for through TWC's Youth Driver Education Funding Program. New §808.21 also describes how TWC will respond to individuals requesting payment who are determined to be ineligible and provides steps required for driver education providers to receive a fee payment.

PART III. IMPACT STATEMENTS

Chris Nelson, Chief Financial Officer, determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state or local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state or to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to individuals required to comply with the rules.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules.

Based on the analyses required by Texas Government Code, §2001.024, TWC determined that the requirement to repeal or amend a rule, as required by Texas Government Code, §2001.0045, does not apply to this rulemaking.

Takings Impact Assessment

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the US Constitution or the Texas Constitution, Article I, §17 or §19, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. TWC completed a Takings Impact Analysis for the proposed rulemaking action under Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to establish how TWC shall, upon request from an individual who meets the eligibility criteria outlined in Texas Transportation Code, §521.168, pay the fees associated with obtaining a driver's license imposed under Chapter 521, Subchapter H, or Texas Education Code, Chapter 1001.

The proposed rulemaking action will not create any additional burden on private real property or affect private real property in a manner that would require compensation to private real property owners under the US Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Government Growth Impact Statement

TWC determined that during the first five years the new rules will be in effect, they:

- will create a government program;
- will require the creation of employee positions;
- will not require an increase or decrease in future legislative appropriations to TWC;
- will not require an increase or decrease in fees paid to TWC;
- will not create a new regulation;
- will not expand, limit, or eliminate an existing regulation;
- will increase the number of individuals subject to the new rules; and
- will positively affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

TWC determined that the rules will not have an adverse economic impact on small businesses or rural communities, as the proposed rules place no requirements on small businesses or rural communities.

Mariana Vega, Director, Labor Market Information, determined that there is not a significant negative impact upon employment conditions in the state as a result of the rules.

Courtney Arbour, Director, Workforce Development Division, determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to improve employment opportunities and outcomes for youth currently or formerly in foster care and homeless youth. TWC Foster Youth Transition Centers, Local Workforce Development Boards (Boards), and other stakeholders in the foster care and homeless services community frequently identify lack of access to transportation as a major barrier to employment for the populations they serve. These rules will make it easier for eligible youth to obtain driver education, which in turn will lower this employment barrier.

TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, TWC sought the involvement of Texas' 28 Boards. TWC provided the policy concept regarding these rules to the Boards for consideration and review on October 19, 2021. TWC also conducted a conference call with Board executive directors and Board staff on October 29, 2021, to discuss the policy concept. During the rulemaking process, TWC considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

PART V. PUBLIC COMMENT

Comments on the proposed rules may be submitted to TWCPolicyComments@twc.texas.gov. Comments must be received no later than March 28, 2022.

SUBCHAPTER A. YOUTH DRIVER EDUCATION FUNDING PROGRAM ELIGIBILITY

40 TAC §808.1

PART VI. STATUTORY AUTHORITY

The new rule is proposed under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The new rule implements the changes made to the Texas Transportation Code, Chapter 521, by SB 2054, specifically the requirements of amended Texas Transportation Code, §521.168(b).

§808.1. Eligible Population.

Unless prohibited under Texas Transportation Code, §521.4265(c), the Agency shall, upon request from an individual who meets the eligibility criteria in this section, pay the fees associated with obtaining a driver's license imposed under Texas Transportation Code, Chapter 521, Subchapter H, or Texas Education Code, Chapter 1001. Eligible individuals for the Youth Driver Education Funding Program include individuals:

(1) eligible for a driver's license fee exemption under Texas Transportation Code, §521.1811; or

(2) younger than 26 years of age who were or are:

(A) in the managing conservatorship of the Texas Department of Family and Protective Services on the day before the individual's 18th birthday; or

(B) a homeless child or youth as defined by 42 United States Code §11434a.

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

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Les Trobman

General Counsel

Texas Workforce Commission

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



SUBCHAPTER B. USE OF YOUTH DRIVER EDUCATION FUNDS

40 TAC §808.21

The new rule is proposed under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The new rule implements the changes made to the Texas Transportation Code, Chapter 521, by SB 2054, specifically the requirements of amended Texas Transportation Code, §521.168(b).

§808.21. Verification Process.

(a) To receive a driver education fee waiver, an eligible individual must identify a driver education provider with whom he or she intends to enroll that:

(1) is registered with the Texas Department of Licensing and Registration as a certified Texas driver education provider;

(2) is a registered vendor in accordance with rules established by the Agency and the Texas Comptroller of Public Accounts; and

(3) charges a rate that does not exceed twice the average rate of all other certified Texas driver education providers within a 30-mile radius of the selected certified Texas driver education provider's physical location. For driver education providers providing online instruction, their rate will be compared to the average rate for online driver education instruction available in Texas.

(b) Once a driver education provider is selected, the eligible individual must visit a website designated by the Agency to complete and submit the Driver Education Waiver Request Form, which includes:

(1) individual eligibility verification; and

(2) Youth Driver Education Funding Program eligibility verification.

(c) Agency staff shall review the form within five business days of submission and notify the requestor of the individual's eligibility status. If staff is unable to determine eligibility, staff may contact the individual for further information.

(d) Once participant and Youth Driver Education Funding Program eligibility are determined, Agency staff shall:

(1) for an eligible individual, submit a payment request on the individual's behalf to the Agency's Finance Division; or

(2) for an ineligible individual, send a response to the individual alerting them of their ineligibility.

(e) After an eligible participant has completed enrollment with the selected provider, the Agency's Finance Division shall review and process the payment request in keeping with Agency policies and procedures regarding fee payment, and if sufficient funds have been transferred from the Texas Department of Public Safety (DPS) to the Agency.

(f) An eligible participant who fails to attend or complete driver education or a test paid for under this chapter must wait for a period of three months before they enroll in a new course or test to be paid for by this chapter. An eligible participant may have the required waiting period waived by providing a written attestation describing the circumstances that prevented them from attending or completing the driver education or test and explaining why they assert the circumstances were outside their control.

(g) The Agency shall pay driver education providers for services provided to an eligible individual from the fund after the individual's application receives approval from the Agency, the driver's education provider submits required payment documentation that is accurate and complete, and the individual submits a completed driver education enrollment agreement.

(h) All Youth Driver Education Funding Program uses described in this chapter shall be monitored and reported on as required by the Texas Comptroller of Public Accounts, the Agency, and DPS.

(i) Driver education providers shall repay to the Agency improper payments received or refunds due for driver education funded under this chapter in instances:

(1) involving fraud committed by the driver education provider;

(2) in which the provider was paid for driver education from another source;

(3) in which the provider did not deliver driver education;
or

(4) in which a refund is due under Texas Education Code, Chapter 1001, Subchapter I.

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

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Les Trobman

General Counsel

Texas Workforce Commission

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



TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 217. VEHICLE TITLES AND REGISTRATION

SUBCHAPTER A. MOTOR VEHICLE TITLES

43 TAC §217.5

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes amendments to Title 43 Texas Administrative Code, Subchapter A, §217.5 concerning motor vehicle titles. These amendments are necessary to expand the definition of evidence of ownership to provide an alternative to filing lawsuits to satisfy evidence of ownership requirements under Transportation Code §501.033(b). The proposed amendments will allow applicants applying for an identification number assignment or reassignment to use a surety bond under Transportation Code §501.053 as evidence of ownership for the purpose of the identification number assignment or reassignment.

EXPLANATION. The proposed amendments to §217.5 are necessary to eliminate unnecessary costs and burdens on applicants for identification number assignments and reassignments, the department, the Office of the Attorney General, and the court system. The proposed changes will provide an alternative to obtaining a court order to produce as evidence of ownership under Transportation Code §501.033. Currently, applicants for motor vehicle title to a used vehicle who are unable to produce evidence of ownership allowed by §217.5(a)(2), in the form of a title issued by the department or by another state in which the motor vehicle was last registered, are able to obtain a title by filing a surety bond with the department under Transportation Code §501.053. Applicants under §501.053 are required by Transportation Code §501.032 to obtain an identification number inspection, if the department does not have a motor vehicle record for the motor vehicle, trailer, or semi-trailer in the department's registration and title system. Identification number inspections are required to verify the identity of the motor vehicle, trailer or semi-trailer, frame, body, or motor of a motor vehicle under Transportation Code §501.0321. This is usually done by the inspector verifying a vehicle identification number of the motor vehicle inspected as well as the corresponding make and year of manufacture of the vehicle. However, in some cases, most commonly in the cases of trailers or semi-trailers, an inspector may be unable to locate an identification number for the vehicle if the identification number has been removed, altered, or obliterated; or if a permanent identification number was never assigned. Because an identification number is required on all titles issued by the department under Transportation Code §501.021, the applicant for title under §501.053 for a vehicle that is missing an identification number is unable to complete their title application.

Transportation Code §501.033 allows the department to assign or reassign a vehicle identification number upon application by the owner of the motor vehicle. Applications for assignment or reassignment under §501.033(b) must be accompanied by "valid evidence of ownership in the name of, or properly assigned to the applicant." However, in most cases, the applicant does not have the title, and is unable to work with the former record titleholder to obtain a certified copy.

To allow applicants to complete the identification number assignment or reassignment process and then obtain title, the department has traditionally allowed a court order declaring that the applicant is the owner of the vehicle to serve as "other evidence of ownership" under 43 Texas Administrative Code §217.5(a)(2). This allows the applicant to have an identification number as-

signed or reassigned under Transportation Code §501.033, so the vehicle will have the requirements for title.

The department's experience has shown that requiring such court orders is impractical and imposes unnecessary costs on applicants, the department, and the court system. To pursue a court order, applicants must pay filing fees and the cost of service of process and may also incur costs associated with legal representation. Many applicants pursuing litigation improperly name the department as a defendant, rather than naming the existing titleholder or handling the case as an In Rem action. This requires that the department obtain representation from the Office of the Attorney General to raise sovereign immunity defenses on its behalf in courts all across the state, as the legislature has not waived sovereign immunity to sue the department in such cases. Additionally, these cases burden the courts with handling an unfamiliar type of case where there is usually not a true dispute of ownership, and the plaintiffs are not sure who they need to name as defendants.

The department has determined that a surety bond will eliminate these issues, while providing adequate evidence of ownership. Interested person damaged by the issuance of title on a motor vehicle will be protected under Transportation Code §501.053(c), which affords a right of action to recover on the bond. The department's proposed process will allow applicants with vehicles needing an identification number to have a surety bond serve as evidence of ownership which will allow for the assignment of an identification number and the issuance of title.

The amendment to §217.5(a)(3) redesignates the paragraph, replaces language describing the inspection requirement under Transportation Code §501.032(a)(2) and the exemption from the requirement for military members in Transportation Code §501.032(b), with references to Transportation Code §501.032(a)(2) and §501.032(b). The changes are made to accurately conform with the statute and prevent confusion if the statute is subsequently amended. The changes do not modify, the exemption to the identification member for military members and their immediate family, but merely streamline the rule language with a citation to the statutory authority for the exemption.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Glenna Bowman, 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. Roland Luna, Sr., Director of the Vehicle Titles and Registration 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. Luna, Sr. has also determined that, for each year of the first five years the amended section is in effect, there are several public benefits anticipated because applicants for identification number assignment or reassignment who are unable to produce evidence of ownership will not need to file a lawsuit and pursue a court order to be used as evidence of ownership.

Anticipated Public Benefits. The public benefits anticipated as a result of the proposal include providing applicants an option for eliminating litigation costs related to providing evidence of ownership for identification number assignment or reassignment and issuance of title. Additionally, the amendment may result in better use of state resources by reducing court dockets.

Anticipated Costs To Comply With The Proposal. Mr. Luna, Sr. anticipates that the proposed amendments do not create additional costs for persons required to comply with these rules, as the rules are not mandatory, but provide an option for applicants seeking evidence of ownership through litigation. There will be costs for persons who choose this option, the cost to obtain a surety bond, but the choice to incur those costs is a business decision of the applicant. The cost of the bond will vary with the value of the vehicle. The value of the surety bond must be one and one-half times the value of the vehicle, as determined by 43 Texas Administrative Code §217.9. The costs of the bond is estimated to be two percent of the value of the bond.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. The cost analysis in the Public Benefit and Cost Note section of this proposal has determined that proposed amendments will not result in additional costs for applicants unable to produce evidence of ownership for purposes of identification number assignments or reassignment, including 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 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 expand an existing regulation by providing an alternative type of evidence of ownership. 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. CST on March 28, 2022. 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 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 to §217.5 under Transportation Code §501.0041 and §1002.001.

-Transportation Code §501.0041 authorizes the department to adopt rules to administer Chapter 501.

-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 §501.033 and §501.053.

§217.5. Evidence of Motor Vehicle Ownership.

(a) Evidence of motor vehicle ownership properly assigned to the applicant must accompany the title application. Evidence must include, but is not limited to, the following documents.

(1) New motor vehicles. A manufacturer's certificate of origin assigned by the manufacturer or the manufacturer's representative or distributor to the original purchaser is required for a new motor vehicle that is sold or offered for sale.

(A) The manufacturer's certificate of origin must be in the form prescribed by the department and must contain, at a minimum, the following information:

(i) motor vehicle description including, but not limited to, the motor vehicle year, make, identification number, and body style;

(ii) the empty or shipping weight;

(iii) the gross vehicle weight when the manufacturer's certificate of origin is invoiced to a licensed Texas motor vehicle dealer and is issued for commercial motor vehicles as that term is defined in Transportation Code, Chapter 502;

(iv) a statement identifying a motor vehicle designed by the manufacturer for off-highway use only; and

(v) if the vehicle is a "neighborhood electric vehicle," a statement that the vehicle meets Federal Motor Vehicle Safety Standard 500 (49 C.F.R. §571.500) for low-speed vehicles.

(B) When a motor vehicle manufactured in another country is sold directly to a person other than a manufacturer's representative or distributor, the manufacturer's certificate of origin must be assigned to the purchaser by the seller.

(2) Used motor vehicles. A title issued by the department, a title issued by another state if the motor vehicle was last registered and titled in another state, or other evidence of ownership must be relinquished in support of the title application for any used motor vehicle. A registration receipt is required from a vehicle owner coming from a state that no longer titles vehicles after a certain period of time.

(3) Evidence of Ownership for Purpose of Identification Number Assignment or Reassignment. An applicant for assignment or reassignment of an identification number under Transportation Code §501.033 who is unable to produce evidence of ownership under this section, may file a bond with the department in accordance with Transportation Code §501.053 and §217.9 of this title (relating to Bonded Titles). The bond will serve as evidence of ownership for purposes of §501.033(b).

(4) [(3)] Motor vehicles brought into the United States. An application for title for a motor vehicle last registered or titled in a foreign country must be supported by documents including, but not limited to, the following:

(A) the motor vehicle registration certificate or other verification issued by a foreign country reflecting the name of the applicant as the motor vehicle owner, or reflecting that legal evidence of ownership has been legally assigned to the applicant;

(B) the identification number inspection required under Transportation Code §501.032(a)(2), except as provided in 501.032(b); and [unless the applicant is an active duty member of the U.S. Armed Forces or is from the immediate family of such a member returning to Texas with proof of the active duty status of the family member, verification of the vehicle identification number of the vehicle, on a form prescribed by the department, executed by a member of:]

[(i) the National Insurance Crime Bureau;]

[(ii) the Federal Bureau of Investigation; or]

[(iii) a law enforcement auto theft unit; and]

(C) for motor vehicles that are less than 25 years old, proof of compliance with United States Department of Transportation (USDOT) regulations including, but not limited to, the following documents:

(i) the original bond release letter with all attachments advising that the motor vehicle meets federal motor vehicle safety requirements or a letter issued by the USDOT, National Highway Traffic Safety Administration, verifying the issuance of the original bond release letter;

(ii) a legible copy of the motor vehicle importation form validated with an original United States Customs stamp, date, and signature as filed with the USDOT confirming the exemption from the bond release letter required in clause (i) of this subparagraph, or a copy thereof certified by United States Customs;

(iii) a verification of motor vehicle inspection by United States Customs certified on its letterhead and signed by its agent verifying that the motor vehicle complies with USDOT regulations;

(iv) a written confirmation that a physical inspection of the safety certification label has been made by the department and that the motor vehicle meets United States motor vehicle safety standards;

(v) the original bond release letter, verification thereof, or written confirmation from the previous state verifying that a bond release letter issued by the USDOT was relinquished to that jurisdiction, if the non United States standard motor vehicle was last titled or registered in another state for one year or less; or

(vi) verification from the vehicle manufacturer on its letterhead stationery.

(b) Alterations to documentation. An alteration to a registration receipt, title, manufacturer's certificate, or other evidence of ownership constitutes a valid reason for the rejection of any transaction to which altered evidence is attached.

(1) Altered lien information on any surrendered evidence of ownership requires a release from the original lienholder or a statement from the proper authority of the state in which the lien originated. The statement must verify the correct lien information.

(2) A strikeover that leaves any doubt about the legibility of any digit in any document will not be accepted.

(3) A corrected manufacturer's certificate of origin will be required if the manufacturer's certificate of origin contains an:

(A) incomplete or altered vehicle identification number;

(B) alteration or strikeover of the vehicle's model year;

(C) alteration or strikeover to the body style, or omitted body style on the manufacturer's certificate of origin; or

(D) alteration or strikeover to the weight.

(4) A Statement of Fact may be requested to explain errors, corrections, or conditions from which doubt does or could arise concerning the legality of any instrument. A Statement of Fact will be required in all cases:

(A) in which the date of sale on an assignment has been erased or altered in any manner; or

(B) of alteration or erasure on a Dealer's Reassignment of Title.

(c) Rights of survivorship. A signed "rights of survivorship" agreement may be executed by a natural person acting in an individual capacity in accordance with Transportation Code, §501.031.

(d) Identification required.

(1) An application for title is not acceptable unless the applicant presents a current photo identification of the owner containing a unique identification number and expiration date. The identification document must be a:

(A) driver's license or state identification certificate issued by a state or territory of the United States;

(B) United States or foreign passport;

(C) United States military identification card;

(D) North Atlantic Treaty Organization identification or identification issued under a Status of Forces Agreement;

(E) United States Department of Homeland Security, United States Citizenship and Immigration Services, or United States Department of State identification document; or

(F) concealed handgun license or license to carry a handgun issued by the Texas Department of Public Safety under Government Code, Chapter 411, Subchapter H.

(2) If the motor vehicle is titled in:

(A) more than one name, then the identification of one owner must be presented;

(B) the name of a leasing company, then:

(i) proof of the Federal Employer Identification Number/Employee Identification Number (FEIN/EIN) of the leasing company must be submitted, written on the application, and can be entered into the department's titling system. The number must correspond to the name of the leasing company in which the vehicle is being titled; and

(ii) the leasing company may submit:

(I) a government issued photo identification, required under paragraph (1) of this subsection, of the lessee listed as the registrant; or

(II) a government issued photo identification, required under paragraph (1) of this subsection, of the employee or authorized agent who signed the application for the leasing company, and the employee's or authorized agent's employee identification, letter of authorization written on the lessor's letterhead, or a printed business card. The printed business card, employee identification, or letter of authorization written on the lessor's letterhead must contain the name of the lessor, and the employee's or authorized agent's name must match the name on the government issued photo identification;

(C) the name of a trust, then a government issued photo identification, required under paragraph (1) of this subsection, of a trustee must be presented; or

(D) the name of a business, government entity, or organization, then:

(i) proof of the Federal Employer Identification Number/Employee Identification Number (FEIN/EIN) of the business, government entity, or organization must be submitted, written on the application, and can be entered into the department's titling system.

The number must correspond to the name of the business, government entity, or organization in which the vehicle is being titled;

(ii) the employee or authorized agent must present a government issued photo identification, required under paragraph (1) of this subsection; and

(iii) the employee's or authorized agent's employee identification; letter of authorization written on the business', government entity's, or organization's letterhead; or a printed business card. The printed business card, employee identification, or letter of authorization written on the business', government entity's, or organization's letterhead must contain the name of the business, governmental entity, or organization, and the employee's or authorized agent's name must match the name on the government issued photo identification.

(3) In addition to the requirements of paragraphs (1) and (2) of this subsection, if a power of attorney is being used to apply for a title, then the applicant must show:

(A) identification, required under paragraph (1) of this subsection, matching the person named as power of attorney; or

(B) identification, required under paragraph (1) of this subsection, and employee identification or a printed business card or authorization written on the letterhead of the entity named as power of attorney that matches the identification of the employee if the power of attorney names an entity.

(4) Within this subchapter, "current" is defined as not to exceed 12 months after the expiration date, except that a state-issued personal identification certificate issued to a qualifying person is considered current if the identification states that it has no expiration.

(5) Within this subsection, an identification document such as a printed business card, letter of authorization, or power of attorney, may be an original or a photocopy.

(6) A person who holds a general distinguishing number issued under Transportation Code, Chapter 503 or Occupations Code, Chapter 2301 is exempt from submitting to the county tax assessor-collector, but must retain:

(A) the owner's identification, as required under paragraph (1) of this subsection; and

(B) authorization to sign, as required under paragraph (2) of this subsection.

(7) A person who holds a general distinguishing number issued under Transportation Code, Chapter 503 or Occupations Code, Chapter 2301, is not required to submit photo identification or authorization for an employee or agent signing a title assignment with a secure power of attorney.

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 February 11, 2022.

TRD-202200473

Aline Aucoin

General Counsel

Texas Department of Motor Vehicles

Earliest possible date of adoption: March 27, 2022

For further information, please call: (512) 465-4209



43 TAC §217.9

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes amendments to Title 43 TAC §217.9, concerning Bonded Titles. The amendments to §217.9 are necessary to clarify portions of the rule, remove duplicative information, and to create an alternative to appraisal for owners of trailers and semi-trailers which is intended to reduce costs to applicants.

The department proposes substantive and nonsubstantive changes to amended §217.9. The substantive changes to amended §217.9(c) clarify that the existing resource used by the department to determine the value of a motor vehicle is the standard presumptive value under existing Tax Code §152.0412. Amendments to §217.9(c) also provide an additional option for a person to determine the value of a motor vehicle that is 25 years or older for purposes of applying for a bond. Amendments to §217.9(c) are necessary to ensure a person has the ability to use a resource that accurately reflects the value of their motor vehicle in its current condition. The option to use an appraisal instead of a national reference guide is at the person's discretion at the time of application for bond.

Amendments to §217.9(c)(4) provide a standard value for certain trailers whose value cannot be determined by the national resource guide. This amendment is necessary to provide persons an alternative to determining the value of trailers and semi-trailers from an appraisal by establishing a uniform value amount for trailers under 20 feet in length and another value for trailers over 20 feet in length. Subsection (e) is amended by removing a requirement for a weight certificate that is not required by §501.053 governing bonded titles. Nonsubstantive amendments to subsection (e)(1) delete existing duplicative requirements found in existing subsection (e)(6).

Nonsubstantive changes include amending subsection (e) to delete an unnecessary duplicative provision, substituting "notice for determination" for "rejection letter," to better align with current department terminology and practices.

Additionally, the rules are being reviewed in compliance with Texas Government Code §2001.039 which requires agencies to review rules every four years and readopt, readopt with amendments, or repeal.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Glenna Bowman, 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.

Roland Luna, Sr., Director of the Vehicle Titles and Registration 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. Luna, Sr. has also determined that, for each year of the first five years amended section is in effect, there are several public benefits anticipated because persons may utilize additional resources to determine the value of a motor vehicle more accurately for purposes of applying for a bond.

Anticipated Public Benefits. The public benefits anticipated as a result of the proposal include clarifying the resources available for a person to use in determining value of a motor vehicle for purposes of applying for a bond.

Anticipated Costs To Comply With The Proposal. Mr. Luna, Sr. anticipates that there will be no costs to comply with these rules.

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-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 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, 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. CST on March 28, 2022. 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 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 to §§223.1 - 223.3 under 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 §501.053.

§217.9. Bonded Titles.

(a) Who may file. A person who has an interest in a motor vehicle to which the department has refused to issue a title or has suspended or revoked a title may request issuance of a title from the department on a prescribed form if the vehicle is in the possession of the applicant; and

(1) there is a record that indicates a lien that is less than ten years old and the surety bonding company ensures lien satisfaction or release of lien;

(2) there is a record that indicates there is not a lien or the lien is ten or more years old; or

(3) the department has no previous motor vehicle record.

(b) Administrative fee. The applicant must pay the department a \$15 administrative fee in addition to any other required fees.

(c) Value. The amount of the bond must be equal to one and one-half times the value of the vehicle as determined under Tax Code §152.0412 regarding [using the] Standard Presumptive Value (SPV) [from the department's Internet website]. If the SPV is not available, then a national reference guide will be used. If the value cannot be determined by the department through either source, then the person may obtain an appraisal. If a motor vehicle is 25 years or older, a person may obtain an appraisal to determine the value instead of using a national reference guide.

(1) The appraisal must be on a form specified by the department from a Texas licensed motor vehicle dealer for the categories of motor vehicles that the dealer is licensed to sell or a Texas licensed insurance adjuster who may appraise any type of motor vehicle.

(2) The appraisal must be dated and be submitted to the department within 30 days of the appraisal.

(3) If the motor vehicle 25 years or older and the appraised value of the vehicle is less than \$4,000, the bond amount will be established from a value of \$4,000.

(4) If the motor vehicle is a trailer or semi-trailer, the person may, as an alternative to an appraisal, have the bond amount established from a value of:

(A) \$4,000, if under 20 feet in length, or

(B) \$7,000, if 20 or more feet in length.

(d) Vehicle identification number inspection. If the department has no motor vehicle record for the vehicle, the vehicle identification number must be verified by an inspection under Transportation Code §501.0321 [a Texas licensed Safety Inspection Station or a law enforcement officer who holds an auto theft certification].

(e) Required documentation. An applicant may apply for a bonded title if the applicant submits:

~~[(1) verification of the vehicle identification number on a form specified by the department;]~~

(1) ~~[(2)]~~ any evidence of ownership;

~~(2) [(3)]~~ the original bond within 30 days of issuance;

~~(3) [(4)]~~ the notice of determination ~~[rejection letter]~~ within one year of issuance and the receipt for \$15 paid to the department;

~~(4) [(5)]~~ the documentation determining the value of the vehicle;

~~(5) [(6)]~~ proof of the vehicle identification number inspection, as described in subsection (d) of this section, if the department has no motor vehicle record for the vehicle;

~~[(7) a weight certificate if there is no title or the vehicle is an out-of-state commercial vehicle;]~~

~~(6) [(8)]~~ a certification of lien satisfaction by the surety bonding company, or a release of lien, if the notice of determination ~~[rejection]~~ letter states that there may be a lien less than ten years old; and

~~(7) [(9)]~~ any other required documentation and fees.

(f) Report of Judgment. The bond must require that the surety report payment of any judgment to the department within 30 days.

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 February 11, 2022.

TRD-202200472

Aline Aucoin

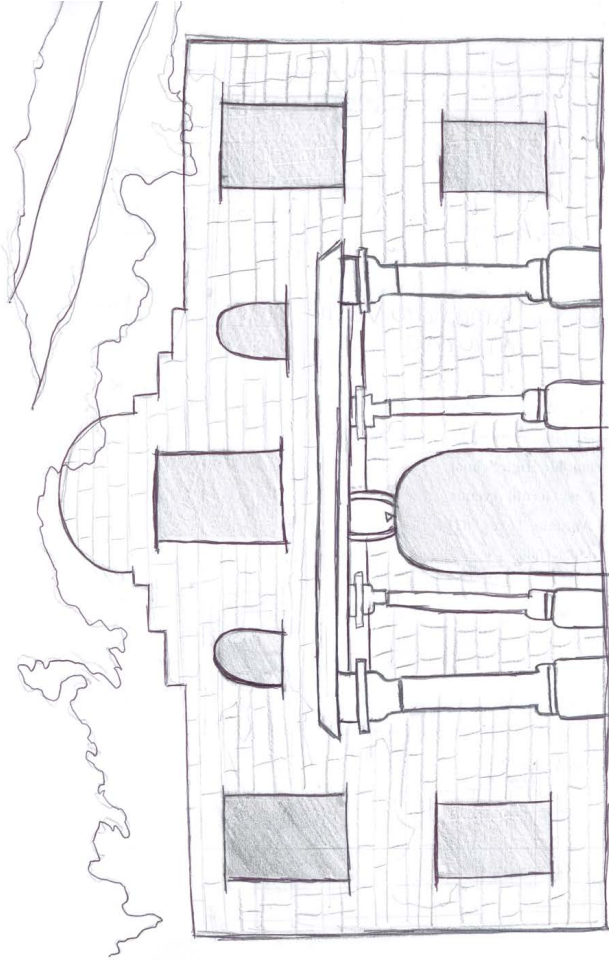
General Counsel

Texas Department of Motor Vehicles

Earliest possible date of adoption: March 27, 2022

For further information, please call: (512) 465-4209

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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 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION

SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §1.23

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 1, Subchapter A, General Policies and Procedures, §1.23, State of Texas Low Income Housing Plan and Annual Report (SLIHP), without changes to the proposed text as published in the December 24, 2021, issue of the *Texas Register* (46 TexReg 8868). The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action, in order to adopt by reference the 2022 SLIHP.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal would be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous adoption by reference the 2022 SLIHP, as required by Tex. Gov't Code 2306.0723.

2. The repeal does not require a change in work that would require the creation of new employee positions, nor is the repeal significant enough to reduce work load to a degree that any existing employee positions are eliminated.

3. The repeal does not require additional future legislative appropriations.

4. The repeal does not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The action will repeal an existing regulation, but is associated with a simultaneous readoption in order to adopt by reference the 2022 SLIHP.

7. The repeal will not increase or decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively or positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be an updated rule under separate action, in order to adopt by reference the 2022 SLIHP. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The public comment period for the proposed repeal and proposed new rule was held between December 20, 2021, and January 10, 2022. The public comment period for the draft 2022 SLIHP was held between December 20, 2021, and January 18, 2022. A virtual public hearing for the draft 2022 SLIHP was held on January 12, 2022, in Austin, Texas. Written comments were accepted by mail or email. While the Department received public comment on the draft 2022 SLIHP, no comments were received specifically on the proposed repeal and proposed new rule.

The TDHCA Governing Board approved the 2022 SLIHP and the final order adopting the repeal on February 10, 2022.

STATUTORY AUTHORITY. The repeal is adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the repealed section affects no other code, article, or statute.

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

Filed with the Office of the Secretary of State on February 11, 2022.

TRD-202200492

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Effective date: March 3, 2022

Proposal publication date: December 24, 2021

For further information, please call: (512) 475-3959



10 TAC §1.23

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 1, Subchapter A, General Policies and Procedures, §1.23 State of Texas Low Income Housing Plan and Annual Report (SLIHP) without changes to the proposed text as published in the December 24, 2021, issue of the *Texas Register* (46 TexReg 8869). The rule will not be republished. The purpose of the new section is to provide compliance with Tex. Gov't Code §2306.0723 and to adopt by reference the 2022 SLIHP, which offers a comprehensive reference on statewide housing needs, housing resources, and strategies for funding allocations. The 2022 SLIHP reviews TDHCA's housing programs, current and future policies, resource allocation plans to meet state housing needs, and reports on performance during the preceding state fiscal year (September 1, 2020, through August 31, 2021).

Tex. Gov't Code §2001.0045(b) does not apply to the adopted rule because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the new rule would be in effect:

1. The new rule does not create or eliminate a government program, but relates to the adoption, by reference, of the 2022 SLIHP, as required by Tex. Gov't Code 2306.0723.
2. The new rule does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The new rule changes do not require additional future legislative appropriations.
4. The new rule changes will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The new rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.
6. The new rule will not expand, limit, or repeal an existing regulation.

7. The new rule will not increase or decrease the number of individuals subject to the rule's applicability.

8. The new rule will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code §2306.0723.

1. The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. There are no small or micro-businesses subject to the new rule for which the economic impact of the rule is projected to be null. There are no rural communities subject to the rule for which the economic impact of the rule is projected to be null.

3. The Department has determined that because the new rule will adopt by reference the 2022 SLIHP, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new rule does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment because the new rule will adopt by reference the 2022 SLIHP; therefore, no local employment impact statement is required to be prepared for the rule.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that the rule will adopt by reference the 2022 SLIHP there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be an updated and more germane rule that will adopt by reference the 2022 SLIHP, as required by Tex. Gov't Code §2306.0723. There will not be any economic cost to any individuals required to comply with the new section because the adoption by reference of prior year SLIHP documents has already been in place through the rule found at this section being repealed.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments because the new rule will adopt by reference the 2022 SLIHP.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The public comment period for the proposed new

rule was held between December 20, 2021, and January 10, 2022. The public comment period for the draft 2022 SLIHP was held between December 20, 2021, and January 18, 2022. A virtual public hearing for the draft 2022 SLIHP was held on January 12, 2022, in Austin, Texas. Written comments were accepted by mail and email. While the Department received public comment on the draft 2022 SLIHP, no comments were received specifically on the proposed repeal and proposed new rule.

The TDHCA Governing Board approved the 2022 SLIHP and the final order adopting the new rule on February 10, 2022.

STATUTORY AUTHORITY. The new section is adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the adopted new section affects no other code, article, or statute.

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

Filed with the Office of the Secretary of State on February 11, 2022.

TRD-202200491

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Effective date: March 3, 2022

Proposal publication date: December 24, 2021

For further information, please call: (512) 475-3959



CHAPTER 27. TEXAS FIRST TIME HOMEBUYER PROGRAM RULE

10 TAC §§27.1 - 27.9

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 27, §§27.1 - 27.9, First Time Homebuyer Program Rule, without changes to the proposed text as published in the December 24, 2021, issue of the *Texas Register* (46 TexReg 8870). The purpose of the repeal is to allow the Department to make forgivable second mortgage loans for down payment assistance through the First Time Homebuyer Program.

Tex. Gov't Code §2001.0045(b) does not apply to the rule because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson has determined that, for the first five years the repeal would be in effect:

1. The repeal does not create or eliminate a government program but relates to changes to minimally expand the pool of households eligible to participate in the Project Access program.
2. The repeal does not require a change in work that would require the creation of new employee positions, nor are the rule

changes significant enough to reduce work load to a degree that eliminates any existing employee positions.

3. The repeal does not require additional future legislative appropriations.

4. The repeal will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The repeal will not expand, limit, or repeal an existing regulation.

7. The repeal will not increase or decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated the repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the changed sections would be the availability of forgivable second mortgage loans for down payment assistance. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period was held December 24, 2021, to January 24, 2022, to receive input on the rule. No comment was received.

STATUTORY AUTHORITY. The repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the repealed sections affect no other code, article, or statute.

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

Filed with the Office of the Secretary of State on February 11, 2022.

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Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

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For further information, please call: (512) 475-3959



10 TAC §§27.1 - 27.9

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 27, First Time Homebuyer Program Rule, §§27.1 - 27.9, without changes to the proposed text as published in the December 24, 2021, issue of the *Texas Register* (46 TexReg 8871). The rules will not be republished.

The purpose of the rule is to set forth parameters for administration of the First Time Homebuyer Program and to expand loan options to eligible homebuyers to include forgivable second mortgage loans for down payment assistance.

Tex. Gov't Code §2001.0045(b) does not apply to the rule for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson has determined that, for the first five years the new sections would be in effect:

1. The new sections do not create or eliminate a government program but relate to changes to existing regulations applicable to household eligibility for the Project Access program.
2. The new sections do not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The new sections do not require additional future legislative appropriations.
4. The new sections will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The new sections are not creating a new regulation, except that they are replacing sections being repealed simultaneously to provide for revisions.
6. The new sections will not expand, limit, or repeal an existing regulation.
7. The new sections will not increase or decrease the number of individuals subject to the rules' applicability.
8. The new sections will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REG-

ULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated the new sections and determined that the actions will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new sections do not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the new sections as to their possible effects on local economies and has determined that for the first five years the new sections would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections would be the availability of forgivable second mortgage loans for down payment assistance. There will not be economic costs to individuals required to comply with the new sections.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new sections are in effect, enforcing or administering the rule does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENT. The public comment period was held December 24, 2021, to January 24, 2022, to receive input on the proposed action. No comments were received.

STATUTORY AUTHORITY. The new sections are adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the new sections affect no other code, article, or statute.

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

Filed with the Office of the Secretary of State on February 11, 2022.

TRD-202200489

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

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For further information, please call: (512) 475-3959



CHAPTER 28. TAXABLE MORTGAGE PROGRAM

10 TAC §§28.1 - 28.9

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 28, Taxable Mortgage Program, without changes to the proposed text as published in the December 24, 2021, issue of the *Texas Register* (46 TexReg 8874). The repealed rules will not be republished.

The purpose of the repeal is to allow the Department to make forgivable second mortgage loans for down payment assistance, and to remove purchase price limits, both as relate to the Taxable Mortgage Program.

Tex. Gov't Code §2001.0045(b) does not apply to the rule because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson has determined that for the first five years the repeal would be in effect:

1. The repeal does not create or eliminate a government program but relates to changes to minimally expand the pool of households eligible to participate in the Project Access program.
2. The repeal does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The repeal does not require additional future legislative appropriations.
4. The repeal will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.
6. The repeal will not expand, limit, or repeal an existing regulation.
7. The repeal will not increase or decrease the number of individuals subject to the rule's applicability.
8. The repeal will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated the repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal would be in effect there would be no economic

effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the changed sections would be the availability of forgivable second mortgage loans for down payment assistance and increased access to the program through the removal of purchase price limits. There will not be economic costs to individuals required to comply with the repealed sections.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period was held December 24, 2021, to January 24, 2022, to receive input on the amended rule. No comment was received.

STATUTORY AUTHORITY. The repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the repeal affects no other code, article, or statute.

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

Filed with the Office of the Secretary of State on February 11, 2022.

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Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

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For further information, please call: (512) 475-3959



10 TAC §§28.1 - 28.9

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 28, Taxable Mortgage Program Rule, without changes to the proposed text as published in the December 24, 2021, issue of the *Texas Register* (46 TexReg 8875). The rule will not be republished.

The purpose of the rule is to set forth parameters for administration of the Taxable Mortgage Program, to expand loan options to eligible homebuyers to include forgivable second mortgage loans for down payment assistance, and to remove Purchase Price Limits for the Taxable Mortgage Program.

Tex. Gov't Code §2001.0045(b) does not apply to the rule because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson has determined that, for the first five years the new sections would be in effect:

1. The new sections do not create or eliminate a government program but relate to changes to existing regulations applicable to household eligibility for the Taxable Mortgage Program.
2. The new sections do not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The new sections do not require additional future legislative appropriations.
4. The new sections will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The new sections are not creating a new regulation, except that they are replacing sections being repealed simultaneously to provide for revisions.
6. The new sections will not expand, limit, or repeal an existing regulation.
7. The new sections will not increase or decrease the number of individuals subject to the rule's applicability.
8. The new sections will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated the new sections and determined that the actions will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new sections do not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the new sections as to their possible effects on local economies and has determined that for the first five years the new sections would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections would be the availability of forgivable second mortgage loans for down payment assistance and increased access to the program through the removal of purchase price limits. There will not be economic costs to individuals required to comply with the new sections.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new sections are in effect,

enforcing or administering the rule does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENT. The public comment period was held December 24, 2021, to January 24, 2022, to receive input on the proposed action. No comments were received.

STATUTORY AUTHORITY. The new sections are adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the new sections affect no other code, article, or statute.

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

Filed with the Office of the Secretary of State on February 11, 2022.

TRD-202200487

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

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For further information, please call: (512) 475-3959



TITLE 13. CULTURAL RESOURCES

PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 26. PRACTICE AND PROCEDURE SUBCHAPTER C. ARCHEOLOGY

13 TAC §26.14, §26.16

The Texas Historical Commission (Commission) adopts amendments to Title 13 of the Texas Administrative Code, Part 2, Chapter 26, Subchapter C, §26.14 and §26.16, relating to updates to requirements for the submission of Antiquities Code permit applications and draft and final reports for archeological projects conducted under the Antiquities Code of Texas. The amendments are adopted with changes to the text of §26.16 to increase the number of hard copy final report submissions to the THC from one to two as published in the November 19, 2021, issue of the *Texas Register* (46 TexReg 7854). The amendment to §26.16 will ensure that duplicate hard copies of the final reports exist in the event one is damaged or lost. Section 26.16 will be republished.

The proposed amendment to §26.14 for Issuance and Restriction of Archeological Permits removes the term "hard copy" and replaces "mailed" with "sent". In the past year THC has brought online an electronic archeological permit application system that allows for submission of all required documents as electronic files, and issues all associated correspondence to the applicant, landowners, and sponsors (signatories) as electronic files, with hard copies sent on request. Existing language in the §26.14 specifies that the permit will be sent via "mail" as a "hard copy". The proposed change will bring the language in the rules back in line with current practice.

The proposed amendments to §26.16 for Reports Relating to Archeological Permits address wording in the rules that is no longer consonant with existing practice since the adoption of an online project review portal eTRAC and the availability of other mechanisms to make reports available to the public. The first proposed change is the deletion of "and transmittal letter" from the report submission requirement. The THC's eTRAC system provides the public an online portal to submit reports directly to THC staff for review, obviating the requirement for a transmittal letter. Proposed changes to language regarding the submission of draft reports has been edited to remove "printed" and language regarding binding of a printed draft report, as these are now submitted as electronic files through eTRAC. The next proposed changes simplify the submission requirements for final reports to require that the only printed copies be submitted to THC and Texas State Library and Archives Commission. This proposed change deletes the requirement that redacted copies be sent to a list of eleven libraries and repositories. THC has adopted both an online system for providing full reports to contractors via the restricted Texas Archeological Sites Atlas and has an agreement with Stephen F. Austin University to provide redacted copies of reports to the public online via the Index of Texas Archaeology. Finally, the requirement to submit tagged PDF versions of complete and redacted reports to the THC remains but is updated to remove requirements that these be submitted on CDs or DVDs, as these may be more efficiently submitted via the eTRAC portal or email.

PUBLIC COMMENT AND RESPONSE

Three comments from Dr. Fred McGhee, Dr. Steve Swanson, and Marybeth Tomka were received regarding the amendments to §26.14 and §26.16. All three supported the proposed amendments, with only Marybeth Tomka raising concerns related to the limited number of digital and hard copies of the final report that are now required under §26.16(a)(3). The comment recommended increasing the number of hard copies and digital copies and storing these at additional locations such as the Texas Archeological Research Laboratory (hard copies) and tDAR (digital copies). In response to the comment, the wording was changed to increase the number of hard copy final report submissions to the THC from one to two, to ensure that an additional hard copy of the report is available should the original be lost or the digital file corrupted. In addition, hard copies of the report are also curated at the designated certified curatorial repository as a component of the curation requirements for Antiquities Code permits, creating an additional backup. Finally, the Commission is declining to make any changes to the number of digital copies, as THC maintains multiple digital copies of files to ensure that there are multiple backups on and off site. Separate digital copies of redacted versions are also already maintained by the Index of Texas Archaeology for free, whereas the proposed use of tDAR would require expenditure of funds on the part of the Commission or the principal investigator.

These amendments are adopted under the authority of Texas Government Code §442.005(b), which designates the Commission as the agency responsible for the administration of the Antiquities Code of Texas, and Texas Natural Resources Code §191.052, which states that the Commission may promulgate rules and require contract or permit conditions to effect the purposes of that chapter.

No other statutes, articles, or codes are affected by these amendments.

§26.16. *Reports Relating to Archeological Permits.*

(a) With the exception of alternative mitigation and rock art preservation permits, a report must be submitted to the commission describing the results of each permitted investigation. The report should meet the Council of Texas Archeologists (CTA) Guidelines for Cultural Resources Management Full or Short Reports, and must be submitted to the commission meeting the following requirements.

(1) The report must contain:

(A) a title page that includes: the name of the investigation project, the name of the principal investigator and investigative firm, the county or counties in which the investigations were performed, the Antiquities Permit number, and the date of publication;

(B) an abstract containing project field dates, project acreage, descriptions of the findings, a list of the sites recorded (with trinomials), and a clarification concerning which artifacts were curated and where they are or will be curated;

(C) specific recommendations of which sites merit official designation as landmarks; which sites appear to be eligible for inclusion in the National Register of Historic Places; and which sites will be adversely affected by the proposed project; and

(D) map(s) with accurate plottings of the project area and archeological sites.

(2) One copy of the draft permit report and associated project area shapefiles must be submitted to the commission for review prior to the production of the final report. The draft report should contain all of the basic content elements required for the final report. The final report must also contain any revisions in the draft that are required in writing by the commission.

(3) Upon completion of a permitted project, and at no charge to the commission, the permittee, sponsor, or principal investigator shall furnish the commission and the Texas State Library and Archives Commission, State Publications Depository Program (hereinafter, TSLAC) with printed copies of the final report. The commission's copies shall be one unbound copy and one bound copy containing at least one map with the plotted location of any and all sites recorded, and two versions of the final report in a tagged PDF format, one including the plotted location of any and all sites recorded and the other with the site location data redacted. The TSLAC copy shall be bound and should not contain the plotted location of sites.

(4) A completed Abstracts in Texas Contract Archeology Summary Form must also be submitted with the final report. An electronic copy of the abstract and the completed abstract form must also be forwarded to the commission and, when appropriate, a Curation Form must also be submitted with the final report.

(b) When Antiquities Permit investigations result in negative findings, the report and curation standards shall meet the CTA Guidelines for Cultural Resources Management Short Reports, and Curation Standards and Procedures, and production must follow the same standards as set forth in subsection (a)(3) of this section.

(c) For reports related to alternative mitigation and rock art preservation permits any requirements will be stated in the permit conditions

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 February 14, 2022.

TRD-202200521

Mark Wolfe
Executive Director
Texas Historical Commission
Effective date: March 6, 2022
Proposal publication date: November 19, 2021
For further information, please call: (512) 463-6100

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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 61. COMBATIVE SPORTS

16 TAC §§61.10, 61.20, 61.23, 61.40, 61.41, 61.43, 61.47, 61.80

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 61, §§61.10, 61.20, 61.23, 61.40, 61.41, 61.43, 61.47, and 61.80, regarding the Combative Sports Program, without changes to the proposed text as published in the October 8, 2021, issue of the *Texas Register* (46 TexReg 6649). These rules will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 61 implement Texas Occupations Code, Chapter 2052, Combative Sports.

The adopted rules implement the provisions of House Bill (HB) 1560, 87th Regular Session (2021) that removed licensure requirements for persons acting as combative sports seconds, matchmakers, and event coordinators. The adopted rules remove the licensure requirement for seconds, matchmakers, and event coordinators; repeal provisions that are no longer necessary in light of the removal of the licensing requirement; add a provision stating that a combative sports contestant is responsible for the conduct of his or her seconds; and make non-substantive changes to correct style and gender-specific language. The adopted rules are necessary to implement HB 1560.

SECTION-BY-SECTION SUMMARY

The adopted rules amend §61.10 (Definitions) to remove subsection (11) (the definition of "matchmaker") and correct gender-specific language in subsection (8) (the definition of "knock-down").

The adopted rules amend §61.20 (General Licensing Requirements) to remove the requirement in subsection (a) that combative sports seconds, matchmakers, and event coordinators hold a license in order to participate in a combative sports event. The adopted rules also correct gender-specific language in subsection (c).

The adopted rules amend §61.23 (General Prohibitions) to repeal subsection (d), which prohibited licensed matchmakers from also being licensed as a contestant, ring official, or second. The adopted rules also amend existing subsection (e) to make it clear that a licensed promoter may continue to act as a combative sports second. Additionally, the adopted rules remove a reference to matchmakers in subsection (a) and correct gender-specific language in subsection (f).

The adopted rules amend §61.40 (Responsibilities of the Promoter) to remove references to matchmakers and event coordinators in sections (b)(10), (b)(15)(F), and (b)(17). The adopted rules also modify subsection (a) to make it clear that promoter staff, not only the promoter, are allowed in contestant dressing rooms.

The adopted rules amend §61.41 (Responsibilities of the Referee) to remove the provision in subsection (i) requiring a referee to hold the chief second responsible for the conduct of a licensed contestant. This change is required by HB 1560. The adopted rules also reword subsection (b) without substantive change.

The adopted rules amend §61.43 (Responsibilities of Seconds) to remove language stating that a second is responsible for a contestant's corner supplies.

The adopted rules amend §61.47 (Responsibilities of Contestants) to add new subsection (z), which states, "A contestant is responsible for the conduct of his or her seconds. Violation of these rules by a second may subject the contestant to disqualification, forfeiture, administrative penalty, and/or sanction." This change was required in due to HB 1560's removal of the licensure requirement for combative sports seconds. A licensed contestant is the most appropriate party to bear responsibility for a violation of the program statutes or rules by one of their seconds.

The adopted rules amend §61.80 (Fees) to remove fees related to the licensing of seconds, matchmakers, and event coordinators.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the October 8, 2021, issue of the *Texas Register* (46 TexReg 6649). The deadline for public comments was November 8, 2021. The Department did not receive any comments from interested parties on the proposed rules during the 30-day public comment period. The public comments are summarized below.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The Combative Sports Advisory Board met on December 15, 2021, to discuss the proposed rules and the public comments received. The Advisory Board recommended that the Commission adopt the proposed rules as published in the *Texas Register*. At its meeting on January 25, 2022, the Commission adopted the proposed rules as recommended by the Advisory Board.

STATUTORY AUTHORITY

The adopted rules are proposed under Texas Occupations Code, Chapters 51 and 2052, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and 2052. No other statutes, articles, or codes are affected by the adopted rules.

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 February 9, 2022.

TRD-202200447

Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

Effective date: March 1, 2022

Proposal publication date: October 8, 2021

For further information, please call: (512) 463-3671



CHAPTER 62. CODE ENFORCEMENT OFFICERS

16 TAC §62.20, §62.80

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 62, §62.20 and §62.80, regarding the Code Enforcement Officers Program, without changes to the proposed text as published in the September 24, 2021, issue of the *Texas Register* (46 TexReg 6328). These rules will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 62 implement Texas Occupations Code, Chapter 1952, Code Enforcement Officers.

The adopted rules are necessary to amend the registration term for a Code Enforcement Officer in Training who upgrades to a Code Enforcement Officer from the remainder of the training registration to a full two-year registration from the date of issuance of the upgrade. The adopted amendments eliminate the need for the newly upgraded Code Enforcement Officer to then have to renew the new registration, sometimes within days of the upgrade, when the initial one-year registration expires.

The adopted amendments also combine the upgrade and renewal of the Code Enforcement Officer registration, resulting in the elimination of a second application having to be filed and processed so soon after the upgrade.

SECTION-BY-SECTION SUMMARY

The adopted rules amend §62.20, Registration Requirements--Applicant and Experience Requirements. The adopted rules amend subsection (c) to improve readability through the use of the plain talk guidelines. The adopted rules also provide a two-year registration term from the date of issuance to be consistent with the Code Enforcement Officer registration term.

The adopted rules amend §62.80, Fees. The adopted rules amend subsection (d) to include the renewal fee into the upgrade process.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the September 24, 2021, issue of the *Texas Register* (46 TexReg 6328). The deadline for public comments was October 25, 2021. The Department received comments from three interested parties on the proposed rules during the 30-day public comment period. The public comments are summarized below.

Comment--The first public comment inquired if the new rules were related to the fire extinguisher firms working from their homes.

Department Response--This comment is out of the scope of the proposed rules, and the Department did not make any changes to the proposed rules as a result of the comment.

Comment--The second public comment was in favor of the proposed rules and expressed that it will make the transition to a code enforcement officer more effective, easier to understand, and seamless.

Department Response--The Department appreciates the comment in support of the proposed rules, and no changes were made to the proposed rules as a result of the comment.

Comment--The third public comment recommended the subject of "Officer Safety" as an additional subject of the current continuing education curriculum.

Department Response--This comment is out of the scope of the proposed rules, and the Department did not make changes to the proposed rules as a result of the comment.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The Code Enforcement Officers Advisory Committee (Advisory Committee) met on December 8, 2021, to discuss the proposed rules and the public comments received. The Advisory Committee recommended that the Commission adopt the proposed rules as published in the *Texas Register*. At its meeting on January 25, 2022, the Commission adopted the proposed rules as recommended by the Advisory Committee.

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 1952, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and 1952. No other statutes, articles, or codes are affected by the adopted rules.

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 February 9, 2022.

TRD-202200441

Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

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Proposal publication date: September 24, 2021

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



CHAPTER 97. MOTOR FUEL METERING AND QUALITY

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at Subchapter A, §97.2; Subchapter B, §97.23, Subchapter D, §97.51 and §97.58, and Subchapter E, §97.70, 16 Texas Administrative Code, Chapter 97, and a new rule at Subchapter A, §97.4, regarding the Motor Fuel Metering and Quality program, without changes to the proposed text as published in the November 19, 2021, issue of the *Texas Register* (46 TexReg 7857). These rules will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The adopted rules create an exemption from Department regulation for motor fuel metering devices that dispense liquid petroleum gas (LPG) pursuant to section 2310.053(a), Occupations Code. The adopted exemption applies to motor fuel metering devices that dispense LPG, and also removes the requirement that service companies and service technicians who provide maintenance activities on motor fuel metering devices that dispense LPG must be licensed by the Department to perform those activities on the exempted devices. The adopted rules are necessary to eliminate duplicative regulation for businesses and individuals that are also subject to registration or licensure requirements by the Texas Department of Agriculture.

SECTION-BY-SECTION SUMMARY

The adopted rules amend §97.2, Definitions, by removing references to LPG and LPG meters.

The adopted rules add §97.4, Exemptions, which creates an exemption from registration for devices that deliver LPG and removes the requirement for licensure by the Department for persons who perform device maintenance activities and companies that employ individuals who perform those activities on devices that deliver LPG.

The adopted rules amend §97.23, Device Performance Review Requirements, by removing the reference to LPG meters.

The adopted rules amend §97.51, Device Maintenance Activities, by removing LPG from the list of eligible device category types.

The adopted rules amend §97.58, Test Standards, by removing the reference to LPG provers.

The adopted rules amend §97.70, Device Fees, by removing the fee for LPG meters from the list of device registration fees.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the November 19, 2021, issue of the *Texas Register* (46 TexReg 7857). The deadline for public comments was December 20, 2021. The Department received comments from two interested parties on the proposed rules during the 30-day public comment period. The public comments are summarized below.

Comment--The Department received a question from an individual regarding the jurisdiction of LPG meter regulation.

Department Response--The Department notes that the question is not directly related to the proposed rules. However, the Department's response is that the Texas Department of Agriculture will continue to maintain jurisdiction and regulatory authority of LPG meters. The exemption created by the proposed rules will remove duplicative regulation by both agencies. The Depart-

ment did not make any changes to the proposed rules in response to this comment.

Comment--The Department received a comment in support of the proposed rules from the Texas Association of Campground Owners. The Association notes that the proposed rules will eliminate duplicative licensing and supervision and reduce the cost of business for companies and technicians.

Department Response--The Department appreciates the comments from the Association. The Department did not make any changes to the proposed rules in response to this comment.

COMMISSION ACTION

At its meeting on January 25, 2022, the Commission adopted the proposed rules as recommended by the Department.

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §97.2, §97.4

STATUTORY AUTHORITY

The adopted rules are proposed under Texas Occupations Code, Chapters 51 and Chapter 2310, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and Chapter 2310. No other statutes, articles, or codes are affected by the adopted rules.

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 February 9, 2022.

TRD-202200451

Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

Effective date: March 1, 2022

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For further information, please call: (512) 463-3671



SUBCHAPTER B. MOTOR FUEL METERING DEVICES

16 TAC §97.23

STATUTORY AUTHORITY

The adopted rules are proposed under Texas Occupations Code, Chapters 51 and Chapter 2310, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and Chapter

2310. No other statutes, articles, or codes are affected by the adopted rules.

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

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Brad Bowman

General Counsel

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For further information, please call: (512) 463-3671



SUBCHAPTER D. SERVICE COMPANIES AND SERVICE TECHNICIANS

16 TAC §97.51, §97.58

STATUTORY AUTHORITY

The adopted rules are proposed under Texas Occupations Code, Chapters 51 and Chapter 2310, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and Chapter 2310. No other statutes, articles, or codes are affected by the adopted rules.

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

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Brad Bowman

General Counsel

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SUBCHAPTER E. FEES

16 TAC §97.70

STATUTORY AUTHORITY

The adopted rules are proposed under Texas Occupations Code, Chapters 51 and Chapter 2310, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and Chapter 2310. No other statutes, articles, or codes are affected by the adopted rules.

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

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Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-3671



CHAPTER 130. PODIATRIC MEDICINE PROGRAM

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 130, Subchapter D, §130.40 and §130.42; Subchapter F, §130.60, and the repeal of an existing rule at Subchapter F, §130.61, regarding the Podiatry program, without changes to the proposed text as published in the October 22, 2021, issue of the *Texas Register* (46 TexReg 7132). These rules will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 130 implement Texas Occupations Code, Chapter 202, Podiatrists.

The adopted rules implement Texas Occupations Code §202.261 by establishing a limited faculty license type, harmonize the waiver provisions for licensure between the full and provisional license rules, establish the fee and license term for a limited faculty license, and repeal an expired transition rule for license fees. The adopted rules are necessary to implement the limited faculty license for the opening of Texas's first podiatry school, the University of Texas Rio Grande Valley School of Podiatry. Additionally, the adopted rules are necessary to harmonize the provisions allowing the Department's executive director to waive the requirements for the Graduate Podiatric Medical Education (GPME) and National Board Part III (formerly known as PM Lexis). These waiver provisions are currently found in the provisional license rule (§130.43) and are being copied to the normal doctor of podiatric medicine license rule (§130.40). These waiver provisions were inadvertently left out when the podiatry program was transferred from the Texas State Board of Podiatric Medicine to the Department. They continue to be relevant as other states did not implement the requirements for the GPME or National Board Part III until after Texas, hampering the application process for podiatrists licensed in other jurisdictions. Finally, the adopted rules repeal the transition rule for two-year license terms (§130.61), which expired on August 31, 2020.

SECTION-BY-SECTION SUMMARY

The adopted rules amend §130.40, Doctor of Podiatric Medicine License - General Requirements and Application. The adopted rules amend the title of the rule to "Doctor of Podiatric Medicine License - General Requirements and Application; Limited Faculty License." The adopted rules make clarifying changes in subsection (a), add a new subsection (b) outlining the issuance of limited faculty licenses as provided by Texas Occupations Code §202.261, add new subsections (c), (d) and (e) containing the waiver provisions for the GPME and National Board Part III requirements from the existing provisional license rule (§130.43), and reletter the other subsections accordingly.

The adopted rules amend §130.42, Doctor of Podiatric Medicine License--Term; Renewal, by adding a new subsection (d). The new subsection outlines the term of the limited faculty license, which is the same as a normal doctor of podiatric medicine license term except that the Department may terminate the license immediately upon receiving notice that the faculty appointment of the podiatrist holding the limited faculty license has been terminated.

The adopted rules amend §130.60, Fees, by adding new paragraphs (7) and (8) in subsection (b). These new paragraphs outline the initial license fee (\$125) and renewal fee (\$60) for the new limited faculty license. The other paragraphs are renumbered accordingly.

The adopted rules repeal §130.61, Transition Rule for Two-year License Terms, a rule which expired on August 31, 2020. The rule is no longer necessary as the transition to two-year licenses has been completed.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the October 22, 2021, issue of the *Texas Register* (46 TexReg 7132). The deadline for public comments was November 22, 2021. The Department did not receive any comments from interested parties on the proposed rules during the 30-day public comment period.

COMMISSION ACTION

At its meeting on January 25, 2022, the Commission adopted the proposed rules without changes as recommended by the Department.

SUBCHAPTER D. DOCTOR OF PODIATRIC MEDICINE

16 TAC §130.40, §130.42

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 202, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and 202. No other statutes, articles, or codes are affected by the adopted rules.

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 February 9, 2022.

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Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-3671

SUBCHAPTER F. FEES

16 TAC §130.60

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 202, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and 202. No other statutes, articles, or codes are affected by the adopted rules.

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

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Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-3671

16 TAC §130.61

STATUTORY AUTHORITY

The adopted repeal is adopted under Texas Occupations Code, Chapters 51 and 202, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted repeal are those set forth in Texas Occupations Code, Chapters 51 and 202. No other statutes, articles, or codes are affected by the adopted repeal.

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

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Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
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For further information, please call: (512) 463-3671



PART 8. TEXAS RACING COMMISSION

CHAPTER 313. OFFICIALS AND RULES OF HORSE RACING

SUBCHAPTER B. ENTRIES, SCRATCHES, AND ALLOWANCES

DIVISION 1. ENTRIES

16 TAC §313.110

The Texas Racing Commission ("the Commission") adopts an amendment to 16 TAC §313.110, Coupled Entries, without changes to the text as proposed in the January 7, 2022, issue of the *Texas Register* (47 TexReg 9). The rule will not be republished.

The amendment would allow certain entries that would previously have been coupled to race as separate betting interests by allowing racing secretaries, with approval of the stewards, the option to uncouple same owner entries for wagering purposes only. These changes are consistent with the Association of Racing Commissioners International's model rules.

16 TAC §313.110(b), entitled Coupled Entries, will change as follows: *(b) In overnight races, the stewards may allow no more than two horses owned in whole or in part by the same individual or entity to race as separate wagering interests.*

REASONED JUSTIFICATION

The reasoned justifications for the amendment is an increased public benefit with more wagering options, a reduction of scratches with corresponding increase in field size for overnight racing, and an increase in race handle.

PUBLIC COMMENTS

No comments were submitted in response to the proposal of the amendment.

STATUTORY AUTHORITY

The amendment is adopted under Tex. Occ. Code §2023.004, which authorizes the Commission to adopt rules to administer the Act.

No other statute, code, or article is affected by the amendment.

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 February 10, 2022.

TRD-202200455

Virginia Fields
General Counsel
Texas Racing Commission
Effective date: March 2, 2022
Proposal publication date: January 7, 2022
For further information, please call: (512) 490-4009



CHAPTER 321. PARI-MUTUEL WAGERING SUBCHAPTER C. REGULATION OF LIVE WAGERING

DIVISION 1. GENERAL PROVISIONS

16 TAC §321.207

The Texas Racing Commission ("the Commission") adopts the amendment to 16 TAC §321.207, Betting Interests, without changes to the text as proposed in the January 7, 2022, issue of the *Texas Register* (47 TexReg 10). The rule will not be republished. The amendment would allow racing Stewards or judges to permit one owner with two entries in the same race, that were previously coupled, to race as separate betting interests by allowing racing secretaries with approval of the stewards the option to uncouple same owner entries for wagering purposes only. The change is consistent with entries in Texas stakes races and other racing jurisdictions.

16 TAC §321.207(a), Betting Interests will change language from "shall" to "may" stating that the Stewards or judges *may* join the animals as a coupled entry.

REASONED JUSTIFICATION

The reasoned justification for the amendment is the permissive discretion of the Stewards and judges for entries to be single as opposed to coupled will increased public benefit with more wagering options, a reduction of scratches with corresponding increase in field size for overnight racing and an increase in overnight race handle.

PUBLIC COMMENTS

No comments were submitted in response to the proposal of the amendment.

STATUTORY AUTHORITY

The amendment is adopted under Tex. Occ. Code §2023.004 which authorizes the Commission to adopt rules to administer the Act.

No other statute, code, or article is affected by the amendment.

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 February 10, 2022.

TRD-202200456

Virginia Fields
General Counsel
Texas Racing Commission
Effective date: March 2, 2022
Proposal publication date: January 7, 2022
For further information, please call: (512) 409-4009

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 129. STUDENT ATTENDANCE

**SUBCHAPTER AA. COMMISSIONER'S
RULES**

19 TAC §129.1025

The Texas Education Agency (TEA) adopts an amendment to §129.1025, concerning student attendance accounting. The amendment is adopted without changes to the proposed text as published in the October 22, 2021 issue of the *Texas Register* (46 TexReg 7138) and will not be republished. The amendment adopts by reference the *2021-2022 Student Attendance Accounting Handbook*. The handbook provides student attendance accounting rules for school districts and charter schools. Although no changes were made to §129.1025 since published as proposed, the *2021-2022 Student Attendance Accounting Handbook* adopted by reference includes changes at adoption.

REASONED JUSTIFICATION: TEA has adopted its student attendance accounting handbook in rule since 2000. Attendance accounting evolves from year to year, so the intention is to annually update 19 TAC §129.1025 to refer to the most recently published student attendance accounting handbook.

Each annual student attendance accounting handbook provides school districts and charter schools with the Foundation School Program (FSP) eligibility requirements of all students, prescribes the minimum requirements of all student attendance accounting systems, lists the documentation requirements for attendance audit purposes, and details the responsibilities of all district personnel involved in student attendance accounting. TEA distributes FSP resources under the procedures specified in each current student attendance accounting handbook. The final version of the student attendance accounting handbook is published on the TEA website. A supplement, if necessary, is also published on the TEA website.

The amendment to §129.1025 adopts by reference the student attendance accounting handbook for the 2021-2022 school year. The adopted handbook is available on the TEA website at <https://tea.texas.gov/finance-and-grants/financial-compliance/student-attendance-accountinghandbook>.

Significant changes to the *2021-2022 Student Attendance Accounting Handbook* include the following.

Section 1, Overview

Texas Education Code (TEC), Chapter 48, specifically §48.008, establishes the requirements for adopting an attendance accounting system and reporting attendance accounting data through Texas Student Data System (TSDS) Public Education Information Management System (PEIMS). The following changes implement reporting requirements for attendance and funding.

Language was revised to state that a school district may serve any student in any capacity or setting as long as serving the student does not interfere with the education of funding-eligible students.

Language was revised to update the statutory authority amended by House Bill 3, 86th Texas Legislature, 2019, from TEC, Chapter 42, to TEC, Chapter 48, throughout the handbook.

Section 2, Audit requirements

TEC, Chapter 48, specifically §48.270, establishes the requirements for presenting reports that contain false information. TEC, §44.008, authorizes the commissioner to require audit reports to be submitted for review and analysis. TEC, §44.010, allows for the review of budget, fiscal, and audit reports to determine whether all legal requirements have been met. The following changes implement reporting for audit requirements to account for attendance and funding.

Language was revised to state that if the district uses a system that is almost entirely functional without the use of paper documents, it must meet the additional standards established in the subsection addressing the Paperless Attendance Accounting Systems or the district must generate and retain paper copies of attendance reports and records.

Language was revised to exclude the career and technical education (CTE) code from the subsection addressing student detail reports.

Language was added to state that board-approved local policy that defines the instruction methods (i.e., synchronous, asynchronous, or a combination of both) should include the official attendance times for synchronous instruction. Additionally, if the board policy indicates approval for asynchronous method, the local educational agency (LEA) must create an asynchronous instructional plan.

Language was added to state that documentation of a student's instructional schedule, whether synchronous or asynchronous, includes the minimum amount of instructional time to meet the two-through-four rule.

Section 3, General Attendance Requirements

TEC, §25.081, and Chapter 48, specifically §48.005, establish the general parameters for attendance and school operation. The following changes implement reporting requirements for attendance and funding.

Language was deleted to remove the requirement of charter schools to serve students in the geographic boundary authorized in the charter school's charter agreement.

Language was revised to state that if a student repeats a course for which the student has already received credit, the time that the student spends taking the course for a subsequent time does not count toward the accumulation of attendance hours for FSP funding purposes unless the course is being repeated due to a student's parent electing for the student to repeat a course from the 2020-2021 school year. This provision will expire on September 1, 2022.

Language was revised to state that students can generate average daily attendance (ADA) funding if they are eligible to graduate but who continue their education to meet the requirements of a higher high school diploma standard; students enrolled in a TEA-designated Pathways in Technology Early College High School (P-TECH) and coded in TSDS PEIMS (E1612).

Language was deleted to remove the provision that a charter school may enroll a child of an employee regardless of geographic boundary.

Language was revised to provide parents with contact information to apply for a school certificate that can be used for school purposes but is not a legal substitute for a certified copy of a birth certificate.

Language was added to state that a student may be considered present for FSP purposes if the student is absent as the result of a serious or life-threatening illness or related treatment that makes the student's attendance infeasible. Documentation from a health care professional licensed, certified, or registered to practice in Texas must be provided that specifies the student's illness and the anticipated period of the student's absence relating to the illness or related treatment.

Language was revised to state that student may be considered present for FSP purposes if the student misses school for the purpose of visiting a driver's license office.

Language was revised to state that demographic and special program information for all students served in the district should be reported through the TSDS PEIMS Fall submission

Language was revised to state that for General Education Homebound (GEH), a student must have a medical condition that is documented by a physician licensed to practice in the United States. Except in cases of medically fragile students, potential medical conditions or concerns that student may develop medical conditions do not constitute grounds for GEH program eligibility. In cases where students are medically able to receive more than the required minimum four hours of face-to-face instruction, LEAs must provide additional remote instruction. Please note that concurrent instruction is not allowed.

Language was revised to state that supplementing in-person homebound instruction with virtual instruction is encouraged for students in GEH programs where medically appropriate. Virtual instruction provided to students in GEH programs could not be provided by a teacher concurrently instructing students in person.

Language was added to include tutorial time that occurs before or after school in the operational minute calculation. If transportation is provided, the district must ensure that before- and/or after-school transportation options are available to students who wish to participate in the tutorial instruction.

Language was revised to state that school districts and charter schools that do not, as part of the TSDS PEIMS Summer submission, report their calendars to TEA until after the school year is complete must ensure that they have the required number of minutes/days built into their school board-approved calendars.

Language was added to note that prior year documentation from the 2019-2020 or 2020-2021 school year may be used in the following manner. If the 2019-2020 school year attendance report is selected, use only the average of the first four six-weeks attendance reporting periods due to the closures during the fifth and sixth six weeks of the 2019-2020 school year. Use the TSDS PEIMS Superintendent's Report of Student Attendance 2019-2020 Summer Collection report (PDM3-130-001). If the 2020-2021 school year attendance report is selected, show the overall average attendance rate for the year for the district or applicable campus.

Language was revised with reference to time in situational instances shown in the table regarding closure for bad weather or other issue of health and safety. Also, language was revised in agency policy in the same table.

Language was revised to state that one program that allows for state funding of school days beyond the 75,600 minutes that make up the state funding year provides extended school year (ESY) services for certain students receiving special education services.

Language was revised to state that beginning in the 2020-2021 school year, an additional instructional-days incentive became available to district or charter school campuses that offer up to an additional 30 days of half-day instruction for students enrolled in prekindergarten (Pre-K) through Grade 5.

Language was revised to state that participating campuses receive half-day funding for students attending each additional day and that additional days funding started on September 1, 2020.

Language was revised to state the Additional Days School Year (ADSY) program allows for additional half-day funding for each school day beyond the 180 days, up to 210 days. Also, language was revised to show that no public school will be funded in excess of a 180-day calendar except for the schools that meet all the criteria for the additional days incentive funding that became available starting in the 2020-2021 school year.

Language was revised to state that districts with tracks ending after June 16, 2022, which is the due date for initial TSDS PEIMS Summer submission, must still submit their initial TSDS PEIMS Summer submissions by that due date. Resubmissions can be delayed; however, resubmissions will not be processed after August 18, 2022.

In response to public comment, Section 3.6.3 was corrected at adoption to state that a student serving as an election clerk must be eligible to serve as an election clerk.

In response to public comment, Section 3.7, relating to the GEH program, was corrected at adoption to state that LEAs may provide additional remote instruction.

Section 4, Special Education

TEC, Chapter 48, specifically §48.102, authorizes funding for special education in certain circumstances. TEC, §48.004, authorizes the commissioner to require reports that may be necessary to implement and administer the FSP. The following changes implement reporting for special education to account for attendance and funding.

Language was revised to cite 19 TAC §89.1070 in the Special Education section, including the foot notes.

Language was revised to state that a full individual and initial evaluation must be completed, and the district must meet the requirements in 34 CFR, §300.323 (f)(2), if appropriate, within 30 days of the evaluation report.

Language was revised to state that, once an admission, review, and dismissal (ARD) committee determines that a student is no longer a child with a disability, the student is dismissed from special education and related services, which also occurs when a parent revokes consent in writing for a student's receipt of special education services.

Language was revised to state that the ARD committee must provide the effective date of dismissal of special education and related services to the district, and the district must record this date in the attendance accounting system.

Language was revised to state that to be placed in the special education homebound setting, a student must have a current medical condition that is documented by a physician except in cases

of severely immuno-compromised students. The language clarifies that potential medical conditions or concerns that students may develop medical conditions do not constitute grounds for special education homebound program eligibility.

Language was revised to state that supplementing in-person homebound instruction with virtual instruction is encouraged for students in special education homebound programs where medically appropriate and to the extent that such instruction is consistent with students' individualized education programs (IEPs). Virtual instruction provided to students in special education homebound programs could not be provided by a teacher concurrently instructing students in person.

Language was added to show that a student who is not eligible for Pre-K may be served in the Pre-K classroom if the ARD committee determines that this is the appropriate setting based on the student's IEP.

Language was revised in the coding chart to state that ineligible Pre-K students may be served in the Pre-K classroom if the ARD committee deems it appropriate and space is available. However, eligible Pre-K students should not be denied enrollment due to an ineligible Pre-K student's enrollment.

Language was revised to state that as a result of SB 2066, 87th Texas Legislature, Regular Session, 2021, the term "emergent bilingual student" replaces the term "limited English proficient (LEP) student" used in TEC, Chapter 29, Subchapter B. This also resulted in a change to the term "English learner (EL)" used in 19 TAC Chapter 89, Subchapter B. These terms describe the same group of Texas students. An emergent bilingual student is in the process of acquiring English and has another language as the student's primary or home language. As PEIMS is revised to reflect these changes, the terms "emergent bilingual (EB)" and "English learner (EL)" may be bridged as EB/EL, and the data element names may still indicate the use of LEP during the transition. It is important to note that "English learner" is still used in federal regulations and guidance.

Section 5, Career and Technical Education (CTE)

TEC, Chapter 48, including §48.106, authorizes funding for CTE in certain circumstances. TEC, Chapter 29, Subchapter F, establishes general parameters for CTE programs. TEC, §48.004, authorizes the commissioner to require reports as may be necessary to implement and administer the FSP. The following change implements reporting for CTE to account for attendance and funding.

Language was deleted to remove eligibility of a district to remove funding in the amount of \$50 for students enrolled in two or more CTE courses.

Language was revised regarding computing contact hours for CTE weighted funding and the tiers.

In response to public comment, Section 5.3 was modified at adoption to clarify enrollment procedures and to remove indicator codes.

In response to public comment, Section 5.6 was modified at adoption to remove references to codes V4, V5, and V6 and delete language that did not reflect the new tiered CTE funding system.

In response to public comment, Section 5.12 was modified at adoption to update certain examples to reflect the new tiered CTE funding system.

Section 6, Bilingual/English as a Second Language (ESL)

TEC, Chapter 48, specifically §48.105, authorizes funding for bilingual or special language programs in certain circumstances. TEC, Chapter 29, Subchapter B, establishes general parameters for bilingual and special language programs. TEC, §48.004, authorizes the commissioner to require reports as may be necessary to implement and administer the FSP. The following changes implement reporting for bilingual and special language programs to account for attendance and funding.

Language was revised to state that when parents indicate the use of more than one language in response to question 1 and/or question 2 of the home language survey, it is the district's responsibility to contact the parent to determine which language is used most of the time.

Language was revised to state that if a language other than English is indicated on any of the required questions on the survey, the district must assess the student for English language proficiency.

Language was deleted to remove the term "limited English proficiency."

Language was added to state that as a result of SB 2066, 87th Texas Legislature, Regular Session, 2021, the term "emergent bilingual student" replaces the term "LEP student" used in TEC, Chapter 29, Subchapter B. See the previous description of changes to Section 4 for an explanation of these changes.

Language was revised to state that the date of the student's enrollment from another Texas public school is the start date for continued program services if the student has been previously identified and served in Texas.

Language was revised to provide the link where the appropriate codes are available.

Language was revised to state that to be eligible for participation in the bilingual or English as a second language (ESL) education program, a student must meet the requirements that are listed.

Language was revised to show students who may participate in a district's bilingual or ESL education program but are not eligible for bilingual education allotment (BEA) funding. This includes students participating or continuing in a one-way dual language immersion, transitional bilingual education, or an ESL program.

The section was revised to include a fact sheet with information on weighted BEA funding.

Language was revised to state that English learners served through an alternative language program generate BEA funds.

Language was added to include Program Model Fact Sheet and Certification Fact Sheet under teacher certification requirements.

Language was revised to revise to state the language proficiency assessment committee (LPAC) will determine if a student can be classified as English proficient and has demonstrated readiness to participate equitably in grade level instruction.

Language was revised to state that the LPAC may recommend that an English proficient student continue in the dual language immersion program with parental approval.

Language was revised to state that as PEIMS is revised to reflect changes as a result of SB 2066, 87th Texas Legislature, Regular Session, 2021, the data element names may still use LEP or EL during the transition.

Language was revised to state that once a reclassified student has completed all four years of state and federal monitoring, he or she will be coded as Former Limited English Proficient/English Learner, code 5 in the Limited English Proficient/English Learner indicator for the duration of his or her schooling in Texas.

Language was revised to provide the link for the English Learning Portal that gives additional resources for program implementation.

Language was revised to state that as PEIMS is revised to reflect changes as a result of SB 2066, 87th Texas Legislature, Regular Session, 2021, the data element names may still use LEP or EL during the transition.

Language was revised to provide link to access additional resources for program implementation.

In response to public comment, Section 6.2 was modified at adoption to align with 19 TAC §89.1220(m)(2), stating that parental approval may be obtained through a phone conversation or email that is documented in writing and retained.

Section 7, Prekindergarten (Pre-K)

TEC, Chapter 29, Subchapter E, establishes special general parameters for Pre-K programs. TEC, Chapter 48, including §48.005, establishes ADA requirements and authorizes funding for certain circumstances. TEC, §48.004, authorizes the commissioner to require reports that may be necessary to implement and administer the FSP. The following changes implement reporting for pre-K to account for attendance and funding.

Language was revised to include eligibility for students in foster care in another state or territory who now reside in Texas.

Language was revised to state that a student is eligible for Pre-K if the student was eligible to enroll in Pre-K but did not attend during the previous school year under TEC, §29.153 (b), and the child has not yet enrolled in kindergarten or if the child's parent or guardian elects for the child to repeat Pre-K in accordance with TEC, §28.02124.

Language was revised to state that a child's parent or guardian can elect for the child to repeat Pre-K in accordance with TEC, §28.02124, or if the child would have been eligible to enroll in Pre-K during the previous school year under TEC §29.153(b), and the child has not yet enrolled in kindergarten.

Language was revised to state that as a result of SB 2066, 87th Texas Legislature, Regular Session, 2021, the term "emergent bilingual student" replaced the term "LEP student" used in TEC, Chapter 29, Subchapter B. The term "English learner (EL)," as used in 19 TAC Chapter 89, Subchapter BB, changes as well. See the previous description of changes in Section 4 for an explanation of these changes.

Language was revised to show that the home language survey will question what language is used in the child's home.

Language was revised to state that a child who is a member of a household receiving benefits from the Supplemental Nutrition Assistance Program, Temporary Assistance for Needy Families program, State Medicaid program, or Food Distribution Program on Indian Reservations is eligible for the National School Lunch Program.

Language was revised to state that students who are in or who have ever been in the conservatorship of the Texas Department of Family Protective Services (DFPS) (that is, in foster care) following an adversary hearing or were in foster care in another

state or territory but now reside in Texas are eligible for free Pre-K.

Language was revised to state that if an individual has a Pre-K-age child and has been nominated but not notified as an honoree prior to the current school year, that individual may request that the Early Childhood Education Division determine eligibility based on the nomination submitted for review to the Criminal Justice Division.

Language was revised to state that proof is required to ensure a student is three or four years old as of September 1 of the school year unless the child's parent or guardian elects for the child to repeat Pre-K in accordance with TEC, §28.02124, or if the child would have been eligible to enroll in Pre-K during the previous school year under TEC, §29.153(b), and has not yet enrolled in kindergarten.

Language was revised to state that Pre-K classes for eligible students four years old and older must operate on a full-day basis unless the district has applied for and received a waiver. Pre-K classes for eligible three-year-old children and ineligible three- and four-year-old children may be operated as a half-day program.

Language was revised in the Eligible Days Present and ADA Eligibility table to show Early Childhood Special Education Services (ECSE) served in Pre-K classroom.

Section 8, Gifted/Talented

TEC, Chapter 29, Subchapter A, establishes parameters for non-traditional programs. TEC, Chapter 48, including §48.005, establishes ADA requirements and authorizes funding for certain circumstances. TEC, §48.004, authorizes the commissioner to require reports that may be necessary to implement and administer the FSP. The following changes implement reporting for gifted/talented to account for attendance and funding.

Language was added to state that districts must code a furloughed student who is taking leave from receiving services through a state-approved gifted/talented program with a gifted/talented indicator code of 0 in the Student Detail Report.

Section 10, Alternative Education Programs (AEPs) and Disciplinary Removals

TEC, §37.008, establishes the general parameters for disciplinary alternative education programs, including placement of students in alternative settings. The following changes implement reporting for alternative settings.

Language was revised to show mandatory expulsion in the disciplinary removals and programs table.

Section 11, Nontraditional Programs

TEC, Chapter 29, Subchapter A, establishes special general parameters for nontraditional programs. TEC, Chapter 48, including §48.005, establishes ADA requirements and authorizes funding for certain circumstances. TEC, §48.004, authorizes the commissioner to require reports that may be necessary to implement and administer the FSP. The following changes implement reporting for nontraditional programs to account for attendance and funding.

Language was revised to state that students are sometimes educated during nontraditional hours or days of the week or in non-traditional programs within the district, such as in optional flexible school day programs (OFSDPs), or off-campus by providers other than the district, such as colleges or universities.

Language was revised to state that districts must not use the AP trademark or AP PEIMS Code (service IDs) unless an audit has been performed.

Language was revised to state that districts must not use the IB trademark or IB PEIMS Code (service IDs) unless authorized by the International Baccalaureate Organization.

Language was revised to state that the Texas Higher Education Coordinating Board shall develop and implement a pilot program under which a licensed hospital may offer dual credit courses to high school students enrolled in a school district in partnership with the district.

Language was revised to state that students must meet requirements for one of the listed assessments to meet Texas Success Initiative Assessment criteria, and requirements to qualify for English courses and revisions were made in the chart showing student eligibility for dual credit courses.

Language was deleted in a requirement for student eligibility to enroll in dual courses with regard to content area of the course and an exemption limited to an institution of higher education partnering with the school district.

Language was deleted to remove the funding of Optional Extended Year Program for the 2021-2022 school year.

Language was added to elaborate on ADSY, ADSY program design, ADSY reporting and funding, and additional ADSY information.

Section 12, Virtual, Remote, and Electronic Instruction

TEC, Chapter 30A, establishes the general parameters for the Texas Virtual School Network (TXVSN). TEC, §30A.153, authorizes funding for the TXVSN from the FSP under certain circumstances. TEC, §48.004, authorizes the commissioner to adopt reports that may be necessary to implement and administer the FSP. The following change implements reporting for the TXVSN to account for attendance and funding.

Language was revised to state that the state virtual school network includes the TXVSN catalog of supplemental online courses for Grades 9 through 12. Courses first became available through the TXVSN course catalog in January 2009 and may be provided through the TXVSN course catalog by a TXVSN course provider.

Language was revised to include eligibility criteria for a student's full-time enrollment in TXVSN courses and state that these courses are offered through the TXVSN course catalog.

Language was added to state that a student taking a course offered through the TXVSN course catalog or an officially recognized TXVSN Online School (OLS) program is considered to be enrolled in a TXVSN course or OLS program when he or she begins receiving instruction and actively engages in instructional activities in a TXVSN subject area or course.

Language was added to show that a student taking a course offered through the TXVSN course catalog or an officially recognized TXVSN OLS program is considered to be, and must be reported as, withdrawn from the TXVSN course or OLS program when the student is no longer actively participating in the TXVSN course or program.

Language was revised to state that the section on remote instruction that is not delivered through the TXVSN will describe procedures for submitting requests for waivers of those rules and

policies and information on how the agency will evaluate those requests.

Language was revised to include that remote instruction not delivered through TXVSN cannot be concurrent, which means remote students must not be taught by a teacher who is also teaching in-person students at the same time.

Language was revised to state that remote conferencing means remote instruction in which a student at an off-campus location is able to virtually participate in classes provided by a teacher on the student's campus.

Language was revised to state that remote conferencing students will receive funding provided that certain requirements are met, such as the total amount of remote conferencing instruction must not exceed more than 20 instructional days over the entirety of the school year.

Language was further revised to state that in addition to other conditions, documentation from a physician must include a statement that the student is to remain confined to their home or to a hospital; the student has a positive test result for a communicable condition listed in 25 TAC §97.7; or the student has been identified as having been in close contact with COVID-19.

Language was revised to state that if the documented temporary medical condition persists longer than 20 instructional days over the entirety of the school year or a 504 committee determines that remote instruction is needed for more than 20 days, a waiver request must be submitted for an extension of remote conferencing beyond the allowable cumulative 20 instructional day period. An example is provided of a child being in close contact with COVID-19 more than twice over the course of the year, and the family opted to follow the stay-at-home recommendations each time.

Language was revised to state that remote conferencing generates attendance if students in Pre-K through Grade 5 receive the equivalent of four hours of instruction with at least two hours of synchronous instruction each school day and students in Grades 6 through 12 receive at least four hours of instruction through synchronous instruction each school day. The instruction does not need to be consecutive.

Language was revised to state that for students participating through remote conferencing, instruction must be provided synchronously, which means two-way, real-time/live virtual instruction between teachers and students. The instruction cannot be concurrent, which means remote students must not be taught by a teacher who is also teaching in-person students at the same time.

Language was revised to state that, in submitting a waiver request to extend remote conferencing instruction beyond the allowable 20 instructional days over the entirety of the school year, districts must state how program requirements will be satisfied to claim weighted funding.

Language was revised to state that for remote conferencing special education students, the instruction cannot be concurrent, which means remote students must not be taught by a teacher who is also teaching in-person students at the same time.

Language was revised to state that to receive funding for remote conferencing special education students, the student's ARD committee must have determined, in a manner consistent with state and federal law, that the remote instruction to be provided is required for the provision of a free and appropriate public

education (FAPE). A placement change for a student served by special education requires the ARD committee to meet to address the change in placement and document it in the student's IEP, generally within 10 school days.

Language was revised to state that if the ARD committee determines that remote conferencing should be needed for longer than 20 instructional days over the entirety of the school year, a waiver request must be submitted for an extension of remote conferencing beyond the allowable cumulative 20 instructional day period. Waivers will be granted on a case-by-case basis and a waiver will not be granted if the student is unable to attend school for a reason other than a medical condition, such as confinement at home for disciplinary reasons. Any waiver request must include an explanation of the circumstances giving rise to the waiver request.

Language was revised to state that special education students participating by remote conferencing will generate attendance if students in Pre-K through Grade 5 receive the equivalent of four hours of instruction with at least two hours of synchronous instruction each school day. Students in Grades 6 through 12 must receive at least four hours of instruction through synchronous instruction each school day in order to generate attendance. This instruction does not need to be consecutive.

Language was revised to state that for remote conferencing special education, both on-campus instructional time and remote conferencing instructional time can be included when calculating two-through-four-hour rule eligibility provided the remote instruction is provided synchronously, which means two-way, real-time/live virtual instruction between teachers and students, not concurrent instruction.

Language was added to state that a student served through remote conferencing may be eligible to generate weighted funding for programs such as CTE or bilingual/ESL education, provided that requirements for the applicable program(s) are met. In submitting a waiver request to extend remote conferencing instruction beyond the allowable 20 instructional days over the entirety of the school year, an explanation must be provided as to how program requirements will be satisfied in order to claim weighted funding.

Language was revised to state that for remote homebound instruction for regular education students and special education students, waivers will only be granted in extremely severe medical circumstances, and a waiver must be submitted for each individual student.

Language was revised to state that CTE courses provided on campus and self-paced computer courses may be considered for contact hours provided all conditions are met.

Language was revised to state that the requirement that a teacher be appropriately qualified/certified does not apply to an open-enrollment charter school unless the school's charter states that a CTE course must be taught by a qualified/certified CTE or technology applications teacher.

Language was revised regarding information on CTE weights and the use of multipliers.

Language was revised regarding weights for the gifted/talented category of students.

Language was added to elaborate on methods of virtual instruction, students' eligibility for ADA funding, eligibility based on current school year, limits on total remote participation ADA, atten-

dance taking and minutes requirement, remote synchronous instructions, and remote asynchronous instruction.

In response to public comment, Sections 12.3, 12.3.1, and 12.3.2 were modified at adoption to indicate that concurrent instruction is not allowed.

In response to public comment, Section 12.6.2.4 was modified at adoption to note that the section applies only to the 2021-2022 and 2022-2023 school years and expires on September 1, 2023.

Glossary

Language was deleted from the Glossary regarding at-risk students and language was added to include criteria to meet the at-risk student's classification.

General

In response to public comment, the term "auditory impairment" was replaced with the term "deaf or hard of hearing" throughout the handbook.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began October 22, 2021, and ended November 22, 2021. Following is a summary of the public comments received and the corresponding agency responses.

General

Comment: A parent commented that virtual online learning should continue.

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

Comment: Forty-one concerned parents and Texans commented that students should not be screened out of virtual education with a test and requested that all students be allowed access to grandfathered virtual programs.

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

Comment: A parent commented with concerns about virtual learning overall and that the parent's local school district did not participate in virtual options.

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

Comment: A parent requested that the proposed *2021-2022 Student Attendance Accounting Handbook* not be approved. The parent stated that many families would be impacted if students are required to return to school in person.

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

Section 3 - General Attendance

Comment: The Texas Association of School Business Officials (TASBO) commented on Section 3 of the handbook, which states that a student may be considered present for FSP purposes if the student is absent as the result of a serious or life-threatening illness or related treatment that makes the student's attendance infeasible and that documentation of the student's illness must be provided by a physician certified/licensed in Texas. TASBO commented that many Texas school districts reside on borders to other states and that, due to geographical location, students may have physicians who are licensed in the United States but not specifically in Texas. TASBO stated that the section needs

to be amended to allow for a physician from another state but licensed in the United States in alignment with other medically-related funded absences in the same section of the handbook.

Response: The agency disagrees. Section 3.6.3 of the handbook is legislatively mandated by Texas Education Code (TEC), §25.087(b)(3), and cannot be changed unless the Texas legislature makes a change to the statute.

Comment: A school district employee commented that in Section 3.6.3 of the proposed handbook, language related to the requirements for a student to serve as an election clerk states that the student must be ineligible to serve as an election clerk. The commenter asked if the word "ineligible" should be changed to "eligible."

Response: The agency agrees. Section 3.6.3 was corrected at adoption to read, "a student must be eligible to serve as an election clerk...."

Comment: The Association of Texas Professional Educators (ATPE) commented that the association recognizes that Senate Bill (SB) 15, 87th Texas Legislature, Second Called Session, 2021, amended TEC, §48.0071(e), to change the prohibition on eligible charters accepting students outside of their geographic boundaries for purposes of enrolling them in a local remote learning program but that the proposed change to Section 12 would impact transfer eligibility for all charter schools regardless of setting. TASBO stated that the proposed language is dramatically overbroad and contrary to the statutory framework the legislature has established regarding charter school boundaries and enrollment. TASBO recommended that language regarding changes to charter school enrollment, including any exemption or exceptions to otherwise general practice as related to the requirements established by SB 15, should be limited to Section 12 of the handbook.

Response: The agency disagrees. The handbook does not eliminate geographic boundary limitations.

Comment: The Texas Council of Administrators of Special Education (TCASE) commented that Section 3.7 states remote instruction is required to be provided if the student is medically able to participate in instruction for more than the minimum four hours. TCASE commented that districts are not allowed to submit documentation that would result in the funding of more than one ADA and questioned the agency's authority to require additional remote instruction if the GEH committee has already determined the face-to-face instruction that is to occur during the homebound period. TASBO requested the agency either delete the sentence requiring remote supplemental instruction or delete the sentence and allow supplemental instruction to occur concurrently to avoid an unfunded mandate putting undue burden on a district.

Response: The agency agrees. Section 3.7 has been corrected at adoption to read, "LEAs may provide additional remote instruction."

Section 4 - Special Education

Comment: TCASE requested that the agency consider using the term "deaf or hard of hearing" throughout the handbook rather than the term "auditory impairment" to align with Texas Government Code, §392.002(b-1).

Response: The agency agrees and has modified the handbook at adoption to change "auditory impairment" to "deaf or hard of hearing" throughout the handbook.

Comment: TCASE requested that guidance be given in Section 4.3.3, Enrollment Procedures for a Student Who is New to Your District but Was Previously Receiving Special Education Services, on how to comply with 19 TAC §89.1050(j)(4), which references the requirements for students who enroll during the summer. TCASE stated that various circumstances exist based on when a student enrolls in a district, whether required professionals are currently on contract at the time of student enrollment, and what records are received at the time of enrollment, especially when a student is enrolling from out of state.

Response: The agency disagrees. Section 4.3.3 pertains to students with disabilities who transfer into a school district during the school year. Section 89.1050(j)(4) addresses the long-standing requirement of 34 CFR, §300.323(a), that at the beginning of the school year, the school district must have an individualized education program (IEP) in effect for each student with a disability within its jurisdiction. A student who enrolls or registers during the summer is not a transfer student subject to the transfer requirements of 34 CFR, §300.323(e) and (f), and §89.1050(j)(1) and (2), which is what Section 4.3.3 addresses. For this student, the new school district must implement the IEP from the previous school district in full on the first day of class of the new school year or must convene an ARD committee meeting during the summer to revise the student's IEP for implementation on the first day of class of the new school year. In further response to the comment, please note that the glossary in the handbook defines "enrollment (in enrollment)" for purposes of the handbook as, "Actually receiving instruction by attendance in a public school, as opposed to being registered but not yet receiving instruction." The term may have other meanings in the field or in other contexts.

Section 5 - Career and Technical Education (CTE)

Comment: A school district CTE coordinator commented that in Section 5.6, Computing Contact Hours, a general employability course needs to be considered as a part of a program of study. The commenter stated that "soft skills" are important to business and industry and that students need to know the general employability skills that every trade requires to sustain employment.

Response: The agency disagrees. Programs of study are revised on a recurring schedule, not to exceed once every five years, to ensure they remain current and relevant to the needs of business and industry. The statewide programs of study were implemented during the 2020-2021 school year. During the revision process, there will be an opportunity for input from stakeholders.

Comment: A school district CTE coordinator commented that Career Prep II should be a part of a program of study. The commenter added that if a student has enough responsibility to be employed for two years in high school (during Career Prep I and II), it is a huge predictor of career and employability success.

Response: The agency disagrees. Programs of study are revised on a recurring schedule, not to exceed once every five years, to ensure they remain current and relevant to the needs of business and industry. The statewide programs of study were implemented during the 2020-2021 school year. During the revision process, there will be an opportunity for input from stakeholders.

Comment: A Texas community member commented that clarification is needed when referencing CTE code in Section 5.3, Enrollment Procedures, and other sections. The commenter stated

confusion among stakeholders about whether the CTE code is the CTE contact hour code or the CTE indicator code.

Response: The agency agrees. The handbook has been modified at adoption to clarify enrollment procedures and remove CTE indicator codes.

Comment: A Texas community member commented that due to the new tiered CTE funding system and changes to the Texas Student Data System, V4, V5, and V6 code references should be removed from the first paragraph in Section 5.5, CTE (Contact Hour) Codes, on pages 161-162 of the proposed handbook. The commenter also recommended deleting two specific paragraphs that read, "For students who are enrolled in more than one CTE course, CTE codes are combined to determine the correct code assigned to each student. For example, a student enrolled in three separate 45-minute CTE courses would be assigned a code of V3 (V1+V1+V1=V3," and, "For students who are enrolled in more than one CTE course, CTE codes are combined to determine the correct code assigned to each student. For example, a student is enrolled in a CTE course that averages 45 minutes per day (V1) and a CTE course that averages 135 minutes per day (V3). When the V1 and V3 class codes are combined, the student is assigned a code of V4 in the attendance accounting system."

Response: The agency agrees. At adoption, the handbook was updated to remove the two paragraphs recommended for deletion by the commenter and remove references to codes V4, V5, and V6.

Comment: A Texas community member commented regarding Section 5.6, Computing Contact Hours. The commenter stated that updates are needed to communicate how the new tiered CTE funding will work.

Response: The agency agrees and plans to update Section 5.6 in the 2022-2023 handbook after more research and development.

Comment: A Texas community member recommended additional information in Section 5.7.5, Required Site Visits by Teachers, such as the purpose of the site visit and whether virtual site visits are an option.

Response: The agency disagrees. While not specified, teachers conducting on-site visits is best practice. Public health conditions vary by localities, and teachers should consider local district and county decisions on current health conditions when determining the method of conducting site visits. Virtual site visits will be acceptable when current health conditions in localities prevent in-person site visits from being conducted.

Comment: A Texas community member commented that the examples in Section 5.12 should be reviewed for accuracy due to changes in CTE funding.

Response: The agency agrees and has modified examples 1, 2, 3, 5, 6, 7, 9, 10, 12, 13, 14 to reflect changes in CTE funding.

Section 6 - Bilingual

Comment: A school district Public Education Information Management System director commented that the handbook should better align with 19 TAC §89.1220(m)(2), which allows a school district to place or exit a student in a program without written approval of the student's parent if the parent provides approval through a phone conversation or e-mail that is documented in writing and retained.

Response: The agency agrees and has modified Section 6.2 at adoption to align with §89.1220(m)(2), stating that parental approval may be obtained through a phone conversation or email that is documented in writing and retained.

Section 12 - Virtual, Remote, and Electronic Instruction

Comment: ATPE commented that one of the proposed changes to Sections 12.3, 12.3.1, and 12.3.2 establishes that remote instruction cannot be concurrent, which means remote students must not be taught by a teacher who is also teaching in-person students at the same time. ATPE stated that while this is an important protection for both students and educators, in the case of extended forms of virtual education, such as Local Remote Learning Programs, it is likely unnecessary and overburdensome for the much more limited and transient form of virtual instruction represented by remote conferencing.

Response: The agency agrees. Language was added to Sections 12.3, 12.3.1, and 12.3.2 at adoption to indicate that concurrent instruction is not allowed.

Comment: ATPE commented that the exemption in Section 12.6.2.4, Exception to Limit on Total Remote Participation ADA: LEAs eligible under the TEC, §48.0071(c), appropriately parrots the statutory language found in TEC, §48.0071(c), as established by SB 15, 87th Texas Legislature, Second Called Session, 2021, but noted that section of statute expires September 1, 2023. ATPE recommended providing notice of this expiration to relevant parties by specifying in the handbook that this section applies only to the 2021-2022 and 2022-2023 school years and expires after that point.

Response: The agency agrees and has modified Section 12.6.2.4 to specify that the section applies only to the 2021-2022 and 2022-2023 school years and expires on September 1, 2023.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §7.055(b)(35), which states that the commissioner shall perform duties in connection with the Foundation School Program (FSP) as prescribed by TEC, Chapter 48; TEC, §25.081, which states that for each school year, each school district must operate so that the district provides for at least 75,600 minutes, including time allocated for instruction, intermissions, and recesses, for students. TEC, §25.081(d), authorizes the commissioner to adopt rules to implement the section. TEC, §25.081(g), states that a school district may not provide student instruction on Memorial Day but that if a school district would be required to provide student instruction on Memorial Day to compensate for minutes of instruction lost because of school closures caused by disaster, flood, extreme weather conditions, fuel curtailment, or another calamity, the commissioner shall approve the instruction of students for fewer than the number of minutes required under TEC, §25.081(a); TEC, §25.0812, which states that school districts may not schedule the last day of school for students before May 15; TEC, §25.087, as amended by Senate Bill (SB) 289 and House Bill (HB) 699, 87th Texas Legislature, Regular Session, 2021, which provides purposes for which a school district shall excuse a student from attending school, including excusing a high school student 15 years of age or older for the purpose of visiting a driver's license office to obtain a driver's license or a learning permit; TEC, §29.0822, which enables a school district to provide a program under this section that meets the needs of students described by TEC, §29.0822(a), for a school district that meets application requirements, including allowing a student to enroll in a dropout recovery program in which courses are conducted online. TEC,

§29.0822, authorizes the commissioner to adopt rules for the administration of the section; TEC, §30A.153, which states that, subject to the limitation imposed under TEC, §30A.153(a-1), a school district or open-enrollment charter school in which a student is enrolled is entitled to funding under TEC, Chapter 48, or in accordance with the terms of a charter granted under TEC, §12.101, for the student's enrollment in an electronic course offered through the state virtual school network in the same manner that the district or school is entitled to funding for the student's enrollment in courses provided in a traditional classroom setting, provided that the student successfully completes the electronic course. TEC, §30A.153(d), authorizes the commissioner to adopt rules necessary to implement the section, including rules regarding student attendance accounting; TEC, §48.004, which states that the commissioner shall adopt rules, take action, and require reports consistent with TEC, Chapter 48, as necessary to implement and administer the FSP; TEC, §48.005, as amended by SB 15, 87th Texas Legislature, Second Called Session, 2021, and SB 1615, SB 1697, and HB 1525, 87th Texas Legislature, Regular Session, 2021, which states that average daily attendance is the quotient of the sum of attendance for each day of the minimum number of days of instruction as described under TEC, §25.081(a), divided by the minimum number of days of instruction. TEC, §48.005(m), authorizes the commissioner to adopt rules necessary to implement the section; TEC, §48.102, which states that for each student in average daily attendance in a special education program under TEC, Chapter 29, Subchapter A, in a mainstream instructional arrangement, a school district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by 1.15. For each full-time equivalent student in average daily attendance in a special education program under TEC, Chapter 29, Subchapter A, in an instructional arrangement other than a mainstream instructional arrangement, a district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by a weight determined according to its instructional arrangement; TEC, §48.103, which states that for each student that a district serves who has been identified as having dyslexia or a related disorder, the district is entitled to an annual allotment equal to the basic allotment multiplied by 0.1 or a greater amount provided by appropriation; TEC, §48.104, as amended by HB 1525, 87th Texas Legislature, Regular Session, 2021, which states that for each student who does not have a disability and resides in a residential placement facility in a district in which the student's parent or legal guardian does not reside, a district is entitled to an annual allotment equal to the basic allotment multiplied by 0.2 or, if the student is educationally disadvantaged, 0.275. For each full-time equivalent student who is in a remedial and support program under TEC, §29.081, because the student is pregnant, a district is entitled to an annual allotment equal to the basic allotment multiplied 2.41; TEC, §48.105, as amended by SB 2066, 87th Texas Legislature, Regular Session, 2021, which states that for each student in average daily attendance in a bilingual education or special language program under TEC, Chapter 29, Subchapter B, a district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by 0.1 or 0.15 if the student is in a bilingual education program using a dual language immersion/one-way or two-way program model, and for students not described in subdivision (1), 0.05 if the student is in bilingual education program using a dual language immersion/two-way program model; TEC, §48.106, as amended by HB 1525, 87th Texas Legislature, Regular Session, 2021, which states that for each full-time equivalent student in average daily attendance in an approved career and technology education program in Grades 7-12 or in career and

technology education programs, a district is entitled to an annual allotment equal to the basic allotment multiplied by a weight of 1.35 and \$50 for each student that is enrolled in two or more advanced career and technology classes for a total of three or more credits; a campus designated as a P-TECH school under TEC, §29.556; or a campus that is a member of the New Tech Network and that focuses on project-based learning and work-based education; TEC, §48.108, as amended by SB 2066, 87th Texas Legislature, Regular Session, 2021, which states that for each student in average daily attendance in kindergarten through third grade, a district is entitled to an annual allotment equal to the basic allotment multiplied by 0.1 if the student is educationally disadvantaged or a student of limited English proficiency, as defined by TEC, §29.052, and in bilingual education or special language program under TEC, Chapter 29, Subchapter B; TEC §48.109, as added by HB 1525, 87th Texas Legislature, Regular Session, 2021, which states that for each student in the gifted and talented category, the district is entitled to an annual allotment equal to the basic allotment multiplied by 0.07 for each school year or a greater amount provided by appropriation. If by the end of the 12th month after receiving an allotment for developing a program a district has failed to implement a program, the district must refund the amount of the allotment to the agency within 30 days. Not more than five percent of a district's students in average daily attendance are eligible for funding under this section. If the state funds exceed amount of state funds appropriated in any year for the programs, the commissioner shall reduce the districts tier one allotment. If funds are less than the total amount appropriated for the school year, the commissioner shall transfer the remainder to any program. After each district has received allotted funds for this program, the State Board of Education may use up to \$500,000 of the funds allocated under this section for other programs; and TEC, §48.270, which states that when, in the opinion of the agency's director of school audits, audits or reviews of accounting, enrollment, or other records of a school district reveal deliberate falsification of the records, or violation of the provisions of TEC, Chapter 48, through which the district's share of state funds allocated under the authority of this chapter would be, or has been, illegally increased, the director shall promptly and fully report the fact to the State Board of Education, the state auditor, and the appropriate county attorney, district attorney, or criminal district attorney.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§7.055(b)(35); 25.081; 25.0812; 25.087; 29.0822; 30A.153; 48.004; 48.005; 48.102; 48.103; 48.104; 48.105; 48.106; 48.108; 48.109; and 48.270.

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

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 230. PROFESSIONAL EDUCATOR PREPARATION AND CERTIFICATION

SUBCHAPTER B. GENERAL CERTIFICATION REQUIREMENTS

19 TAC §230.11

The State Board for Educator Certification (SBEC) adopts an amendment to 19 Texas Administrative Code (TAC) §230.11, concerning general certification requirements. The amendment is adopted without changes to the proposed text as published in the October 22, 2021, issue of the *Texas Register* (46 TexReg 7145) and will not be republished. The adopted amendment would update the list of countries that permit individuals who have obtained the equivalent of a United States bachelor's or master's degree to be exempt from the Test of English as a Foreign Language internet-Based Test (TOEFL iBT) to demonstrate English language proficiency; clarifies that individuals who have already demonstrated English language proficiency to receive an SBEC-issued Texas certificate would not have to demonstrate English language proficiency again for purposes of admission into an educator preparation program (EPP) to obtain an additional Texas educator certificate; and provides technical and grammatical edits.

REASONED JUSTIFICATION: At the August 2017 SBEC meeting, the SBEC adopted changes to 19 TAC Chapter 230 to remove the provision that required candidates to demonstrate English language proficiency by providing evidence that the primary language of instruction at an institution of higher education that the candidate attended outside of the United States was English. The SBEC adopted a list of countries in which English is the official language and allowed candidates from these countries to be exempt from the requirement to take the TOEFL iBT. The SBEC derived its list of English-speaking countries from the lists the colleges and universities of the University of Texas and Texas A&M University systems use to determine exemptions from English language proficiency requirements for student admissions.

At the July 2021 SBEC meeting, the SBEC directed Texas Education Agency (TEA) staff to draft amendments to 19 TAC Chapter 230 to update the list of qualifying countries to include any new additions to the lists used by the colleges and universities of the University of Texas and Texas A&M University systems.

Following is a description of the adopted amendment that adds the additional countries to the approved list as outlined in Figure: 19 TAC §230.11(b)(5)(C).

§230.11. General Provisions.

The adopted amendment updates Figure: 19 TAC §230.11(b)(5)(C) to add, "Federated States of Micronesia," "India," "Ireland," "New Zealand," and "Singapore" to the list of qualifying countries where English is the primary or predominant language. These are countries that the colleges and universities of the University of Texas and Texas A&M University systems have identified as English-speaking for the purposes of determining exemptions to English language proficiency requirements. This adopted amendment permits individuals who have obtained the equivalent of a United States bachelor's or master's degree from colleges or universities in the Federated States of Micronesia, India, Ireland, New

Zealand, and Singapore to be exempt from the English language proficiency requirement for educator certification. The adopted amendment to Figure: 19 TAC §230.11(b)(5)(C) also provide grammatical and technical edits to the list of countries to properly place "Canada" and the "Cayman Islands" alphabetically and to add "Islands" to Turks and Caicos.

Adopted new 19 TAC §230.11(c) clarifies that individuals who have previously demonstrated English language proficiency to receive an SBEC-issued certificate would not be required to demonstrate English language proficiency again if they seek admission into an approved Texas EPP at a later time to pursue an additional area of certification. This would prevent redundant, inefficient, and unnecessary paperwork for both educators and TEA staff.

SUMMARY OF COMMENTS AND RESPONSES. The public comment period on the proposal began October 22, 2021, and ended November 22, 2021. The SBEC also provided an opportunity for registered oral and written comments on the proposal at the December 10, 2021, meeting in accordance with the SBEC board operating policies and procedures. The following is a summary of the public comments received on the proposal and the responses.

Comment: One individual who is an EPP candidate commented in opposition of the proposed amendment to 19 TAC §230.11. The commenter questioned the English language proficiency requirement for U.S.-born citizens with degrees from other countries and the reason why Mexico was not on the SBEC-approved list.

Response: The SBEC disagrees. The SBEC-approved list in the proposed rules that would qualify an individual for exemption from the English language proficiency requirement for certification purposes, aligns with the countries identified by the University of Texas and Texas A&M University systems to qualify individuals for exemption from the English language proficiency requirement for admission purposes. Neither the University of Texas nor Texas A&M University systems has identified Mexico as a country for which the English language requirement is waived.

Comment: One individual commented in opposition of the proposed changes to 19 TAC §230.11 and stated these changes would lower standards and make it easier for individuals from other countries to become certified.

Response: The SBEC disagrees. The proposed rules would allow some individuals on the SBEC-approved list of countries to utilize their degree to satisfy the English language proficiency requirement. Individuals from other countries must still meet the remaining examination, fingerprinting, and background check requirements to qualify for certificate issuance.

Comment: Two individuals certified outside the state commented in support of the proposed changes to 19 TAC §230.11 and the addition of India and New Zealand to the list of SBEC-approved countries.

Response: The SBEC agrees.

Comment: One individual commented neither in support nor against the proposed amendment to 19 TAC §230.11, but rather that the rule substitution was very good.

Response: The SBEC disagrees. It is unclear what the commenter means by "rule substitution."

Comment: One individual commented neither in support nor against the proposed amendment to 19 TAC §230.11, but rather that the new laws and hiring of retirees was an eye opener.

Response: The SBEC disagrees. The proposed amendment does not relate to the hiring of retirees. This comment is outside the scope of the proposed rulemaking.

Comment: One individual commented neither in support nor against the proposed amendment to 19 TAC §230.11, but rather commented that she wanted to learn more.

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

The State Board of Education (SBOE) took no action on the review of amendment to §230.11 at the January 28, 2022 SBOE meeting.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031, which authorizes the SBEC to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; and TEC, §21.041(b)(5), which requires the SBEC to propose rules that specify the requirements for the issuance of an educator certificate to a person who holds a similar certificate issued by another state or foreign country, subject to TEC, §21.052.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§21.003(a); 21.031; and 21.041(b)(1), (4), and (5).

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

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Cristina De La Fuente-Valadez

Director, Rulemaking

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CHAPTER 234. MILITARY SERVICE MEMBERS, MILITARY SPOUSES, AND MILITARY VETERANS

19 TAC §234.3, §234.5

The State Board for Educator Certification (SBEC) adopts amendments to 19 Texas Administrative Code (TAC) §234.3 and §234.5, concerning military service members, military spouses, and military veterans. The amendments are adopted without changes to the proposed text as published in the October 22, 2021 issue of the *Texas Register* (46 TexReg 7148) and will not be republished. The adopted amendments implement House Bill (HB) 139, 87th Texas Legislature, Regular Session, 2021. The adopted amendments add the space force to the list of branches of the United States Armed Forces and allow service members, spouses, and veterans to get credit toward educator certification requirements for clinical and professional experience

REASONED JUSTIFICATION: All military-related provisions for educator certification have been consolidated into 19 TAC Chapter 234. The adopted amendments to 19 TAC Chapter 234 implement HB 139, 87th Texas Legislature, Regular Session, 2021. Following is a description of the adopted amendments.

§234.3. Definitions.

The adopted amendment to §234.3(5) implements HB 139, 87th Texas Legislature, Regular Session, 2021, by adding "space force" to update the list of branches of the United States Armed Forces.

§234.5. Certification of Military Service Members, Military Spouses, and Military Veterans.

The adopted amendment to §234.5(f) implements HB 139, 87th Texas Legislature, Regular Session, 2021, by adding "clinical and professional experience" training to the list of appropriate credit toward certification requirements. HB 139 allows state licensing agencies to give military service members, spouses, and veterans credit toward certification requirements for clinical and professional experience.

The adopted amendment also includes a technical edit to further define a cross reference to 19 TAC §152.1001 in §234.5(h).

SUMMARY OF COMMENTS AND RESPONSES. The public comment period on the proposal began October 22, 2021, and ended November 22, 2021. The SBEC also provided an opportunity for registered oral and written comments on the proposal at the December 10, 2021 meeting in accordance with the SBEC board operating policies and procedures. No public comments were received on the proposal.

The State Board of Education (SBOE) took no action on the review of amendment to §234.3 and §234.5 at the January 28, 2022 SBOE meeting.

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (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; TEC, §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; TEC, §21.044(a), as amended by House Bill (HB) 159, 87th Texas Legislature, Regular Session, 2021, which requires the SBEC to propose rules establishing training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program; TEC, §21.052(b-1), as amended by HB 139, 87th Texas Legislature, Regular Session, 2021, which requires the SBEC to establish procedures to accurately identify military spouses and expedite processing of certification applications that they submit; TEC, §21.052(c), which specifies the SBEC can specify

the term of a temporary certificate issued under this subsection; TEC, §21.052(d-1), which requires the SBEC to issue a three-year temporary certificate to eligible military spouses of active-duty service members; TEC, §21.052(f), as amended by HB 139, 87th Texas Legislature, Regular Session, 2021, which provides definitions for terms used in the rest of TEC, §21.052; TEC, §21.052(i), as added by HB 139, 87th Texas Legislature, Regular Session, 2021, which defines active-duty service, lists the branches of the United States Armed Forces, and confirms the members of the military community eligible for processes established to certify educators from outside the state; Texas Occupations Code (TOC), §55.001, as amended by HB 139, 87th Texas Legislature, Regular Session, 2021, which defines key terms and identifies the individuals relevant to the processing and support of members of the military community; TOC, §55.002, which provides clarification and guidelines for implementing fee exemptions for members of the military community; TOC, §55.003, which states military service members are eligible to receive a two-year extension of time to complete requirements for license renewal; TOC, §55.004, as amended and added by HB 139, 87th Texas Legislature, Regular Session, 2021, which requires state agencies to adopt rules for issuance of licensure to members of the military community and provides alternatives to become eligible for licensure; TOC, §55.0041, as amended by HB 139, 87th Texas Legislature, Regular Session, 2021, which requires state agencies to adopt rules to allow military spouses licensed in other states and in good standing to practice in their occupation of expertise with the license issued in another state; TOC, §55.005, which requires state agencies to establish a process to expedite applications for licensure submitted by members of the military community; TOC, §55.006, which requires state agencies to determine renewal requirements for expedited licenses issued to members of the military community; TOC, §55.007, which provides state agencies authority to credit verified military service, training, or education toward licensing requirements; TOC, §55.008, which authorizes state agencies to credit verified relevant military service, training, or education relevant to the occupation toward the apprenticeship requirements for licensure; TOC, §55.009, which confirms state agencies that issue licensure shall waive license application and examination fees paid to the state for applicable members of the military community; and TOC, §55.010, which requires state agencies to prominently post notification of licensure provisions for military service members, military veterans, and military spouses on the home page of the agency's website.

CROSS REFERENCE TO STATUTE. The amendments implement TEC, §§21.041(b)(2) and (4); 21.044(a), as amended by HB 159, 87th Texas Legislature, Regular Session, 2021; and 21.052(b-1), as amended by HB 139, 87th Texas Legislature, Regular Session, 2021, (c), (d-1), (f), as amended by HB 139, 87th Texas Legislature, Regular Session, 2021, and (i), as added by HB 139, 87th Texas Legislature, Regular Session, 2021; and TOC, §§55.001, as amended by HB 139, 87th Texas Legislature, Regular Session, 2021; 55.002; 55.003; 55.004, as amended and added by HB 139, 87th Texas Legislature, Regular Session, 2021, 55.0041, as amended and added by HB 139, 87th Texas Legislature, Regular Session, 2021; and 55.005-55.010.

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

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CHAPTER 249. DISCIPLINARY PROCEEDINGS, SANCTIONS, AND CONTESTED CASES

The State Board for Educator Certification (SBEC) adopts amendments to 19 Texas Administrative Code (TAC) §§249.15, 249.17 and 249.42, concerning disciplinary proceedings, sanctions, and contested cases. The amendments to §249.15 and §249.42 are adopted without changes to the proposed text as published in the October 22, 2021 issue of the *Texas Register* (46 TexReg 7150) and will not be republished. The amendment to §249.17 is adopted with changes to the proposed text as published in the October 22, 2021 issue of the *Texas Register* (46 TexReg 7150) and will be republished. The adopted amendments implement House Bill (HB) 2519, 87th Texas Legislature, Regular Session, 2021, by amending the SBEC's rules to allow the SBEC to put conditions on a certificate without any additional sanction; to reduce the minimum sanction for contract abandonment that occurs 30-44 days in advance of the first day of instruction for the next school year; to clarify that sanctions for contract abandonment are subject to all mitigating factors and that mitigating factors can reduce a sanction to the point that the SBEC takes no disciplinary action against an educator; and to clarify the notice that the Texas Education Agency (TEA) sends sanctioned educators regarding the necessity of filing a motion for rehearing if the respondent wants to appeal the decision. The adopted amendments also reflect the results of the SBEC's July work session on contract abandonment and October and December meetings by expanding the definition of good cause for contract abandonment to include instances when an educator resigns after receiving written permission from school administration and to add new mitigating factors that allow lower sanctions for contract abandonment when an educator gets a promotion, is assigned to another campus, has their salary reduced, faces a threat of immediate physical harm or any other relevant circumstances or facts.

BACKGROUND INFORMATION AND JUSTIFICATION: Chapter 249 covers educator discipline, including investigations, sanction guidelines, and procedures for contested cases. Texas Education Code (TEC), §§21.105, 21.160, and 21.210, give educators the right to resign without penalty at the end of a school year, up to 45 days before the first day of instruction for the following school year. Contract abandonment occurs when an educator resigns from a teaching contract less than 45 days before the first day of instruction for the following school year. The SBEC engaged in discussions during the July 22, 2021 work session and July 23, 2021 SBEC meeting regarding contract abandonment rules and procedures. Adopted rule changes implement the results of those discussions and recent legislation regarding contract abandonment.

House Bill 2519

HB 2519, 87th Texas Legislature, Regular Session, 2021, created new requirements and limitations for the SBEC in educator discipline cases involving either contract abandonment or a suspension sanction.

HB 2519 amended TEC, §§21.105(e), 21.160(e), and 21.210(e), to state that the SBEC in considering contract abandonment cases "may consider alternatives to sanctions, including additional continuing education or training." The SBEC has historically interpreted "additional" in 19 TAC §249.15(a)(5) to mean that the SBEC had to impose another sanction, such as a non-inscribed reprimand, before it could put other conditions or restrictions on a certificate, such as requiring continuing education. To allow the SBEC to require training without having to issue any other sanction in accordance with the intent of HB 2519, the adopted amendment removes the word "additional" from 19 TAC §249.15(a)(5).

Through changes to TEC, §§21.105, 21.160, and 21.210, HB 2519 forbids the SBEC from issuing a sanction of suspension or revocation for educators who abandon their contracts with school districts 30 days or more before the first day of instruction for the next school year. The adopted amendment therefore changes the sanction guidance for contract abandonment in 19 TAC §249.17(d)(3) to make an inscribed reprimand the standard sanction when an educator abandons a contract 30-44 days prior to the first day of instruction and no mitigating factors apply. HB 2519 made no changes to the deadline for educator resignations; an educator can still resign without penalty 45 days prior to the first day of instruction. Thus, under the adopted rule, an educator who resigns 45 days prior to the first day of instruction is not subject to sanction by the SBEC, an educator who resigns 30-44 days prior to the first day of instruction is subject to an inscribed reprimand if no mitigating factors apply, and an educator who resigns fewer than 30 days before the first day of instruction or at any point during the school year is subject to at least a one-year suspension if no mitigating factors apply. In a case where the educator resigned 30-44 days prior to the first day of instruction and mitigating factors applied, under the adopted rule, the educator will receive a sanction of less than an inscribed reprimand—a non-inscribed reprimand, a requirement to complete continuing education with no reprimand, or no reprimand at all—depending on the strength of the mitigating factors and at the SBEC's discretion. Similarly, in a case where the educator resigns fewer than 30 days prior to the first day of instruction or during the school year and mitigating factors apply, under the adopted rule, the educator will receive a sanction of less than a one-year suspension—a shorter suspension, an inscribed reprimand, a non-inscribed reprimand, a requirement to complete continuing education with no reprimand, or no reprimand at all—depending on the strength of the mitigating factors and at the SBEC's discretion. In any case where the educator had good cause for contract abandonment as defined in 19 TAC §249.17(d)(1), the educator would not be subject to sanction by the SBEC regardless of when the educator resigned.

At adoption, the SBEC modified the amendment to §249.17(d)(3)(A) in response to public comment to remove the reference to §249.17(d)(2)(A) so as to prevent the mitigating factor for 30 days of notice from interfering with the applicability of the default sanction for educators who resign at least 30 days prior to the first day of instruction. Under the wording for §249.17(d)(3)(A) as proposed, the default sanction could be interpreted to not ever actually apply since every educator who resigns 30 days prior to the first day of instruction will have given 30 days of notice.

HB 2519 amended TEC, §§21.105(e), 21.160(e), and 21.210(e) to require that the SBEC consider "any mitigating factors relevant to the teacher's conduct" prior to imposing a sanction for contract abandonment. The adopted amendment to 19 TAC §249.17(d)(2) changes "may" to "shall" to reflect this new statutory requirement by removing the SBEC's discretion on whether to review mitigating factors in contract abandonment cases. The adopted amendment to 19 TAC §249.17(d)(2) also includes technical edits that add "the educator" as a lead in and that make corresponding technical edits to subparagraphs (A)-(F). The adopted amendment to 19 TAC §249.17(d)(3) adds new §249.17(d)(3)(A) and (B) to include specific cross-references to the factors the SBEC considers under 19 TAC §249.17(c), among which would include a broad catch-all factor, "any other relevant circumstances or facts," to make it clear that the SBEC will consider all mitigating factors in contract abandonment cases. At adoption and in response to public comment, the SBEC changed the amended language of 19 TAC §249.17(d)(2) to include new subparagraph (J) that explicitly states that the mitigating factors the SBEC must consider in all contract abandonment cases include "any other relevant circumstances or facts," to clarify that the SBEC can consider any mitigating factor in accordance with HB 2519.

The adopted amendment to 19 TAC §249.17(d)(3)(B) also provides a technical edit to reorganize subparagraphs (A)-(C) to clauses (i)-(iii).

The adopted amendment includes new 19 TAC §249.17(d)(3)(C), which clarifies that mitigating factors can reduce an educator's sanction to such an extent that the SBEC takes no disciplinary action against the educator. This change is adopted to reduce confusion among SBEC members and stakeholders regarding the limits of the SBEC's discretion in considering mitigating factors. The SBEC cannot be arbitrary or capricious in determining the value of a mitigating factor or a sanction, but the SBEC can decide that the unique mitigating facts in a specific case are so extreme and compelling that they necessitate reducing the educator's sanction to the point that an educator subject to discipline receives no sanction.

In TEC, §21.065(b), HB 2519 imposes requirements on the SBEC when it suspends an educator's certificate to give notice to the educator regarding "the basis for the suspension" and "information regarding the method in which the teacher may respond to the suspension." The SBEC already sends sanctioned educators such notices with the final order, informing the educators that they must file a Motion for Rehearing with the SBEC if they do not agree with the SBEC's decision and if they want to appeal in keeping with Texas Government Code (TGC), §2001.145. The adopted amendment adds language to 19 TAC §249.42(a) that reflects and clarifies this procedure and the language used in the letters to educators.

This proposal includes technical edits to further define a cross reference to 19 TAC Chapter 101 in §249.15(b)(8).

SBEC Work Session and Board Meeting

On July 22, 2021, the SBEC conducted a work session to examine ways to improve its contract abandonment sanctioning guidelines. The results of the work session and the July 23, 2021 and October 1, 2022 SBEC meetings are reflected in the adopted amendment to 19 TAC §249.17(d)(1) and (2), which adds to the definition of good cause for contract abandonment and to the mitigating factors that apply specifically to contract abandonment cases. These provisions offer guidance and predictability to edu-

cators, TEA staff, State Office of Administrative Hearings judges, and the SBEC regarding in what situations the SBEC will take no action against an educator due to good cause and in what situations the SBEC will issue reduced sanctions against an educator for contract abandonment based on applicable mitigating factors.

The adopted amendment to 19 TAC §249.17(d)(1) expands the definition of good cause for contract abandonment. Adopted new §249.17(d)(1)(D) makes written permission from school district administration good cause for contract abandonment. The adopted amendment causes the SBEC to take no disciplinary action against an educator who abandoned a contract under those specific conditions because an educator should be able to resign without penalty when the educator reasonably understands that he or she has received written permission from the school administration to resign.

The adopted amendment to 19 TAC §249.17(d)(2) adds mitigating factors that reduce an educator's sanction for contract abandonment. Adopted new §249.17(d)(2)(G) reduces an educator's sanction if the educator had resigned in order to take a position that amounted to a career change from one certification class to another or to a more advanced position within the principal certificate class. For example, the adopted amendment reduces the sanction for an educator who resigned in order to become a librarian, a counselor, an assistant principal, a principal, or a superintendent. The adopted amendment also reduces the sanction for an assistant principal who resigned to become a principal, a superintendent, or another more senior administration position that requires a principal or superintendent certificate. This adopted amendment gives teachers more flexibility to advance their careers within education without fear of long suspension sanctions from SBEC due to contract abandonment. At adoption and in response to public comment, the SBEC added new clause (iii) to §249.17(d)(2)(G), which allows mitigation for educators who take jobs at charter schools or districts of innovation that are equivalent to the positions described by educator certification class in §249.17(d)(2)(G)(i) and (ii). This new provision allows educators the same mitigating impact for taking new jobs in charter schools and districts of innovation as in traditional public schools, even though charter schools and districts of innovation may not require educators to be certified.

Adopted new 19 TAC §249.17(d)(2)(H) allows a reduced sanction when an educator resigns due to a decrease in the educator's base pay, excluding stipends, as compared to the prior year at the same school district. Due to school district board meeting schedules, some educators do not learn what their salary will be for the school year until after the 45th day before the first day of instruction, when educators can no longer resign without penalty. The commissioner of education has held that an educator's contract remains valid even if the educator's salary is set at a later school district board meeting, so long as the educator's final salary is within the salary range that the educator was offered when the educator signed the contract. An educator can thus find themselves in a year-long contract for salary that is less than the educator had earned the year before and be unable to resign without penalty. Under adopted new 19 TAC §249.17(d)(2)(H), an educator who resigned in such circumstances is still subject to discipline for contract abandonment but would receive a lesser sanction than the default one-year suspension.

The SBEC proposed a new mitigating factor that would have allowed a reduced contract abandonment sanction when an educator resigns following a change in the educator's campus as-

signment that causes a significant adverse impact on the educator's family needs or health condition. After receiving public comment opposed to the new mitigating factor because it would make it easier for educators to abandon contracts when their assignments required long commutes or working with difficult students, the SBEC voted at adoption to remove this language from the amendment and to reletter the remaining subparagraphs accordingly.

Adopted new 19 TAC §249.17(d)(2)(I) allows lower sanctions for contract abandonment when an educator resigns a contract due to working conditions that reasonably posed an immediate threat of physical harm to the educator. This adopted change allows the SBEC to reduce the penalty in a contract abandonment case to reflect the severity of the risk of physical harm an educator faced before resigning. It gives educators some comfort and predictability that they would not face a long suspension for contract abandonment if they resign due to physically dangerous working conditions. This provision was proposed as 19 TAC §249.17(d)(2)(J) but was relettered at adoption to 19 TAC §249.17(d)(2)(I). It is otherwise unchanged from how it was published as proposed.

While TEA staff may make sanction recommendations, the SBEC retains discretion to determine the final sanction and the amount of reduction in penalty allowed for each mitigating factor prescribed in 19 TAC §249.17(d)(2).

SUMMARY OF COMMENTS AND RESPONSES. The public comment period on the proposal began October 22, 2021, and ended November 22, 2021. The SBEC also provided an opportunity for registered oral and written comments on the proposal at the December 10, 2021 meeting in accordance with the SBEC board operating policies and procedures. The following is a summary of the public comments received on the proposal and the responses.

I. General Comments

a. Comments in Support

Comment: The Texas Classroom Teachers Association (TCTA), the Texas American Federation of Teachers (Texas AFT), and the Association of Texas Professional Educators (ATPE) commented in support of the proposed amendments. The commenters noted that all the proposed amendments are either necessary to implement HB 2519, 87th Texas Legislature, Regular Session, 2021, or are the product of a robust stakeholder process that included representatives of classroom teachers, administrators, and school districts. The commenters noted that the proposed amendments struck an appropriate balance between school district and educator needs, while expanding the SBEC's ability to consider individual educators' unique circumstances. Texas AFT stated that the proposed amendments do not exceed the intent of HB 2519 or the scope of SBEC's rulemaking authority.

Response: The SBEC agrees. Aside from the amendments that are necessary to implement HB 2519, the adopted amendments are the product of several years of board member and stakeholder input.

b. Comments in Opposition

Comment: The Texas Association of School Administrators (TASA), Fast Growth School Coalition (FGSC), Texas Association of Community Schools (TACS), Texas Association of Rural Schools (TARS), Texas Association of School Personnel Administrators (TASPA), Texas Elementary Principals & Super-

visors Association (TEPSA), Texas Rural Education Association (TREA), Texas School Alliance (TSA), Texas Urban Council (TUC), Bexar County Education Coalition (BCEC), Castleberry Independent School District (ISD), Pearland ISD, Dickinson ISD, Alamo Heights ISD, Plainview ISD, Caldwell ISD, and Alice ISD commented that they oppose changes to the contract abandonment sanctioning guidelines because the amendments were not necessary. The commenters pointed out that the amendments to good cause and mitigating factors were not necessitated by the changes in statute resulting from HB 2519. The commenters also noted that no more than 284 of the 375,222 certified educators in Texas are reported for contract abandonment in a given year, that less than one-tenth of one percent of certified educators have been sanctioned by the SBEC, and that the vast majority of contract abandonments reported to the SBEC are from one school district. The commenters noted that students need consistency and stability in their teachers and that the proposed changes could cause more instability in teacher staffing and leave students with inexperienced substitute teachers or no teachers at all.

Response: The SBEC disagrees. The adopted amendments to §249.17(d)(1) and (2) are not related to the implementation of HB 2519, nor are they precluded by the statutory changes HB 2519 made. Instead, the adopted amendments to §249.17(d)(1) and (2) are the product of two years of SBEC and stakeholder input and will update the rules to reflect the SBEC's current perspective on contract abandonment sanctions. While educators who are reported for contract abandonment represent a small percentage of the total population of Texas educators, they constitute 48% of all educator discipline cases in Fiscal Year 2021 (FY21). It is therefore necessary to ensure that the rules relating to contract abandonment are updated to reflect the will of the SBEC as closely as possible to maximize the efficiency, predictability, and consistency of educator sanctions resulting from contract abandonment.

Comment: Itasca ISD, Gruver ISD, Pine Tree ISD, TUC, Austin ISD, Vidor ISD, Maypearl ISD, four representatives of Dayton ISD, two representatives of Beaumont ISD, Klein ISD, Alice ISD, Livingston ISD, United ISD, Lewisville ISD, Plano ISD, Alamo Heights ISD, Elgin ISD, North East ISD, 10 representatives of Texas City ISD, Taft ISD, Manor ISD, Northwest ISD, and 27 individuals opposed the proposed amendments that allow reduced sanctions for contract abandonment because the amendments would make it easier for educators to abandon their contracts. The commenters stated that the proposed amendments will make it difficult to staff schools with competent faculty because more teachers will leave the classroom in mid-year at a time when experienced, certified teachers are difficult to find. The commenters noted that students suffer when teachers abandon their contracts and that schools are unable to provide adequately qualified replacements. The commenters particularly opposed any amendment that would allow a longer window for an educator to resign without penalty.

Response: The SBEC disagrees. First, the adopted amendments do not allow a longer period for an educator to resign without penalty. Even under the adopted amendments, an educator who resigns without permission after the 45th day before the first day of instruction is still subject to discipline by the SBEC. The adopted amendment to §249.17(d)(3), which reduces the default sanction from a suspension to an inscribed reprimand for educators who resign 44-30 days prior to the first day of instruction, is required to enact HB 2519's changes to Texas Education Code (TEC), §§21.105, 21.160, and 21.210, that forbid the

SBEC from suspending or revoking the certificate of any educator who resigns at least 30 days before the first day of instruction. The adopted amendments to the definition of good cause and the mitigating factors under §249.17(d)(1) and (2) are designed to address situations in which a sanction by the SBEC no longer serves an appropriate deterrent purpose for an educator, either because the situation in the classroom is so untenable that the educator will resign regardless of the penalty, or because a long suspension of the educator's certificate under those circumstances is more likely to impact the educator's morale and cause them to leave the profession than to retain them in the classroom. In such situations, the adopted reduced sanctions for contract abandonment do not make it especially easier for educators to abandon their contracts, since they were likely to do so regardless of the sanction but do make it easier or possible for educators to return to the classroom rather than abandoning the education profession entirely. The adopted changes to §249.15 and §249.42 are required to implement HB 2519.

Comment: Goliad ISD expressed neither opposition or support for the proposed amendments, but commented that teachers need to honor contracts.

Response: The SBEC agrees. Teachers should honor their employment contracts with school districts to help minimize disruptions for students and schools that impair student performance.

Comment: One individual opposed the proposed amendments and commented that the proposed amendments that are not necessitated by HB 2519 will cause more educators to resign.

Response: The SBEC disagrees. The adopted amendments to the definition of good cause and the mitigating factors under §249.17(d)(1) and (2) are designed to address situations in which a sanction by the SBEC no longer serves an appropriate deterrent purpose either because the situation in the classroom is so untenable that the educator will resign regardless of the penalty, or because a long suspension of the educator's certificate under those circumstances is more likely to impact their morale and cause them to leave the profession than to keep them in the classroom. In such situations, the adopted amendments that reduced the sanctions for contract abandonment do not make it especially easier for educators to abandon their contracts, since they were likely to do so regardless of the sanction. Instead, the adopted rules make it easier or possible for educators to return to the classroom rather than abandoning the education profession entirely.

Comment: One individual opposed the proposed amendments because HB 2519 creates an undue and crippling burden on school districts when districts are already struggling to find competent, qualified teachers for the classroom.

Response: The SBEC disagrees. The SBEC does not legally have any discretion to decide to not implement the requirements of HB 2519. Concerns about HB 2519 should be addressed to the Texas Legislature.

Comment: One individual commented in opposition to the proposed amendments, stating that the SBEC should make a rule requiring school districts to notify educators signing contracts of the date after which the educator can no longer resign without penalty.

Response: The SBEC disagrees. The SBEC does not have jurisdiction to make rules governing the behavior of school districts.

Comment: One individual commented in opposition to the proposed amendments, stating that if teachers are allowed to abandon their contracts, students will not receive a quality education because it is difficult to find highly qualified teachers.

Response: The SBEC disagrees. The adopted amendments do not allow all educators to abandon their contracts. The adopted amendments to the definition of good cause and the mitigating factors for contract abandonment under §249.17(d)(1) and (2) are designed to address situations in which a sanction by the SBEC no longer serves an appropriate deterrent purpose either because the situation in the classroom is so untenable that the educator will resign regardless of the penalty, or because a long suspension of the educator's certificate under those circumstances is more likely to impact their morale and cause them to leave the profession than to retain them in the classroom. In such situations, the adopted reduced sanctions for contract abandonment do not make it especially easier for educators to abandon their contracts, since they were likely to do so regardless of the sanction. Instead, the adopted rules make it easier or possible for educators to return to the classroom rather than abandoning the education profession entirely.

Comment: Hallsville ISD, Marshall ISD, and one individual commented in opposition to the proposed amendments, stating that teachers should be held to their contractual obligations for the whole school year.

Response: The SBEC disagrees. In situations where an educator has good cause for contract abandonment, the SBEC should not sanction the educator for resigning.

Comment: One individual commented in opposition to the proposed amendments because allowing teachers to abandon contracts hurts students and is not allowed in any other profession.

Response: The SBEC disagrees. The adopted amendments do not allow all teachers to abandon contracts. The education profession differs from all other professions in that the consequences of resigning from a job impact not just the employer and employee, but also the students who rely on the teacher to educate them.

II. §249.17(d)(1)(D)

a. Comments in Support

Comment: The Texas State Teachers' Association (TSTA) commented in support of §249.17(d)(1)(D) because allowing an educator to resign without penalty when the educator reasonably believes that the educator has consent from the school district to resign is fundamentally fair. TSTA stated that an educator improperly receiving permission to resign is a reason for the school district to examine its procedures, not a reason to sanction the educator.

Response: The SBEC agrees.

Comment: Texas AFT commented in support of proposed new §249.17(d)(1)(D), stating that school districts often do not inform teachers of the consequences of resigning in mid-year and often allow local campus administrators to accept teachers' resignations. Texas AFT stated that school districts can train their principals not to accept resignations but instead to refer resigning teachers to the central administration. Texas AFT commented that the draft rule text includes sufficient safeguards because it requires that the teacher's belief be reasonable and that the permission be written.

Response: The SBEC agrees.

Comment: ATPE commented in support of proposed new §249.17(d)(1)(D), stating that allowing an educator to resign without penalty when the educator received written permission from a school administrator reflects in SBEC rule what is already practice at many school districts.

Response: The SBEC agrees. Adopted new §249.17(d)(1)(D) will make it standard across the state that all educators in all districts are allowed to resign without an SBEC sanction when the educator has been given written permission by a school administrator. It will avoid the inconsistency and inequity that results when only some districts choose to report educators for contract abandonment.

b. Comments in Opposition

Comment: Texas Association of School Boards (TASB) opposed proposed new §249.17(d)(1)(D) because the addition of a new reason for good cause undermines the strength and stability of Chapter 21 teacher contracts that can keep teachers in classrooms at a time of unprecedented teacher shortages. TASB noted that TEC, Chapter 21, creates a balance of rights between school districts and educators in teacher contracts that is intended to provide instructional stability for students, by requiring educators to stay in their contract for the full contract term without the opportunity to resign unilaterally, while requiring school districts to go through an attenuated and expensive process to terminate an educator's employment in mid-year.

Response: The SBEC disagrees. Teacher shortages cannot be solved by penalizing teachers who have already left the classroom when they reasonably believed that they have permission from school district administration to resign. The threat of an SBEC sanction is unlikely to occur to an educator who reasonably believes that the school district has permitted them to resign, so an SBEC sanction under such circumstances has little deterrent value. On the other hand, adopted new §249.17(d)(1)(D) creates an incentive for districts to train their administrative staff better in how to respond to an educator's request to resign so as to avoid creating a reasonable belief that the resignation was accepted.

Comment: TASB, TASA, FGSC, TACS, TARS, TASPA, TEPSA, TREA, TSA, TUC, Plainview ISD, and an individual opposed proposed new §249.17(d)(1)(D) because teachers should be required to abide by the terms of their contracts and the districts' local policies that require resignations to be submitted specifically to the school district board of trustees' designees. The commenters noted that courts have consistently held that, legally, there is no apparent authority for school districts in the context of school district personnel contracting issues. The commissioner of education (commissioner) has been consistent in deciding that for purposes of determining the validity of a teacher's contract, a teacher cannot effectively resign by submitting a resignation to a principal or other person who has not been designated by the SBEC to accept resignations. The commenters stated that the proposed amendment would create an "end-run" around these commissioner decisions. The commenters also stated that the proposed amendment would result in unequal rights between the educator and the school district because school districts will not be able to rely on apparent authority when appealing contract issues to the commissioner, but teachers will be able to rely on mere belief that the educator had permission to resign when contesting SBEC sanctions for contract abandonment. TASA, FGSC, TACS, TARS, TASPA, TEPSA, TREA, TSA, TUC, and Plainview ISD also noted that the SBEC's concern in this area arose from a single specific district that had an automated sys-

tem that sent misleading messages to resigning educators; they noted that the specific district had fixed the issue and that the issue had not been repeated in other districts.

Response: The SBEC disagrees. First, the SBEC's concern is not limited to a single instance in a specific district. While in most school districts, only the superintendent and the board of trustees have the legal authority to accept resignations, many educators considering resignation are told by the principal at their local campus or a person in the Human Relations department that the educator's resignation is fine and will be accepted. Under the current rules, when those educators resign, they are still subject to sanction by the SBEC for contract abandonment, regardless of what they were promised by district administrators.

Contrary to the commenters' assertions, an SBEC rule on sanctions for contract abandonment does not create an "end-run" around commissioner's decisions on the validity of educator contracts--the SBEC has no authority to determine whether a contract is valid. The SBEC's rule on when to sanction an educator for contract abandonment is separate and unrelated to the legal issues of actual authority and apparent authority in a school district. A school district will still be able to argue issues of actual authority in its local grievance process and in appeals to the commissioner on educator contract termination and non-renewal issues, such as whether an educator should receive back pay. The addition of adopted new §249.17(d)(1)(D) will not impact the legal validity of an educator's contract with the district. It will only prevent the SBEC from sanctioning an educator's certificate when the educator has resigned with a reasonable belief that the educator had written permission from the school district's administration to resign. It may have the effect of causing districts to better train their administration staff on how to communicate with educators who are attempting to resign, but clearer communication would benefit both districts and educators alike.

III. §249.17(d)(2)

a. Comments in Support

Comment: TCTA commented in support of the proposed amendments to good cause and the mitigating factors for contract abandonment in §249.17(d)(1) and (2) because they are necessary to provide flexibility and guidance for the SBEC to address difficult circumstances that educators face. TCTA stated that the proposed amendments to good cause and the proposed new mitigating factors will make educators more likely to stay in the education profession after leaving a contract, in contrast to the 70% of teachers previously sanctioned for contract abandonment who have not returned to teaching in Texas.

Response: The SBEC agrees. The adopted amendments to the definition of good cause and the mitigating factors under §249.17(d)(1) and (2) are designed to address situations in which a sanction by the SBEC no longer serves an appropriate deterrent purpose either because the situation in the classroom is so untenable that the educator will resign regardless of the penalty, or because a long suspension of the educator's certificate under those circumstances is more likely to impact their morale and cause them to leave the profession than to keep them in the classroom. In such situations, the adopted reduced sanctions for contract abandonment do not make it especially easier for educators to abandon their contracts, since they were likely to do so regardless of the sanction. Instead, the adopted rules make it easier or possible for educators to return to the classroom rather than abandoning the education profession entirely.

Comment: TSTA commented in support of the implementation of HB 2519 through the new mitigating factors in proposed new §249.17(d)(2)(G)-(J) and the proposed addition of an explicit reference to §249.17(c) in proposed §249.17(d)(2)(A) and (B) because the changes allow the SBEC to consider any relevant factors in determining a sanction while requiring the Board to mitigate in certain specific situations. TSTA also supported the proposed new mitigating factors in §249.17(d)(2)(G)-(J) because they reflect situations in which the harm of staying in the contract can be more detrimental to educators than the harm breach of contract brings to the school district and students. TSTA pointed out that the proposed new mitigating factors do not strip school districts of their unilateral authority to make administrative decisions that impact teachers. TSTA also noted that proposed new §249.17(d)(2)(G)-(J) are only mitigating factors that reduce the sanction the SBEC imposes on the educator's certificate--not good cause for contract abandonment--so educators will still be subject to discipline for contract abandonment under those circumstances.

Response: The SBEC agrees regarding proposed new §249.17(d)(2)(G), (H), and (J), but disagrees regarding proposed new §249.17(d)(2)(I). Regarding proposed new §249.17(d)(2)(I), the potential harm to students caused by teachers leaving contracts when a reassignment requires a long commute or involves difficult students is great enough that it outweighs the benefit for teachers of a mitigating factor specifically related to reassignment. Most situations in which a reassignment causes a change to the educator's health or family needs are already addressed by existing §249.17(d)(1)(A) and (C) that define the educator's health condition and family needs as good cause for contract abandonment. The SBEC therefore voted not to adopt proposed new §249.17(d)(2)(I) and voted to reletter proposed §249.17(d)(2)(J) to adopted §249.17(d)(2)(I) accordingly.

Comment: Texas AFT commented in favor of proposed new §249.17(d)(2)(G)-(J) because the mitigating factors will reduce educators' sanctions in situations where a harsh penalty for contract abandonment is inappropriate because circumstances out of the educator's control forced the educator to leave the contract. Texas AFT pointed out that the mitigating factors are not good cause for contract abandonment and that educators will still be subject to discipline. Texas AFT also noted that three of the four proposed mitigating factors are within the school districts' control--proposed new §249.17(d)(2)(H)-(J).

Response: The SBEC agrees. Under the adopted amendments, school districts maintain the authority to set educators' salaries and to assign educators to positions as necessary. The changes to proposed new §249.17(d)(2)(G), (H), and (J) only allow the SBEC to reduce the sanction on the educator's certificate after the fact, should the educator choose to resign their contract due to a salary reduction or an immediate threat of significant physical harm in the classroom. The SBEC voted not to adopt proposed new §249.17(d)(2)(I) because most situations in which a reassignment causes a change to the educator's health or family needs are already addressed by existing §249.17(d)(1)(A) and (C) that define the educator's health condition and family needs as good cause for contract abandonment. As a result, the SBEC also voted to reletter proposed §249.17(d)(2)(J) to adopted §249.17(d)(2)(I).

Comment: ATPE commented in support of proposed new §249.17(d)(2)(G)-(J) because the new mitigating factors reflect the SBEC's respect for educators as professionals who are making difficult decisions to leave jobs. ATPE noted that the

proposed new mitigating factors would allow the SBEC the discretion to mitigate sanctions when educators are having to choose between their teaching jobs and their health, their families, or their long-term careers.

Response: The SBEC agrees regarding proposed new §249.17(d)(2)(G), (H), and (J), but disagrees regarding proposed new §249.17(d)(2)(I). Regarding proposed new §249.17(d)(2)(I), the potential harm to students caused by teachers leaving contracts when a reassignment requires a long commute or involves difficult students is great enough that it outweighs the benefit for teachers of a mitigating factor specifically related to reassignment. Most situations in which a reassignment causes a change to the educator's health or family needs are already addressed by existing §249.17(d)(1)(A) and (C) that define the educator's health condition and family needs as good cause for contract abandonment. The SBEC therefore voted not to adopt proposed new §249.17(d)(2)(I) and voted to reletter proposed §249.17(d)(2)(J) to adopted §249.17(d)(2)(I) accordingly.

b. Comments in Opposition

Comment: TASB and Mabank ISDs opposed the four new proposed mitigating factors in §249.17(d)(2)(G)-(J), stating the mitigating factors do nothing to mitigate the harm an educator's resignation will have on students. TASB noted that the existing mitigating factors in §249.17(d)(2)(A)-(F) are all efforts a departing educator can make to lessen the impact of the educator's absence on the educator's classroom of students, while the proposed new factors are only educators' excuses for abandoning children.

Response: The SBEC disagrees regarding proposed new §249.17(d)(2)(G), (H), and (J), but agrees regarding proposed new §249.17(d)(2)(I). While the focus of the new mitigating factors is on the teachers' perspective rather than on the students', the situations reflected in the new adopted mitigating factors deserve lesser sanctions because they respond to the difficult realities of work as an educator. These realities cause educators to leave the profession permanently and cause potential educators to decide against education as a profession. It is important to look at the impact of contract abandonment sanctions on teachers' morale and on the dignity of the education profession, and to reduce the sanction for contract abandonment when the situation the educator left was so unreasonable or untenable that a sanction would not deter another educator in the same situation from taking the same action.

Regarding proposed new §249.17(d)(2)(I), the potential harm to students caused by teachers leaving contracts when a reassignment requires a long commute or involves difficult students is great enough that it outweighs the benefit for teachers of a mitigating factor specifically related to reassignment. Most situations in which a reassignment causes a change to the educator's health or family needs are already addressed by existing §249.17(d)(1)(A) and (C) that define the educator's health condition and family needs as good cause for contract abandonment. The SBEC therefore voted not to adopt proposed new §249.17(d)(2)(I) and voted to reletter proposed §249.17(d)(2)(J) to adopted §249.17(d)(2)(I) accordingly.

Comment: One individual commented in opposition to the proposed amendments because the proposed amendments favor teachers too much over students' need for classroom continuity. The commenter stated that the mitigating factors should not include teachers' subjective preferences.

Response: The SBEC disagrees regarding proposed new §249.17(d)(2)(G), (H), and (J), but agrees regarding proposed new §249.17(d)(2)(I). The mitigating factors under §249.17(d)(2) are designed to address situations in which a sanction by the SBEC no longer serves an appropriate deterrent purpose either because the situation in the classroom is so untenable that the educator will resign regardless of the penalty, or because a long suspension of the educator's certificate under those circumstances is more likely to impact their morale and cause them to leave the profession than to keep them in the classroom. In such situations, the adopted rules make it easier or possible for educators to return to the classroom rather than to abandon the education profession entirely. In this way, the adopted amendments support increased long-term educator continuity and thus benefit educators and students alike.

Regarding proposed new §249.17(d)(2)(I), the potential harm to students caused by teachers leaving contracts when a reassignment requires a long commute or involves difficult students is great enough that it outweighs the benefit for teachers of a mitigating factor specifically related to reassignment. Most situations in which a reassignment causes a change to the educator's health or family needs are already addressed by existing §249.17(d)(1)(A) and (C) that define the educator's health condition and family needs as good cause for contract abandonment. The SBEC therefore voted not to adopt proposed new §249.17(d)(2)(I) and voted to reletter proposed §249.17(d)(2)(J) to adopted §249.17(d)(2)(I) accordingly.

Comment: Representative Drew Darby, Texas House of Representatives member; BCEC, and North East ISD commented in opposition to the proposed rules because additional good cause and mitigating factors for contract abandonment are not required by HB 2519. Representative Darby expressed concern that §249.17(d)(2) confines the SBEC to only consider the listed factors as mitigation, when HB 2519 requires the SBEC to consider any mitigating factors relevant to the teacher's conduct in determining a sanction for contract abandonment.

Response: The SBEC agrees. The adopted amendments to §249.17(d)(1) and (2) are not related to the implementation of HB 2519, nor are they precluded by the statutory changes HB 2519 made. Instead, the adopted amendments to §249.17(d)(1) and (2) are the product of two years of SBEC and stakeholder input and will update the rules to reflect the SBEC's current perspective on contract abandonment sanctions. The mitigating factors for contract abandonment in §249.17(d)(2) serve only to guide TEA staff, administrative law judges at the State Office of Administrative Hearings (SOAH), and the SBEC on the mitigating factors that the SBEC has determined will always result in the reduction of a sanction and are not an exclusive list of factors the SBEC can consider in determining a sanction in a specific case. In accordance with TEC, §§21.105, 21.160, and 21.210, as amended by HB 2519, the SBEC can consider any relevant mitigating factors. To implement this aspect of HB 2519, the SBEC adopted an amendment to §249.17(d)(3), adding a specific statement that the default sanctions for contract abandonment do not apply if the case involves any of the mitigating factors in §249.17(c)—which includes "any relevant circumstances or facts." Representative Darby's comment makes it clear that this proposed amendment was not sufficient to dispel confusion about what factors the SBEC can consider in determining the sanction in a contract abandonment case. To clarify, the SBEC voted to add new §249.17(d)(2)(J) at adoption, explicitly including in the mitigating factors for contract abandonment cases "any

other relevant circumstances or facts," the same language that already appears in existing §249.17(c)(10).

IV. §249.17(d)(2)(G)

a. Comments in Support

Comment: TSTA commented that while many school districts in Texas will not report an educator to the SBEC for contract abandonment caused by a career change or promotion, not all districts have this same local policy. TSTA supports proposed new §249.17(d)(2)(G) because it removes this discrepancy among districts and helps educators make calculated decisions regarding professional development within a career in education that encourages teachers to stay in the education profession.

Response: The SBEC agrees.

Comment: The law firm of Schulman, Lopez, Hoffer & Adelstein commented in support of the rules generally but noted that proposed new §249.17(d)(2)(G) created an injustice for educators transferring from conventional school districts to charter schools for promotions because positions at charter schools do not require certification and therefore cannot be defined by certificate class.

Response: The SBEC agrees. The SBEC modified the proposed rule text at adoption to include promotions to positions in charter schools and districts of innovation--public schools that may not require educator certification--when the educator's new position is equivalent to the certified positions described.

b. Comments in Opposition

Comment: TASA, FGSC, TACS, TARS, TASPA, TEPSA, TREA, TSA, TUC, Plainview ISD, and an individual opposed the addition of §249.17(d)(2)(G), regarding it as unnecessary because very few school districts report educators who leave for a promotion, and because the SBEC could consider such factors when necessary under its catch-all decision-making factor in §249.17(c)(10) of "any other relevant circumstances or facts."

Response: The SBEC disagrees. While it is true that many districts include promotion as good cause in their local policies, there are still several districts that report contract abandonment to the SBEC when educators leave for promotions. And while it is also true that "any other relevant circumstances or facts" in §249.17(c)(10) would give the SBEC legal cover to mitigate an educator's sanction for contract abandonment for any reason, it does not give guidance to staff, educators, school administrators, or administrative law judges on what reasons for mitigation the SBEC finds particularly significant and compelling, leaving them to guess at what the SBEC might do. Adopted new §249.17(d)(2)(G) creates more consistency and predictability throughout the state in outcomes for educators who abandon contracts to advance their education careers.

Comment: TASB commented in opposition to proposed new §249.17(d)(2)(G), stating that educators can seek promotions to start at the beginning of the next school year while still honoring their current contracts. TASB noted that a district does not have an opportunity to terminate a teacher with short notice when the district finds a more qualified educator to fill the position. TASB stated that sanctions should still be available for educators who abandon their contracts in mid-year to the detriment of students, regardless of what new job the educator took.

Response: The SBEC disagrees. Opportunities for an educator to further his or her career within the education field do not all uniformly arrive at the end of the school year. Often, opportuni-

ties arise mid-year as the result of the retirement or resignation of another educator. To keep educators from leaving the education profession, it is important for the SBEC to honor and support the possibility of career advancement within the field of education. Adopted new §249.17(d)(2)(G) does not prevent an educator from being subject to sanction for abandoning the contract. Rather, it requires a lesser, mitigated sanction for an educator who abandons his or her contract for a more advanced job or a new career path within the field of education.

Comment: North East ISD opposed proposed new §249.17(d)(2)(G) because only an educator's career change within the principal or superintendent certificate classes is sufficient to justify the SBEC mitigating the sanction for contract abandonment. The commenter stated that an educator should not have good cause if the educator abandons a contract for a position as an educator in another district.

Response: The SBEC disagrees. Adopted new §249.17(d)(2)(G) does not apply to teachers who take a job in another district as a teacher. It only applies to teachers who change or advance their career in education to another job requiring a different class of certificate, such as a teacher who takes a job as a counselor or a librarian who takes a job as a principal. To limit the mitigation only to advancements into district administration would be to ignore the importance of educators' career changes to new roles within the field--changes that allow educators to find new inspiration to remain in the education profession long-term.

V. §249.17(d)(2)(H)

a. Comment in Support

Comment: Texas AFT commented in support of proposed new §249.17(d)(2)(H) because the current remedy for an educator whose contract is breached by the school district through a salary reduction--to go through the local grievance process and appeal to the commissioner, seeking back pay--is too attenuated and expensive. Texas AFT stated that educators should have the right to quit if the district is not paying correctly.

Response: The SBEC disagrees. The process to appeal a breach of contract through the local grievance process with an appeal to the commissioner is entirely separate and apart from the jurisdiction of the SBEC and the sanction of an educator's certificate for contract abandonment. The SBEC does not have authority to award back pay. The adopted new mitigating factor does not give an educator a right to quit if a district reduces the educator's salary--it does not create good cause for contract abandonment. The educator is still subject to discipline and sanction by the SBEC for contract abandonment under adopted new §249.17(d)(2)(H).

b. Comments in Opposition

Comment: TASB, TASA, FGSC, TACS, TARS, TASPA, TEPSA, TREA, TSA, TUC, and Plainview ISD opposed the addition of §249.17(d)(2)(H) because it is unnecessary, as the case it was designed to address was an educator who was paid less for fewer days and fewer responsibilities, and who the commissioner found had received adequate notice of the change in salary. The commissioner has long-established precedent that dictates how and when a school district can reduce a teacher's salary, which requires that the district give the educator notice that a salary reduction is coming before 45 days before the first day of instruction, when the educator can still resign without penalty. TASB stated that if the SBEC allows lesser sanctions

against an educator's certificate for contract abandonment following a salary reduction when the district gave proper notice in keeping commissioner opinions, it will undermine the commissioner's precedent.

Response: The SBEC disagrees. First, it is important to note the difference in authority between the commissioner and the SBEC: the commissioner has the authority to determine whether teacher contracts are valid and enforceable, and the SBEC has the authority to determine whether a teacher's certificate should be sanctioned as punishment for abandoning a valid contract. While the commissioner can determine that an educator is owed back wages and should be paid a certain amount going forward, the SBEC can only decide whether to sanction the educator's certificate.

The commenters are correct that the commissioner has held, beginning in 2015 with the cases *Jamil Abdul-Jabbar v. Port Arthur Independent School District*, Docket No. 017-R10-12-2014, and *Worthy v. Port Arthur Independent School District*, Docket No. 016-R10-12-2014, that an educator has a valid contract so long as the district gives the educator notice of a salary range for the next year at least 45 days before the first day of instruction, when the educator can still resign. The commissioner has stated that a salary range is specific enough notice to make the underlying contract valid: the commissioner upheld a range of \$21,000--between \$53,957-\$75,283--as sufficiently specific. The commissioner extended this line of precedent in *James v. Dallas Independent School District*, Docket No. 028-R10-03-2015, and *Cooksy v. Dallas Independent School District*, Docket No. 027-R10-03-2015, in which the commissioner found that notice was sufficient to create a valid contract when the district informed the educator that he would be assigned as an assistant principal for the next year, when the salary range for an assistant principal was published in the district's "Salary Handbook" as \$59,400-\$72,250. In *Cooksy*, the commissioner noted that any salary range a district gave, no matter how broad, would constitute reasonable notice for purposes of determining the validity of the educator's contract as long as the notice came prior to the 45th day before the first day of instruction, stating, "It would seem that the greater the range of possible salary reductions set by a school district, the less likely teachers would remain at their current district and not consider other districts whose salaries were not so uncertain." In each of the cases in this line of precedent, the reduction in salary came with a reassignment to a new position, such as a district athletic director being reassigned to assistant principal, or an assistant principal of a high school being reassigned to assistant principal of a middle school.

But just because a teacher's contract is legally valid does not require that the SBEC sanction an educator for contract abandonment when the educator leaves the contract. TEC, §§ 21.105(c), 21.160(c), and 21.210(c), all provide that the SBEC may impose sanctions against an educator who resigns. The statute does not mandate enforcement of all school district-teacher contracts through one-year suspensions of the educator's certificate. Adopted new §249.17(d)(2)(H) uses the flexibility given to the SBEC in the TEC to require a lesser sanction than a one-year suspension in a situation where the educator has a decrease in salary base pay from one year to the next. The decrease in sanction acknowledges the difficult situation in which a district places a teacher when it demands that the educator decide whether to resign based on a broad potential pay range, the top end of which may be acceptable to the educator while the bottom end may be below the educator's current cost of living. The adopted new rule would not impact the legal validity of the contract. It would also

not impact the natural consequences that an educator would endure as a result of resigning in mid-year, such as loss of income. The adopted amendment does not make a reduction in salary good cause for contract abandonment, and so preserves the deterrent effect of a sanction. The adopted rule would only serve to encourage TEA staff, administrative law judges at SOAH, and the SBEC to reduce the length of time an educator's certificate is suspended if the educator resigns following a reduction in pay.

Comment: North East ISD commented in opposition to proposed new §249.17(d)(2)(H) because a reduction in base pay should only constitute good cause for contract abandonment if the reduction happens during the term of the contract, and should not count if the educator has been informed that there will be a reduction in base pay prior to the beginning of the contract.

Response: The SBEC disagrees. First, adopted new §249.17(d)(2)(H) does not create good cause for contract abandonment; it is only a mitigating factor that reduces an educator's sanction for contract abandonment if it applies. The educator is still subject to discipline and sanction by the SBEC for contract abandonment under adopted new §249.17(d)(2)(H). If an educator knows the salary that he or she will be paid in the coming year prior to the 45th day before the first day of instruction, adopted new §249.17(d)(2)(H) would not apply. The SBEC has previously interpreted good cause and the mitigating factors in §249.17(d)(1) and (2) to only describe situations arising after the educator signs the contract with the district, and not issues that were already known to the educator at the time they signed. If, however, the school district has only given the educator a salary range at the time the educator can resign without penalty, and then the district determines the educator's specific salary after the 45th day before the first day of instruction, adopted new §249.17(d)(2)(H) would apply. The decrease in sanction allowed by adopted new §249.17(d)(2)(H) acknowledges the difficult situation in which a district places a teacher when it demands that the educator make the decision on whether to resign based on a broad potential pay range, the top end of which may be acceptable to the educator while the bottom end may be below the educator's current cost of living.

VI. §249.17(d)(2)(I)

a. Comment in Support

Comment: TCTA commented in support of §249.17(d)(2)(I), noting that the proposed new mitigating factor would allow the SBEC to reduce sanctions for contract abandonment when reassignment to a different campus has a significant adverse impact on the educator's family needs. TCTA stated that the proposed new provision would allow educators in this situation to seek employment as an educator in a district closer to the educator's home rather than being forced into employment outside of education by the suspension of the educator's certificate.

Response: The SBEC disagrees. The potential harm to students caused by teachers leaving contracts when a reassignment requires a long commute or involves difficult students is great enough that it outweighs the benefit for teachers of a mitigating factor specifically related to reassignment. Most situations in which a reassignment causes a change to the educator's health or family needs are already addressed by existing §249.17(d)(1)(A) and (C) that define the educator's health condition and family needs as good cause for contract abandonment. The SBEC therefore voted not to adopt proposed new §249.17(d)(2)(I) and voted to reletter proposed §249.17(d)(2)(J) to adopted §249.17(d)(2)(I) accordingly.

b. Comments in Opposition

Comment: TASB, TASA, FGSC, TACS, TARS, TASPA, TEPSA, TREA, TSA, TUC, Plainview ISD, and one individual opposed the addition of §249.17(d)(2)(I) because any change in assignment that caused a serious health condition or a change in family needs would already be addressed under the definition of good cause in §249.17(d)(A) and (C). The commenters particularly objected that the proposed addition would allow teachers to get out of their contracts if a new teaching assignment required increased driving time that interfered with the educator's family needs because no other professional employees are allowed to leave contracts due to driving time.

Response: The SBEC agrees. The SBEC therefore voted not to adopt proposed new §249.17(d)(2)(I) and voted to reletter proposed §249.17(d)(2)(J) to adopted §249.17(d)(2)(I) accordingly.

Comment: TASB, TASA, FGSC, TACS, TARS, TASPA, TEPSA, TREA, TSA, TUC, BCEC, Plainview ISD, and one individual opposed the addition of §249.17(d)(2)(I) because the proposed rule would interfere with a superintendent's authority and discretion to place teachers in assignments where the district most needs them.

Response: The SBEC disagrees. The creation of a new mitigating factor will not impact a school district superintendent's authority to assign a teacher to a position. Superintendents will remain free to assign educators as necessary and appropriate, and the educators' contracts will remain valid. The proposed amendment only creates a new mitigating factor, not good cause for contract abandonment.

That being said, the SBEC determined at its December meeting that the potential harm to students caused by teachers leaving contracts when a reassignment requires a long commute or involves difficult students is great enough that it outweighs the benefit for teachers of a mitigating factor specifically related to reassignment. Most situations in which a reassignment causes a change to the educator's health or family needs are already addressed by existing §249.17(d)(1)(A) and (C) that define the educator's health condition and family needs as good cause for contract abandonment. The SBEC therefore voted not to adopt proposed new §249.17(d)(2)(I) and voted to reletter proposed §249.17(d)(2)(J) to adopted §249.17(d)(2)(I) accordingly.

Comment: One individual opposed the proposed addition of §249.17(d)(2)(I) out of concern that an educator who lives on the "right side of town" would use it as a pretext to get out of an assignment to an underperforming school on the "wrong side of town."

Response: The SBEC agrees. The potential harm to students caused by teachers leaving contracts when a reassignment requires a long commute or involves difficult students is great enough that it outweighs the benefit for teachers of a mitigating factor specifically related to reassignment. Most situations in which a reassignment causes a change to the educator's health or family needs are already addressed by existing §249.17(d)(1)(A) and (C) that define the educator's health condition and family needs as good cause for contract abandonment. The SBEC therefore voted not to adopt proposed new §249.17(d)(2)(I) and voted to reletter proposed §249.17(d)(2)(J) to adopted §249.17(d)(2)(I) accordingly.

Comment: Elgin ISD commented in opposition to proposed new §249.17(d)(2)(I) and expressed concern that the proposed rule will force districts to hire new teachers rather than reassigning

their current employees, which will create additional cost for the school district and adversely impact the district's budget.

Response: The SBEC disagrees. The creation of a new mitigating factor will not impact a school district superintendent's authority to assign a teacher to a position. Superintendents will remain free to assign educators as necessary and appropriate, and the educator's contracts will remain valid. The proposed amendment only created a new mitigating factor, not good cause for contract abandonment.

Regardless of the impact of proposed §249.17(d)(2)(I) on a superintendent's authority, the SBEC determined at its December meeting that the potential harm to students caused by teachers leaving contracts when a reassignment requires a long commute or involves difficult students is great enough that it outweighs the benefit for teachers of a mitigating factor specifically related to reassignment. Most situations in which a reassignment causes a change to the educator's health or family needs are already addressed by existing §249.17(d)(1)(A) and (C) that define the educator's health condition and family needs as good cause for contract abandonment. The SBEC therefore voted not to adopt proposed new §249.17(d)(2)(I) and voted to reletter proposed §249.17(d)(2)(J) to adopted §249.17(d)(2)(I) accordingly.

Comment: North East ISD opposes proposed new §249.17(d)(2)(I) because reassignment of a teacher to another class within the same campus should not be a mitigating factor for contract abandonment, nor should a change in campus assignment that is requested by the educator. The commenter stated that the driving force behind educator assignment decisions must be the needs of students, not educators.

Response: The SBEC agrees. The SBEC determined at its December meeting that the potential harm to students caused by teachers leaving contracts when a reassignment requires a long commute or involves difficult students is great enough that it outweighs the benefit for teachers of a mitigating factor specifically related to reassignment. Most situations in which a reassignment causes a change to the educator's health or family needs are already addressed by existing §249.17(d)(1)(A) and (C) that define the educator's health condition and family needs as good cause for contract abandonment. The SBEC therefore voted not to adopt proposed new §249.17(d)(2)(I) and voted to reletter proposed §249.17(d)(2)(J) to adopted §249.17(d)(2)(I) accordingly.

VII. §249.17(d)(2)(J), Adopted as §249.17(d)(2)(I)

a. Comments in Support

Comment: TCTA commented in support of proposed new §249.17(d)(2)(J), noting that teachers who are assaulted or injured by students at school should be able to remove themselves from a dangerous situation. TCTA stated that the proposed rule sets a high bar by requiring an immediate threat of significant physical harm before the sanction for contract abandonment will be mitigated. TCTA further noted that the proposed new provision is only a mitigating factor and not good cause for contract abandonment.

Response: The SBEC agrees. The language "reasonably posed an immediate threat of significant physical harm" in the rule is intentionally broad, to allow the SBEC discretion to address the range of risks that could arise from working conditions at a school by mitigating the sanction for contract abandonment as necessary.

b. Comments in Opposition

Comment: TASB, TASA, FGSC, TACS, TARS, TASP, TEPSA, TREA, TSA, TUC, BCEC and Plainview ISD opposed the addition of §249.17(d)(2)(J) because the terms "reasonably pose" and "significant physical harm" are vague. The commenters noted that any conditions that posed a threat to teachers would also pose a threat to students and, therefore, would already be regulated by the laws and rules that address student safety in public schools and that allow the commissioner to intervene when a school district has failed to maintain student safety. TASA, FGSC, TACS, TARS, TASP, TEPSA, TREA, TSA, TUC, and BCEC suggested that the issue of potential physical harm to teachers would be more appropriately regulated through a rule that applied to school districts and superintendents, rather than just teacher contracts.

Response: The SBEC disagrees. The language "reasonably posed an immediate threat of significant physical harm" in the rule is intentionally broad to allow the SBEC discretion to address the range of risks that could arise from working conditions at a school by mitigating the sanction for contract abandonment as necessary. The commenters' suggestion--that the problem of working conditions that reasonably pose an immediate threat of significant physical harm should be addressed through a rule that applies to school districts--is beyond the authority of the SBEC to address because the SBEC does not have any jurisdiction over school districts.

Comment: One individual opposed proposed new §249.17(d)(2)(J) because the term "immediate threat of physical harm" was broad enough that an educator could use it as a pretext to resign when the educator was assigned to a Disciplinary Alternative Education Placement where students have committed criminal acts, to a campus with special education students on behavioral intervention plans, or to a school listed as a Persistently Dangerous School in accordance with federal law. The commenter noted that students in these situations have an equal right to consistent, quality educators as any other students.

Response: The SBEC disagrees. Adopted new §249.17(d)(2)(J) only creates a mitigating factor, not good cause for contract abandonment, so an educator cannot rely on it as a means to get out of an assignment.

Comment: North East ISD commented in opposition to proposed new §249.17(d)(2)(J), stating that to receive a mitigated sanction for contract abandonment, an educator should have to show an immediate and ongoing physical threat, that the educator had informed the district of the potential for significant physical harm, and that the district failed to make the working conditions safer.

Response: The SBEC disagrees. Adopted new §249.17(d)(2)(J) addresses immediate threats of significant physical harm to an educator--terrifying conditions that cause an educator to need to resign immediately and that reduce the deterrent value of a strong sanction on the educator's certificate. Adopted new §249.17(d)(2)(J) is only a mitigating factor and not good cause for contract abandonment. It is appropriate to reduce an educator's sanction if the educator encountered an immediate threat of significant physical harm regardless of whether the educator waited to see if the school district would address the issue before resigning. It is important to note that existing §249.17(d)(2)(E) mitigates an educator's sanction if the educator engages in good faith communications with the district, so an educator who communicates with the district regarding a threat of physical harm will receive a lower sanction as compared to an educator who simply resigns immediately.

VIII. §249.17(d)(3)

a. Comments in Opposition

Comment: TASB opposed the proposed amendment to §249.17(d)(3), arguing that HB 2519 does not require a mandatory sanction for contract abandonment that occurs 30 days or more prior to the first day of instruction. TASB further noted that because §249.17(d)(3)(A) only applies when no mitigating factors apply, and the mitigating factor in §249.17(d)(2)(A) for educators who give 30 days of notice will apply in all cases that could be subject to §249.17(d)(3)(A), §249.17(d)(3)(A) will never actually be applicable.

Response: The SBEC disagrees in part and agrees in part. With regard to whether a minimum sanction is required by HB 2519, the SBEC agrees that the bill does not include such a requirement. HB 2519 forbids the SBEC from suspending or revoking the certificate of an educator who abandons their contract 30 days or more prior to the first day of instruction but does not specify whether the SBEC should issue an inscribed reprimand, a non-inscribed reprimand, or required training. The adopted amendment to §249.17(d)(3) will offer guidance and consistency for TEA staff, the SBEC, and administrative law judges at the SOAH on the appropriate penalty in cases wherein the educator resigns 30 days or more before the first day of instruction. This guidance is in keeping with the intent of HB 2519, as it is limited only to cases where no other mitigating factors apply. The SBEC agrees that existing §249.17(d)(2)(A) is confusing and redundant when incorporated by reference into §249.17(d)(3)(A). The SBEC therefore voted to change the amendment at adoption to remove the reference to §249.17(d)(2)(A) from §249.17(d)(3)(A).

Comment: Representative Drew Darby commented in opposition to the proposed rules because HB 2519 does not impose a minimum sanction for contract abandonment, and it gives the SBEC authority to consider alternatives to sanctions such as additional continuing education or training. Representative Darby stated that requiring an inscribed reprimand as a mandatory sanction would remove the flexibility for the SBEC to consider alternatives to punishment required under TEC, §§21.105, 21.160, and 21.210, as amended by HB 2519.

Response: The SBEC disagrees. The adopted amendments to §249.17(d)(3) to implement HB 2519 add a default sanction of an inscribed reprimand for educators who abandon their contracts 30-44 days prior to the first day of instruction and include a specific statement that the default sanctions for contract abandonment do not apply if the case involves any of the mitigating factors in §249.17(c)--which includes "any relevant circumstances or facts." The adopted amendment to §249.17(d)(3) gives guidance to TEA staff, administrative law judges at the SOAH, and the SBEC to ensure consistency and predictability in sanctions for educators. Thus, if any relevant circumstance or fact gives the SBEC a basis for a lower sanction or no sanction at all, the sanction guidance in §249.17(d)(3) no longer applies and the SBEC is free to issue a non-inscribed reprimand, training, or continuing education with no reprimand or no sanction at all. On the other hand, when no mitigating factors are present, the default sanctions in §249.17(d)(3) create increased consistency and predictability in sanctions for contract abandonment and comply with the finding in the Texas Sunset Commission's 2015 report that the SBEC should adopt educator rules on educator sanctions to ensure consistent enforcement decisions that are aligned with agency precedent. The adopted amendment to §249.17(d)(3) preserve consistency in sanctions while allowing SBEC full discretion to determine the

sanction (or decide not to sanction) as the specific mitigating factors in a case require.

Comment: TSTA opposed proposed §249.17(d)(3)(A) because an inscribed reprimand is too strong a sanction when an educator leaves a contract 30-44 days before the first day of instruction and no mitigating factors apply. TSTA stated that an inscribed reprimand could keep the educator from getting future employment.

Response: The SBEC disagrees. An educator who leaves a contract 30-44 days prior to the first day of instruction when no mitigating factors apply has left a school district scrambling to fill the spot and has increased the likelihood that the classroom will be left without a teacher or without an adequately qualified and experienced teacher. It is important to note that this provision applies only when no mitigating factors apply to decrease the sanction--any factor that captures the SBEC's sympathies could mitigate and reduce the sanction below an inscribed reprimand. School districts considering whether to hire a teacher should have the opportunity to know when an educator has abandoned a contract previously and to consider whether such a candidate would be the best selection. Since HB 2519 has forbidden the SBEC from ordering suspensions or revocations when an educator abandons a contract 30-44 days before the first day of instruction, an inscribed reprimand is the appropriate default sanction in that situation.

IX. §249.17(d)(3)(C)

a. Comments in Opposition

Comment: TASB opposed the proposed addition of §249.17(d)(3)(C) because giving SBEC the discretion not to impose sanctions when an educator is subject to discipline will make SBEC sanctions less predictable and consistent.

Response: The SBEC disagrees. The SBEC has always had the authority to choose not to impose a sanction on an educator even when the educator was subject to discipline, provided the facts in the case made the holding not arbitrary or capricious. The adopted rule clarifies that mitigating factors can cause the SBEC not to sanction an educator who is subject to discipline, to reduce confusion for TEA staff, SBEC members, and educators.

The State Board of Education (SBOE) took no action on the review of amendments to §§249.15, 249.17, and 249.42 at the January 28, 2022 SBOE meeting.

SUBCHAPTER B. ENFORCEMENT ACTIONS AND GUIDELINES

19 TAC §249.15, §249.17

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §21.006(a)-(c-2), (f)-(g-1), and (i), which require the superintendent or director of a school district, district of innovation, open-enrollment charter school, other charter entity, regional education service center or shared services arrangement to report to the State Board for Educator Certification (SBEC) within seven business days of when the superintendent knew or received a report from a principal that an educator has resigned or is terminated and there is evidence that the educator has engaged in certain misconduct, unless the superintendent or director completes an investigation before the educator resigns or is terminated and determines that the educator did not commit the alleged misconduct. It also requires principals to report to superintendents within seven business days of when the superintendent knew or received a report from a principal that

an educator has resigned or is terminated and when there is evidence that the educator has engaged in certain misconduct. It further authorizes the SBEC to impose sanctions on educators who fail to report as required by the statute, including authority to impose monetary administrative penalties, gives the SBEC rule-making authority as necessary to implement the statute, requires the SBEC to create an internet portal to facilitate confidential and secure reporting, and gives the SBEC authority to impose administrative penalties on principals and superintendents who fail to fulfill their reporting obligations to the SBEC under TEC, §21.006; TEC, §21.007, which gives the SBEC authority to place a notice that an educator is under investigation for alleged misconduct on the educator's public certification records, which requires the SBEC to give the educator notice and an opportunity to show cause, which requires that the SBEC limit the amount of time the notice can appear on the educator's certification, and which gives the SBEC rulemaking authority as necessary to implement the provision; TEC, §21.009(e), which states that the SBEC may revoke the certificate of an administrator if the board determines it is reasonable to believe that the administrator employed an applicant despite being aware that the applicant had been adjudicated for or convicted of having an inappropriate relationship with a student or minor; TEC, §21.031(a), which charges the SBEC with regulating and overseeing all aspects of the certification, continuing education, and standards of conduct for public school educators; TEC, §21.035, which states that TEA staff provide administrative functions and services for SBEC and gives SBEC the authority to delegate to either the commissioner of education or to Texas Education Agency (TEA) staff the authority to settle or otherwise informally dispose of contested cases involving educator certification; TEC, §21.040(4), which requires the SBEC to develop policies that delineate the respective responsibilities of the SBEC and TEA staff; TEC, §21.041, which authorizes the SBEC to adopt rules as necessary for its own procedures, to regulate educators, specify the requirements for issuance or renewal of educator certificates, administer statutory requirements, provide for educator disciplinary proceedings, and for enforcement of the Educator's Code of Ethics; TEC, §21.058, which requires the SBEC to revoke the certification of an educator convicted or placed on deferred adjudication community supervision for certain offenses; TEC, §21.0581, which allows the SBEC to suspend, revoke, or sanction an educator's certificate, or refuse to issue a certificate, if the person has assisted another person in obtaining employment at a school district, private school, or open-enrollment charter school, other than by the routine transmission of administrative and personnel files when the person knew the other person had engaged in sexual misconduct with a student or minor in violation of the law; TEC, §21.060, which sets out crimes that relate to the education profession and authorizes the SBEC to sanction or to refuse to issue a certificate to any person who has been convicted of one of these offenses; TEC, §21.065, as added by HB 2519, 87th Texas Legislature, Regular Session, 2021, which sets requirements for the notice SBEC must send when it suspends an educator's certificate; TEC, §21.105(c), as amended by HB 2519, 87th Texas Legislature, Regular Session, 2021, which allows the SBEC to impose sanctions against an educator who abandons a probationary contract; TEC, §21.105(e), as added by House Bill (HB) 2519, 87th Texas Legislature, Regular Session, 2021, which requires the SBEC to consider any mitigating factors relevant to the teacher's conduct and allows the SBEC to consider alternatives to sanctions, including additional continuing education or training; TEC, §21.105(f), as added by HB 2519, 87th Texas Legislature, Regular Session, 2021, which forbids the SBEC from is-

suings a sanction of suspension or revocation for educators who abandon their contracts with school districts more than 30 days prior to the first day of instruction for the next school year; TEC, §21.160(c), as amended by HB 2519, 87th Texas Legislature, Regular Session, 2021, which allows the SBEC to impose sanctions against an educator who abandons a continuing contract; TEC, §21.160(e), as added by HB 2519, 87th Texas Legislature, Regular Session, 2021, which requires the SBEC to consider any mitigating factors relevant to the teacher's conduct and allows the SBEC to consider alternatives to sanctions, including additional continuing education or training; TEC, §21.160(f), as added by HB 2519, 87th Texas Legislature, Regular Session, 2021, which forbids the SBEC from issuing a sanction of suspension or revocation for educators who abandon their contracts with school districts more than 30 days prior to the first day of instruction for the next school year; TEC, §21.210(c), as amended by HB 2519, 87th Texas Legislature, Regular Session, 2021, which allows the SBEC to impose sanctions against an educator who abandons a term contract; TEC, §21.210(e), as added by HB 2519, 87th Texas Legislature, Regular Session, 2021, which requires the SBEC to consider any mitigating factors relevant to the teacher's conduct and allows the SBEC to consider alternatives to sanctions, including additional continuing education or training; TEC, §21.210(f), as added by HB 2519, 87th Texas Legislature, Regular Session, 2021, which forbids the SBEC from issuing a sanction of suspension or revocation for educators who abandon their contracts with school districts more than 30 days prior to the first day of instruction for the next school year; TEC, §22.082, which requires the SBEC to subscribe to the criminal history clearinghouse and allows the SBEC to obtain any criminal history from any closed case file; TEC, §22.0831, which requires the SBEC to review the criminal history of certified educators and applicants for certification; TEC, §22.085, which requires school districts, charter schools, and shared services arrangements to conduct fingerprint criminal background checks on employees and to refuse to hire those who have certain criminal history; TEC, §22.087, which requires superintendents and directors of school districts, charter schools, private schools, regional education service centers, and shared services arrangement to notify the SBEC if an applicant for a certification has criminal history that is not in the criminal history clearinghouse; TEC, §22.092, which requires school districts, charter schools, districts of innovation, regional education service centers, and shared services arrangements to discharge or to refuse to hire any person listed on the registry of persons not eligible for employment in Texas public schools; TEC, §22.093(a)-(f), which requires superintendents or directors of school districts, districts of innovation, charter schools, regional education service centers, or shared services arrangements to notify the commissioner of education if an employee resigned or was terminated and there is evidence that the employee abused or otherwise committed an unlawful act with a student or minor, or was involved in a romantic relationship with a student or minor; Texas Government Code (TGC), §411.090, which allows the SBEC to get from the Texas Department of Public Safety all criminal history record information about any applicant for licensure as an educator; TGC, §2001.058(e), which sets out the requirements for when the SBEC can make changes to a proposal for decision from an administrative law judge; TGC, §2001.142(a), which requires all Texas state licensing agencies to notify parties to contested cases of orders or decisions of the agency by personal service, electronic means, if the parties have agreed to it, first class, certified or registered mail, or by any method required under the agency's rules for a party to serve copies of pleadings in a contested case; Texas

Family Code (TFC), §261.308(d) and (e), which requires the Texas Department of Family and Protective Services to release information regarding a person alleged to have committed abuse or neglect to the SBEC; TFC, §261.406(a) and (b), which requires the Texas Department of Family and Protective Services to send a copy of a completed investigation report involving allegations of abuse or neglect of a child in a public or private school to the TEA; and Texas Occupations Code (TOC), §53.021(a), 53.022-53.025, 53.051, and 53.052, which allow the SBEC to suspend or revoke an educator's certificate or refuse to issue a certificate if a person is convicted of certain offenses; which set out factors for the SBEC to determine whether a particular criminal offense relates to the occupation of education; which set out additional factors for the SBEC to consider when deciding whether to allow a person convicted of a crime to serve as an educator; which set out information the SBEC must give an applicant when it denies a license and requires that the SBEC allow 30 days for the applicant to submit any relevant information to the SBEC; which state that proceedings to deny or sanction an educator's certification are covered by the Texas Administrative Procedure Act, Chapter 2001, TGC; which give the SBEC rule-making authority to issue guidelines to define which crimes relate to the profession of education; which require that the SBEC notify a license holder or applicant after denying, suspending, or revoking the certification; and which allow a person who has been denied an educator certification or had an educator certification revoked or suspended to file a petition for review in state district court after exhausting all administrative remedies; TOC, §56.003, which prohibits state agencies from taking disciplinary action against licensees for student loan non-payment or default; and Every Student Succeeds Act, 20 United States Code, §7926, which requires state educational agencies to make rules forbidding educators from aiding other school employees, contractors, or agents in getting jobs when the educator knows the job-seeker has committed sexual misconduct with a student or minor in violation of the law.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §§21.006(a)-(c-2), (f)-(g-1), and (i); 21.007; 21.009(e); 21.031(a); 21.035; 21.041; 21.058; 21.0581; 21.060; 21.065, as added by House Bill (HB) 2519, 87th Texas Legislature, Regular Session, 2021; 21.105(c), (e), and (f), as amended and added by HB 2519, 87th Texas Legislature, Regular Session, 2021; 21.160(c), (e), and (f), as amended and added by HB 2519, 87th Texas Legislature, Regular Session, 2021; 21.210(c), (e), and (f), as amended and added by HB 2519, 87th Texas Legislature, Regular Session, 2021; 22.082; 22.0831; 22.085; 22.087; 22.092; and 22.093(a)-(f); Texas Government Code, §§411.090, 2001.058(e), and 2001.142(a); Texas Family Code, §261.308(d) and (e) and §261.406(a) and (b); Texas Occupations Code, §§53.021(a), 53.022-53.025, 53.051, 53.052, and 56.003; and the Every Student Succeeds Act, 20 United States Code, §7926.

§249.17. *Decision-Making Guidelines.*

(a) Purpose. The purpose of these guidelines is to achieve the following objectives:

(1) to provide a framework of analysis for the Texas Education Agency (TEA) staff, the presiding administrative law judge (ALJ), and the State Board for Educator Certification (SBEC) in considering matters under this chapter;

(2) to promote consistency in the exercise of sound discretion by the TEA staff, the presiding ALJ, and the SBEC in seeking, proposing, and making decisions under this chapter; and

(3) to provide guidance for the informal resolution of potentially contested matters.

(b) Construction and application. This section shall be construed and applied so as to preserve SBEC members' discretion in making final decisions under this chapter. This section shall be further construed and applied so as to be consistent with §249.5(b) of this title (relating to Purpose; Policy Governing Disciplinary Proceedings) and this chapter, the Texas Education Code (TEC), and other applicable law, including SBEC decisions and orders.

(c) Consideration. The following factors may be considered in seeking, proposing, or making a decision under this chapter:

- (1) the seriousness of the violation;
- (2) whether the misconduct was premeditated or intentional;
- (3) attempted concealment of misconduct;
- (4) prior misconduct and SBEC sanctions;
- (5) the potential danger the conduct poses to the health and welfare of students;
- (6) the effect of the prior conduct upon any victims of the conduct;
- (7) whether sufficient time has passed and sufficient evidence is presented to demonstrate that the educator or applicant has been rehabilitated from the prior conduct;
- (8) the effect of the conduct upon the educator's good moral character and ability to be a proper role model for students;
- (9) whether the sanction will deter future violations; and
- (10) any other relevant circumstances or facts.

(d) Contract abandonment.

(1) Good cause. The following factors may be considered good cause when an educator is reported to have abandoned a contract in violation of the TEC, §§21.105(c), 21.160(c), or 21.210(c):

(A) serious illness or health condition of the educator or close family member of the educator;

(B) relocation to a new city as a result of change in employer of the educator's spouse or partner who resides with the educator;

(C) significant change in the educator's family needs that requires the educator to relocate or to devote more time than allowed by current employment; or

(D) the educator's reasonable belief that the educator had written permission from the school district administration to resign.

(2) Mitigating factors. The following factors shall be considered in seeking, proposing, or making a decision under this chapter regarding an educator who has abandoned a contract in violation of the TEC, §§21.105(c), 21.160(c), or 21.210(c). The educator:

(A) gave written notice to the school district 30 days or more in advance of the first day of instruction for which the educator will not be present;

(B) assisted the school district in finding a replacement educator to fill the position;

(C) continued to work until the school district hired a replacement educator;

(D) assisted in training the replacement educator;

(E) showed good faith in communications and negotiations with the school district;

(F) provided lesson plans for classes following the educator's resignation;

(G) changed careers within the field of education:

(i) to a position that required a different class of educator certification as defined in §230.33(b) of this title (relating to Classes of Certificates);

(ii) to a position with a higher level of authority within the principal class of certificate; or

(iii) to a position in an open-enrollment charter school or a district of innovation that is equivalent to the positions described in clauses (i) and (ii) of this subparagraph;

(H) had a reduction in base pay, excluding stipends, as compared to the educator's base pay for the prior year at the same school district;

(I) resigned due to working conditions that reasonably posed an immediate threat of significant physical harm to the educator; or

(J) any other relevant circumstances or facts.

(3) Mandatory sanction for contract abandonment.

(A) An educator subject to sanction, who has abandoned a contract 44-30 days prior to the first day of instruction for the following school year in violation of the TEC, §§21.105(c), 21.160(c), or 21.210(c), in a case where the factors listed in subsection (c) of this section or in paragraph (1) or (2)(B)-(J) of this subsection do not mitigate or apply, shall receive a sanction of an inscribed reprimand.

(B) An educator subject to sanction, who has abandoned a contract less than 30 days prior to the first day of instruction for the following school year or at any point during the school year in violation of the TEC, §§21.105(c), 21.160(c), or 21.210(c), in a case where the factors listed in subsection (c) of this section or in paragraph (1) or (2) of this subsection do not mitigate or apply, may not receive a sanction of less than:

(i) suspension for one year from the first day that, without district permission, the educator failed to appear for work under the contract, provided that the educator has not worked as an educator during that year and the case is resolved within that one year through an agreed final order; or

(ii) suspension for one year from either the effective date of an agreed final order resolving the case or an agreed future date at the beginning of the following school year, if the educator has worked as an educator after abandoning the contract; or

(iii) suspension for one year from the date that the SBEC adopts an order that becomes final following a default under §249.35 of this title (relating to Disposition Prior to Hearing; Default) or a contested case hearing at the State Office of Administrative Hearings (SOAH).

(C) The factors listed in subsection (c) of this section and in paragraphs (1) and (2) of this subsection may mitigate an educator's sanction so significantly that the SBEC takes no disciplinary action.

(e) Mandatory minimum sanction for felony-level conduct. An educator subject to sanction, who is court-ordered to complete a period of deferred adjudication or community supervision for a

felony-level criminal offense under state or federal law, may not receive a sanction of less than:

(1) suspension for a period concurrent with the term of deferred adjudication or community supervision, if the case is resolved through an agreed final order prior to the educator completing deferred adjudication or community supervision and the educator has not been employed as an educator during the period of deferred adjudication or community supervision; or

(2) suspension beginning on the effective date of an agreed final order for a period extending beyond the end of the educator's deferred adjudication or community supervision but may be less than the initial court-ordered term of deferred adjudication or community supervision, if the case is resolved through an agreed final order prior to the educator completing deferred adjudication or community supervision and the educator has been employed as an educator during the period of deferred adjudication or community supervision; or

(3) suspension beginning on the effective date of an agreed final order for a period at least half as long as the initial court-ordered term of deferred adjudication or community supervision, if the case is resolved through an agreed final order after the educator has completed deferred adjudication or community supervision; or

(4) suspension for a period equal to the term of deferred adjudication or community supervision that the criminal court initially ordered but beginning from the date of the final board decision, if the case is resolved through a final board decision following a contested case hearing at the SOAH or a default under §249.35 of this title.

(f) Mandatory minimum sanction for misdemeanor-level conduct. If an educator is subject to sanction, and a court has ordered the educator to complete a period of deferred adjudication, community supervision, or pretrial diversion for a misdemeanor-level criminal offense under state or federal law, the educator may not receive a sanction of less than an inscribed reprimand.

(g) Mandatory minimum sanction for test security violation. An educator who intentionally manipulates the results or violates the security or confidential integrity of any test required by the TEC, Chapter 39, Subchapter B, may not receive a sanction of less than suspension for one year from the effective date of an agreed final order or a final board decision following a contested case hearing at the SOAH.

(h) Mandatory minimum sanction for drugs and alcohol on school campus. An educator who is subject to sanction because the educator has tested positive for drugs or alcohol while on school campus, was under the influence of drugs or alcohol on school campus, or was in possession of drugs or alcohol on school campus may not receive a sanction of less than a one-year suspension and required completion of a drug or alcohol treatment program.

(i) Mandatory permanent revocation or denial. Notwithstanding subsection (c) of this section, the SBEC shall permanently revoke the teaching certificate of any educator or permanently deny the application of any applicant if, after a contested case hearing or a default under §249.35 of this title, it is determined that the educator or applicant:

- (1) engaged in any sexual contact or romantic relationship with a student or minor;
- (2) solicited any sexual contact or romantic relationship with a student or minor;
- (3) possessed or distributed child pornography;
- (4) was registered as a sex offender;
- (5) committed criminal homicide;

(6) transferred, sold, distributed, or conspired to possess, transfer, sell, or distribute any controlled substance, the possession of which would be at least a Class A misdemeanor under the Texas Health and Safety Code, Chapter 481, on school property;

(7) intentionally, knowingly, or recklessly causes bodily injury to a student or minor when the conduct of the educator or applicant is not immune from disciplinary proceedings by TEC, §22.0512; or

(8) committed any offense described in the TEC, §21.058.

(j) Mandatory minimum for failure to report. An educator subject to sanction, who fails to report educator misconduct under the circumstances and in the manner required by the TEC, §21.006, and §249.14(d)-(f) of this title (relating to Complaint, Required Reporting, and Investigation; Investigative Notice; Filing of Petition), when the case is resolved through an agreed final order, may not receive a sanction of less than:

(1) an inscribed reprimand and a \$5,000 administrative penalty for a superintendent or director who fails to file timely a report to the SBEC; or

(2) an inscribed reprimand and a \$500 administrative penalty for a principal who fails to timely notify a superintendent or director.

(k) Sanctioned misconduct in another state. The findings of fact contained in final orders from any other state jurisdiction may provide the factual basis for SBEC disciplinary action. If the underlying conduct for the administrative sanction of an educator's certificate or license issued in another state is a violation of SBEC rules, the SBEC may initiate a disciplinary action regarding the educator's Texas educator certificate and impose a sanction as provided under this chapter.

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

Filed with the Office of the Secretary of State on February 11, 2022.

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Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Effective date: March 3, 2022

Proposal publication date: October 22, 2021

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



SUBCHAPTER E. POST-HEARING MATTERS

19 TAC §249.42

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §21.031(a), which charges the SBEC with regulating and overseeing all aspects of the certification, continuing education, and standards of conduct for public school educators; TEC, §21.035, which states that TEA staff provide administrative functions and services for SBEC and gives SBEC the authority to delegate to either the commissioner of education or to TEA staff the authority to settle or otherwise informally dispose of contested cases involving educator certification; TEC, §21.040(4), which requires the SBEC to develop policies that delineate the respective responsibilities of the SBEC and TEA staff; TEC, §21.041, which authorizes the SBEC to adopt rules as necessary for its own procedures, to regulate educators,

specify the requirements for issuance or renewal of educator certificates, administer statutory requirements, provide for educator disciplinary proceedings, and for enforcement of the Educator's Code of Ethics; and Texas Occupations Code, §§53.021(a), 53.022-53.025, and 53.051, which allow the SBEC to suspend or revoke an educator's certificate or refuse to issue a certificate if a person is convicted of certain offenses; set out factors for the SBEC to determine whether a particular criminal offense relates to the occupation of education; set out additional factors for the SBEC to consider when deciding whether to allow a person convicted of a crime to serve as an educator; set out information the SBEC must give an applicant when it denies a license and requires that the SBEC allow 30 days for the applicant to submit any relevant information to the SBEC; state that proceedings to deny or sanction an educator's certification are covered by the Texas Administrative Procedure Act, Chapter 2001, Texas Government Code; give the SBEC rulemaking authority to issue guidelines to define which crimes relate to the profession of education; and require that the SBEC notify a license holder or applicant after denying, suspending, or revoking the certification.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§21.031(a); 21.035; 21.040(4); and 21.041(a), and (b)(1), (4), and (7); and Texas Occupations Code, §§53.021(a), 53.022-53.025, and 53.051.

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

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TITLE 22. EXAMINING BOARDS

PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 463. APPLICATIONS AND EXAMINATIONS

SUBCHAPTER B. LICENSING REQUIREMENTS

22 TAC §463.11

The Texas Behavioral Health Executive Council adopts amendments to §463.11, relating to Supervised Experience Required for Licensure as a Psychologist. In response to public comments, §463.11 is adopted with changes to the proposed text as published in the October 1, 2021, issue of the *Texas Register* (46 TexReg 6468) and will be republished below.

Reasoned Justification.

The adopted amendment is intended to allow applicants for licensure as a psychologist to petition the Texas State Board of Examiners of Psychologists regarding a deficiency in the applicant's required supervised experience for licensure. The Board can then examine the applicant and either approve, deny, or condition the approval on reasonable terms and conditions designed to ensure the applicant's education, training, and experience provide reasonable assurance that the applicant has the knowledge and skills necessary for entry-level practice as a licensed psychologist. Prior to submitting such a petition, an applicant must have completed at least 1,500 hours of supervised experience in a formal internship, obtained a doctoral degree in psychology, completed at least 1,500 hours of supervised experience following conferral of a doctoral degree, and obtained a passing score on all requisite examinations, the jurisprudence examination and the EPPP. If an applicant has not met these minimum requirements then an applicant is not eligible to submit the petition described in the adopted amendment. In response to public comments, this rule is being adopted with changes to clarify that licensure requirements are not being waived for any applicants, but if applicants have a deficiency and they meet the criteria of this rule then they can petition to remediate the deficiency, so long as it does not conflict with any applicable laws and would not adversely affect the public welfare.

List of interested groups or associations against the rule.

Dallas Psychology Association

Texas Psychological Association

Bexar County Psychological Association

Brazos Valley Psychological Association

Virginia Academy of Clinical Psychologists

Association of State and Provincial Psychology Boards

American Psychological Association

Texas Psychological Association Academic and Higher Education Committee

Association of Counseling Center Training Agencies

Sam Houston State Area Psychological Association

Summary of comments against the rule.

Commenters disagreed with this rule change because they believe the standard of practice of psychology in Texas will be diminished and patients will be negatively impacted. The commenters believe this rule will allow for a waiver of the formal internship, that applicants with a doctoral degree in psychology but no internship will be able to ask the Board to waive this requirement and be granted a license. Some commenters believe the Board should maintain a requirement of an APA accredited or APPIC member internship to become a licensed psychologist. Commenters believe this rule will dilute essential training requirements and is inconsistent with national training and education standards. Commenters believe Texas will become a safe haven for unqualified applicants seeking licensure if the rule is adopted. Some commenters believed this rule will negatively affect Texas' membership in PSYPACT. Some commenters do not trust the judgement of future BHEC members, which could greatly expand the latitude of this rule, and believe the review of applicants on a case by case basis places the burden of assessing a psychologist's qualifications on the consumer because the commenters believe licensure standards will no longer be consistent for all applicants. Commenters believe providers in other

states may stop referring patients to psychologist in Texas because they are unsure of the quality of training required in Texas. Some commenters believe that barriers to obtaining appropriate internship experience should be addressed, such as working with universities to create scholarships or recruiting in rural areas, instead of this rule change. Commenters believe this rule exceeds the scope of authority for the Board and Council, and it is contrary to current legal licensing requirements. Commenters argue that this rule change effectively lowers the required hours for supervised experience for a formal internship to 1,500 hours, which conflicts with other licensing requirements. A commenter believes this rule change will negatively affect the portability of a current Texas licensee with other states.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

Commenters believe this rule will not threaten the quality of psychological services and has confidence in the Board's discretion to determine how best to protect the public while ensuring unnecessary regulations that create a barrier to entry are eliminated. Commenters state that there are not enough APA accredited internship programs to meet the demand for students coming out of APA accredited training programs, therefore this rule will allow the Council the flexibility to consider what would otherwise be an eligible professional for licensure. A commenter noted that there is a lack of licensed mental health professionals in Texas, especially in rural areas, and the commenter believes this rule change will potentially boost the number of licensed psychologists in rural areas. A commenter supports the rule because it will allow applicants with minor pre-doctoral deficits to be remedied, at the Board's discretion, so that person can go on to provide services which are much in need throughout Texas and especially in rural areas which are underserved. A commenter supports the rule because it will allow the Board to adapt to growth in the profession and changes in technology, allowing the Board to evaluate the true quality of an applicant's training. Another commenter believes this rule change will help boost the number of licensed psychologists in rural Texas, which will allow for more services to be provided to underserved populations. Commenters believe the proposed rule will give the Board, and future Board members, an appropriate level of discretion to review, consider, and adapt licensing requirements in a way that protects the public and helps ensure that all Texans, even those in rural and underserved areas, have access to psychological services.

Agency Response.

In response to public comments that mistakenly believe this rule amendment will waive or do away with the formal internship requirement the Council adopts this rule with amendments to clarify that licensing requirements are not being waived, but if an applicant meets the requirements of subsection (g) of this rule and still has a deficiency then the Board may condition the approval of the applicant on reasonable terms and conditions designed to ensure the applicant's education, training, and experience provide reasonable assurance that the applicant has the knowledge and skill necessary for entry-level practice as a licensed psychologist (e.g. establish a plan for the applicant to remediate the deficiency). This rule does not waive the formal internship requirement, in order to even request the remediation of a deficiency an applicant must have completed at least 1,500 hours of supervised experience in a formal internship as well as meet other requirements listed in the rule. Current licensing rules

do not require all applicants to complete only APA accredited or APPIC member internships. Applicants can complete a CPA accredited internship or they can complete an internship that is not accredited but meets the criteria listed in §463.11(d)(2) to qualify for licensure. The changes to this rule will have no effect on Texas' standing or membership in PSYPACT, it is the Texas Legislature's enactment of Subchapter L in Chapter 501 of the Texas Occupations Code that made Texas a member of PSYPACT and this rule amendment has no impact on Subchapter L. As discussed below, this rule is within the legal authority of the Board to recommend to the Council, and for the Council to adopt; but this agency does not have legal authority to create scholarship programs for doctoral interns as a commenter suggested. The minimum of 1,500 hours for a formal internship was listed in subsection (g) of this amended rule in order to align with the requirements in §463.10(e), additionally the minimum required hours for an APPIC accredited internship is 1,500 so this matches with the requirement found in §463.11(d)(1). This rule amendment does not create a new or lower standard for the minimum amount of required formal internship hours, but it creates a minimum standard for when an applicant can petition the Board to remediate a deficiency. Currently Texas does not have any reciprocity agreements with any other states, so this rule should have no effect on license portability or reciprocity with other states.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §501.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Psychologists previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. The rule is specifically authorized by §501.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed the rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

§463.11. *Supervised Experience Required for Licensure as a Psychologist.*

(a) Required Supervised Experience. In order to qualify for licensure, an applicant must submit proof of a minimum of 3,500 hours of supervised experience, at least 1,750 of which must have been obtained through a formal internship that occurred within the applicant's doctoral degree program and at least 1,750 of which must have been received as a provisionally licensed psychologist (or under provisional trainee status under prior versions of this rule).

(1) A formal internship completed after the doctoral degree was conferred, but otherwise meeting the requirements of this rule, will be accepted for an applicant whose doctoral degree was conferred prior to September 1, 2017.

(2) The formal internship must be documented by the Director of Internship Training. Alternatively, if the Director of Internship Training is unavailable, the formal internship may be documented by a licensed psychologist with knowledge of the internship program and the applicant's participation in the internship program.

(3) Following conferral of a doctoral degree, 1,750 hours obtained or completed while employed in the delivery of psychological services in an exempt setting, while licensed or authorized to practice in another jurisdiction, or while practicing as a psychological associate or specialist in school psychology in this state may be substituted for the minimum of 1,750 hours of supervised experience required as a provisionally licensed psychologist if the experience was obtained or completed under the supervision of a licensed psychologist. Post-doctoral supervised experience obtained without a provisional license or trainee status prior to September 1, 2016, may also be used to satisfy, either in whole or in part, the post-doctoral supervised experience required by this rule if the experience was obtained under the supervision of a licensed psychologist.

(b) Satisfaction of Post-doctoral Supervised Experience with Doctoral Program Hours.

(1) Applicants who received their doctoral degree from a degree program accredited by the American Psychological Association (APA), the Canadian Psychological Association (CPA), or a substantially equivalent degree program, may count the following hours of supervised experience completed as part of their degree program toward the required post-doctoral supervised experience:

(A) hours in excess of 1,750 completed as part of the applicant's formal internship; and

(B) practicum hours certified by the doctoral program training director (or the director's designee) as meeting the following criteria:

(i) the practicum training is overseen by the graduate training program and is an organized, sequential series of supervised experiences of increasing complexity, serving to prepare the student for internship and ultimately licensure;

(ii) the practicum training is governed by a written training plan between the student, the practicum training site, and the graduate training program. The training plan must describe how the trainee's time is allotted and assure the quality, breadth, and depth of the training experience through specification of the goals and objectives of the practicum, the methods of evaluation of the trainee's performance, and reference to jurisdictional regulations governing the supervisory experience. The plan must also include the nature of supervision, the identities of the supervisors, and the form and frequency of feedback from the agency supervisor to the training faculty. A copy of the plan must be provided to the Council upon request;

(iii) the supervising psychologist must be a member of the staff at the site where the practicum experience takes place;

(iv) at least 50% of the practicum hours must be in service-related activities, defined as treatment or intervention, assessment, interviews, report-writing, case presentations, and consultations;

(v) individual face-to-face supervision shall consist of no less than 25% of the time spent in service-related activities;

(vi) at least 25% of the practicum hours must be devoted to face-to-face patient or client contact;

(vii) no more than 25% of the time spent in supervision may be provided by a licensed allied mental health professional or a psychology intern or post-doctoral fellow; and

(viii) the practicum must consist of a minimum of 15 hours of experience per week.

(2) Applicants applying for licensure under the substantial equivalence clause must submit an affidavit or unsworn declaration from the program's training director or other designated leader familiar with the degree program, demonstrating the substantial equivalence of the applicant's degree program to an APA or CPA accredited program at the time of the conferral of applicant's degree.

(3) An applicant and the affiant or declarant shall appear before the agency in person to answer any questions, produce supporting documentation, or address any concerns raised by the application if requested by a council or board member or the Executive Director. Failure to comply with this paragraph shall constitute grounds for denial of substantial equivalency under this rule.

(c) General Requirements for Supervised Experience. All supervised experience for licensure as a psychologist, including the formal internship, must meet the following requirements:

(1) Each period of supervised experience must be obtained in not more than two placements, and in not more than 24 consecutive months.

(2) Gaps Related to Supervised Experience.

(A) Unless a waiver is granted by the Council, an application for a psychologist's license will be denied if a gap of more than seven years exists between the date an applicant's doctoral degree was officially conferred and the date of the application.

(B) The Council shall grant a waiver upon a showing of good cause by the applicant. Good cause shall include, but is not limited to:

(i) proof of continued employment in the delivery of psychological services in an exempt setting as described in §501.004 of the Psychologists' Licensing Act, during any gap period;

(ii) proof of professional development, which at a minimum meets the Council's professional development requirements, during any gap period;

(iii) proof of enrollment in a course of study in a regionally accredited institution or training facility designed to prepare the individual for the profession of psychology during any gap period; or

(iv) proof of licensure as a psychologist and continued employment in the delivery of psychological services in another jurisdiction.

(3) A formal internship with rotations, or one that is part of a consortium within a doctoral program, is considered to be one placement. A consortium is composed of multiple placements that have

entered into a written agreement setting forth the responsibilities and financial commitments of each participating member, for the purpose of offering a well-rounded, unified psychology training program whereby trainees work at multiple sites, but obtain training from one primary site with some experience at or exposure to aspects of the other sites that the primary site does not offer.

(4) The supervised experience required by this rule must be obtained after official enrollment in a doctoral program.

(5) All supervised experience must be received from a psychologist licensed at the time supervision is received.

(6) The supervising psychologist must be trained in the area of supervision provided to the supervisee.

(7) Experience obtained from a psychologist who is related within the second degree of affinity or consanguinity to the supervisee may not be utilized to satisfy the requirements of this rule.

(8) All supervised experience obtained for the purpose of licensure must be conducted in accordance with all applicable Council rules.

(9) Unless authorized by the Council, supervised experience received from a psychologist practicing with a restricted license may not be utilized to satisfy the requirements of this rule.

(10) The supervisee shall be designated by a title that clearly indicates a supervisory licensing status such as "intern," "resident," "trainee," or "fellow." An individual who is a Provisionally Licensed Psychologist or a Licensed Psychological Associate may use that title so long as those receiving psychological services are clearly informed that the individual is under the supervision of a licensed psychologist. An individual who is a Licensed Specialist in School Psychology may use that title so long as the supervised experience takes place within a school, and those receiving psychological services are clearly informed that the individual is under the supervision of an individual who is licensed as a psychologist and specialist in school psychology. Use of a different job title is permitted only if authorized under §501.004 of the Psychologists' Licensing Act, or another Council rule.

(d) Formal Internship Requirements. The formal internship hours must be satisfied by one of the following types of formal internships:

(1) The successful completion of an internship program accredited by the American Psychological Association (APA) or Canadian Psychological Association (CPA), or which is a member of the Association of Psychology Postdoctoral and Internship Centers (AP-PIC); or

(2) The successful completion of an organized internship meeting all of the following criteria:

(A) It must constitute an organized training program which is designed to provide the intern with a planned, programmed sequence of training experiences. The primary focus and purpose of the program must be to assure breadth and quality of training.

(B) The internship agency must have a clearly designated staff psychologist who is responsible for the integrity and quality of the training program and who is actively licensed/certified by the licensing board of the jurisdiction in which the internship takes place and who is present at the training facility for a minimum of 20 hours a week.

(C) The internship agency must have two or more full-time licensed psychologists on the staff as primary supervisors.

(D) Internship supervision must be provided by a staff member of the internship agency or by an affiliate of that agency who carries clinical responsibility for the cases being supervised.

(E) The internship must provide training in a range of assessment and intervention activities conducted directly with patients/clients.

(F) At least 25% of trainee's time must be in direct patient/client contact.

(G) The internship must include a minimum of two hours per week of regularly scheduled formal, face-to-face individual supervision. There must also be at least four additional hours per week in learning activities such as: case conferences involving a case in which the intern was actively involved; seminars dealing with psychology issues; co-therapy with a staff person including discussion; group supervision; additional individual supervision.

(H) Training must be post-clerkship, post-practicum and post-externship level.

(I) The internship agency must have a minimum of two full-time equivalent interns at the internship level of training during applicant's training period.

(J) The internship agency must inform prospective interns about the goals and content of the internship, as well as the expectations for quantity and quality of trainee's work, including expected competencies; or

(3) The successful completion of an organized internship program in a school district meeting the following criteria:

(A) The internship experience must be provided at or near the end of the formal training period.

(B) The internship experience must require a minimum of 35 hours per week over a period of one academic year, or a minimum of 20 hours per week over a period of two consecutive academic years.

(C) The internship experience must be consistent with a written plan and must meet the specific training objectives of the program.

(D) The internship experience must occur in a setting appropriate to the specific training objectives of the program.

(E) At least 600 clock hours of the internship experience must occur in a school setting and must provide a balanced exposure to regular and special educational programs.

(F) The internship experience must occur under conditions of appropriate supervision. Field-based internship supervisors, for the purpose of the internship that takes place in a school setting, must be licensed as a psychologist and, if a separate credential is required to practice school psychology, must have a valid credential to provide psychology in the public schools. The portion of the internship which appropriately may take place in a non-school setting must be supervised by a psychologist.

(G) Field-based internship supervisors must be responsible for no more than two interns at any given time. University internship supervisors shall be responsible for no more than twelve interns at any given time.

(H) Field-based internship supervisors must provide at least two hours per week of direct supervision for each intern. University internship supervisors must maintain an ongoing relationship with field-based internship supervisors and shall provide at least one field-based contact per semester with each intern.

(I) The internship site shall inform interns concerning the period of the internship and the training objectives of the program.

(J) The internship experience must be systematically evaluated in a manner consistent with the specific training objectives of the program.

(K) The internship experience must be conducted in a manner consistent with the current legal-ethical standards of the profession.

(L) The internship agency must have a minimum of two full-time equivalent interns at the internship level during the applicant's training period.

(M) The internship agency must have the availability of at least two full-time equivalent psychologists as primary supervisors, at least one of whom is employed full time at the agency and is a school psychologist.

(e) Industrial/Organizational Requirements. Individuals from an Industrial/Organizational doctoral degree program are exempt from the formal internship requirement but must complete a minimum of 3,500 hours of supervised experience, at least 1,750 of which must have taken place after conferral of the doctoral degree and in accordance with subsection (a) of this section. Individuals who do not undergo a formal internship pursuant to this paragraph should note that Council rules prohibit a psychologist from practicing in an area in which they do not have sufficient training and experience, of which a formal internship is considered to be an integral requirement.

(f) Licensure Following Respecialization.

(1) In order to qualify for licensure after undergoing respecialization an applicant must demonstrate the following:

(A) conferral of a doctoral degree in psychology from a regionally accredited institution of higher education prior to undergoing respecialization;

(B) completion of a formal post-doctoral respecialization program in psychology which included at least 1,750 hours in a formal internship;

(C) completion of respecialization within the two year period preceding the date of application for licensure under this rule; and

(D) upon completion of the respecialization program, at least 1,750 hours of supervised experience obtained as a provisionally licensed psychologist (or under provisional trainee status under prior versions of this rule).

(2) An applicant meeting the requirements of this subsection is considered to have met the requirements for supervised experience under this rule.

(3) The rules governing the waiver of gaps related to supervised experience shall also govern any request for waiver of a gap following respecialization.

(g) Remedy for Incomplete Supervised Experience.

(1) An applicant who has completed at least 1,500 hours of supervised experience in a formal internship, 1,500 hours of supervised experience following conferral of a doctoral degree, and who does not meet all of the supervised experience qualifications for licensure set out in subsections (a), (c), and (d) of this section or §465.2 of this title (relating to Supervision), may petition for permission to remediate an area of deficiency. An applicant may not however, petition for the waiver or modification of the requisite doctoral degree or passage of the requisite examinations.

(2) The Council may allow an applicant to remediate a deficiency identified in paragraph (1) of this subsection if the applicant can demonstrate:

(A) the prerequisite is not mandated by federal law, the state constitution or statute, or 22 TAC Part 41; and

(B) the remediation would not adversely affect the public welfare.

(3) The Council may approve or deny a petition under this subsection, and in the case of approval, may condition the approval on reasonable terms and conditions designed to ensure the applicant's education, training, and experience provide reasonable assurance that the applicant has the knowledge and skills necessary for entry-level practice as a licensed psychologist.

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

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Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

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For further information, please call: (512) 305-7706



PART 39. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS

CHAPTER 850. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS

The Texas Board of Professional Geoscientists (TBPG) adopts amendments concerning the licensure and regulation of Professional Geoscientists in Texas. TBPG adopts amendments to 22 TAC §§850.10, 850.61 - 850.63, and 850.65 regarding definitions, organization, and responsibilities. These amendments are adopted without changes to the proposed text as published in the October 22, 2021, issue of the *Texas Register* (46 TexReg 7160). The rules will not be republished.

Adopted amendments to TBPG rules add acronyms and correct wording and grammar for consistency. The adopted amendment to 22 TAC §850.10 clarifies the definition of "Licensee" in subsection 1, adding the terms, "P.G.," "Geoscientist-in-Training (GIT)," and "Geoscience Firm (Firm)" to list out the acronyms that are used throughout the rules. The adopted amendment in 22 TAC §850.61 removes the words "in order" from subsection (d) to be concise. The adopted amendment in 22 TAC §850.62 capitalizes the word "Firm" in two instances when referring to a registered geoscience firm. The adopted amendment in 22 TAC §850.63 adds the word "in" for clarity and consistency in subsection (a). The adopted amendment in 22 TAC §850.65 replaces the word "as" with "at" to correct and clarify the sentence.

The public benefit anticipated as a result of enforcing or administering the sections includes ensuring that TBPG rules are clear and consistent as they relate to geoscience licensure in Texas.

One comment was received from an individual regarding the proposed amendments, in favor of the changes.

SUBCHAPTER A. AUTHORITY AND DEFINITIONS

22 TAC §850.10

These sections are adopted under the Texas Geoscience Practice Act, Occupations Code §1002.151, which authorizes the Board to adopt and enforce all rules consistent with the Act as necessary for the performance of its duties.

These sections affect the Texas Geoscience Practice Act, Occupations Code §1002.002.

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

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Rene Truan

Executive Director

Texas Board of Professional Geoscientists

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For further information, please call: (512) 936-4408



SUBCHAPTER B. ORGANIZATION AND RESPONSIBILITIES

22 TAC §§850.61 - 850.63, 850.65

This section is adopted under the Texas Geoscience Practice Act, Occupations Code §1002.151, which authorizes the Board to adopt and enforce all rules consistent with the Act as necessary for the performance of its duties.

This section affects the Texas Administrative Procedure Act, Government Code §2001.059, regarding meetings; Government Code §2001.351, regarding firm registration; Government Code §§2001.401 - 2001.457, regarding disciplinary action and administrative penalties; and Government Code §2001.021, regarding petition for adoption of rules.

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

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Executive Director

Texas Board of Professional Geoscientists

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For further information, please call: (512) 936-4408



CHAPTER 851. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS LICENSING AND ENFORCEMENT RULES

The Texas Board of Professional Geoscientists (TBPG) adopts amendments to rules and repeals concerning the licensure and regulation of Professional Geoscientists in Texas. TBPG adopts amendments to 22 TAC §§851.10, 851.20 - 851.22, 851.28 - 851.32, 851.40, 851.43, 851.85, 851.101 - 851.106, 851.108, 851.109, 851.111 - 851.113, 851.151 - 851.153, 851.156 - 851.159, 851.203, 851.204, 851.220 regarding TBPG licensing and enforcement rules. TBPG also repeals 22 TAC §851.83 regarding temporary exemption of certain licensees from continuing education requirements, and 22 TAC §851.154 regarding student loan default being ground for nonrenewal of license. These amendments and repeals are adopted without changes to the proposed text as published in the October 22, 2021, issue of the *Texas Register* (46 TexReg 7162) and will not be republished.

TBPG is now adopting these amendments and repeals to its rules to make clarifications and changes and to correct wording and grammar. The adopted amendments clarify definitions regarding geoscience firms, remove a definition for a sole proprietor, and add a definition for a sole practitioner. The adopted amendment to 851.30 modifies the application process for geoscience firms to now require a federal employer identification number (EIN) instead of the previous requirement for a certificate of authority from the Office of the Secretary of State. This modification will assist in streamlining the process for registrants and it will be more consistent with other licensing agencies in the state of Texas. The adopted amendments add TBPG's new examination waiver policy for P.G. applicants in the Soil Science discipline. Adopted amendments make changes throughout the rules to remove the name "National Association of State Board of Geology (ASBOG®)" where it appears and replace it with the shortened name "ASBOG®" when referring to the provider of the Geology Fundamentals and Practice exams. Other adopted changes throughout the rules capitalize the word "Firm" when it refers to a registered geoscience firm, change the phrase "public health, safety, and welfare" for consistency, add acronyms where possible, and correct wording and grammar for accuracy.

Adopted amendment to 851.10 clarifies the definition of "Geoscience Firm," removes the definition of "Sole Proprietor," and adds a definition for "Sole Practitioner." Other changes to the definitions include adding acronyms for "P.G." and "GIT," removing unnecessary words, and correcting wording and grammar for consistency.

Adopted changes to 851.20 remove a reference to NAFTA and change it to refer to "the U.S.-Mexico-Canada Agreement (USMCA) in subsection (h). Adopted amendment to 851.21 revises the name "National Association of State Boards of Geology (ASBOG®)" to be "ASBOG®" to reflect ASBOG's shortened name. Adopted amendment to 851.22 removes unnecessary wording in subsection (a), modifies the name for "Form VI-Request for Waiver of Licensing Requirement - Board Policy and Procedures," and renumbers the section. Other changes include adding TBPG's new examination waiver policy for P.G. applicants in the Soil Science discipline and revising the name "National Association of State Boards of Geology (ASBOG®)" to be "ASBOG®" to reflect ASBOG's shortened name. Adopted amendment to 851.28 adds wording in subsection (a) to indicate that renewal notices that are sent to licensees will

be sent via mail "or email" at least 60 days prior to the license expiration date. Adopted amendment to 851.29 removes the term "in order" in multiple instances and clarifies subsection (b)(3) regarding licensure in another jurisdiction or country that is issued either "without exam or with a similar exam" for clarity. Adopted amendment to 851.30 streamlines the application process for firm registration so as to now require a federal employer identification number (EIN) instead of a certificate of authority from the Office of the Secretary of State; the amendment capitalizes the word "Firm" when referring to a registered geoscience firm; it makes changes to the name "ASBOG®" to reflect ASBOG's shortened name; removes unnecessary definition for "certificant;" it clarifies the definition for Council of Soil Scientist Examiners; and renumbers the section accordingly. Adopted amendment to 851.31 renames the section to be: "Temporary P.G. License and Temporary Firm Registration" and adds language for a firm that wishes to temporarily engage in the public practice of geoscience in this state to be able to apply for temporary firm registration in Texas if it meets certain requirements. Adopted amendment to 851.32 revises the name "National Association of State Boards of Geology (ASBOG®)" to be "ASBOG®" to reflect ASBOG's shortened name in subsection (b) (4) (A). Adopted amendment to 851.43 revises subsection (c) to show that "A GIT is exempt from the continuing education requirement during the first renewal period. The continuing education requirement must be met in subsequent renewals." Rule 851.83 is repealed. Adopted amendment to 851.85 rephrases the term "public health, safety, and welfare" for consistency, and it replaces the word "waive" in subsection (b) (2) with the term "temporarily suspend" for accuracy.

Adopted amendment to 851.101 replaces the term "Professional Geoscientist" with the acronym "P.G." and replaces the term "Geoscientist-in-Training" with the term "GIT" in multiple places. The change also replaces the term "Geoscience Firm" with the word "Firm." Other changes include removing the phrase "or is providing such service on behalf of themselves or some other organization for which their services are provided at no cost," when referring to professional geoscience services rendered. Adopted amendment to 851.102 cleans up the language in subsection (c) so that it reads, "A Professional Geoscientist or a Geoscience Firm shall not engage in conduct or perform professional geoscience services characterized by Gross Incompetence including work that evidenced an inability or lack of skill or knowledge necessary to discharge the duty and responsibility required of a Professional Geoscientist or Geoscience Firm; or evidenced by an extreme lack of knowledge of, or an inability or unwillingness to apply, the principles or skills generally expected of a reasonably prudent Professional Geoscientist or Geoscience Firm." Adopted amendment to 851.103 cleans up the language in subsection (a) so that it reads, "A Professional Geoscientist or Geoscience Firm shall not practice geoscience in any manner that, when measured by generally accepted geoscience standards or procedures, does or is reasonably likely to result in the endangerment of public health, safety, or welfare. Such practice is deemed to be "reckless." Adopted changes to subsection (b) (3) revise the sentence so that it reads, "Action which demonstrates a conscious disregard for compliance with a statute, regulation, code, ordinance, or recognized standard applicable to a particular project when such disregard jeopardizes or has the potential to jeopardize public health, safety, or welfare." Adopted amendment to 851.104 removes the phrase "an act" in subsection (a), and replaces the term "government funded" with "government-funded" for accuracy. Adopted changes also rephrase the term "public health, safety,

and welfare" in subsections (f) and (h) for consistency. Adopted amendment to 851.105 replaces the word "which" with "that" for accuracy, removes the phrase, "of the Professional Geoscientist, the Geoscientist-in-Training, or Geoscience Firm" because it is unnecessary in the sentence, and replaces the terms "Professional Geoscientist, Geoscientist-in-Training, or Geoscience Firm" with the acronyms "P.G., GIT, or Firm." Adopted amendment to 851.106 removes the word "which" in subsection (b) (3) and replaces it with the word "that," and removes the term "in order" in subsection (g). Adopted amendment to 851.108 removes the words "Texas Board of Professional Geologists (TBPG)" and replaces it with the acronym "TBPG." Adopted amendment to 851.109 removes the phrase "it is found by" in subsection (a), and replaces it with the word "finds." Adopted changes in subsection (a) also remove the terms "Act or the rules of the TBPG" and replace it with "TBPG Act or rules." Adopted changes also rephrase the term "public health, safety, and welfare" in subsection (b), and remove the term "In order to" and replace with "To" in subsection (c) for accuracy and consistency. Adopted amendment to 851.111 rephrases the term "public health, safety, and welfare" in subsection (a), and adds the term "GIT" in subsection (c), when referring to "A Professional Geoscientist, GIT, or Geoscience Firm shall exercise reasonable care to prevent unauthorized disclosure or use of private information or confidences concerning a client or employer by the Professional Geoscientist's or Geoscience Firm's employees and associates." Adopted amendment to 851.112 simply rewords the rule.

Adopted amendment to 851.151 revises subsection (a)(2)(B) to show that unless a person is licensed by TBPG, a person may not otherwise represent to the public that the person is qualified to: "Engage in the practice of geoscience for the public, including individuals, corporations, governments or courts." It also corrects punctuation. Adopted amendment to 851.152 capitalizes the word "Firm" in several places, removes the entire subsection (b) because this information is already included in 22 TAC 851.10 under the definition of a Geoscience Firm, and renumbers the subsection. It also removes the term "sole proprietor" in previous subsection (d), replacing it with the term "sole practitioner," and it removes the term "non-exempt" when referring to the public practice of geoscience. Adopted amendment to 851.153 adds the phrase "including GITs" in the statement that "Professional Geoscientists shall perform or directly supervise the geoscience services of any subordinates, including GITs." Rule 851.154 is repealed to be consistent with a statutory change that no longer supports the board taking disciplinary action against a person on the basis that the person defaulted on a student loan. Adopted amendment to 851.156 revises a sentence in subsection (c) to read, "A Professional Geoscientist shall seal only documents that contain geoscience services performed by or under the Professional Geoscientist's direct supervision." In subsection (d), changes are made to rephrase the term "public health, safety, and welfare" for consistency. In subsection (g)(1)(B), the term "his/her" is replaced with the term "the Professional Geoscientist's." In subsection (j), the term "insure" is replaced with the term "ensure" for accuracy, and the term "his/her" is replaced with "the Professional Geoscientist's." Previous subsection (k) has been separated into two sections, existing subsection (k) and new subsection (l), and changes are made so that the word "their" is replaced with the term "a P.G.'s," when referring to documents released from a P.G.'s control, and the section is renumbered. Newly re-sequenced subsection (o) rephrases the term "Professional Geoscientist(s)," and newly re-sequenced subsection (u) adds the word "subsequently." Adopted amendment to

851.157 rephrases a sentence in subsection (e)(2) regarding the two types of complaints and investigations to read: "Complaints and investigations that are initiated by the Board staff or an Appointed Board Member as a result of information that may indicate a violation that becomes known to the Board staff or an Appointed Board Member." Adopted amendment to 851.158 rephrases subsection (1)(l) to read that staff have the option to: "Dismiss, with or without advisement, complaints that are meritless, non-jurisdictional, or that do not involve a threat or potential threat to public health, safety, and welfare, with the exception of complaints that involve violations of the continuing education requirement." Adopted changes also remove the word "and" in subsection (3)(B)(ii). Adopted amendment to 851.159 adds commas in subsection (a)(5) for accuracy, replaces the word "corporation" with the word "firm" throughout the rule, removes the word "or" in subsection (b)(10) and (c)(8), and rephrases "public health, safety, and welfare" throughout the rule for consistency.

Adopted amendment to 851.203 removes the word "the" before "TBPG" in subsection (f)(3). Adopted amendment to 851.204 adds a comma in subsection (e) before the word, "if any." Adopted amendment to 851.220 removes the term "the Board" in two places and replaces it with "TBPG."

The public benefit anticipated as a result of enforcing or administering the sections includes ensuring that TBPG rules are clear and consistent as they relate to geoscience licensure in Texas.

One comment was received from an individual regarding the proposed amendments, in favor of the changes.

SUBCHAPTER A. DEFINITIONS

22 TAC §851.10

This section is adopted under the Texas Geoscience Practice Act, Occupations Code §1002.151, which authorizes the Board to adopt and enforce all rules consistent with the Act as necessary for the performance of its duties.

This section affects the Texas Geoscience Practice Act, Occupations Code §§1002.002 and 1002.151.

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

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Rene Truan
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SUBCHAPTER B. P.G. LICENSING, FIRM REGISTRATION, AND GIT CERTIFICATION

22 TAC §§851.20 - 851.22, 851.28 - 851.32, 851.40, 851.43, 851.85

These sections are adopted under the Texas Geoscience Practice Act, Occupations Code §1002.151, which authorizes the

Board to adopt and enforce all rules consistent with the Act as necessary for the performance of its duties; §1002.255, which authorizes the Board to establish license eligibility requirements; §1002.259, which authorizes the Board to waive certain requirements for licensure; §1002.261, which authorizes the Board to issue a license to applicants who meet the requirements of licensure; §1002.351, which authorizes the Board to regulate the public practice of geoscience by a firm or corporation; and §1002.352, which authorizes the Board to establish criteria for geoscientists-in-training.

These sections affect the Texas Geoscience Practice Act, Occupations Code §§1002.151, 1002.154, 1002.253, 1002.254, 1002.255, 1002.256, 1002.257, 1002.258, 1002.259, 1002.261, 1002.262, 1002.301, 1002.302, 1002.351, and 1002.352.

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

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Rene Truan
Executive Director
Texas Board of Professional Geoscientists
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For further information, please call: (512) 936-4408



22 TAC §851.83

This section is adopted under the Texas Geoscience Practice Act, Occupations Code §1002.151, which authorizes the Board to adopt and enforce all rules consistent with the Act as necessary for the performance of its duties; and §1002.255, which authorizes the Board to establish license eligibility requirements; §1002.259, which authorizes the Board to waive certain requirements for licensure.

This section affects the Texas Geoscience Practice Act, Occupations Code §§1002.151, 1002.154, 1002.253, 1002.254, 1002.255, 1002.256, 1002.257, 1002.258, 1002.259, 1002.261, 1002.262, 1002.301, 1002.302, 1002.351, and 1002.352.

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SUBCHAPTER C. CODE OF PROFESSIONAL CONDUCT

22 TAC §§851.101 - 851.106, 851.108, 851.109, 851.111 - 851.113

This section is adopted under the Texas Geoscience Practice Act, Occupations Code §1002.151, which authorizes the Board to adopt and enforce all rules and regulations consistent with the Act as necessary for the performance of its duties, and §1005.153, which authorizes the Board to adopt a code of professional conduct that is binding on all license holders under this chapter.

These sections affect the Texas Geoscience Practice Act, Occupations Code §§1002.151 and 1002.153.

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

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Executive Director

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For further information, please call: (512) 936-4408



SUBCHAPTER D. COMPLIANCE AND ENFORCEMENT

22 TAC §§851.151 - 851.153, 851.156 - 851.159

This section is adopted under the Texas Geoscience Practice Act, Occupations Code §1002.151, which authorizes the Board to adopt and enforce all rules consistent with the Act as necessary for the performance of its duties; under 1002.154, which authorizes the Board to enforce this chapter; under 1002.202, which authorizes the Board to accept or initiate a complaint; 1002.351, which authorizes the public practice of geoscience by a firm or corporation; 1002.402, which authorizes the Board to impose appropriate sanctions; 1002.403, which authorizes the Board to take certain disciplinary actions.

These sections affect the Texas Geoscience Practice Act, Occupations Code §§1002.151, 1002.154, 1002.202, 1002.351, 1002.402, 1002.403; 1002.454; and Texas Occupations Code, Chapter 53.

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

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Rene Truan

Executive Director

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For further information, please call: (512) 936-4408



22 TAC §851.154

This section is adopted under the Texas Geoscience Practice Act, Occupations Code §1002.151, which authorizes the Board to adopt and enforce all rules consistent with the Act as necessary for the performance of its duties; and under 1002.154, which authorizes the Board to enforce this chapter.

This section affects the Texas Geoscience Practice Act, Occupations Code §§1002.151, 1002.154, 1002.202, 1002.351, 1002.402, 1002.403; 1002.454; and Texas Occupations Code, Chapter 53.

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

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Executive Director

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For further information, please call: (512) 936-4408



SUBCHAPTER E. HEARINGS--CONTESTED CASES AND JUDICIAL REVIEW

22 TAC §§851.203, 851.204, 851.220

This section is adopted under the Texas Geoscience Practice Act, Occupations Code §1002.151, which authorizes the Board to adopt and enforce all rules consistent with the Act as necessary for the performance of its duties, and the regulation of the practice of geoscience in this state; 1002.404, which authorizes a person's right to a hearing.

These sections affect the Texas Geoscience Practice Act, Occupations Code §§1002.151 and 1002.404.

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

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Rene Truan
Executive Director
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For further information, please call: (512) 936-4408

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**SUBCHAPTER B. P.G. LICENSING, FIRM
REGISTRATION, AND GIT CERTIFICATION**

22 TAC §851.80

The Texas Board of Professional Geoscientists (TBPG) adopts an amendment concerning the licensure and regulation of Professional Geoscientists in Texas. TBPG adopts an amendment to 22 TAC §851.80 regarding fees, by adding a fee for temporary firm registration in Texas. This amendment is adopted without changes to the proposed text as published in the December 31, 2021, issue of the *Texas Register* (46 TexReg 9181). The rule will not be republished.

The adopted amendment will allow the TBPG to charge a registration fee to a firm to temporarily be registered as a Geoscience Firm in Texas. The new fee, which is lower than the fee for a regular firm registration, would provide an incentive to qualified firms and ventures to engage in short term project(s) in the state.

The public benefit anticipated as a result of enforcing or administering the section includes the encouragement of economic activity in the state by ensuring that firms that wish to perform geoscience services to the public in Texas on a limited basis can apply for and receive a temporary firm registration to do so after showing they meet applicable requirements.

No public comments were received regarding the proposal.

This section is adopted under the Texas Geoscience Practice Act, Occupations Code §1002.151, which authorizes the Board to adopt and enforce all rules and regulations consistent with the Act as necessary for the performance of its duties, and the regulation of the practice of geoscience in this state; §1002.152, which authorizes the board to set reasonable and necessary fees to be charged to applicants and license holders; and Occupations Code §1002.351, which authorizes the Board to adopt rules related to the public practice of geoscience by a firm or corporation.

This section affects the Texas Geoscience Practice Act, Occupations Code §§1002.151 and 1002.351.

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

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Rene Truan
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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

**PART 1. TEXAS DEPARTMENT OF
PUBLIC SAFETY**

**CHAPTER 6. LICENSE TO CARRY
HANDGUNS**

SUBCHAPTER A. GENERAL PROVISIONS

37 TAC §6.2

The Texas Department of Public Safety (the department) adopts new §6.2, concerning Approved First Responder Handgun Storage Device. This rule is adopted without changes to the proposed text as published in the January 7, 2022, issue of the *Texas Register* (47 TexReg 17) and will not be republished.

New §6.2 is necessary to implement House Bill 1069, 87th Legislative Session. House Bill 1069 requires the department approve by rule the devices a first responder may use to secure and store a handgun while on duty, if the first responder is required to enter a location where carrying a handgun is prohibited by federal law or otherwise. New §6.2 provides the requirements such devices must meet in order to be approved by the department.

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Government Code §411.184 (added by House Bill 1067, 87th Leg. Sess.) which requires the director to adopt rules establishing minimum standards for an initial training course and an annual continuing education course for first responders who hold licenses to carry.

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 February 11, 2022.

TRD-202200468
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: March 3, 2022
Proposal publication date: January 7, 2022
For further information, please call: (512) 424-5848

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**SUBCHAPTER B. ELIGIBILITY AND
APPLICATION PROCEDURES FOR A LICENSE
TO CARRY A HANDGUN**

37 TAC §6.14, §6.18

The Texas Department of Public Safety (the department) adopts amendments to §6.14, concerning Proficiency Requirements and proposed new §6.18, concerning First Responder Certifica-

tion; Renewal of Certification. These rules are adopted without changes to the proposed text as published in the January 7, 2022, issue of the *Texas Register* (47 TexReg 18) and will not be republished.

Proposed amendments to §6.14 extend the time period during which applicants for a license to carry can submit their certificates of training from one year to two. Proposed new §6.18 implements House Bill 1069, 87th Legislative Session. House Bill 1069 requires the department to establish by rule minimum standards for a training course to be completed by first responders who also hold a license to carry, the successful completion of which authorizes certain first responders under certain conditions to carry a handgun while on duty. New §6.18 provides the procedures for the issuance and renewal of the first responder certification.

No comments were received regarding the adoption of these rules.

These rules are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Government Code §411.184 (added by House Bill 1067, 87th Leg. Sess.) which requires the director to adopt rules establishing minimum standards for an initial training course and an annual continuing education course for first responders who hold licenses to carry.

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

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D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



SUBCHAPTER F. SUSPENSION AND REVOCATION PROCEDURES

37 TAC §6.95, §6.96

The Texas Department of Public Safety (the department) adopts new §6.95 and §6.96, concerning First Responder Instructor Certification. These rules are adopted without changes to the proposed text as published in the January 7, 2022, issue of the *Texas Register* (47 TexReg 19) and will not be republished.

These new rules are necessary to implement House Bill 1069, 87th Legislative Session. House Bill 1069 requires the department establish by rule minimum standards for a training course to be completed by first responders who also hold a license to carry, the successful completion of which authorizes certain first responders under certain conditions to carry a handgun while on duty. New §6.95 and §6.96 provide the application procedures and training requirements to enable qualified license to carry handgun instructors to obtain the training and certification

required to offer the first responder training course to first responders who hold a license to carry.

No comments were received regarding the adoption of these rules.

These rules are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Government Code §411.184 (added by House Bill 1067, 87th Leg. Sess.) which requires the director to adopt rules establishing minimum standards for an initial training course and an annual continuing education course for first responders who hold licenses to carry.

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

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D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



CHAPTER 15. DRIVER LICENSE RULES

SUBCHAPTER B. APPLICATION REQUIREMENTS--ORIGINAL, RENEWAL, DUPLICATE, IDENTIFICATION CERTIFICATES

37 TAC §15.25

The Texas Department of Public Safety (the department) adopts amendments to §15.25, concerning Address. This rule is adopted without changes to the proposed text as published in the January 7, 2022, issue of the *Texas Register* (47 TexReg 20) and will not be republished.

The Eighty-seventh Texas Legislature enacted House Bill 368, which amended Texas Transportation Code, §521.1211 and Senate Bill 1134, which amended Texas Transportation Code, §521.054, requiring the department to provide eligible applicants (prosecutors, federal bankruptcy judges, U.S. Marshals, U.S. Attorneys, and family members) with the option of providing an alternate address for display on their driver license or identification card. The amendments to §15.25 detail the process to be followed for an eligible applicant interested in providing an alternate address.

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code.

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

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D. Phillip Adkins
General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



SUBCHAPTER K. INTERAGENCY AGREEMENTS

37 TAC §15.171

The Texas Department of Public Safety (the department) adopts amendments to §15.171, concerning Identifying Document for Offenders/Memorandum of Understanding. This rule is adopted without changes to the proposed text as published in the January 7, 2022, issue of the *Texas Register* (47 TexReg 22) and will not be republished.

The Eighty-seventh Texas Legislature enacted House Bill 4544, which amended Texas Human Resources Code, §245.0536, requiring the department, the Texas Juvenile Justice Department (TJJD), and the Department of State Health Services (DSHS) by rule, to adopt a memorandum of understanding that establishes their respective responsibilities with respect to the issuance of state identification to a minor offender, prior to release, including responsibilities related to the verification of the person's identity.

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code.

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

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D. Phillip Adkins
General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 15. TEXAS VETERANS COMMISSION

CHAPTER 462. ENERGY INDUSTRY PROGRAM FOR VETERAN PROFESSIONAL DEVELOPMENT

40 TAC §§462.1 - 462.4

The Texas Veterans Commission (commission) adopts new Chapter 462, concerning Energy Industry Program for Veteran Professional Development, located in Title 40, Part 15, of the Texas Administrative Code. This chapter is adopted without changes to the proposed text as published in the December 3, 2021, issue of the *Texas Register* (46 TexReg 8234) and will not be republished.

The new rules are adopted to reflect the directive by Senate Bill (H.B.) 33, 87th Legislature, Regular Session (2021), which authorizes the commission to assist veterans seeking training in preparation for employment in the energy industry.

The commission received one written comment from Texas 2036 of Dallas, Texas regarding the proposed new rule. Texas 2036 advocates adding rule language in §462.2 to specify various sectors in the definition of the energy industry. Texas 2036 also advocates revising the proposed rule language in §462.3 to redefine the "process" into a "program" and add a requirement that the commission engage in outreach efforts with the energy industry.

The commission considered the public comment in its entirety. The commission ultimately decided against altering or expanding rule §462.2 to adhere to legal requirements as well as legislative intent provided by House Bill 33.

The new rules are adopted under Texas Government Code 434.010, which grants the commission the authority to establish rules that it considers necessary for the effective administration of the agency.

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 February 10, 2022.

TRD-202200459

Houston John Goodell
General Counsel

Texas Veterans Commission

Effective date: March 2, 2022

Proposal publication date: December 3, 2021

For further information, please call: (512) 463-3288



CHAPTER 463. VETERAN VERIFICATION LETTER

40 TAC §§463.1 - 463.4

The Texas Veterans Commission (commission) adopts the new Chapter 463, §§463.1 - 463.4, concerning the Veteran Verification Letter, located in Title 40, Part 15, of the Texas Administra-

tive Code. This chapter is adopted without changes to the proposed text as published in the December 3, 2021, issue of the *Texas Register* (46 TexReg 8235) and will not be republished.

The new rules are adopted at the direction of Senate Bill (S.B.) 938, 87th Legislature, Regular Session (2021), regarding Section 171.005 (b) of the Texas Tax Code, authorizing the commission to provide a person who meets the requirements of Subsection (a)(1) written verification of that status in a form required by the comptroller.

No comments were received regarding the proposed amendments.

The new rules are adopted under Texas Government Code 434.010, granting the commission the authority to establish rules that it considers necessary for the effective administration of the agency.

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

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TRD-202200460
Houston John Goodell
General Counsel
Texas Veterans Commission
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For further information, please call: (512) 463-3288



CHAPTER 464. CITIZENSHIP ASSISTANCE FOR VETERANS

40 TAC §§464.1 - 464.3

The Texas Veterans Commission (commission) adopts the new Chapter 464, §§464.1 - 464.3, concerning the Citizenship Assistance for Veterans, located in Title 40, Part 15, of the Texas Administrative Code. This chapter is adopted without changes to the proposed text as published in the December 3, 2021, issue of the *Texas Register* (46 TexReg 8237) and will not be republished.

The new rules are adopted at the direction of Senate Bill (S.B.) 886, 87th Legislature, Regular Session (2021), which the commission shall evaluate the veteran's citizenship status in order to (1) educate and direct veterans in becoming United States citizens; and (2) facilitate the veteran's naturalization process.

No comments were received regarding the proposed amendments.

The new rules are adopted under Texas Government Code 434.010, granting the commission the authority to establish rules that it considers necessary for the effective administration of the agency.

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

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TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 215. MOTOR VEHICLE DISTRIBUTION

SUBCHAPTER E. GENERAL DISTINGUISHING NUMBERS

43 TAC §§215.152, §215.158

INTRODUCTION. The Texas Department of Motor Vehicles (department) adopts amendments to 43 TAC §215.152 and §215.158, concerning the maximum number of temporary tags that a dealer or converter may issue from the temporary tag database. The amendments are necessary to implement amended Transportation Code §503.0626 and §503.0631 and new §503.0632(a)-(e) under House Bill 3927, 87th Legislature, Regular Session (2021). The department adopts §215.152 with changes to the proposed text as published in the November 12, 2021, issue of the *Texas Register* (46 TexReg 7757); §215.152 will be republished. The department adopts §215.158 without changes to the proposed text as published in the November 12, 2021, issue of the *Texas Register* (46 TexReg 7757); §215.158 will not be republished. Sections 215.152 and 215.158 have been adopted for immediate effect.

The department has also adopted amendments to 43 TAC §§215.150, 215.153, 215.154, and 215.155 concerning access to the temporary tag database and temporary tag requirements and new 43 TAC §215.505 concerning denial of access to the temporary tag database in -the February 11, 2022, issue of the *Texas Register*.

REASONED JUSTIFICATION. House Bill 3927 amended Transportation Code and added new §503.0632(a)-(e) to authorize the department to establish by rule the maximum number of temporary tags that a dealer or converter may obtain in a calendar year under §§503.062, 503.0625, or 503.063. The maximum tag limit adopted amendments in §215.152 are intended to prevent dealers and converters from fraudulently issuing an excessive amount of temporary tags while allowing legitimate businesses to continue operations unimpacted.

The department met with the Motor Vehicle Industry Regulation Advisory Committee in considering comments submitted on the proposal. The Motor Vehicle Industry Regulation Advisory Committee (MVIAC) also met twice in considering the proposal. The department appreciates the committee members' serious consideration of the issues presented by HB 3927 and the members' comments.

The department published the proposal for comment in the *Texas Register* on November 20, 2021. The department also published on that day proposals for amendments to 43 TAC §§215.150, 215.151, 215.153, 215.154, and 215.155 concerning access to the temporary tag database and temporary tag requirements and new 43 TAC §215.505 concerning denial of access to the temporary tag database; and 43 TAC §§217.2, 217.4, 217.23, 217.28, 217.36, 217.45, 217.46, and 217.89 concerning the implementation of SB 876. Some commenters chose to make comments on more than one proposal in one submission or not specify the proposal that they were commenting on. The department has considered all timely received comments in respect to the proposal the commenter stated that they were commenting on, or to which the comment could apply. The department has not excluded any comments because the submission included, referred to, or could apply to multiple proposals.

The department analyzed data from multiple department systems and developed a model that considers the factors identified in §503.0632(b) to greatly reduce the volume of fraudulent tag issuance yet balances the business needs of legitimate dealers and converters. Implementation of setting the maximum tag limits under HB 3927 involves programming to multiple department systems.

The department recognizes that implementing fraud prevention and detection mechanisms should not adversely impact dealers or converters that are not fraudulently issuing temporary tags. The model developed by the department is intended to provide dealers or converters with the number of temporary tags they need to operate without having to request additional tags. Also, by using existing department systems, the adopted amendments add no additional costs for a dealer or converter and create no new required activities or reports for dealers.

The department also recognizes all dealers and converters are not the same. As such, the adopted amendments consider actual temporary tag issuance specific to each established dealer and converter as a minimum allotment and then provides an increase based on each dealer's and converter's licensing tenure, as well as an increase for growth, resulting in a maximum number of temporary tags unique to each dealer and converter.

New license holders have been considered as well, and the adopted amendments provide an initial allotment of temporary tags based on the type of dealer and whether the dealer or converter is a first-time licensee, an existing licensee moving locations, or an established dealer moving into the state. Additional considerations include buy - sell arrangements, inheritances, or an existing licensee establishing an additional location. All considerations will ensure a maximum tag limit appropriate to each situation.

The following paragraphs address the amendments in this adoption.

The amendment to §215.152(b)(1) is a response to fraudulent activity and clarifies that information entered to obtain a temporary tag must be true and accurate.

The amendments to §215.152 add new subsections (c)-(l) to establish the maximum number of temporary tags that may be allotted to a dealer or converter. In summary, §215.152(c)-(e) implement Transportation Code §503.0632(b) and establish the calculated number of temporary tags that a dealer or converter past its initial license period will receive from the department with no dealer or converter action. Section 215.152(f) establishes a

maximum tag limit for newly licensed dealers and converters. Section 215.152(i) creates the process for dealers to request additional tags. Section 215.152(g), (h), and (j) - (l) address general matters related to the maximum number of temporary tags.

Section 215.152(c) establishes the calculation for determining the number of buyer's temporary tags a dealer will receive.

Section 215.152(c)(1) creates the base number of the calculation from activity related to sales implementing §503.0632(b)(1)(B). The base starts with the greater of the dealer's highest number of in-state buyer temporary tags issued or title transactions recorded in the Registration and Title System (RTS) over the prior three fiscal years. The department is using state fiscal years, because it will allow the department time to collect data, determine the multipliers, test the system, and be ready to release the maximum limits prior to the January 1st calendar year implementation date. All months will be counted towards the maximum limit although a lag will exist.

To limit potential fraudulent action, the department will limit the number of in-state buyer's tags issued in the calculation to twice the number of RTS transactions. The department then adds to the in-state total the number of out-of-state temporary tags issued to set the base. The department revised §215.152(c)(1) based on comments.

The text has been amended to clarify that only the number of in-state buyer's temporary tags issued will be used in determining if the amount exceeds two times the number of in-state title transactions. The number of buyer's temporary tag issued for out-of-state sales will not be included in the limitation analysis.

The allowed number of issued in-state buyer's temporary tags, or title transactions if it is greater, will then be added to the number of buyer's temporary tags issued for out-of-state sales to provide the base amount of temporary tags. That total will be increased by the growth rate and time in business multipliers.

The department takes this action because for most dealers the number of temporary tags issued for out-of-state sales is not the majority of the dealer's business. Also, while the limit analysis does provide a tool to identify potential unauthorized use of buyer's temporary tag, the department does not have access to a similar readily available tool for out-of-state sales. The department can require dealers to present sales documentation and records; however, that would be burdensome for legitimate dealers to present on an annual basis without any related issue of unauthorized use of temporary tags.

The change will also clarify that the amount will be the greatest number of buyer's temporary tags issued in one fiscal year of the previous three fiscal years.

The changes do not add additional requirements or costs or affect persons not on notice of the proposal.

Section 215.152(c)(2) then multiplies the base total by a time in business factor to implement §503.0632(b)(1)(A). The anticipated factor is based on the percentage of years the dealer has been in business over the last 10 years. In response to comments the department has amended the text to clarify that the factor will increase by 10% each year. For example, a dealer that has been in business for five years would receive a 50% addition to the base. Thus, a hypothetical dealer that had a calculated base of 100 tags and was in business for five years would be allotted 150 buyer's tags. The change does not add additional requirements or costs, or affect persons not on notice of the proposal.

Section 215.152(c)(3) then multiplies the base total after the addition of the time in business factor by a determined market growth rate factor of not less than zero to implement §503.0632(b)(1)(C). In response to comments, the department changed the calculation for determining a dealer's growth rate for buyer's tags. The multiplier will be the greater of the dealer's actual growth rate or the actual statewide growth rate. The growth rate for an individual dealer will be determined by calculating the growth rate of the license holder's title transactions and adding that growth rate to the license holder's growth rate for out-of-state buyer's tags issued. The statewide actual growth rate will be the growth rate in the number of title transactions and out-of-state buyer's tags issued statewide. To avoid having unusual factors result in excessively large growth rates, including new licensees being licensed for part of the prior fiscal year, the department has limited the actual growth rate to 200 percent. The cap does not prevent a license holder from requesting additional tags if necessary under §217.152(i). The changes do not add additional requirements or costs, or affect persons not on notice of the proposal.

Section 215.152(c)(4) is used here as a remedy if the standard formula is not working based on sudden changes in the market to implement §503.0632(b)(2) - (4). This provision allows the department to increase the number of buyer's temporary tags for all dealers in the state, or in a limited area, if the standard formula is lagging behind. For example, a sudden increase in sales after a slow market period may require a separate temporary increase in the number of buyer's temporary tags for all dealers until the increased sales data can be incorporated into the standard calculation. Remedies for individual dealer situations are addressed in §215.152(g), (h), and (i).

Section 215.152(d) and (e) apply to dealer and converter temporary tags. The subsections are similar in construction to the §215.152(c) in that the subsections use prior temporary tag data to establish a base and then increase the allotment with multipliers based on time in business and growth rate. Section 215.152(d)(2) and (e)(2) have been amended based on comments similarly to §215.152(c)(2) to state that the time in business multiplier increases by 10 percent each year. Section 215.152(d)(3) and (e)(3) have been amended similarly to 215.152(c)(3) to state that the growth rate multiplier is the greater of the license holder's actual growth rate or the statewide actual growth rate. As in §217.152(c)(3), the license holder's actual growth rate is limited to 200 percent. The changes do not add additional requirements or costs, or affect persons not on notice of the proposal. Also, §215.152(d) and (e) have a similar provision to §215.152(c)(4) to adjust allocations in a rapidly changing market.

Based on comments, the discussions of the MVIRAC, and board action, the department has changed proposed §215.152(f), (g), and (h).

Section 215.152(f) establishes the minimum number of allotted buyer, dealer, and converter tags for new licensees. The allotment is by an annual block, because new dealers or converters will have no prior history to establish a base, or time in operation to establish a time in operation or annual growth multiplier. The annual block allotment is not subject to the time in operation or annual growth multiplier. The period of allotment will run through the dealer's or converter's first two-year license period and end the following December 31st. This will provide information to calculate a base, a three-year multiplier, and the annual growth rate multiplier. However, even with this information, many

dealers and converters may see a significant drop in the number allotted temporary tags depending on the actual base number of tags issued and sales.

The department has changed §215.152(f) to confirm that the license holder may present information to the department in the licensing process that the minimum number of temporary tags allotted to the new license holder should be increased. First, the department has added the word "initial" before the word "allocations" and after the word "The" in the second sentence. The statement clarifies that a new dealer is not prohibited from requesting additional temporary tags under §215.152(i).

Section 215.152(f)(1), which applies to franchised dealers is changed to add the statement "unless:

(A) the dealer provides credible information indicating that a greater number of tags is warranted based on anticipated sales, and growth, to include new and used vehicle sales, including information from the manufacturer or distributor, or as otherwise provided in this section; and

(B) if more than 600 temporary tags are determined to be needed based on anticipated sales and growth, the total number of temporary tags needed, including the 600, will be doubled;"

Section 215.152(f)(2), which applies to independent dealers, is modified by adding the statement "unless the dealer provides credible information indicating that a greater number of tags is warranted based on anticipated sales as otherwise provided in this section." Section 215.152(f)(3), which applies to converters, is modified by adding the statement "unless the converter provides credible information indicating that a greater number of tags is warranted based on anticipated sales, including information from the manufacturer or distributor, or as otherwise provided in this section."

The reasons for increasing the number of temporary tags for a new dealer are addressed in §215.152(g) and (h), as changed based on comments.

Proposed §215.152(g) and (h) have been combined and redesignated §215.152(g)(1) and (2). Section 215.152(g)(1) is intended to avoid the situation under §215.152(f) in which an existing dealer or converter could inflate the number of temporary tags they are allotted or be limited in its ability to expand. Section 215.152(g)(1) provides that an existing dealer or converter that is moving its operations from one location to a different location will continue with its allotment of temporary tags. The dealer or converter will not be issued a block allotment under subsection (f). Thus, an existing dealer with less than 300 allowed buyer's tags, cannot inflate its number, and conversely a dealer with more than 300 buyer's tags will not be penalized for making a business decision.

Section 215.152(g)(2) provides that an existing dealer or converter opening an additional location will receive an allotment based on the allotment provided to existing locations. In addition to being redesignated, §215.152(g)(2) has been changed to read "opening an additional location will receive a maximum allotment of temporary tags based on the greater of the allotment provided to existing locations, including franchised dealers opening additional locations for different line makes, or the amount under subsection (f) of this section." The change clarifies that §215.152(g)(2) includes "franchised dealers opening additional locations for different line makes" and revises §215.152(g)(2) by adding "of temporary tags" between "allotment" and "based," and

adding the statement "and not be allocated temporary tags under subsection (f) of this section" to the end of the paragraph.

The department has also added §215.152(g)(3) and (4) to address two additional temporary tag allocation situations. Section 215.152(g)(3) provides that a dealership "purchased as a buy-sell ownership agreement will receive the maximum allotment of temporary tags provided to the location being purchased and not be allocated temporary tags under subsection (f) of this section." Section 215.152(g)(4) provides that a dealership "inherited by will or laws of descent will receive the maximum allotment of temporary tags provided to the location being inherited and not be allocated temporary tags under subsection (f) of this section." License holders may provide information addressing licensing situations otherwise involving retirement or death as allowed in §215.152(h).

Section 215.152(h) is added based on comments and the discussions of the MVIRAC to list additional circumstances under which a new dealer or converter may request additional temporary tags under §215.152(f). The situations each involve a type of circumstance with "some continuity in existing operations that will result in increased sales." The list is

"(1) franchised dealer, manufacturer, or distributor sales expectations;

(2) a change in license required by death or retirement, *except as provided in subsection (g) of this section*;

(3) prior year's sales by a dealership moving into the state; or

(4) other similar change of location or ownership that indicates some continuity in existing operations that will result in increased sales."

The changes to §215.152(f), (g), and (h) are consistent with the department's intent to prevent dealers or converters from having to request additional tags when established sales data is available to the department. The rules contemplate licensees in these scenarios being able to provide additional documentation to obtain an increase beyond the initial allotment. The changes will still allow licensees to request an increase based on the criteria identified, but would not require them to do so and would continue the allotment previously established for the licensee based on the current formula. The changes do not add additional requirements or costs, or affect persons not on notice of the proposal. Further, the changes in §215.152(f), (g), and (h) do not limit a dealer or converter from requesting additional temporary tags under §215.152(i).

Section 215.152(i) establishes the process under which a dealer or converter may request additional temporary tags as required by new Transportation Code §503.0632(d). Section 215.152(i) establishes that the dealer or converter may request additional tags after 50 percent of the calendar year allotment have been used. Also, requests will be made through the eLICENSING system. Just as the goal in establishing the initial allotment of temporary tags is intended to carry the license holder through the year without the need for requesting additional tags, an increase following a request for additional temporary tags will be granted with the intent of providing sufficient additional tags for the remaining calendar year. But should circumstances require, a dealer or converter can request additional tags.

Section 215.152(i)(1) establishes that the dealer or converter is required to demonstrate that the need for additional temporary tags results from business operations, including anticipated needs, as required by §503.0632(c), and lists some types of

information that may be presented, including evidence of factors under §503.0632(b) related to the individual license holder. The list is not exclusive. Section 215.152(i)(2) establishes that the department will consider the information provided but may also consider any additional information that the department considers to be relevant to making a determination. As in §215.152(i)(1), a non-exclusive list of information that the department may consider is listed in §215.152(i)(2).

Section 215.152(i)(3) establishes that the department is not bound to issue only the number of additional temporary tags requested by the dealer or converter and may issue more or less than the request. A decision to grant the request on whole or in part does not constitute a denial of the request. In response to comments and questions for the Regulatory Compliance Division of the Office of the Governor, the department has added the following sentence to clarify that the "*Allocation of additional temporary tags under this paragraph does not limit the dealer's or converter's ability to submit additional requests for more temporary tags.*"

Additionally, the department has amended §215.152(i)(4) to expand on the appeal process. Section 215.152(i)(4) provides that a denied request may be appealed to the director of the department's Motor Vehicle Division. The process, should it be necessary, is intended to be quickly resolved. Further, as addressed in §215.152(i)(4)(E)(i), denial of an appeal does not prevent a license holder from submitting additional requests for temporary tags under the rules. The changes to §215.152(i)(3) and (4) do not add additional requirements or costs, or affect persons not on notice of the proposal.

The director's decision is final. Section 215.152(i)(5) establishes that once a denial is final, a dealer or converter may only submit a subsequent request for additional temporary tags during that calendar year if the dealer or converter is able to provide additional information not considered in the prior request.

Section 215.152(j) provides that an allotment change under §215.152(i) does not result in a change to the base allotment in future years. That number will be calculated under §215.152(c), (d), or (e), or allotted under §215.152(f), (g), or (h). Ultimately if the additional number of temporary tags are used, that number will become the base in the calculation. Section 215.152(k) provides that the department will continue to monitor temporary tag usage that suggests that misuse or fraud has occurred as described in Transportation Code §§503.038, 503.0632(f), or 503.067. Section 215.152(l) provides that unused temporary tags do not roll over to subsequent years. The base calculations will be done annually.

The amendments to §215.158(d) address the changes in Transportation Code §503.0626 and §503.0631 that removed the requirement for the temporary tag databases to be within the department's Vehicle Titles and Registration Division. The department has assigned the function to the department's Motor Vehicle Division. Otherwise, the proposal does not change the process for determining preprinted internet-down tags. The amendments to §215.158 also add new subsection (e), which clarifies that a preprinted internet-down tag will apply against the dealer's maximum number of allotted buyer's tags when the preprinted tag is entered into the temporary tag database as a sale. Preprinting the tags will not reduce the maximum number of allotted buyer's tags.

The department adopts §215.152 and §215.158 for immediate effect to act against continuing temporary tag fraud.

SUMMARY OF COMMENTS.

The department received written comments requesting a change in the proposed text from Senator Bettencourt, Cernosek Wrecker/Deer Park Paint & Body, Representative Harris, Representative Hefner, NCTCOG, TADA, TIADA, Vroom, and 27 individual commenters.

General

Comment:

Multiple commenters stated that the purpose of HB 3927 was to aid law enforcement in stopping the fraud without being onerous to legitimate dealers.

Agency Response:

That department agrees with the commenters and has endeavored to implement HB 3927 in that respect, including the

(1) adoption of maximum tag limits in §215.152 in this adoption as authorized under Transportation Code §503.0632(a)-(e) that sets out a formula designed to provide dealers with more tags than they have used in prior fiscal years and not require any additional reporting on behalf of dealers, while preventing criminals from accessing unlimited numbers of tags; and

(2) in a separate adoption submitted on this day, the adoption of

(a) security requirements for managing user access to the temporary tag database in §215.150 as authorized in Transportation Code §503.0631;

(b) a denial of access process in §215.505 as authorized under Transportation Code §503.0632(f).

Comment:

Multiple commenters asserted that adoption of rules under Transportation Code §503.07632(a) is discretionary, and that the department need not apply the rules to franchised dealers.

Agency Response:

The department agrees that the use of "may" in Transportation Code §503.07632(a) makes the choice to adopt rules discretionary but declines to make a change based on the comment because the statute does not make the application of those rules discretionary after the decision to adopt rules is made. Statute states that the rules apply to dealers and converters. It does not authorize an exception for franchised dealers or state that it only applies to independent dealers.

Comment:

Multiple commenters asserted that the rules create burdensome requirements for license holders and the department; that the department should create exceptions, set forth in a variety of alternative combinations, for license holders that have been in business for a number of years and that are not under suspicion of issuing fraudulent temporary tags for non-existent sales; and that the statute does not require that the rule limit the number of temporary tags of dealers who are not the source of the problem that the statute and rule are intended to address.

Agency response:

The department disagrees with the comments because the comments are not supported by statute, and the rules do not create burdensome requirements for license holders or the department. As such, the department declines to make a change based on the comments.

As previously addressed, Transportation Code §503.0632(a) does not create an exception for certain types of dealers or converters. Following on that Transportation Code §503.07632(b) requires that "The maximum number of temporary tags that the department determines a dealer or converter may obtain under this section must be based on the dealer's or converter's anticipated need for temporary tags." An exception based solely on the number of years the license holder has been in business and the license holder's administrative violations is not "based on the dealer's or converter's anticipated need for temporary tags."

The department also disagrees that the rules create burdensome requirements for dealers and converters. As required by statute, the rules set a calendar year maximum tag limit that requires no action, paperwork, or submissions at all on behalf of existing or new dealers. The formula incorporates the factors laid out in statute by the legislature for existing dealers with a history and establishes a basis for new dealers. Based on comments, the department has expanded and clarified that new licensees may request additional tags at time of licensure if they believe more are needed. All license holders may request additional tags after they have used 50 percent of their annual allocation, but a request is not required. The request for additional temporary tags will be based on the licensee's business operations and anticipated needs as required by statute. Dealers will need to monitor the use of temporary tags and if necessary anticipate a need for additional temporary tags based on Transportation Code §503.0632(c).

As it relates to any burden on the department, the information the department will use to determine basic calendar year maximum tag limits for the approximately 20,000 existing dealers and other license holders is accessible to the department electronically, and the department will programmatically implement the formula by computer to determine each existing license holder's annual allotment. New dealers and converters also have a base limit, but if the license holder requests additional tags, this may be reviewed and determined during the licensing process. As for requests for additional temporary tags, the department has designed the formula with the intent that dealers and converters should not have a need to request additional tags.

In addition, from a practical aspect the commenters suggestion of a time period to obtain unlimited tags raises the concern of what the department has heard of what some are describing as stealth dealers - a dealer that is part of a criminal enterprise of dealers waiting for one to be taken down only to open and continue the criminal activity. A dealer only needs to sell five vehicles a year to maintain its license. Yet under the commenters suggestion, such a dealer with no suspicion of fraudulently obtaining temporary tags would have access to an unlimited number of tags, thousands of which could be issued in a few days.

Also, the criminals to date, would have qualified as a small or micro-business and new entrants to the market. A rule designed or intended to primarily affect these groups without specific legislative authorization is inconsistent with statute. Government Code §2006.001, defines a "micro-business" as having not more than 20 employees, and a "small business" as having fewer than 100 employees or less than \$6 million in annual gross receipts (Emphasis added). This would include the majority of the approximately 20,000 license holders affected by these rules. Government Code §2006.002 requires the department to prepare a regulatory flexibility analysis if a proposed rule has an adverse effect on a small or micro-business. The analysis studies ways

to reduce the impact on a small or micro-business, most often by exemption. In addition, the Regulatory Compliance Division of the Office of the Governor reviews rules to ensure that they do not raise barriers to new market entrants.

Finally, the commenters' request to apply the rules to a license holder based on mere suspicion of fraudulent activity is also not supported by statute. Transportation Code §503.0632 creates two tools for identifying dealers selling temporary tags, by setting maximum tag limits, and denial of access to the temporary tag database. As stated in this response, statute requires the maximum tag limits to be established by rule, apply to a calendar year, and provides for no exemptions for license holder type, size, or administrative history. The denial of access rule authorized under Transportation Code §503.0632(f) is adopted in a separate proposal as §215.505. Statute and rule provide that the department may deny access to the temporary tag database if the department determines that the license holder has fraudulently obtained temporary tags. Neither statute nor rule allow for action based on mere suspicion and the action is denial of access to the database, not imposition of maximum tag limits. Further, establishing a criterion to implement maximum tag limits on a license holder at any point in a calendar year based on mere suspicion could be both burdensome and disruptive to the license holder.

Section 215.152(c) General

Comment:

A commenter supports limiting the number of issued buyer's temporary tags, agent temporary tags, and converter temporary tags as a means to curb or reduce temporary tag fraud.

Agency response:

The department appreciates the supportive comment.

Section 215.152(c) General

Comment:

A commenter recommends that the department set the minimum number of temporary tags at 300 for all small and micro-businesses, because 300 is the minimum used for new businesses, and the complex calculations that are required for determining if the dealership has received the correct number of temporary tags.

Agency Response:

The department agrees that all dealers and converters should have a sufficient number of temporary tags to conduct business and grow; however, the department declines to make a change based on the comment.

The 300 temporary tags allotted annually to new independent dealers is a minimum based on the discussions during the MVIRAC meetings. This number is intended to provide a new dealer with no prior sales history a reasonable number of temporary tags to enter into the business, knowing full well that some may need to request additional tags, and some may never use a tenth of those tags, considering that five sales annually are required to maintain a dealer's license and many dealers fail to meet that requirement. At the end of the first licensing cycle, the dealer will transition to a maximum limit based on the dealer's history, dealer's or statewide growth rate, and tenure as provided in Transportation Code §503.0632(b).

Further, the department does not believe that the calculations are complex or more importantly beyond the ability of any indi-

vidual who can operate a dealership or perform the calculations necessary to complete a sales or financing contract.

Section 215.152(c) General

Comment:

Three commenters stated that the department should do on-site visits of every dealer or converter before issuing a license or allowing them access to the temporary tag system. One of the commenters further suggested the following additional language be added to §215.505, which is proposed in a separate proposal. As previously stated, the department recognizes that some comments may apply to different proposals. The commenter proposed adding the following:

Due to the magnitude of the abuse of the temporary tag program, in order to determine the number of temporary tags that will be available to the dealer or converter on an annual basis, any and all dealers and converters shall be assessed on the following criteria through an on-location visit by DMV personnel:

(1) the dealer 's or converter 's:

(A) time in operation;

(B) sales data; and

(C) expected growth;

(2) expected changes in the dealer 's or converter 's market;

(3) temporary conditions that may affect sales by the dealer or converter;

(4) the size and actual inspection of the physical location of the dealer or converter; and

(5) any other information the department considers relevant.

Agency Response:

The department appreciates the comment and has attempted to implement the statutory items set out in the comment in this adoption. The department is further evaluating the benefit of site visits versus the cost and burden to the 20,000 legitimate dealers in this state and the department. Because site visits were not addressed in the proposal for public comment, the department declines to add them to this adoption; however, they may be considered in future proposals.

Section 215.152(c) Notice

Comment:

A commenter requests that the department provide each dealer and converter with 30 days' notice of the department's annual temporary tag number allotment prior to the beginning of the calendar year by email and regular mail.

Agency Response:

The department appreciates the comment; however, declines to make the requested change in the proposal. The department will endeavor to work with dealers throughout the process and be as transparent as possible; however, the proposed notice would not affect the number of tags being allocated or allow the dealer to take any action prior to using 50 percent of its temporary tag allotment.

The department intends for the system to allow dealers and converters to be able to see their annual tag limits at any time, including the number of remaining tags they have for the year, when the user logs into the eTAG system. Additionally, the depart-

ment intends for the system to send email alerts to dealers and converters once they have reached 50 percent of their annual temporary tag limit, and possibly more often.

Section 215.152(c)(1) Calculation of Buyer's Tags

Comment:

A commenter notes that the proposed dealer's annual buyer's temporary tag formula is calculated from the dealer's sales data from the previous three fiscal years as determined from the department's systems. The commenter recommends that for clarity and so there is no confusion, that the three fiscal years be included in §215.152(c)(1)(A), (B), and (C).

In addition, commenters stated that the formula adversely affects dealers who make a significant portion of their sales to out-of-state customers, because the base number of temporary tags issued is predominantly tied to and limited by in-state Registration and Title System transactions.

Agency Response:

The department agrees with the comment and has changed §215.152(c)(1) to amend and clarify the formula.

The text has been amended to clarify that only the number of in-state buyer's temporary tags issued will be used in determining if the amount exceeds two times the number of in-state title transactions. The number of buyer's temporary tag issued for out-of-state sales will not be included in the limitation analysis.

The allowed number of issued in-state buyer's temporary tags, or title transactions if it is greater, will then be added to the number of buyer's temporary tags issued for out-of-state sales to provide the base number of temporary tags. That total will be increased by the growth rate and time in business multipliers.

The department takes this action because for most dealers the number of temporary tags issued for out-of-state sales is not the majority of the dealer's business. Also, while the limit analysis does provide a tool to identify potential unauthorized use of buyer's temporary tag, the department does not have access to a similar readily available tool for out-of-state sales. The department can require dealers to present sales documentation and records; however, that would be burdensome for legitimate dealers to present on an annual basis without any related issue of unauthorized use of temporary tags.

The change will also clarify that the amount will be the greatest number of buyer's temporary tags issued in one fiscal year of the previous three fiscal years.

To implement the described changes, the department has amended the proposed text as follows, showing changes to the proposed text in underlines and strike throughs.

"(1) Sales data determined from the department's systems from previous three fiscal years. A dealer's base number will contain the *sum* [greater] of:

(A) *the greater of:*

(i) [the maximum number of] in-state buyer's temporary tags issued *in one fiscal year during the previous three* fiscal years; *or*

(ii) [~~(B) the maximum number of~~] title transactions processed through the Registration and Title System *in one fiscal year during the previous three* fiscal years; *but*

(iii) *the amount will be limited to an amount that is not more than two times the number of title transactions identified in subparagraph (ii) of this paragraph; and*

(B) [C] the addition of the *greatest* [maximum] number of out-of-state buyer's temporary tags issued *in one fiscal year during the previous three* fiscal years;

[(D) the dealer's base number will be limited to an amount that is not more than two times the number of title transactions identified in subparagraph (B) of this paragraph.]"

The changes do not impose new costs or requirements, or affect persons not on notice of the proposal.

Section 215.152(c)(1) Calculation of Buyer's Tags

Comment:

A commenter states that §215.152(c)(1)(A) should be removed, because basing the number of buyer's temporary tags on the maximum number of in-state buyer's temporary tags issued during previous fiscal years may give unscrupulous dealers or converters an inflated baseline and does not ensure that these tags are tied to actual vehicle sales like using the number of title transactions processed.

Agency Response:

The department agrees that criminals may attempt to corrupt any system, and has considered it in creating a maximum tag formula that will limit potential unauthorized use of temporary tags while also allowing legitimate dealer's and converter's the ability to freely conduct and expand their businesses without burdensome regulation and department involvement. The department recognizes that a one to one ratio between the number of tags being issued and the number of title transactions is unlikely due to returns, voids, and other errors that may occur, but are not fraudulent in nature. As addressed in other responses to comments, the comparison to the number of title transactions analysis provides a tool to identify potential unauthorized use of buyer's temporary tags. The number of title transaction is also readily available to the department without burdening legitimate dealers with additional requirements. The department declines to make a change in response to the comment.

Section 215.152(c)(2), §215.152(d)(2), and §215.152(e)(2) Time in business multiplier

Comment:

Commenters stated that the multipliers based on years in operation are unclear and should be included within the rule text.

Agency Response:

The department agrees with the comment and has revised the rule text to state that the time in operation multipliers will be increased by 10 percent for each year the dealer or converter is in operation up to 10 years. The changes do not impose new costs or requirements, or affect persons not on notice of the proposal.

Section 215.152(c)(2), §215.152(d)(2), and §215.152(e)(2) Time in business multiplier

Comment:

A commenter asserts that the years in operation multiplier also consider the license holders prior experience.

Agency Response:

The department agrees that many factors may affect sales; however, the department declines to make the requested change because the time in business multiplier §§215.152(c)(3), 215.152(d)(3), and 215.152(e)(3) is a general multiplier applicable to all license holders. To the extent that a license holder's actual legitimate use of tags, be it related to an individual or other reason, does indicate the need for temporary tags in excess of the annual allotment, a license holder could assert that in a request for additional tags under §215.152(i)(1) or when being licensed under §215.152(f) as modified. However, increased sales would normally be reflected in an increase in the base number and carried through the formula for an increase in future years without the need for additional action by the license holder.

Section 215.152(c)(3), §215.152(d)(3), and §215.152(e)(3) Growth rate multiplier

Comment:

Commenters stated that the multipliers limiting growth rate to the statewide average were unfair to dealers and converters that grew at a faster rate.

Agency Response:

The department agrees with the comment and has revised the rule text to state that the growth rate multipliers in §215.152(c)(3), (d)(3) and (e)(3) will be the greater of the dealer's or converter's actual growth rate or the statewide actual growth rate. Increased sales and a stellar growth rate would normally be reflected in an increase in the base number and carried through the formula for future years without the need for additional action by the license holder. To the extent that a license holder's actual legitimate use of tags does indicate the need for temporary tags in excess of the annual allotment, be it related to phenomenal growth or other reason, a license holder could assert that in a request for additional tags and under §215.152(i)(1) or when being licensed under §215.152(f) as modified. To avoid having unusual factors result in excessively large growth rates, including new licensees being licensed for part of the prior fiscal year, the department has limited the actual growth rate to 200 percent. The cap does not prevent a license holder from requesting additional tags if necessary under §217.152(i). The changes do not impose new costs or requirements, or affect persons not on notice of the proposal.

Section 215.152(c)(4), §215.152(d)(4), and §215.152(e)(4) Special Circumstances

Comment:

A commenter asserts that a statewide growth factor versus a regional growth factor may not take into account a recent change in circumstances, such as a new plant in a dealer's market. In addition, for a franchised dealer, the line-make may play a role in a dealer's expected market growth.

Agency Response:

The department agrees with the comment but declines to make a change in the rule text because individual license holder situations are already addressed in the ability of the license holder to request additional tags under §215.152(i)(1) or when being licensed under §215.152(f) as modified.

The department has developed the formula using historical information increased by historical growth and time in operation multipliers. In addition, the department may increase the number of tags generally under §§215.152(c)(4), 215.152(d)(4), and

215.152(e)(4) based on general market conditions. The intent is to carry legitimate dealers and converters through the calendar year with a significant cushion of temporary tags and without the need to request additional temporary tags.

However, in some cases additional tags may be needed to maintain that cushion because of circumstances unique to that dealer. As such, §215.152(i) authorizes the license holder to request additional tags by providing information demonstrating the need for additional temporary tags based on sales, anticipated need, or other factors listed in §503.0632(b), which would include a factor that the department considered relevant based on the dealer's or converter's particular circumstance.

Section 215.152(d)

Comment:

A commenter requests a process to increase the allotment of dealer temporary tags when a dealer switches from agent specific tags to vehicle specific tags.

Agency Response:

The department recognizes the concern, but has made no change in the text. Allocation of dealer tags should adjust in future years based on historical use; however, current year allocations can also be considered in requests for additional tags, or at time of licensing.

Section 215.152(f) New Dealers

Comment:

Multiple commenters raised concerns that the proposed limitations for new dealers and converters in §215.152(f) and allowances for additional tags under §215.152(g) and (h) were inadequate and failed to address many potential situations related to franchised dealers, buy-sell agreements, change of license holder because of retirement or inheritance, and entry of existing out-of-state operations in to the market. A commenter also requested that the department clarify that is the minimum number that a license holder may obtain under §215.152(f) by inserting the word "initial" before the word "allocations" and after the word "The" to make it clear that a dealer or converter can obtain more temporary tags. A commenter also requests that §215.152(h) be changed to read like 215.152(g).

Agency Response:

The department agrees with the comments and based on comments, the discussions of the MVIRAC, and board action, the department has changed proposed 215.152(f), (g), and (h). The changes do not add new requirements or costs, or affect persons not on notice of the proposal.

The department has changed §215.152(f) to confirm that the license holder may present information to the department in the licensing process that the minimum number of temporary tags allotted to the new license holder should be increased. First, the department has added the word "initial" before the word "allocations" and after the word "The" in the second sentence. The statement clarifies that a new dealer is not prohibited from requesting additional temporary tags under §215.152(i).

Section 215.152(f)(1), which applies to franchised dealers is changed to add the statement "unless:

(A) the dealer provides credible information indicating that a greater number of tags is warranted based on anticipated sales, and growth, to include new and used vehicle sales, including

information from the manufacturer or distributor, or as otherwise provided in this section; and

(B) if more than 600 temporary tags are determined to be needed based on anticipated sales and growth, the total number of temporary tags needed, including the 600, will be doubled;"

Section 215.152(f)(2), which applies to independent dealers, is modified by adding the statement "unless the dealer provides credible information indicating that a greater number of tags is warranted based on anticipated sales as otherwise provided in this section." Section 215.152(f)(3), which applies to converters, is modified by adding the statement "unless the converter provides credible information indicating that a greater number of tags is warranted based on anticipated sales, including information from the manufacturer or distributor, or as otherwise provided in this section."

The reasons for increasing the number of temporary tags for a new dealer are addressed in §215.152(g) and (h), as changed based on comments.

Proposed §215.152(g) and (h) have been combined and redesignated §215.152(g)(1) and (2). Section 215.152(g)(1) is intended to avoid the situation under §215.152(f) in which an existing dealer or converter could inflate the number of temporary tags they are allotted or be limited in its ability to expand. Section 215.152(g)(1) provides that an existing dealer or converter that is moving its operations from one location to a different location will continue with its allotment of temporary tags. The dealer or converter will not be issued a block allotment under subsection (f). Thus, an existing dealer with less than 300 allowed buyer's tags, cannot inflate its number, and conversely a dealer with more than 300 buyer's tags will not be penalized for making a business decision.

Section 215.152(g)(2) provides that an existing dealer or converter opening an additional location will receive an allotment based on the allotment provided to existing locations. In addition to being redesignated, §215.152(g)(2) has been changed to read "opening an additional location will receive a maximum allotment of temporary tags based on the greater of the allotment provided to existing locations, including franchised dealers opening additional locations for different line makes, or the amount under subsection (f) of this section." The change clarifies that §215.152(g)(2) includes "franchised dealers opening additional locations for different line makes" and revises §215.152(g)(2) by adding "of temporary tags" between "allotment" and "based," and adding the statement "and not be allocated temporary tags under subsection (f) of this section" to the end of the paragraph.

The department has also added §215.152(g)(3) and (4) to address two additional temporary tag allocation situations. Section 215.152(g)(3) provides that a dealership "purchased as a buy-sell ownership agreement will receive the maximum allotment of temporary tags provided to the location being purchased and not be allocated temporary tags under subsection (f) of this section." Section 215.152(g)(4) provides that a dealership "inherited by will or laws of descent will receive the maximum allotment of temporary tags provided to the location being inherited and not be allocated temporary tags under subsection (f) of this section". License holders may provide information addressing licensing situations otherwise involving retirement or death as allowed in §215.152(h).

Section 215.152(h) is added based on comments and the discussions of the MVIRAC to list additional circumstances under which a new dealer or converter may request additional tempo-

rary tags under §215.152(f). The situations each involve a type of circumstance with "some continuity in existing operations that will result in increased sales." The list is

- "(1) franchised dealer, manufacturer, or distributor sales expectations;
- (2) a change in license required by death or retirement , *except as provided in subsection (g) of this section*;
- (3) prior year's sales by a dealership moving into the state; or
- (4) other similar change of location or ownership that indicates some continuity in existing operations that will result in increased sales."

The changes to §215.152(f), (g), and (h) are consistent with the department's intent to prevent dealers or converters from having to request additional tags when established sales data is available to the department. The rule contemplates licensees in these scenarios being able to provide additional documentation to obtain an increase beyond the initial allotment. The changes will still allow licensees to request an increase based on the criteria identified, but would not require them to do so and would continue the allotment previously established for the licensee based on the current formula. The changes do not add additional requirements or costs, or affect persons not on notice of the proposal. Further, the changes in §215.152(f), (g), and (h) do not limit a dealer or converter from requesting additional temporary tags under §215.152(i).

Section 215.152(i) establishes the process under which a dealer or converter may request additional temporary tags as required by new Transportation Code §503.0632(d). Section 215.152(i) establishes that the dealer may request additional tags after 50 percent of the calendar allotment have been used. Also, requests will be made through the eLICENSING system. Just as the goal in establishing the initial allotment of temporary tags is intended to carry the license holder through the year without the need for requesting additional tags, an increase following a request for additional temporary tags will be granted with the intent of providing sufficient additional tags for the for the remaining calendar year. But should circumstances require, a dealer or converter can request additional tags if necessary.

Section 215.152(f)(1) New Franchised Dealers

Comment:

A commenter is concerned that 600 is not an adequate number for all new franchised dealers. The commenter suggests that the department inquire of a new franchised dealer licensee what he or she expects to sell in their location over the calendar year and multiply that number by no less than 2 to derive an initial temporary tag number

Agency Response:

The department agrees with the comment; however, the department has resolved the issue differently as addressed in other responses to comment. The department declines to make a change based on this comment.

Section 215.152(f)(1) and (2) Dealer tags for New Dealers

Comment:

A commenter suggests that the department reduce the number of dealer tags for new dealers because the tags have limited and defined uses and they are not directly connected to a vehicle sale.

Agency Response:

The department agrees that the uses of dealer's tags are limited and that the use is not always directly linked to a sale, but the department declines to make a change based on the comment because they are necessary to dealer operations. In addition, dealers and converters use agent and vehicle tags for customer test drives, and the number of agent and vehicle temporary tags must provide for multiple test drives before a vehicle is sold.

Section 215.152(f)(2)

Comment:

Three commenters objected to allowing new independent dealers to have "900" temporary tags as being excessive and failing to address the problem.

Agency Response:

The department appreciates the comment but disagrees. The limits for new licensees were determined based on recommendations provided by MVIRAC. Also, after the end of the first licensing cycle the dealer will transition to a maximum limit based on the dealer's history, dealer's or statewide growth rate, and tenure as provided in Transportation Code §503.0632(b).

Section 215.152(g) and (h) Tags for Dealers or Converters with Existing Operations Relocating or Opening New Operations

Comment:

The language in the new §215.152(g) and (h) is favored as it addresses dealers moving to different locations or opening additional locations and determines how they will be treated during the issuance of temporary tags.

Agency Response:

The department appreciates the supportive comment.

Section 215.152(i) Notice of 50 percent Level

Comment:

A commenter requests that the department send a notice to a dealer or converter prior to the license holder's 50 percent allotted use.

Agency Response:

The department agrees with the comment and will work programatically to provide notices to license holder and make this a transparent process but declines to make a change based on the comment. Dealers and converters are responsible for temporary tag use, and the annual allocation and remaining tags available will be available to all eTAG users every time they sign on to the system.

Section 215.152(i) Appeal after Using 50 percent of the Temporary Tag Allotment

Comment:

A commenter suggests, assuming appropriate resources are available to process allotments in a timely manner, consider increasing from 50 percent to 75 percent of maximum number before a dealer or converter can request an increase in allotment.

Agency Response:

The department agrees with the commenter that reviewing requests for additional temporary tags needs to be handled on a timely basis; however, the department declines to make a

change based on the comment. The department believes that the 50 percent level of use provides sufficient ability for license holders to proactively manage their temporary tag allotments and determine if there is a need to request additional tags and for the department to evaluate the request.

Section 215.152(i)(3) Denial of a Request for Additional Temporary Tags.

Comment:

Several commenters stated that issuance of less than the requested number of temporary tags in response to a request for additional temporary tags should be considered a denial and be subject to appeal.

Agency Response:

The department appreciates the commenters concern but declines to make a change based on the comment because the license holder may simply request additional temporary tags, if needed.

The department has tried to avoid an adversarial process in the allocation of calendar year temporary tags and has developed a formula with the intent of providing legitimate license holders with enough temporary tags to make the need to request additional temporary tags unnecessary for the majority of license holders. Those that need additional tags may request them.

The following comments are not associated with a particular section of the proposal.

Comment:

Six commenters stated that dealers should not be allowed to issue excessive numbers of temporary tags.

Agency response:

The department agrees with the comments and has adopted rules to implement HB 3927 both with regards to maximum tag limits to prevent criminals from having access to unlimited numbers of temporary tags and to denial of access for criminals that try to engage in selling temporary tags.

Comment:

Fifteen commenters stated that the issuance of fraudulent temporary tags harms this state and drivers and law enforcement officers in Texas and other states. The commenters stated that vehicles in violation of licensing and registration laws can result in numerous costs to the state and private citizens, including risks to law enforcement at traffic stops with potential criminals, higher insurance rates, accidents where losses aren't covered due to uninsured drivers, lost taxes and fees to the state, lost and increasing toll fees, and higher pollution levels.

Agency response:

The department agrees with the comments and has adopted rules to implement HB 3927 both with regards to maximum tag limits to prevent criminals from having access to unlimited numbers of temporary tags and denial of access for any that still try to engage in selling temporary tags.

Comment:

Five commenters recommended that the department should require fingerprinting and background checks for all users of the temporary tag database.

Agency response:

The department appreciates these comments. The department is evaluating fingerprinting and other means and may present these actions in future proposals; however, the request goes beyond the scope of this proposal.

Comment:

Five commenters recommended that the department cease issuing paper tags.

Agency response:

The department appreciates the comment. The use of paper tags is required by statute and is an effective low-cost means of facilitating the millions of dealer and converter sales transactions that occur annually in the state. The legislature enacted HB 3927, which is being implemented by the department to combat the criminals that have sought to exploit the system.

Comment:

Four commenters asserted that the department should do more to take action against drivers who operate their vehicle with expired or illegible paper plates.

Agency response:

The department appreciates the comment. The department is not a criminal law enforcement agency and is limited to the authorized actions that the legislature has provided it under statute.

Comment:

Two commenters asserted the department should do more to stop the sale of fraudulent temporary tags on social media and prosecute both the people that are advertising on social media and the social media sites themselves.

Agency response:

The department appreciates the comment. The department is not a criminal law enforcement agency. The department has acted to notify social media sites of the activity when it is discovered; however, even if a site is removed it may appear again.

Comment:

Two commenters recommended that the department deter the use of fraudulent tags by enlisting citizens to assist with finding the fraudulent sellers and create a system for people to report violations they witness.

Agency response:

The department appreciates the comment. The department is not a criminal law enforcement agency. The department partners with law enforcement agencies to address the issue.

Comment:

Two commenters asserted that the department needs to process title applications faster and eliminate its backlog.

Agency Response:

The department appreciates the comment. The department is not currently experiencing a backlog of title applications. All title applications received by the department are being processed within five days of receipt, in accordance with Transportation Code §501.027.

Comment:

An individual commenter asserted that dealers should not be able to sell a vehicle until the dealer possesses the title.

Agency response:

The department appreciates the comment. Under Transportation Code §503.038, the department may take administrative action against a dealer that "fails to take assignment of any basic evidence of ownership, including a certificate of title or manufacturer's certificate, for a vehicle the dealer acquires."

Comment:

An individual commenter asserted that title applications should be executed on the date of the sale.

Agency Response:

The department appreciates the comment. The titling process involves multiple entities, including the seller, the buyer, the department and the county tax assessor-collectors, who complete different steps. Multiple statutes address the length of time each entity has to complete specific steps. Specifically, Transportation Code §501.023 states the county tax assessor-collector has 72 hours after receipt to send its application to the department; Transportation Code §501.027 gives the department five days after the receipt of the application to make its determination. The department is not able to change statute by rule.

Comment:

An individual commenter recommended that the department require a dealer to be in possession of the vehicle to issue a temporary tag to the vehicle.

Agency Response:

The department appreciates the comment. The existing rule in Title 43 Texas Administrative Code §215.151 requires the dealer to secure the temporary tag to the vehicle. This requirement is not being removed by this adoption.

Comment:

An individual commenter recommended that the department require dealers and converters to renew their licenses annually.

Agency response:

The department appreciates the comment. License renewal is outside the scope of this rule proposal.

Comment:

An individual commenter recommended that the department track how many paper plates are issued by each dealer and converter.

Agency response:

The department appreciates the comment. The department's system tracks the number of plates issued by each dealer and converter. Prior to the enactment of HB 3927, statute did not allow the department to limit the number of temporary tags or deny a dealer's or converter's access to the database unless the license was revoked, which is a long process.

Comment:

An individual commenter recommended that the department require buyers of vehicles go in-person to their TxDMV Regional Service Center to receive a temporary tag.

Agency response:

The department appreciates the comment. The use of paper tags is required by statute and is an effective low-cost means of

facilitating the millions of dealer and converter sales that occur annually in the state.

Comment:

An individual commenter asserted that the department should not allow small dealerships to issue paper tags; instead, people who purchase from small dealerships should be required to get their paper tags from TxDMV.

Agency response:

The department appreciates the comment. The department disagrees that creating barriers for the thousands of small dealerships in this state to prevent a few criminals is an appropriate response and declines to make a change based on this comment.

Comment:

An individual commenter recommended that the department immediately revoke access to the temporary tag database for any dealer that duplicates a paper tag.

Agency response:

The department appreciates the comment. The department's denial of access rules in §215.505 under HB 3927 will allow for this. Prior to the enactment of HB 3927, statute did not allow the department to limit the number of temporary tags or deny a dealer's or converter's access to the database unless the license was revoked which is a long process.

Comment:

An individual commenter recommended that the department and county tax assessor-collector should promptly complete their reviews of sale information before the department issues a temporary tag to a vehicle.

Agency Response:

The department appreciates the comment. The complete sales transaction that is processed by a dealer or converter, the county tax assessor-collector, and the department, can be complex with all information not being available for several weeks after the customer has purchased the vehicle.

Comment:

An individual commenter stated that license plates should be issued to the person and transferrable between cars; when the person sells the vehicle, they should keep the plate and use it on any vehicle the person subsequently purchases.

Agency response:

The department appreciates the comment. The department notes that new vehicles do not have license plates and some used vehicles have missing or used license plates. Also, the license plate relates to the prior owner, which may cause confusion for law enforcement and other agencies and unwarranted burdens for the new owner.

Comment:

An individual commenter recommended that the department require buyers to purchase an insurance policy that is in effect for the 60 days the temporary tag is in effect, to provide financial responsibility.

Agency Response:

The department appreciates the comment. Owners are required by statute to comply with motor vehicle financial responsibility laws at all times. The department cannot change statute by rule.

Comment:

An individual commenter recommended that the department include the dealer's phone number on the temporary tag.

Agency Response:

The department appreciates the comment. The department will consider the comment in future updates to temporary tags.

STATUTORY AUTHORITY. The department adopts amendments to §215.152 and §215.158 under Transportation Code §§503.002, 503.0632, and 1002.001.

-Transportation Code §503.002 authorizes the department to adopt rules to administer Transportation Code Chapter 503.

-Transportation Code §503.0632(a) provides that the department by rule may establish the maximum number of temporary tags that a dealer or converter may obtain in a calendar year under §§503.062, 503.0625, or 503.063.

-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 §§503.062, 503.0625, 503.063, and 503.0632(a)-(e).

§215.152. Obtaining Numbers for Issuance of Temporary Tags.

(a) A dealer, a federal, state, or local governmental agency, or a converter is required to have internet access to connect to the temporary tag databases maintained by the department.

(b) Except as provided by §215.157 of this title (relating to Advance Numbers, Preprinted Internet-down Temporary Tags), before a temporary tag may be issued and displayed on a vehicle, a dealer, a federal, state, or local governmental agency, or converter must:

(1) enter in the temporary tag database true and accurate information about the vehicle, dealer, converter, or buyer, as appropriate; and

(2) obtain a specific number for the temporary tag.

(c) The department will inform each dealer annually of the maximum number of buyer's temporary tags the dealer is authorized to issue during the calendar year under Transportation Code §503.0632. The number of buyer's temporary tags allocated to each dealer by the department will be determined based on the following formula:

(1) Sales data determined from the department's systems from the previous three fiscal years. A dealer's base number will contain the sum of:

(A) the greater number of:

(i) in-state buyer's temporary tags issued in one fiscal year during the previous three fiscal years; or

(ii) title transactions processed through the Registration and Title System in one fiscal year during the previous three fiscal years; but

(iii) the amount will be limited to an amount that is not more than two times the number of title transactions identified in subparagraph (ii) of this paragraph; and

(B) the addition of the greatest number of out-of-state buyer's temporary tags issued in one fiscal year during the previous three fiscal years;

(2) the total value of paragraph (1) of this subsection will be increased by a multiplier based on the dealer's time in operation giving a 10 percent increase in tags for each year the dealer has been in operation up to 10 years;

(3) the total value of paragraph (2) of this subsection will be increased by a multiplier that is the greater of:

(A) the dealer's actual growth rate percentage identified from the preceding two fiscal years, calculated by the growth of the number of title transactions processed through the Registration and Title System plus the growth of the number of out-of-state buyer's temporary tags issued, except that it may not exceed 200 percent; or

(B) the statewide actual growth rate percentage identified from the preceding two fiscal years, calculated by the growth of the number of title transactions processed through the Registration and Title System plus the growth of the number of out-of-state buyer's temporary tags issued, not less than zero, to determine the buyer's temporary tag allotment; and

(4) the department may increase the determined allotment of buyer's temporary tags for dealers in the state, in a geographic or population area, or in a county, based on:

- (A) changes in the market;
- (B) temporary conditions that may affect sales; and
- (C) any other information the department considers relevant.

(d) The department will inform each dealer annually of the maximum number of agent temporary tags and vehicle specific temporary tags the dealer is authorized to issue during the calendar year under Transportation Code §503.0632. The number of agent temporary tags and vehicle specific temporary tags allocated to each dealer by the department, for each tag type, will be determined based on the following formula:

(1) dealer temporary tag data for agent temporary tags and vehicle specific temporary tags determined from the department's systems from the previous three fiscal years. A dealer's base number will contain the maximum number of dealer temporary tags issued during the previous three fiscal years;

(2) the total value of paragraph (1) of this subsection will be increased by a multiplier based on the dealer's time in operation giving a 10 percent increase in tags for each year the dealer has been in operation up to 10 years; and

(3) the total value of paragraph (2) of this subsection will be increased by a multiplier that is the greater of:

(A) the dealer's actual growth rate percentage identified from the preceding two fiscal years, calculated by the growth of the number of dealer's temporary tags issued, except that it may not exceed 200 percent; or

(B) the statewide actual growth rate percentage identified from the preceding two fiscal years, calculated by the growth of the number of dealer's temporary tags issued, not less than zero, to determine the dealer's temporary tag allotment; and

(4) the department may increase a dealer's allotment of agent temporary tags and vehicle specific temporary tags for dealers in the state, in a geographic or population area, or in a county, based on:

- (A) changes in the market;
- (B) temporary conditions that may affect sales; and
- (C) any other information the department considers relevant.

(e) The department will inform each converter annually of the maximum number of temporary tags the converter is authorized to issue during the calendar year under Transportation Code §503.0632. The number of temporary tags allocated to each converter by the department will be determined based on the following formula:

(1) converter temporary tag data determined from the department's systems from the previous three fiscal years. A converter's base number will contain the maximum number of converter temporary tags issued during the previous three fiscal years;

(2) the total value of paragraph (1) of this subsection will be increased by a multiplier based on the converter's time in operation giving a 10 percent increase in tags for each year the dealer has been in operation up to 10 years; and

(3) the total value of paragraph (2) of this subsection will be increased by a multiplier that is the greater of:

(A) the converter's actual growth rate percentage identified from the preceding two fiscal years, calculated by the growth of the number of converter's temporary tags issued, except that it may not exceed 200 percent; or

(B) the statewide actual growth rate percentage identified from the preceding two fiscal years, calculated by the growth of the number of converter's temporary tags issued, not less than zero, to determine the converter's temporary tag allotment;

(4) the department may increase a converter's allotment of converter temporary tags for converters in the state, in a geographic or population area, or in a county, based on:

- (A) changes in the market;
- (B) temporary conditions that may affect sales; and
- (C) any other information the department considers relevant.

(f) A dealer or converter that is licensed after the commencement of a calendar year shall be authorized to issue the number of temporary tags allotted in this subsection prorated on all or part of the remaining months until the commencement of the calendar year after the dealer's or converter's initial license expires. The initial allocations shall be as determined by the department in granting the license, but not more than:

(1) 600 temporary tags for a franchised dealer per each tag type, buyer's temporary tags, agent temporary tags, and vehicle specific tags, unless:

(A) the dealer provides credible information indicating that a greater number of tags is warranted based on anticipated sales, and growth, to include new and used vehicle sales, including information from the manufacturer or distributor, or as otherwise provided in this section; and

(B) if more than 600 temporary tags are determined to be needed based on anticipated sales and growth, the total number of temporary tags needed, including the 600, will be doubled;

(2) 300 temporary tags for a nonfranchised dealer per each tag type, buyer's temporary tags, agent temporary tags, and vehicle specific tags, unless the dealer provides credible information indicating

that a greater number of tags is warranted based on anticipated sales as otherwise provided in this section; and

(3) A converter will be allocated 600 temporary tags, unless the converter provides credible information indicating that a greater number of tags is warranted based on anticipated sales, including information from the manufacturer or distributor, or as otherwise provided in this section.

(g) An existing dealer or converter that is:

(1) moving its operations from one location to a different location will continue with its allotment of temporary tags and not be allocated temporary tags under subsection (f) of this section;

(2) opening an additional location will receive a maximum allotment of temporary tags based on the greater of the allotment provided to existing locations, including franchised dealers opening additional locations for different line makes, or the amount under subsection (f) of this section;

(3) purchased as a buy-sell ownership agreement will receive the maximum allotment of temporary tags provided to the location being purchased and not be allocated temporary tags under subsection (f) of this section; and

(4) inherited by will or laws of descent will receive the maximum allotment of temporary tags provided to the location being inherited and not be allocated temporary tags under subsection (f) of this section.

(h) A new dealer or converter may also provide credible information supporting a request for additional temporary tags to the amount allocated under subsection (f) of this section based on:

(1) franchised dealer, manufacturer, or distributor sales expectations;

(2) a change in license required by death or retirement, except as provided in subsection (g) of this section;

(3) prior year's sales by a dealership moving into the state; or

(4) other similar change of location or ownership that indicates some continuity in existing operations.

(i) After using 50 percent of the allotted maximum number of temporary tags, a dealer or converter may request an increase in the number of temporary tags by submitting a request in the department's eLICENSING system.

(1) The dealer or converter must provide information demonstrating the need for additional temporary tags results from business operations, including anticipated needs, as required by §503.0632(c). Information may include documentation of sales and tax reports filed as required by law, information of anticipated need, or other information of the factors listed in §503.0632(b).

(2) The department shall consider the information presented and may consider information not presented that may weigh for or against granting the request that the department in its sole discretion determines to be relevant in making its determination. Other relevant information may include information of the factors listed in §503.0632(b), the timing of the request, and the applicant's temporary tag activity.

(3) The department may allocate a lesser or greater number of additional temporary tags than the amount requested by the dealer or converter. Allocation of a lesser or greater number of additional

temporary tags is not a denial of the request. Allocation of additional temporary tags under this paragraph does not limit the dealer's or converter's ability to submit additional requests for more temporary tags.

(4) If a request is denied, a dealer or converter may appeal the denial to the Director of the Motor Vehicle Division whose decision is final.

(A) The denial will be sent to the license holder by email to the email used by the license holder in the request.

(B) The appeal must be requested within 10 business days of the denial being sent to the department through the eLICENSING system.

(C) The appeal may discuss information provided in the request but may not include additional information.

(D) The Motor Vehicle Division Director will review the submission and any additional statements concerning the information submitted in the original request and render an opinion within 10 business days of receiving the appeal. The Motor Vehicle Division Director may decide to deny the request and issue no additional tags, or award an amount of additional temporary tags that is lesser, equal to, or greater than the request.

(E) The requesting license holder will be notified as follows:

(i) If the Motor Vehicle Division director has decided to deny the appeal, the license holder will be contacted by email regarding the decision and options to submit a new request with additional relevant credible supporting documentation or to pursue a claim in district court; or

(ii) If the Motor Vehicle Division Director has decided to award an amount of additional temporary tags that is lesser, equal to, or greater than the request, the additional temporary tags will be added to the license holders account and the license holder will be contacted by email regarding the decision, informed that the request has not been denied, and options the license holder has to submit a new request.

(5) Once a denial is final, a dealer or converter may only submit a subsequent request for additional temporary tags during that calendar year if the dealer or converter is able to provide additional information not considered in the prior request.

(j) A change in the allotment under subsection (i) of this section does not create a dealer or converter base for subsequent year calculations.

(k) The department may at any time initiate an enforcement action against a dealer or converter if temporary tag usage suggests that misuse or fraud has occurred as described in Transportation Code §§503.038, 503.0632(f), or 503.067.

(l) Unused dealer or converter tag allotments from a calendar year do not roll over to subsequent years.

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 February 14, 2022.

TRD-202200541

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**CHAPTER 217. VEHICLE TITLES AND
REGISTRATION**

INTRODUCTION. The Texas Department of Motor Vehicles (department) adopts amendments to 43 TAC §§217.2, 217.4, 217.23, 217.28, 217.36, 217.45, 217.46, and 217.89 concerning titling and registering motor vehicles. The amendments to §§217.4, 217.23, 217.28, 217.45, 217.46, and 217.89 are necessary to implement amended Transportation Code §§501.023, 501.0234, 501.030, 502.040, 502.041, 502.407, 520.006, and 521.144 authorizing registration and title applications to be processed by any county tax assessor-collector willing to accept the application under Senate Bill (SB) 876, 87th Legislature, Regular Session (2021). The amendment to §217.36 is necessary to complete the implementation of Transportation Code §707.20 and §707.21 under House Bill (HB) 1631, 86th Legislature, Regular Session (2019) by removing obsolete references to photographic traffic signal enforcement programs. The amendment to §217.2 removes the term "identification certificate" as a defined term and is nonsubstantive. The department adopts amendments to 43 TAC §§217.2, 217.4, 217.23, 217.28, 217.36, 217.46, and 217.89 without changes to the proposed text as published in the November 12, 2021, issue of the *Texas Register* (46 TexReg 7762); §§217.2, 217.4, 217.23, 217.28, 217.36, 217.46, and 217.89 will not be republished. The department adopts amendments to 43 TAC §217.45 with changes to the proposed text; §217.45 will be republished. The rules are adopted to be effective March 1, 2022.

REASONED JUSTIFICATION. Senate Bill 876 expands title and registration services beyond those county tax assessor-collectors required to accept a title or registration application in statute to any county tax assessor-collector willing to accept the application. Adopted §§217.4, 217.23, 217.28, 217.45, 217.46, and 217.89 address the expansion by adding a reference to "a county tax assessor-collector who is willing to accept the application" to those existing sections that specified a county tax assessor-collector. Sections that did not specify a county tax assessor-collector or just the process have not been amended.

The department met with the Customer Service Advisory Committee twice in considering this adoption. The department appreciates the committee members' serious consideration of the issues presented by SB 876 and the members' comments.

Implementation of SB 876 also involves significant programming modifications to the department's Registration and Title System (RTS) to enable the routine processing of out-of-county applications and the distribution of fees as specified in amended Transportation Code §520.006, which applies if a willing county tax assessor-collector is collecting fees and processing the application on behalf of a county tax assessor-collector who is designated by statute to process the application.

The following paragraphs address the amendments in this adoption.

The amendment to §217.2 removes the term "identification certificate" as a defined term and redesignates the following definitions accordingly. The term is never used alone as a defined term. The term is used in multiple sections of Chapter 217. It usually refers to a document that is then described as a form of personal identification such as a driver's license or identification card, but not in a consistent manner. In §217.4 and §217.89, the term is used and then described similarly to its defined use in §217.2, as relating to a vehicle inspection under Transportation Code Chapter 548 and §501.030. Chapter 548 refers to the document as a "vehicle inspection report." As such, the term is unnecessary as a defined term because each use redefines the term.

The amendment to §217.4(b)(1) removes the statement "as selected by the applicant." In this section, the term "applicant" refers to the owner or purchaser of the vehicle. The change conforms the section with SB 876, which repeals Transportation Code §501.023(e) and §501.0234(e), which required the purchaser to choose the county the title application was to be filed in. The amendment to §217.4(b)(2) conforms the section with the SB 876 any willing county amendment to Transportation Code §501.023(a). The amendment to §217.4(c)(4) removes the requirement for the applicant to provide the seller's mailing address, which is not required in statute or on the applicable department form. The amendment to §217.4(d)(4) replaces the term "identification certificate" with "vehicle inspection report" based on the reasons addressed in the prior discussion of the amendment to §217.2.

The amendments to §217.23(c) and (d) are necessary to conform the section with the SB 876 any willing county amendment to Transportation Code §502.040 and §502.041.

The amendments to §217.28(a) and (c) are necessary to conform the section with the SB 876 any willing county amendment to Transportation Code §502.041. The department has added the term "of the county" to §217.28(c) to clarify the subsection to read "An initial application for registration must be filed with the tax assessor-collector of the county in which the owner resides or any county tax assessor-collector who is willing to accept the application, except as provided in subsection (d) of this section." The amendment also adds new §217.28(f) to create a definition of a closed county by rule for purposes of Transportation Code §502.407(c), as required by SB 876. Adopted §217.28(f) is based on the prior closed definition in §217.4(b)(2), which is being amended as previously discussed in this adoption to conform §217.4 to Transportation Code §501.023 as amended by SB 876. The amendment to §217.28(e)(5) replaces the existing sentence, because proration is covered in §217.45(d)(2). Additionally, the department adopts nonsubstantive amendments to §217.28(b), (c), and (d) to conform to current statutory references by replacing the term "license plate" with the term registration and otherwise referring to "registration renewal notice" and clarifying that an applicant may also renew a vehicle registration via the internet without a registration renewal notice.

The amendments to §217.36(b) and (d) are necessary to remove obsolete references to photographic traffic signal enforcement programs. House Bill 1631 prohibited the use of such programs with the enactment of Transportation Code §707.20 and §707.21. The department timely implemented HB 1631 and ceased the prohibited actions; however, a change was not made to the rule to remove the provisions. Because §217.36(b) was removed, §217.36(c) and (d) have been redesignated as §217.36(b) and (c), respectively.

The amendments to §217.45(b)(3), (d)(3)(B) and (E), (e)(1)(A), and (f)(1) are necessary to conform the section with the SB 876 any willing county amendment to Transportation Code §502.040 and §502.041, including by changing the reference from "the" to "a" county tax assessor-collector. The department has added the phrase "of the county" between the words "assessor-collector" and "in which" to clarify §217.45(b)(3) and (e)(1)(A). The department has also adopted amending §217.45(f)(1) to remove the reference to log loader license plates in a replacement paragraph, because log loader plates cannot be replaced.

The amendments to §217.46(d)(3), (e)(1), and (f) are necessary to conform the section with the SB 876 any willing county amendment to Transportation Code §502.041. The §217.46(d)(3) amendment removes the reference to "as indicated on the License Plate Renewal Notice" because an "appropriate" county may be a willing county. Similarly, §217.46(f) amendment removes the requirement to go to "the county in which the owner resides" for replacement license plates. The amendments to §217.46(c)(1)(C) and (4) substitute the term "vehicle identification number" for "motor number." The amendment to §217.46(c)(3)(B)(ii) removes the requirement for "tire size" because the department does not collect the information in this context. The amendments to §217.46(d)(2), (3), and (4) conform to current statutory references by replacing the term "license plate renewal notice" with the term "registration renewal notice." Finally, the amendment to §217.46(d)(2) also replaces the word "mail" with "send" should additional distribution methods be adopted in the future.

The amendment to §217.89(b) is necessary to conform the section with the SB 876 any willing county amendment to Transportation Code §501.023(a). The amendments to §217.89(c) and (d)(3)(B) are based on a review of the enacting statute HB 3588, 78th Legislature, Regular Session (2003), which established the \$65 rebuilder fee and submission requirements. House Bill 3588 did not have a savings clause for the prior inspections. The department is adopting to apply the change prospectively and not to any existing title issued under the process. The amendments to §217.89(d)(2)(D) and (G) are to update the rule to conform with the existing process that does not require the owner's address, but does require the rebuilder's name, address, and signature. The amendments to §217.89(d)(3)(A) update the requirement to refer to the "authorization or certificate number and the date of inspection" instead of a "sticker" number and "expiration." The amendment to §217.89(d)(5) updates the statutory reference to Transportation Code §502.046, which was transferred, redesignated, and amended from Transportation Code §502.153 by HB 2357 Acts 2011, 82nd Legislature, Regular Session (2012).

The rules are adopted to be effective March 1, 2022, the effective date of SB 876.

SUMMARY OF COMMENTS.

The department received written comments requesting a change in the proposed text from the Lubbock County Tax Assessor-Collector, Tax Assessor Collectors Association of Texas, Texas Automobile Dealers Association, and Texas Independent Automobile Dealers Association.

Comment:

Two commenters recommended the department add language to the rule that clarifies how funds will be collected, refunded, and dispersed between willing counties. The commenter asked how dishonored payments will be managed efficiently.

Agency Response:

The department appreciates the comment. The rules as proposed conform existing rule to the requirements of SB 876. As amended by SB 876, Transportation Code §520.006 specifies the distribution of fees that each county will receive. The rules as proposed do not address the disbursement of funds, and are outside the scope of the proposal. Counties will remit funds following existing statutes such as Transportation Code §502.198. The department will make any necessary programming changes in the existing Registration and Title System to ensure the existing requirements for the fee distribution continue as specified under law including in Transportation Code §520.006. The department declines to make changes based on the comment.

Comment:

A commenter asked if a title is processed in a participating county, not the county of residence, and the title is rejected through Austin or NMVTIS, how will the affected county be able to access the documents to correct the title in a timely manner.

Agency Response:

The department appreciates the comment. Senate Bill 876 has no impact on processing rejected transactions. The proposed rules do not change existing requirements for the processing county. Under current practice, the processing county is responsible for rejected transactions. The department declines to make changes based on the comment.

Comment:

A commenter asked how specialty license plates will be picked up from a participating county if they are currently sent to their county based on the address.

Agency Response:

The department appreciates the comment. The proposed rules do not change existing processes for specialty license plates. The department will continue to send specialty license plates to the county of residence. The department declines to make changes based on the comment.

Comment:

A commenter recommended including language that affirms that the department will be responsible for dispersing funds collected between willing counties.

Agency Response:

The department appreciates the comment. The rules as proposed conform existing rule to the requirements of SB 876. As amended by SB 876, Transportation Code §520.006 specifies the distribution of fees that each county will receive. The rules as proposed do not address the disbursement of funds and are outside the scope of the proposal. Counties will remit funds following existing statutes such as Transportation Code §502.198. The department will make any necessary programming changes in the existing Registration and Title System to ensure the existing requirements for the fee distribution continue as specified under law including in Transportation Code §520.006. The department declines to make changes based on the comment.

Comment:

A commenter recommended including language that affirms the department will be responsible for dispersing funds collected to all state agencies in the same manner as is currently dispersed if processed by a willing county.

Agency Response:

The department appreciates the comments regarding the disbursement of fees. The rules as proposed implement SB 876. The existing requirements under Transportation Code §520.006 that specifies the fees that each county receives was not changed by SB 876. The rules as proposed do not address the disbursement of funds as that is outside the scope of the rule. Counties will remit funds following existing statutes such as Transportation Code §502.198. The department will make any necessary programming changes in the existing Registration and Title System to ensure the existing requirements for the fee distribution continue as specified under existing law including in Transportation Code §520.006. The department declines to make changes based on the comment.

Comment:

A commenter recommended including language detailing the management of NMVTIS if processed in a willing county

Agency Response:

The department appreciates the comment. The processing county will continue to process rejected transactions following existing processes. The department declines to make a change based on the comment.

Comment:

A commenter recommended including language that affirms that the department, through the Registration Title System, will be capable of validating the owner of resident's county to ensure the tax assessor-collector office is not responsible to validate the renewal, owner and vehicle location address through other means.

Agency Response:

The department appreciates the comment. The department will make conforming programming changes as necessary to department systems to ensure the validation of information necessary to determine whether the county as a willing county or statutory county. The department declines to make a change to the rule text regarding programming internal system based on the comment because it is outside the scope of the rule.

Comment:

A commenter recommended including language that the Registration and Title System will be capable of validating emission and non-emission counties for proper assessment of fees.

Agency Response:

The department appreciates the comment. The department will make conforming programming changes as necessary to department systems to validate emission and non-emission counties. The department declines to make a change based on the comment.

Comment:

A commenter recommended including language that details the manner by which companion applications such as webDealer, webSub, etc. will determine willing versus statutory counties.

Agency Response:

The department appreciates the comments. The proposed rules do not address webDealer, webSub, or other similar applications. If a county is willing that county's deputies will be willing.

The department declines to make a change based on the comment.

Comment:

A commenter stated that §217.23 fails to provide a registration option for situations in which a natural disaster occurs. The commenter suggests adding §217.23(e) which states "if a county tax assessor-collector is closed or a county has been declared a natural disaster, the closest unaffected county shall be considered where an owner resides, or a motor vehicle is purchased or encumbered."

Agency Response:

The department appreciates the comment. Transportation Code §501.023 and §502.040(b) were amended by SB 876 to remove the department's designation of an alternative county if the owner's county of residence is closed for any reason and to instead allow any willing county to accept the registration. As such, a county tax assessor-collector may, with any necessary local determination, decide to assist following a natural disaster. The department declines to make a change based on the comment.

Comment:

A commenter stated that a "closure" should be defined as a "county tax assessor-collector being open to receive and process registrations for both dealers and residents for less than 35 hours a week."

Agency Response:

The department appreciates the comment. As addressed in prior responses to comments, Transportation Code §501.023 and §502.040(b) were amended by SB 876 to remove the department's designation of an alternative county if the owner's county of residence is closed for any reason and to instead allow any willing county to accept the registration. The department declines to make a change based on the comment.

Comment:

A commenter states that it should be clear if the normal tax assessor-collector is closed then the processor is paid the same amount as they would be for any other consumer residing in their county.

Agency Response:

The department appreciates the comment. As addressed in prior responses to comments, Transportation Code §501.023 and §502.040(b) were amended by SB 876 to remove the department's designation of an alternative county if the owner's county of residence is closed for any reason and to instead allow any willing county to accept the registration. Transactions involving a willing county will be determined under Transportation Code §520.006 as amended by SB 876. The department declines to make a change based on the comment.

Comment:

A commenter asked as there is no definition of "willing to accept the application," is a TAC allowed to pick and choose which dealer's transactions it is "willing" to accept?

Agency Response:

The department appreciates the comment. The department agrees that statute did not define "willing to accept the appli-

ation" or provide additional requirements. The department declines to make a change based on the comment.

Comment:

A commenter asked if a county tax assessor-collector is required to disclose the necessary requirements for its willingness to accept an application.

Agency Response:

The department appreciates the comment. Statute does not specify any requirements for a county. The department declines to make a change based on the comment.

Comment:

A commenter asked if a TAC can decide to be "willing" one week and not "willing" the next week to accept applications.

Agency Response:

The department appreciates the comment. Statute does not specify any requirements for a county concerning how it must determine if and when it is a willing county. The department declines to make a change based on the comment.

Comment:

A commenter asked if a TAC is required to give or post a notice regarding its willingness to accept applications so that dealers and others know of their willingness.

Agency Response:

The department appreciates the comment. Statute does not specify any requirements for a county to post notice. The department will allow webDealer to display any county that has agreed to process a dealer's transactions. The department declines to make a change based on the comment.

Comment:

A commenter recommended that, as an offense is committed after the fifth working day after a vehicle's registration expires, the department propose a definition of "closed" to allow for a knowable defense under §502.407, Transportation Code.

Agency Response:

The department appreciates the comment. Section 217.28(f) has been added to create a definition of a closed county by rule for the sole purpose of Transportation Code §502.407(c) as required by SB 876. The department is relying on the prior definition of a closed county which was used for the purpose of Transportation Code §502.407(c) in the past. Transportation Code §501.023 and §502.040(b) were amended by SB 876 to remove the department's designation of an alternative county if the owner's county of residence is closed for any reason and to instead allow any willing county to accept the registration. The department declines to make a change based on the comment.

Comment:

A commenter asked if an office is open less than eight hours per day for a week, is the office open and if the office is open five hours in a five-day week, is it considered "open" or "closed."

Agency Response:

The department appreciates the comment. Transportation Code §501.023 and §502.040(b) were amended by SB 876 to remove the department's designation of an alternative county if

the owner's county of residence is closed for any reason and to instead allow any willing county to accept the registration. The department declines to make a change based on the comment.

SUBCHAPTER A. MOTOR VEHICLE TITLES

43 TAC §217.2, §217.4

STATUTORY AUTHORITY. The department adopts amendments to §§217.2, 217.4, 217.23, 217.28, 217.36, 217.45, 217.46, and 217.89 under Transportation Code §§501.0041, 502.0021, 520.003, and 1002.001.

- Transportation Code §501.0041 authorizes the department to adopt rules to administer Transportation Code Chapter 501.

- Transportation Code §502.0021 authorizes the department to adopt rules to administer Transportation Code Chapter 502.

- Transportation Code §520.003 authorizes the department to adopt rules to administer Transportation Code Chapter 520;

- 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 §§501.023, 501.0234, 501.030, 502.040, 502.041, 502.407, 520.006, 521.144, 707.020 and 707.021.

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 February 11, 2022.

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Aline Aucoin

General Counsel

Texas Department of Motor Vehicles

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For further information, please call: (512) 465-4209



SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

43 TAC §§217.23, 217.28, 217.36, 217.45, 217.46

STATUTORY AUTHORITY. The department adopts amendments to §§217.2, 217.4, 217.23, 217.28, 217.36, 217.45, 217.46, and 217.89 under Transportation Code §§501.0041, 502.0021, 520.003, and 1002.001.

- Transportation Code §501.0041 authorizes the department to adopt rules to administer Transportation Code Chapter 501.

- Transportation Code §502.0021 authorizes the department to adopt rules to administer Transportation Code Chapter 502.

- Transportation Code §520.003 authorizes the department to adopt rules to administer Transportation Code Chapter 520;

- 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 §§501.023, 501.0234, 501.030, 502.040, 502.041, 502.407, 520.006, 521.144, 707.020 and 707.021.

§217.45. *Specialty License Plates, Symbols, Tabs, and Other Devices.*

(a) Purpose and Scope. Transportation Code, Chapters 504, 551, and 551A charge the department with providing specialty license plates, symbols, tabs, and other devices. For the department to perform these duties efficiently and effectively, this section prescribes the policies and procedures for the application, issuance, and renewal of specialty license plates, symbols, tabs, and other devices, through the county tax assessor-collectors, and establishes application fees, expiration dates, and registration periods for certain specialty license plates. This section does not apply to military license plates except as provided by §217.43 of this title (relating to Military Specialty License Plates).

(b) Initial application for specialty license plates, symbols, tabs, or other devices.

(1) Application Process.

(A) Procedure. An owner of a vehicle registered as specified in this subchapter who wishes to apply for a specialty license plate, symbol, tab, or other device must do so on a form prescribed by the director.

(B) Form requirements. The application form shall at a minimum require the name and complete address of the applicant.

(2) Fees and Documentation.

(A) The application must be accompanied by the prescribed registration fee, unless exempted by statute.

(B) The application must be accompanied by the statutorily prescribed specialty license plate fee. If a registration period is greater than 12 months, the expiration date of a specialty license plate, symbol, tab, or other device will be aligned with the registration period and the specialty plate fee will be adjusted to yield the appropriate fee. If the statutory annual fee for a specialty license plate is \$5 or less, it will not be prorated.

(C) Specialty license plate fees will not be refunded after an application is submitted and the department has approved issuance of the license plate.

(D) The application must be accompanied by prescribed local fees or other fees that are collected in conjunction with registering a vehicle, with the exception of vehicles bearing license plates that are exempt by statute from these fees.

(E) The application must include evidence of eligibility for any specialty license plates. The evidence of eligibility may include, but is not limited to:

(i) an official document issued by a governmental entity; or

(ii) a letter issued by a governmental entity on that agency's letterhead.

(F) Initial applications for license plates for display on Exhibition Vehicles must include a photograph of the completed vehicle.

(3) Place of application. Applications for specialty license plates may be made directly to the county tax assessor-collector of the county in which the owner resides or a county tax assessor-collector who is willing to accept the application, except that applications for the following license plates must be made directly to the department:

(A) County Judge;

(B) Federal Administrative Law Judge;

(C) State Judge;

(D) State Official;

(E) U.S. Congress--House;

(F) U.S. Congress--Senate; and

(G) U.S. Judge.

(4) Gift plates.

(A) A person may purchase general distribution specialty license plates as a gift for another person if the purchaser submits an application for the specialty license plates that provides:

(i) the name and address of the person who will receive the plates; and

(ii) the vehicle identification number of the vehicle on which the plates will be displayed.

(B) To be valid for use on a motor vehicle, the recipient of the plates must file an application with the county tax assessor-collector and pay the statutorily required registration fees in the amount as provided by Transportation Code, Chapter 502 and this subchapter.

(c) Initial issuance of specialty license plates, symbols, tabs, or other devices.

(1) Issuance. On receipt of a completed initial application for registration, accompanied by the prescribed documentation and fees, the department will issue specialty license plates, symbols, tabs, or other devices to be displayed on the vehicle for which the license plates, symbols, tabs, or other devices were issued for the current registration period. If the vehicle for which the specialty license plates, symbols, tabs, or other devices are issued is currently registered, the owner must surrender the license plates currently displayed on the vehicle, along with the corresponding license receipt, before the specialty license plates may be issued.

(2) Classic Motor Vehicles, Classic Travel Trailers, Custom Vehicles, Street Rods, and Exhibition Vehicles.

(A) License plates. Texas license plates that were issued the same year as the model year of a Classic Motor Vehicle, Travel Trailer, Street Rod, or Exhibition Vehicle may be displayed on that vehicle under Transportation Code, §504.501 and §504.502, unless:

(i) the license plate's original use was restricted by statute to another vehicle type;

(ii) the license plate is a qualifying plate type that originally required the owner to meet one or more eligibility requirements, except for a plate issued under Transportation Code, §504.202; or

(iii) the alpha numeric pattern is already in use on another vehicle.

(B) Validation stickers and tabs. The department will issue validation stickers and tabs for display on license plates that are displayed as provided by subparagraph (A) of this paragraph.

(3) Number of plates issued.

(A) Two plates. Unless otherwise listed in subparagraph (B) of this paragraph, two specialty license plates, each bearing the same license plate number, will be issued per vehicle.

(B) One plate. One license plate will be issued per vehicle for all motorcycles and for the following specialty license plates:

- (i) Antique Vehicle (includes Antique Auto, Antique Truck, Antique Motorcycle, and Antique Bus);
- (ii) Classic Travel Trailer;
- (iii) Rental Trailer;
- (iv) Travel Trailer;
- (v) Cotton Vehicle;
- (vi) Disaster Relief;
- (vii) Forestry Vehicle;
- (viii) Golf Cart;
- (ix) Log Loader;
- (x) Military Vehicle;
- (xi) Package Delivery Vehicle;
- (xii) Fertilizer; and
- (xiii) Off-highway Vehicle.

(C) Registration number. The identification number assigned by the military may be approved as the registration number instead of displaying Military Vehicle license plates on a former military vehicle.

(4) Assignment of plates.

(A) Title holder. Unless otherwise exempted by law or this section, the vehicle on which specialty license plates, symbols, tabs, or other devices is to be displayed shall be titled in the name of the person to whom the specialty license plates, symbols, tabs, or other devices is assigned, or a title application shall be filed in that person's name at the time the specialty license plates, symbols, tabs, or other devices are issued.

(B) Non-owner vehicle. If the vehicle is titled in a name other than that of the applicant, the applicant must provide evidence of having the legal right of possession and control of the vehicle.

(C) Leased vehicle. In the case of a leased vehicle, the applicant must provide a copy of the lease agreement verifying that the applicant currently leases the vehicle.

(5) Classification of neighborhood electric vehicles. The registration classification of a neighborhood electric vehicle, as defined by §217.3(3) of this title (relating to Motor Vehicle Titles) will be determined by whether it is designed as a 4-wheeled truck or a 4-wheeled passenger vehicle.

(6) Number of vehicles. An owner may obtain specialty license plates, symbols, tabs, or other devices for an unlimited number of vehicles, unless the statute limits the number of vehicles for which the specialty license plate may be issued.

(7) Personalized plate numbers.

(A) Issuance. The department will issue a personalized license plate number subject to the exceptions set forth in this paragraph.

(B) Character limit. A personalized license plate number may contain no more than six alpha or numeric characters or a combination of characters. Depending upon the specialty license plate design and vehicle class, the number of characters may vary. Spaces, hyphens, periods, hearts, stars, the International Symbol of Access, or

silhouettes of the state of Texas may be used in conjunction with the license plate number.

(C) Personalized plates not approved. A personalized license plate number will not be approved by the executive director if the alpha-numeric pattern:

(i) conflicts with the department's current or proposed regular license plate numbering system;

(ii) would violate §217.27 of this title (relating to Vehicle Registration Insignia), as determined by the executive director; or

(iii) is currently issued to another owner.

(D) Classifications of vehicles eligible for personalized plates. Unless otherwise listed in subparagraph (E) of this paragraph, personalized plates are available for all classifications of vehicles.

(E) Categories of plates for which personalized plates are not available. Personalized license plate numbers are not available for display on the following specialty license plates:

(i) Amateur Radio (other than the official call letters of the vehicle owner);

(ii) Antique Motorcycle;

(iii) Antique Vehicle (includes Antique Auto, Antique Truck, and Antique Bus);

(iv) Apportioned;

(v) Cotton Vehicle;

(vi) Disaster Relief;

(vii) Farm Trailer (except Go Texan II);

(viii) Farm Truck (except Go Texan II);

(ix) Farm Truck Tractor (except Go Texan II);

(x) Fertilizer;

(xi) Forestry Vehicle;

(xii) Log Loader;

(xiii) Machinery;

(xiv) Permit;

(xv) Rental Trailer;

(xvi) Soil Conservation;

(xvii) Texas Guard;

(xviii) Golf Cart;

(xix) Package Delivery Vehicle; and

(xx) Off-highway Vehicle.

(F) Fee. Unless specified by statute, a personalized license plate fee of \$40 will be charged in addition to any prescribed specialty license plate fee.

(G) Priority. Once a personalized license plate number has been assigned to an applicant, the owner shall have priority to that number for succeeding years if a timely renewal application is submitted to the county tax assessor-collector each year in accordance with subsection (d) of this section.

(d) Specialty license plate renewal.

(1) Renewal deadline. If a personalized license plate is not renewed within 60 days after its expiration date, a subsequent renewal application will be treated as an application for new personalized license plates.

(2) Length of validation. Except as provided by Transportation Code, §§504.401, 504.4061, or 504.502, all specialty license plates, symbols, tabs, or other devices shall be valid for 12 months from the month of issuance or for a prorated period of at least 12 months coinciding with the expiration of registration.

(3) Renewal.

(A) Renewal notice. Approximately 60 days before the expiration date of a specialty license plate, symbol, tab, or other device, the department will send each owner a renewal notice that includes the amount of the specialty plate fee and the registration fee.

(B) Return of notice. The owner must return the fee and any prescribed documentation to the tax assessor-collector of the county in which the owner resides or a county tax assessor-collector who is willing to accept the application, except that the owner of a vehicle with one of the following license plates must return the documentation, and specialty license plate fee, if applicable, directly to the department and submit the registration fee to a county tax assessor-collector:

- (i) County Judge;
- (ii) Federal Administrative Law Judge;
- (iii) State Judge;
- (iv) State Official;
- (v) U.S. Congress--House;
- (vi) U.S. Congress--Senate; and
- (vii) U.S. Judge.

(C) Expired plate numbers. The department will retain a specialty license plate number for 60 days after the expiration date of the plates if the plates are not renewed on or before their expiration date. After 60 days the number may be reissued to a new applicant. All specialty license plate renewals received after the expiration of the 60 days will be treated as new applications.

(D) Issuance of validation insignia. On receipt of a completed license plate renewal application and prescribed documentation, the department will issue registration validation insignia as specified in §217.27 unless this section or other law requires the issuance of new license plates to the owner.

(E) Lost or destroyed renewal notices. If a renewal notice is lost, destroyed, or not received by the vehicle owner, the specialty license plates, symbol, tab, or other device may be renewed if the owner provides acceptable personal identification along with the appropriate fees and documentation to the tax assessor-collector of the county in which the owner resides or a county tax assessor-collector who is willing to accept the application. Failure to receive the notice does not relieve the owner of the responsibility to renew the vehicle's registration.

(e) Transfer of specialty license plates.

(1) Transfer between vehicles.

(A) Transferable between vehicles. The owner of a vehicle with specialty license plates, symbols, tabs, or other devices may transfer the specialty plates between vehicles by filing an application through the county tax assessor-collector in which the owner resides or

a county tax assessor-collector who is willing to accept the application, if the vehicle to which the plates are transferred:

(i) is titled or leased in the owner's name; and

(ii) meets the vehicle classification requirements for that particular specialty license plate, symbol, tab, or other device.

(B) Non-transferable between vehicles. The following specialty license plates, symbols, tabs, or other devices are non-transferable between vehicles:

(i) Antique Vehicle license plates (includes Antique Auto, Antique Truck, and Antique Bus), Antique Motorcycle license plates, and Antique tabs;

(ii) Classic Auto, Classic Truck, Classic Motorcycle, Classic Travel Trailer, Street Rod, and Custom Vehicle license plates;

(iii) Forestry Vehicle license plates;

(iv) Log Loader license plates;

(v) Golf Cart license plates;

(vi) Package Delivery Vehicle license plates; and

(vii) Off-highway Vehicle license plates.

(C) New specialty license plates. If the department creates a new specialty license plate under Transportation Code, §504.801, the department will specify at the time of creation whether the license plate may be transferred between vehicles.

(2) Transfer between owners.

(A) Non-transferable between owners. Specialty license plates, symbols, tabs, or other devices issued under Transportation Code, Chapter 504, Subchapters C, E, and F are not transferable from one person to another except as specifically permitted by statute.

(B) New specialty license plates. If the department creates a new specialty license plate under Transportation Code, §504.801, the department will specify at the time of creation whether the license plate may be transferred between owners.

(3) Simultaneous transfer between owners and vehicles. Specialty license plates, symbols, tabs, or other devices are transferable between owners and vehicles simultaneously only if the owners and vehicles meet all the requirements in both paragraphs (1) and (2) of this subsection.

(f) Replacement.

(1) Application. When specialty license plates, symbols, tabs, or other devices are lost, stolen, or mutilated, the owner shall apply directly to a county tax assessor-collector for the issuance of replacements.

(2) Temporary registration insignia. If the specialty license plate, symbol, tab, or other device is lost, destroyed, or mutilated to such an extent that it is unusable, and if issuance of a replacement license plate would require that it be remanufactured, the owner must pay the statutory replacement fee, and the department will issue a temporary tag for interim use. The owner's new specialty license plate number will be shown on the temporary tag unless it is a personalized license plate, in which case the same personalized license plate number will be shown.

(3) Stolen specialty license plates.

(A) The department or county tax assessor-collector will not approve the issuance of replacement license plates with the

same personalized license plate number if the department's records indicate either the vehicle displaying the personalized license plates or the license plates are reported as stolen to law enforcement. The owner will be directed to contact the department for another personalized plate choice.

(B) The owner may select a different personalized number to be issued at no charge with the same expiration as the stolen specialty plate. On recovery of the stolen vehicle or license plates, the department will issue, at the owner's or applicant's request, replacement license plates, bearing the same personalized number as those that were stolen.

(g) License plates created after January 1, 1999. In accordance with Transportation Code, §504.702, the department will begin to issue specialty license plates authorized by a law enacted after January 1, 1999, only if the sponsoring entity for that license plate submits the following items before the fifth anniversary of the effective date of the law.

(1) The sponsoring entity must submit a written application. The application must be on a form approved by the director and include, at a minimum:

(A) the name of the license plate;

(B) the name and address of the sponsoring entity;

(C) the name and telephone number of a person authorized to act for the sponsoring entity; and

(D) the deposit.

(2) A sponsoring entity is not an agent of the department and does not act for the department in any matter, and the department does not assume any responsibility for fees or applications collected by a sponsoring entity.

(h) Assignment procedures for state, federal, and county officials.

(1) State Officials. State Official license plates contain the distinguishing prefix "SO." Members of the state legislature may be issued up to three sets of State Official specialty license plates with the distinguishing prefix "SO," or up to three sets of State Official specialty license plates that depict the state capitol, and do not display the distinguishing prefix "SO." An application by a member of the state legislature, for a State Official specialty license plate, must specify the same specialty license plate design for each applicable vehicle. State Official license plates are assigned in the following order:

(A) Governor;

(B) Lieutenant Governor;

(C) Speaker of the House;

(D) Attorney General;

(E) Comptroller;

(F) Land Commissioner;

(G) Agriculture Commissioner;

(H) Secretary of State;

(I) Railroad Commission;

(J) Supreme Court Chief Justice followed by the remaining justices based on their seniority;

(K) Criminal Court of Appeals Presiding Judge followed by the remaining judges based on their seniority;

(L) Members of the State Legislature, with Senators assigned in order of district number followed by Representatives assigned in order of district number, except that in the event of redistricting, license plates will be reassigned; and

(M) Board of Education Presiding Officer followed by the remaining members assigned in district number order, except that in the event of redistricting, license plates will be reassigned.

(2) Members of the U.S. Congress.

(A) U.S. Senate license plates contain the prefix "Senate" and are assigned by seniority; and

(B) U.S. House license plates contain the prefix "House" and are assigned in order of district number, except that in the event of redistricting, license plates will be reassigned.

(3) Federal Judge.

(A) Federal Judge license plates contain the prefix "USA" and are assigned on a seniority basis within each court in the following order:

(i) Judges of the Fifth Circuit Court of Appeals;

(ii) Judges of the United States District Courts;

(iii) United States Bankruptcy Judges; and

(iv) United States Magistrates.

(B) Federal Administrative Law Judge plates contain the prefix "US" and are assigned in the order in which applications are received.

(C) A federal judge who retired on or before August 31, 2003, and who held license plates expiring in March 2004 may continue to receive federal judge plates. A federal judge who retired after August 31, 2003, is not eligible for U.S. Judge license plates.

(4) State Judge.

(A) State Judge license plates contain the prefix "TX" and are assigned sequentially in the following order:

(i) Appellate District Courts;

(ii) Presiding Judges of Administrative Regions;

(iii) Judicial District Courts;

(iv) Criminal District Courts; and

(v) Family District Courts and County Statutory Courts.

(B) A particular alpha-numeric combination will always be assigned to a judge of the same court to which it was originally assigned.

(C) A state judge who retired on or before August 31, 2003, and who held license plates expiring in March 2004 may continue to receive state judge plates. A state judge who retired after August 31, 2003, is not eligible for State Judge license plates.

(5) County Judge license plates contain the prefix "CJ" and are assigned by county number.

(6) In the event of redistricting or other plate reallocation, the department may allow a state official to retain that official's plate number if the official has had the number for five or more consecutive years.

(i) Development of new specialty license plates.

(1) Procedure. The following procedure governs the process of authorizing new specialty license plates under Transportation Code, §504.801, whether the new license plate originated as a result of an application or as a department initiative.

(2) Applications for the creation of new specialty license plates. An applicant for the creation of a new specialty license plate, other than a vendor specialty plate under §217.52 of this title (relating to Marketing of Specialty License Plates through a Private Vendor), must submit a written application on a form approved by the executive director. The application must include:

(A) the applicant's name, address, telephone number, and other identifying information as directed on the form;

(B) certification on Internal Revenue Service letterhead stating that the applicant is a not-for-profit entity;

(C) a draft design of the specialty license plate;

(D) projected sales of the plate, including an explanation of how the projected figure was established;

(E) a marketing plan for the plate, including a description of the target market;

(F) a licensing agreement from the appropriate third party for any intellectual property design or design element;

(G) a letter from the executive director of the sponsoring state agency stating that the agency agrees to receive and distribute revenue from the sale of the specialty license plate and that the use of the funds will not violate a statute or constitutional provision; and

(H) other information necessary for the board to reach a decision regarding approval of the requested specialty plate.

(3) Review process. The board:

(A) will not consider incomplete applications;

(B) may request additional information from an applicant if necessary for a decision; and

(C) will consider specialty license plate applications that are restricted by law to certain individuals or groups of individuals (qualifying plates) using the same procedures as applications submitted for plates that are available to everyone (non-qualifying plates).

(4) Request for additional information. If the board determines that additional information is needed, the applicant must return the requested information not later than the requested due date. If the additional information is not received by that date, the board will return the application as incomplete unless the board:

(A) determines that the additional requested information is not critical for consideration and approval of the application; and

(B) approves the application, pending receipt of the additional information by a specified due date.

(5) Board decision. The board's decision will be based on:

(A) compliance with Transportation Code, §504.801;

(B) the proposed license plate design, including:

(i) whether the design appears to meet the legibility and reflectivity standards established by the department;

(ii) whether the design meets the standards established by the department for uniqueness;

(iii) other information provided during the application process;

(iv) the criteria designated in §217.27 as applied to the design; and

(v) whether a design is similar enough to an existing plate design that it may compete with the existing plate sales; and

(C) the applicant's ability to comply with Transportation Code, §504.702 relating to the required deposit or application that must be provided before the manufacture of a new specialty license plate.

(6) Public comment on proposed design. All proposed plate designs will be considered by the board as an agenda item at a regularly or specially called open meeting. Notice of consideration of proposed plate designs will be posted in accordance with Office of the Secretary of State meeting notice requirements. Notice of each license plate design will be posted on the department's Internet website to receive public comment at least 25 days in advance of the meeting at which it will be considered. The department will notify all other specialty plate organizations and the sponsoring agencies who administer specialty license plates issued in accordance with Transportation Code, Chapter 504, Subchapter G, of the posting. A comment on the proposed design can be submitted in writing through the mechanism provided on the department's Internet website for submission of comments. Written comments are welcome and must be received by the department at least 10 days in advance of the meeting. Public comment will be received at the board's meeting.

(7) Final approval.

(A) Approval. The board will approve or disapprove the specialty license plate application based on all of the information provided pursuant to this subchapter at an open meeting.

(B) Application not approved. If the application is not approved under subparagraph (A) of this paragraph, the applicant may submit a new application and supporting documentation for the design to be considered again by the board if:

(i) the applicant has additional, required documentation; or

(ii) the design has been altered to an acceptable degree.

(8) Issuance of specialty plates.

(A) If the specialty license plate is approved, the applicant must comply with Transportation Code, §504.702 before any further processing of the license plate.

(B) Approval of the plate does not guarantee that the submitted draft plate design will be used. The board has final approval authority of all specialty license plate designs and may adjust or reconfigure the submitted draft design to comply with the format or license plate specifications.

(C) If the board, in consultation with the applicant, adjusts or reconfigures the design, the adjusted or reconfigured design will not be posted on the department's website for additional comments.

(9) Redesign of specialty license plate.

(A) Upon receipt of a written request from the applicant, the department will allow redesign of a specialty license plate.

(B) A request for a redesign must meet all application requirements and proceed through the approval process of a new specialty plate as required by this subsection.

(C) An approved license plate redesign does not require the deposit required by Transportation Code, §504.702, but the applicant must pay a redesign cost to cover administrative expenses.

(j) Golf carts.

(1) A county tax assessor-collector may issue golf cart license plates as long as the requirements under Transportation Code, §§551.403 or §551.404 are met.

(2) A county tax assessor-collector may only issue golf cart license plates to residents or property owners of the issuing county.

(3) A golf cart license plate may not be used as a registration insignia, and a golf cart may not be registered for operation on a public highway.

(4) The license plate fee for a golf cart license plate is \$10.

(k) Off-highway vehicle.

(1) A county tax assessor-collector may issue off-highway vehicle license plates as long as the requirements under Transportation Code, §§551A.053 or §551A.055 are met.

(2) An off-highway vehicle license plate may not be used as a registration insignia, and an off-highway vehicle may not be registered for operation on a public highway.

(3) The license plate fee for an off-highway vehicle license plate is \$10.

(l) Package delivery vehicle.

(1) A county tax assessor-collector may issue package delivery license plates as long as the requirements under Transportation Code, §§551.453, 551.454, and 551.455 are met.

(2) The license plate fee for a package delivery license plate is \$25 to be paid on an annual basis.

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

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Aline Aucoin

General Counsel

Texas Department of Motor Vehicles

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For further information, please call: (512) 465-4209



SUBCHAPTER D. NONREPAIRABLE AND SALVAGE MOTOR VEHICLES

43 TAC §217.89

STATUTORY AUTHORITY. The department adopts amendments to §§217.2, 217.4, 217.23, 217.28, 217.36, 217.45, 217.46, and 217.89 under Transportation Code §§501.0041, 502.0021, 520.003, and 1002.001.

- Transportation Code §501.0041 authorizes the department to adopt rules to administer Transportation Code Chapter 501.

- Transportation Code §502.0021 authorizes the department to adopt rules to administer Transportation Code Chapter 502.

- Transportation Code §520.003 authorizes the department to adopt rules to administer Transportation Code Chapter 520;

- 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 §§501.023, 501.0234, 501.030, 502.040, 502.041, 502.407, 520.006, 521.144, 707.020 and 707.021.

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

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SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

43 TAC §217.56

INTRODUCTION. The Texas Department of Motor Vehicles (department) adopts amendments to 43 TAC §217.56, concerning vehicle registration reciprocity agreements. The amendments are necessary to implement Transportation Code §502.091(b), which authorizes the department to require an applicant for vehicle registration under the International Registration Plan (IRP) to register under the Unified Carrier Registration System Plan and Agreement under 49 U.S.C. §14504a (UCR) before applying for vehicle registration under the IRP if the applicant is required to register under UCR. The amendments are also necessary to delete certain definitions because the relevant terms are defined in the IRP. The amendments are also necessary to incorporate by reference the January 1, 2021, edition of the IRP. All amendments are substantive, except for the deletion of the definitions. The department adopts §217.56 without changes to the proposed text as published in the November 12, 2021, issue of the *Texas Register* (46 TexReg 7769). The rule will not be republished.

REASONED JUSTIFICATION. Amendments to §217.56(c)(2)(B) are necessary to incorporate by reference the January 1, 2021, edition of the IRP. Texas is bound by the IRP, which is a vehicle registration reciprocity agreement between the 48 contiguous states, the District of Columbia, and the Canadian provinces. Section 217.56 must incorporate the latest edition of the IRP because it contains language regarding the nature and requirements of vehicle registration under the IRP. Texas is a member of the IRP, as authorized by Transportation Code §502.091 and 49 U.S.C. §31704, and must comply with the IRP. The jurisdictions that are members of the IRP amended the January 1, 2019 edition of the IRP as follows to create the

January 1, 2021, edition of the IRP: amended Section 1325 regarding the composition of the Board of Directors of the Repository, and added a new Dispute Resolution Committee decision.

Amendments to §217.56(c)(2)(B) are also necessary to delete definitions because the relevant terms are defined in the IRP. It is not necessary to repeat any definitions from the IRP in §217.56(c)(2) because the IRP is adopted by reference in §217.56(c)(2)(B). Also, most of the defined terms in the definitions in §217.56(c)(2)(B) do not appear in §217.56(c)(2) other than in the definitions.

The amendment to §217.56(c)(2)(C)(i) is necessary to implement Transportation Code §502.091(b) by requiring an applicant for vehicle registration under the IRP to register under UCR before applying for IRP registration if the applicant is required to register under UCR. Texas participates in UCR, which is a federal registration program that is administered by the 41 states that participate in UCR (participating states) under 49 U.S.C. §14504a. Motor carriers and motor private carriers (motor carriers), as well as brokers, freight forwarders, and leasing companies (transportation service providers), that provide interstate transportation services must register under UCR and pay the fees under §14504a and 49 C.F.R. §367.20, *et seq.* Texas is authorized to participate in UCR under Transportation Code Chapter 645 and 43 TAC §218.17.

The department currently enforces UCR through audits and administrative enforcement actions. The amendment to §217.56(c)(2)(C)(i) requires an applicant for IRP to provide the department with a copy of the applicant's receipt under UCR to prove the applicant is currently registered under UCR if the applicant is required to register under UCR. The department believes the amendment to §217.56(c)(2)(C)(i) will help Texas comply with the 85% UCR compliance rate as required by the UCR State Performance Standards dated January 28, 2020. The department also believes the amendment will help Texas increase its UCR compliance rate. Texas achieved a UCR compliance rate of 88.37% for UCR registration year 2019, and 85.39% for UCR registration year 2020. Also, as more of the participating states increase their UCR compliance rate, it increases the chances that the Federal Motor Carrier Safety Administration (FMCSA) will reduce the UCR fees for all motor carriers and transportation service providers.

The UCR State Performance Standards require each participating state to achieve a minimum of an 85% UCR registration compliance rate by the end of each UCR registration period, which is the period during which registration fees are collected for each UCR registration year. The UCR registration compliance rate for a state is determined for each UCR registration period by dividing the total number of UCR registrations for that state by the total number of people, including sole proprietors and legal entities, that are required to have UCR registration in that state. According to the UCR State Performance Standards, states that do not demonstrate the ability to achieve the 85% registration compliance rate must submit a remedial action plan to the UCR Audit Subcommittee that identifies actions the state has taken or will take to help ensure future compliance with the 85% registration compliance rate. The UCR State Performance Standards also require participating states to undergo periodic compliance reviews which are administered with oversight from the UCR Audit Subcommittee and the UCR Board of Directors.

The current UCR Handbook says the participating states enforce the payment of UCR fees in a variety of ways. The UCR Hand-

book also says that some states deny a motor carrier its vehicle registration under the IRP until the motor carrier completes its UCR registration.

If the owner of a commercial vehicle registers its vehicle under the IRP, the vehicle is registered in the 48 contiguous states, as well as the District of Columbia and the Canadian provinces (member jurisdictions). If the owner of a commercial vehicle does not have IRP registration, the owner must generally obtain vehicle registration in each of the member jurisdictions in which the vehicle will travel. Many owners of commercial vehicles that travel through more than one of the member jurisdictions want to get IRP registration because it is an efficient and cost-effective way to obtain vehicle registration at a fraction of the cost. When the owner registers its vehicles with one base member jurisdiction under the IRP, the vehicles are only required to display one license plate that indicates the vehicles are registered in all member jurisdictions. Also, under the IRP, the owner pays vehicle registration fees based on the percentage of travel in each member jurisdiction relative to the total distance traveled in all member jurisdictions. IRP registration is also called apportioned registration because the owner is only required to pay a portion of the registration fees in any member jurisdiction.

FMCSA must set the UCR fees in an amount sufficient to collect enough revenue to pay the administrative costs for UCR and to pay the participating states the revenue they are entitled to receive under §14504a(g) and (h), based on the recommendation of the UCR Board under §14504a(d)(7)(A). The 41 participating states collect the UCR fees for each UCR registration year. The collected UCR fees are allocated to the states and to pay the administrative costs for UCR under §14504a(g) and (h).

FMCSA must increase the UCR fees if there is a shortage of UCR revenue and the UCR board requests an adjustment to the fees. See §14504a(d)(7) and (f)(1)(E). When FMCSA proposed to increase the UCR fees in 2010, some commenters stated that the UCR fees should only be raised after the participating states achieved adequate compliance with UCR. See Fees for the Unified Carrier Registration Plan and Agreement, 75 *Federal Register* 21993, 22001 (April 27, 2010). Many commenters stated that raising the UCR fees as proposed was unfair because it increased the burden on compliant motor carriers to the benefit of the non-compliant motor carriers. *Id.* at 22002. One commenter stated that applicants for vehicle registration should be required to show proof of compliance with UCR before their vehicle could be registered. *Id.* FMCSA encouraged more states to register any person, including any entities, for UCR at the same time the states renew vehicle registration, including IRP registration. *Id.* at 21999.

FMCSA must reduce the UCR fees if there is a surplus of UCR revenue and the UCR board requests an adjustment to the fees. See §14504a(d)(7), (f)(1)(E), and (h)(4). A surplus of UCR revenue occurs when the participating states collect more UCR revenue than is needed to pay the administrative costs for UCR and to pay the participating states the revenue they are entitled to receive under §14504a(g) and (h). The participating states are not allowed to get more UCR revenue than they are entitled to keep under §14504a(g) and (h), even if there is a surplus of UCR revenue. As more of the participating states increase their UCR compliance rate, it increases the chances that FMCSA will reduce the UCR fees for all motor carriers and transportation service providers. The last time FMCSA reduced the UCR fees was in 2020. See Fees for the Unified Carrier Registration Plan and

Agreement, 85 Fed. Reg. 8192 (Feb. 13, 2020) (codified at 49 C.F.R. §367.60).

SUMMARY OF COMMENTS.

No comments on the proposed amendments were received.

STATUTORY AUTHORITY. The department adopts amendments to §217.56 under Transportation Code §§502.091(b), 502.0021, and 1002.001.

Transportation Code §502.091(b) authorizes the department to adopt rules to carry out the IRP and to require an applicant for IRP to register under UCR before the applicant applies for registration under IRP.

Transportation Code §502.0021 authorizes the department to adopt rules to administer Transportation Code Chapter 502.

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 §502.091 and §645.001.

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 February 11, 2022.

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Aline Aucoin
General Counsel

Texas Department of Motor Vehicles

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TRANSFERRED RULES

The Government Code, §2002.058, authorizes the Secretary of State to remove or transfer rules within the Texas Administrative Code when the agency that promulgated the rules is abolished. The Secretary of State will publish notice of rule transfer or removal in this section of the *Texas Register*. The effective date of a rule transfer is the date set by the legislature, not the date of publication of notice. Proposed or emergency rules are not subject to administrative transfer.

Department of State Health Services

Rule Transfer

During the 84th Legislative Session, the Texas Legislature passed Senate Bill 200, addressing the reorganization of health and human services delivery in Texas. As a result, certain functions previously performed by the Department of State Health Services (DSHS), including client services, certain regulatory functions, and the operation of state hospitals, transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code, §531.0201 and §531.02011. The DSHS rules in Texas Administrative Code, Title 25, Part 1, Chapter 37, Maternal and Infant Health Services, Subchapter F, Hemophilia Assistance Program, that are related to these transferred functions, are being transferred to HHSC under Texas Administrative Code, Title 26, Part 1, Chapter 354, Hemophilia Assistance Program.

The rules will be transferred in the Texas Administrative Code effective March 15, 2022.

The following table outlines the rule transfer:

Figure: 25 TAC Chapter 37, Subchapter F
TRD-202200536



Figure: 25 TAC Chapter 37, Subchapter F

| Current Rules | Move to |
|----------------------------------------------------------------|----------------------------------------------------------------|
| Title 25. Health Services | Title 26. Health and Human Services |
| Part 1. Department of State Health Services | Part 1. Health and Human Services |
| Chapter 37. Maternal and Infant Health Services | Commission |
| Subchapter F. Hemophilia Assistance Program | Chapter 354. Hemophilia Assistance Program |
| §37.111. Purpose. | §354.1. Purpose. |
| §37.112. Definitions. | §354.3. Definitions. |
| §37.113. Program Eligibility. | §354.5. Program Eligibility. |
| §37.114. Benefits and Limitations. | §354.7. Benefits and Limitations. |
| §37.115. Providers. | §354.9. Providers. |
| §37.116. Claims Payment. | §354.11. Claims Payment. |
| §37.117. Rights and Responsibilities. | §354.13. Rights and Responsibilities. |
| §37.118. Modifications, Suspensions, Denials and Terminations. | §354.15. Modifications, Suspensions, Denials and Terminations. |
| §37.119. Right of Appeal. | §354.17. Right of Appeal. |



Department of State Health Services

Rule Transfer

Health and Human Services Commission

Rule Transfer

During the 84th Legislative Session, the Texas Legislature passed Senate Bill 200, addressing the reorganization of health and human services delivery in Texas. As a result, certain functions previously performed by the Department of State Health Services (DSHS), including client services, certain regulatory functions, and the operation of state hospitals, transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code, §531.0201 and §531.02011. The DSHS rules in Texas Administrative Code, Title 25, Part 1, Chapter 37, Maternal and Infant Health Services, Subchapter F, Hemophilia Assistance Program, that are related to these transferred functions, are being transferred to HHSC under Texas Administrative Code, Title 26, Part 1, Chapter 354, Hemophilia Assistance Program.

The rules will be transferred in the Texas Administrative Code effective March 15, 2022.

The following table outlines the rule transfer:

Figure: 25 TAC Chapter 37, Subchapter F
TRD-202200539

During the 84th Legislative Session, the Texas Legislature passed Senate Bill 200, addressing the reorganization of health and human services delivery in Texas. As a result, certain functions previously performed by the Department of State Health Services (DSHS), including client

services, certain regulatory functions, and the operation of state hospitals, transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code, §531.0201 and §531.02011. The DSHS rules in Texas Administrative Code, Title 25, Part 1, Chapter 37, Maternal and Infant Health Services, Subchapter K, Epilepsy Program, that are related to these transferred functions, are being transferred to HHSC under Texas Administrative Code, Title 26, Part 1, Chapter 355, Epilepsy Program.

The rules will be transferred in the Texas Administrative Code effective March 15, 2022.

The following table outlines the rule transfer:

Figure: 25 TAC Chapter 37, Subchapter K
TRD-202200535

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Health and Human Services Commission

Rule Transfer

Figure: 25 TAC Chapter 37, Subchapter K

| Current Rules | Move to |
|--------------------------------------------------------------|-------------------------------------------------------------|
| Title 25. Health Services | Title 26. Health and Human Services |
| Part 1. Department of State Health Services | Part 1. Health and Human Services |
| Chapter 37. Maternal and Infant Health Services | Commission |
| Subchapter K. Epilepsy Program | Chapter 355. Epilepsy Program |
| §37.211. General. | §355.1. General. |
| §37.212. Recipient Requirements. | §355.3. Recipient Requirements. |
| §37.213. Residency and Residency Documentation Requirements. | §355.5. Residency and Residency Documentation Requirements. |
| §37.214. Application and Eligibility Date. | §355.7. Application and Eligibility Date. |
| §37.215. Financial Criteria. | §355.9. Financial Criteria. |
| §37.216. Limitations and Benefits Provided. | §355.11. Limitations and Benefits Provided. |
| §37.218. Notice of Intent to Take Action and Fair Hearings. | §355.13. Notice of Intent to Take Action and Fair Hearings. |

◆ ◆ ◆

Department of State Health Services

Rule Transfer

During the 84th Legislative Session, the Texas Legislature passed Senate Bill 200, addressing the reorganization of health and human services delivery in Texas. As a result, certain functions previously performed by the Department of State Health Services (DSHS), including client services, certain regulatory functions, and the operation of state hospitals, transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code, §531.0201 and §531.02011. The DSHS rules in Texas Administrative Code, Title 25, Part 1, Chapter 38, Children with Special Health Care Needs Services Program, that are related to these transferred functions, are being transferred to HHSC under Texas Administrative Code, Title 26, Part 1, Chapter 351, Children with Special Health Care Needs Services Program.

The rules will be transferred in the Texas Administrative Code effective March 15, 2022.

The following table outlines the rule transfer:

During the 84th Legislative Session, the Texas Legislature passed Senate Bill 200, addressing the reorganization of health and human services delivery in Texas. As a result, certain functions previously performed by the Department of State Health Services (DSHS), including client services, certain regulatory functions, and the operation of state hospitals, transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code, §531.0201 and §531.02011. The DSHS rules in Texas Administrative Code, Title 25, Part 1, Chapter 37, Maternal and Infant Health Services, Subchapter K, Epilepsy Program, that are related to these transferred functions, are being transferred to HHSC under Texas Administrative Code, Title 26, Part 1, Chapter 355, Epilepsy Program.

The rules will be transferred in the Texas Administrative Code effective March 15, 2022.

The following table outlines the rule transfer:

Figure: 25 TAC Chapter 37, Subchapter K
TRD-202200538

Figure: 25 TAC Chapter 38
TRD-202200534

◆ ◆ ◆

Health and Human Services Commission

Rule Transfer

During the 84th Legislative Session, the Texas Legislature passed Senate Bill 200, addressing the reorganization of health and human services delivery in Texas. As a result, certain functions previously performed by the Department of State Health Services (DSHS), including client services, certain regulatory functions, and the operation of state hospitals, transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code, §531.0201 and §531.02011. The DSHS rules in Texas Administrative Code, Title 25, Part 1, Chapter 38, Children with Special Health Care Needs Services Program, that are related to these transferred functions, are being transferred to HHSC under Texas Administrative Code, Title 26, Part 1, Chapter 351, Children with Special Health Care Needs Services Program.

The rules will be transferred in the Texas Administrative Code effective March 15, 2022.

Figure: 25 TAC Chapter 38
TRD-202200537

The following table outlines the rule transfer:

Figure: 25 TAC Chapter 38

| Current Rules | Move to |
|--------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------|
| Title 25. Health Services | Title 26. Health and Human Services |
| Part 1. Department of State Health Services | Part 1. Health and Human Services |
| Chapter 38. Children with Special Health Care Needs Services Program | Commission |
| | Chapter 351. Children with Special Health Care Needs Services Program |
| §38.1. Purpose and Common Name. | §351.1. Purpose and Common Name. |
| §38.2. Definitions. | §351.2. Definitions. |
| §38.3. Eligibility for Services. | §351.3. Eligibility for Services. |
| §38.4. Covered Services. | §351.4. Covered Services. |
| §38.5. Rights and Responsibilities of a Client's Parent(s), Foster Parent(s), Guardian, or Managing Conservator, or an Adult Client. | §351.5. Rights and Responsibilities of a Client's Parent(s), Foster Parent(s), Guardian, or Managing Conservator, or an Adult Client. |
| §38.6. Providers. | §351.6. Providers. |
| §38.7. Ambulatory Surgical Care Facilities. | §351.7. Ambulatory Surgical Care Facilities. |
| §38.8. Inpatient Rehabilitation Centers. | §351.8. Inpatient Rehabilitation Centers. |
| §38.9. Cleft-Craniofacial Services. | §351.9. Cleft-Craniofacial Services. |
| §38.10. Payment of Services. | §351.10. Payment of Services. |
| §38.11. Contracts, Written Agreements, and Donations. | §351.11. Contracts, Written Agreements, and Donations. |
| §38.12. Denial, Modification, Suspension, or Termination of Program Eligibility or Eligibility for Health Care Benefits. | §351.12. Denial, Modification, Suspension, or Termination of Program Eligibility or Eligibility for Health Care Benefits. |
| §38.13. Right of Appeal. | §351.13. Right of Appeal. |
| §38.14. Development and Improvement of Standards and Services. | §351.14. Development and Improvement of Standards and Services. |
| §38.15. Third Party Recovery. | §351.15. Third Party Recovery. |
| §38.16. Procedures to Address Program Budget Alignment. | §351.16. Procedures to Address Program Budget Alignment. |



Department of Aging and Disability Services

Rule Transfer

During the 84th Legislative Session, the Texas Legislature passed Senate Bill 200, addressing the reorganization of health and human services delivery in Texas. As a result, some agencies were abolished, and their functions transferred to the Texas Health and Human Services Commission (HHSC). Texas Government Code, §531.0202(b), specified the Department of Aging and Disability Services (DADS) be abolished September 1, 2017, after all its functions were transferred to HHSC in accordance with Texas Government Code, §531.0201 and §531.02011. The former DADS rules in Texas Administrative Code, Title 40, Part 1, Chapter 10, Guardianship Services, are being transferred to Texas Administrative Code, Title 26, Part 1, Chapter 361, Guardianship Services.

The rules will be transferred in the Texas Administrative Code effective March 15, 2022.

The following table outlines the rule transfer:

Figure: 40 TAC Chapter 10
TRD-202200540



Health and Human Services Commission

Rule Transfer

During the 84th Legislative Session, the Texas Legislature passed Senate Bill 200, addressing the reorganization of health and human services delivery in Texas. As a result, some agencies were abolished, and their functions transferred to the Texas Health and Human Services Commission (HHSC). Texas Government Code, §531.0202(b), specified the Department of Aging and Disability Services (DADS) be abolished September 1, 2017, after all its functions were transferred to HHSC in accordance with Texas Government Code, §531.0201 and §531.02011. The former DADS rules in Texas Administrative Code, Title 40, Part 1, Chapter 10, Guardianship Services, are being trans-

ferred to Texas Administrative Code, Title 26, Part 1, Chapter 361, Guardianship Services.

The rules will be transferred in the Texas Administrative Code effective March 15, 2022.

The following table outlines the rule transfer:

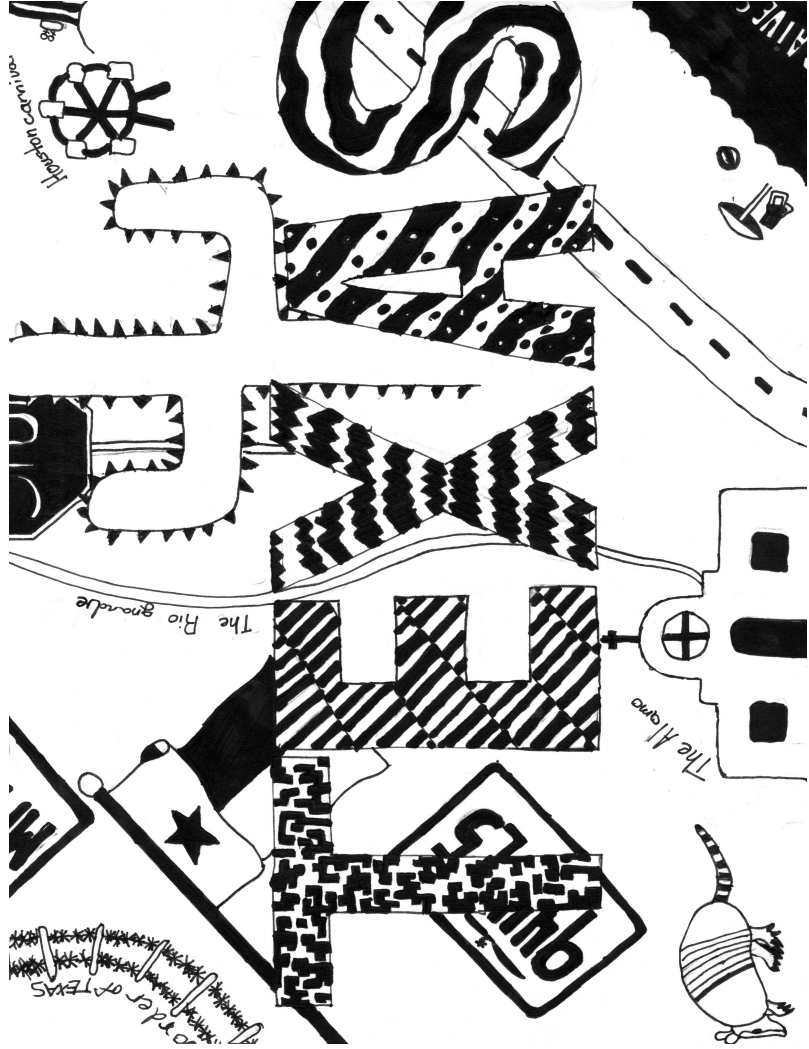
Figure: 40 TAC Chapter 10

TRD-202200533

Figure: 40 TAC Chapter 10

| | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Current Rules Title 40. Social Services and Assistance Part 1. Department of Aging and Disability Services Chapter 10. Guardianship Services | Move to Title 26. Health and Human Services Part 1. Health and Human Services Commission Chapter 361. Guardianship Services |
| Subchapter A. General Provisions | Subchapter A. General Provisions |
| §10.101. Introduction. | §361.1. Introduction. |
| §10.103. Definitions. | §361.3. Definitions. |
| Subchapter B. Eligibility And Assessment Of Individuals For Guardianship Services | Subchapter B. Eligibility And Assessment Of Individuals For Guardianship Services |
| §10.201. Eligibility for Services. | §361.21. Eligibility for Services. |
| §10.203. Assessment. | §361.23. Assessment. |
| §10.205. Annual Review of a Ward's Status. | §361.25. Annual Review of a Ward's Status. |
| Subchapter C. Contractor Requirements | Subchapter C. Contractor Requirements |
| §10.301. Guardianship Contracts. | §361.51. Guardianship Contracts. |
| §10.305. Eligibility To Be a Guardianship Contractor. | §361.53. Eligibility To Be a Guardianship Contractor. |
| §10.307. Acceptance of Referrals from DADS. | §361.55. Acceptance of Referrals from DADS. |
| §10.309. Policies and Procedures Required of Contractors. | §361.57. Policies and Procedures Required of Contractors. |
| §10.311. Qualifications and Training Requirements for Contractor Employees. | §361.59. Qualifications and Training Requirements for Contractor Employees. |
| §10.313. Qualifications and Training Requirements for Volunteers of Contractors. | §361.61. Qualifications and Training Requirements for Volunteers of Contractors. |
| §10.315. Criminal Background Checks. | §361.67. Criminal Background Checks. |
| §10.317. Quality Assurance Plan. | §361.69. Quality Assurance Plan. |
| §10.319. Fiscal Management. | §361.71. Fiscal Management. |
| §10.321. Roles and Responsibilities of Case Managers. | §361.73. Roles and Responsibilities of Case Managers. |
| §10.323. Reporting of Abuse, Neglect, or Exploitation. | §361.75. Reporting of Abuse, Neglect, or Exploitation. |
| §10.325. Compliance with Probate Court Local Rules in Service Area. | §361.77. Compliance with Probate Court Local Rules in Service Area. |
| §10.327. Responsibilities of the Guardian of the Person. | §361.79. Responsibilities of the Guardian of the Person. |
| §10.329. Responsibilities of Guardian of the Estate. | §361.81. Responsibilities of Guardian of the Estate. |
| §10.331. Service Plans for Wards. | §361.83. Service Plans for Wards. |
| Subchapter D. Records Management | Subchapter D. Records Management |
| §10.401. Confidentiality of Records. | §361.151. Confidentiality of Records. |
| §10.403. Documentation Requirements. | §361.153. Documentation Requirements. |
| §10.405. Maintenance of Records. | §361.155. Maintenance of Records. |
| Subchapter E. Contract Monitoring And Compliance | Subchapter E. Contract Monitoring And Compliance |
| §10.501. Monitoring Reviews. | §361.201. Monitoring Reviews. |
| §10.503. Complaint Investigations. | §361.203. Complaint Investigations. |
| §10.505. Fiscal Monitoring. | §361.205. Fiscal Monitoring. |
| §10.507. Sanctions. | §361.207. Sanctions. |
| §10.509. Administrative Review. | §361.209. Administrative Review. |





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

Texas Department of Housing and Community Affairs

Title 10, Part 1

The Texas Department of Housing and Community Affairs (the Department) files this notice of rule review for 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, 10 TAC §1.4, Protest Procedures for Contractors. The purpose of the proposed action is to conduct a rule review in accordance with Tex. Gov't Code §2001.039, which requires a state agency to review its rules every four years.

At this time, the Department has determined that there continues to be a need for this rule, which is to comply with 34 TAC Chapter 20, Subchapter F, Division 3, the rules of the Texas Comptroller of Public Accounts addressing procurement, which require state agencies to adopt protest procedures consistent with the Comptroller's procedures. The Department has also determined that no changes to this rule as currently in effect are necessary. This rule proposed for readoption will be noted in the Review of Agency Rules section of the *Texas Register* without publication of the text.

REQUEST FOR PUBLIC COMMENT. All comments or questions in response to this notice of rule review may be submitted in writing from February 25, 2022, through March 25, 2022. Written comments may be submitted to Brooke Boston, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941, or by email to bboston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m. Austin local time, March 25, 2022.

TRD-202200498
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Filed: February 11, 2022



The Texas Department of Housing and Community Affairs (the Department) files this notice of rule review for 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, 10 TAC §1.6, Historically Underutilized Businesses. The purpose of the proposed action is to conduct a rule review in accordance with Tex. Gov't Code §2001.039, which requires a state agency to review its rules every four years.

At this time, the Department has determined that there continues to be a need for this rule, which is to encourage the use of Historically Underutilized Businesses (HUBs) in the Department's procurement processes and to comply with Tex. Gov't Code §2161.003, which requires that

the Department adopt the Texas Comptroller of Public Accounts HUB Program rules. The Department has also determined that no changes to this rule as currently in effect are necessary. This rule proposed for readoption will be noted in the Review of Agency Rules section of the *Texas Register* without publication of the text.

REQUEST FOR PUBLIC COMMENT. All comments or questions in response to this notice of rule review may be submitted in writing from February 25, 2022, through March 25, 2022. Written comments may be submitted to Brooke Boston, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941, or by email to bboston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m. Austin local time, March 25, 2022.

TRD-202200499
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Filed: February 11, 2022



The Texas Department of Housing and Community Affairs (the Department) files this notice of rule review for 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.12 Negotiated Rulemaking. The purpose of the proposed action is to conduct a rule review in accordance with Tex. Gov't Code §2001.039, which requires a state agency to review its rules every four years.

At this time, the Department has determined that there continues to be a need for this rule, which is to satisfy Tex. Gov't Code, §2306.082, which requires the Department to encourage negotiated rulemaking. The Department has also determined that no changes to this rule as currently in effect are necessary. This rule proposed for readoption will be noted in the Review of Agency Rules section of the *Texas Register* without publication of the text.

REQUEST FOR PUBLIC COMMENT. All comments or questions in response to this notice of rule review may be submitted in writing from February 25, 2022, through March 25, 2022. Written comments may be submitted to Brooke Boston, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941, or by email to bboston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m. Austin local time, March 25, 2022.

TRD-202200500
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Filed: February 11, 2022



The Texas Department of Housing and Community Affairs (the Department) files this notice of rule review for 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, 10 TAC §1.17, Alternative Dispute Resolution. The purpose of the proposed action is to conduct a rule review in accordance with Tex. Gov't Code §2001.039, which requires a state agency to review its rules every four years.

At this time, the Department has determined that there continues to be a need for this rule, which is to satisfy Tex. Gov't Code, §2306.082, which requires the Department to encourage alternative dispute resolution procedures. The Department has also determined that no changes to this rule as currently in effect are necessary. This rule proposed for re-adoption will be noted in the Review of Agency Rules section of the *Texas Register* without publication of the text.

REQUEST FOR PUBLIC COMMENT. All comments or questions in response to this notice of rule review may be submitted in writing from February 25, 2022, through March 25, 2022. Written comments may be submitted to Brooke Boston, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941, or by email to bboston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m. Austin local time, March 25, 2022.

TRD-202200501

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Filed: February 11, 2022



Texas Education Agency

Title 19, Part 2

The State Board of Education (SBOE) proposes the review of 19 Texas Administrative Code (TAC) Chapter 89, Adaptations for Special Populations, pursuant to the Texas Government Code, §2001.039. The rules being reviewed by the SBOE in 19 TAC Chapter 89 relate to gifted/talented education, Texas certificate of high school equivalency, and special education services and settings and are organized under the following subchapters: Subchapter A, Gifted/Talented Education; Subchapter C, Texas Certificate of High School Equivalency; and Subchapter D, Special Education Services and Settings.

As required by the Texas Government Code, §2001.039, the SBOE will accept comments as to whether the reasons for adopting 19 TAC Chapter 89, Subchapters A, C and D, continue to exist.

The public comment period on the review begins February 25, 2022, and ends at 5:00 p.m. on April 1, 2022. 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/SBOE_Rules_\(TAC\)/State_Board_of_Education_Rule_Review](https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_(TAC)/State_Board_of_Education_Rule_Review). The SBOE will take registered oral and written comments on the review at the appropriate committee meeting in April 2022 in accordance with the SBOE board operating policies and procedures.

TRD-202200567

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: February 16, 2022



Adopted Rule Reviews

Texas Department of Licensing and Regulation

Title 16, Part 4

The Texas Department of Licensing and Regulation (Department) filed a Notice of Intent to Review to consider for re-adoption, revision, or repeal the rule chapters listed below, in their entirety, under Title 16, Part 4, of the Texas Administrative Code (TAC). This review was conducted in accordance with Texas Government Code §2001.039.

Building and Mechanical Programs

Chapter 62, Code Enforcement Officers

Chapter 78, Mold Assessors and Remediators

Chapter 119, Sanitarians

Court-Ordered Education Programs

Chapter 90, Offender Education Programs for Alcohol and Drug-Related Offenses

Chapter 92, Responsible Pet Owners

Transportation Programs

Chapter 95, Transportation Network Companies

Medical and Health Professions Programs

Chapter 118, Laser Hair Removal

Public Comments

A combined Notice of Intent to Review for all of the chapters listed above was published in the September 3, 2021, issue of the *Texas Register* (46 TexReg 5597). The public comment period closed on October 4, 2021. The Department received written comments from 65 interested parties in response to the Notice of Intent to Review. Four interested parties also presented oral comments at the January 25, 2022, meeting of the Texas Commission of Licensing and Regulation (Commission), the Department's governing body. Two of these interested parties also had submitted written comments in response to the Notice of Intent to Review. The written and oral public comments received for each chapter are explained below.

Chapter 62, Code Enforcement Officers

The Department did not receive any public comments in response to the Notice of Intent to Review for Chapter 62, Code Enforcement Officers.

Chapter 78, Mold Assessors and Remediators

The Department received written public comments from 56 interested parties in response to the Notice of Intent to Review for Chapter 78, Mold Assessors and Remediators. Four interested parties, including two that also submitted written public comments, presented oral public comments at the Commission meeting regarding the rule review for Chapter 78. The interested parties included individuals and business entities, the Texas Mold Assessors and Remediators Association, the Texas Association of Builders (TAB), and the Institute of Inspection Cleaning and Restoration Certification (IICRC).

Of the written and oral public comments that were received, the Department received 16 comments in support of re-adoption of the rules. Most of these comments support re-adoption to protect consumers from unscrupulous operators and because the rules are also protective of consumers' health. The Department received one comment that opposed the rule review, stating that the timing of the rule review is premature under current law. The Department has taken these comments into consideration as part of this review. The Department received 42 comments requesting one or more amendments to the rules. Many of these comments support amendments to define and narrow the scope of mold license holders' advice to consumers; to revise the definition of "indoor air"; to include air sampling protocols and requirements to ad-

here to recognized mold remediation standards; and to increase options for mold training and education. The Department will take these comments under consideration for a possible future rulemaking because any amendments must be made using the standard rulemaking process.

Chapter 90, Offender Education Programs for Alcohol and Drug-Related Offenses

The Department received public comments from five interested parties in response to the Notice of Intent to Review for Chapter 90, Offender Education Programs for Alcohol and Drug-Related Offenses. Of the comments that were received, three comments expressed support for continuing the offender education courses and programs and provided information regarding the benefits of these courses and programs. The Department has taken these comments into consideration as part of this review. Four comments requested amendments to the rules relating to: using technology for remote delivery of course material, personal and subject-matter validation, and end of course testing; implementing Senate Bill 1480, 87th Regular Legislature (2021); adopting rules that align with the current rule structures and procedures of the Driver Education and Traffic Safety (DES) program; allowing for classroom and online options for the Offender Education courses; recategorizing the DES Drug and Alcohol Driving Awareness Program as an Offender Education Alcohol Awareness program; and updating the offender education course curriculum. The Department will take these comments under consideration for a possible future rulemaking because any amendments must be made using the standard rulemaking process.

Chapter 92, Responsible Pet Owners

The Department did not receive any public comments in response to the Notice of Intent to Review for Chapter 92, Responsible Pet Owners.

Chapter 95, Transportation Network Companies

The Department received public comments from one interested party in response to the Notice of Intent to Review for Chapter 95, Transportation Network Companies. The comment requested amendments to the rules related to the fees. The Department will take this comment under consideration for a possible future rulemaking because any amendments must be made using the standard rulemaking process.

Chapter 118, Laser Hair Removal

The Department did not receive any public comments in response to the Notice of Intent to Review for Chapter 118, Laser Hair Removal.

Chapter 119, Sanitarians

The Department received public comments from three interested parties in response to the Notice of Intent to Review for Chapter 119, San-

itarians. The three comments requested amendments to the program rules. Two of these comments were from individuals and related to the scope of practice of sanitarians and the composition of the advisory committee. The third comment was from the City of New Braunfels and related to the registration term for a sanitarian in training. The Department will take these comments under consideration for a possible future rulemaking because any amendments must be made using the standard rulemaking process.

Department Review and Recommendation

The Department reviewed each of the rule chapters listed above and determined that the reasons for adopting or readopting the rules in these chapters continue to exist. The rules are still essential in implementing the statutory provisions for each of the affected programs. The rules provide details that are not found in the program statutes but are necessary for implementation and operation of the programs. The Department recommended the readoption of each of the rule chapters listed above in their entirety and in their current form.

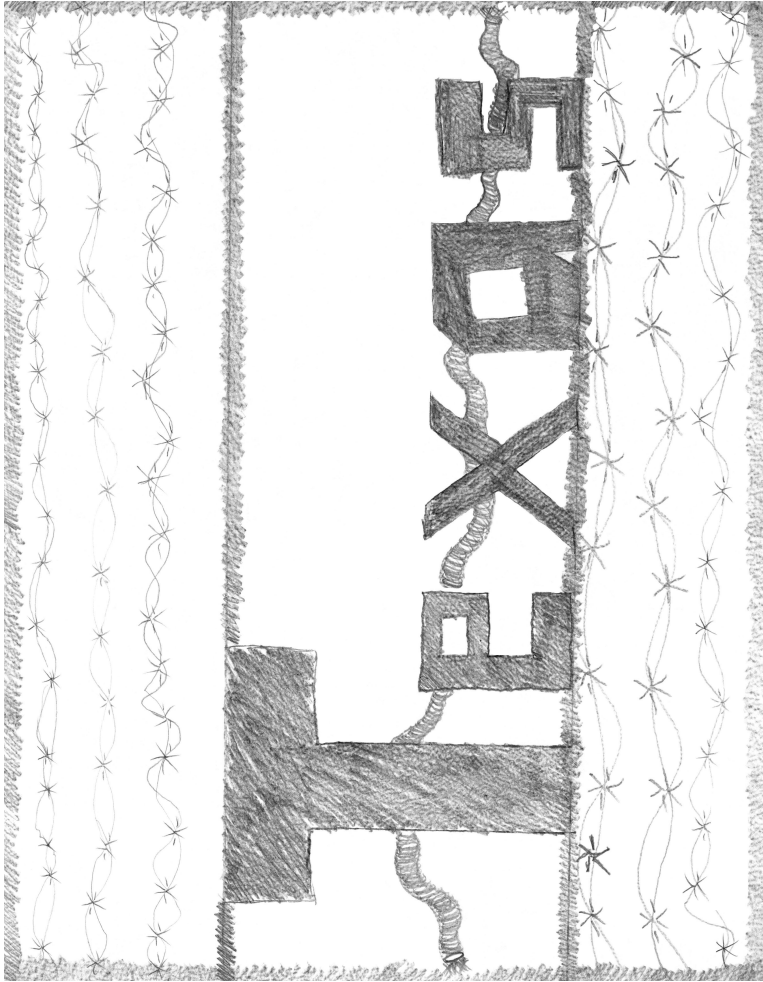
The Department may propose amendments in the future to update, clarify, or supplement the existing rules. Any proposed changes to the rules will be published in the Proposed Rules section of the *Texas Register* and will be open for public comment before final adoption by the Texas Commission of Licensing and Regulation (Commission), the Department's governing body, and in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

Commission Action

At its meeting on January 25, 2022, the Commission readopted the following rule chapters, in their entirety and in their current form: 16 TAC, Chapter 62, Code Enforcement Officers; Chapter 78, Mold Assessors and Remediators; Chapter 90, Offender Education Programs for Alcohol and Drug-Related Offenses; Chapter 92, Responsible Pet Owners; Chapter 95, Transportation Network Companies; Chapter 118, Laser Hair Removal; and Chapter 119, Sanitarians. This concludes the review of these rule chapters in accordance with Texas Government Code §2001.039.

TRD-202200551
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Filed: February 15, 2022





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.

Texas State Affordable Housing Corporation

2022 Texas Foundations Fund Draft Guidelines

Public Comment Needed: 2022 Texas Foundations Fund

The 2022 Texas Foundations Fund Draft Guidelines are now available for public comment. A copy of the 2022 Texas Foundations Fund Draft Guidelines may be found on the Corporation's website at www.tsahc.org. Please submit public comment via email to Anna Orendain at aorendain@tsahc.org with the subject line "2022 Texas Foundations Fund Public Comment". Public comment must be submitted for consideration by March 11, 2022 at 5:00 p.m.

TRD-202200565

David Long

President

Texas State Affordable Housing Corporation

Filed: February 16, 2022

◆ ◆ ◆
Office of Consumer Credit Commissioner

Adjustments to Maximum Fee Amounts

Section 394.210 of the Texas Finance Code lists maximum fee amounts for debt management and debt settlement providers. Under Section 394.2101, the OCCC publishes adjustments to these amounts based on the Consumer Price Index for All Urban Consumers (1982-84).

Effective Maximum Fee Amounts: July 1, 2022 to June 30, 2023

The effective maximum fee amounts for July 1, 2022 to June 30, 2023 will be adjusted as follows:

| Description | Citation | Adjusted Amount |
|------------------------------------------------------------------------------|---------------|------------------------------------------|
| Debt management setup fee | 394.210(f)(1) | \$124.00 |
| Debt management monthly service fee | 394.210(f)(2) | Lesser of \$12.00 per account or \$62.00 |
| Debt settlement setup fee | 394.210(g)(1) | \$494.00 |
| Debt settlement monthly service fee | 394.210(g)(2) | Lesser of \$12.00 per account or \$62.00 |
| Counseling or education if no debt management or settlement service provided | 394.210(1) | \$124.00 |
| Fee for dishonored payment | 394.210(n) | \$30.00 ¹ |

¹ The 2022 adjustment would exceed the \$30 authorized by Texas Business and Commerce Code §3.506

Note: These calculations are based on comparing the reference base index for December 2011 (225.672) to the index for December 2021 (278.802). The percentage change is a 23.5430% increase, rounded to the nearest dollar. The fee descriptions above are just a summary. Providers should carefully review Section 394.210 and other applicable law to ensure that their fees are authorized.

The 2022 adjustment would exceed the \$30 authorized by Texas Business and Commerce Code §3.506

TRD-202200552

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: February 15, 2022



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 02/21/22 - 02/27/22 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 02/21/22 - 02/27/22 is 18% for Commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

TRD-202200548

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: February 15, 2022



Credit Union Department

Application to Expand Field of Membership

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration.

An application was received from First Community Credit Union, Houston, Texas, to expand its field of membership. The proposal would permit persons who live, work, worship, or attend school in and businesses in Waller, Washington, Burleson, Brazos, Grimes, Walker, Madison, Leon, Robertson, Falls, Limestone, Freestone, McLennan, Hill, Navarro, Ellis, Johnson, Tarrant, Dallas, Rockwall, Collin, and Denton Counties, Texas, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at <http://www.cud.texas.gov/page/bylaw-charter-applications>. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-202200560

John J. Kolhoff

Commissioner

Credit Union Department

Filed: February 16, 2022



Applications for a Merger or Consolidation

Notice is given that the following applications have been filed with the Credit Union Department (Department) and are under consideration.

An application was received from Telco Plus Credit Union (Longview) seeking approval to merge with Teachers Alliance Federal Credit Union (Longview), with Telco Plus Credit Union being the surviving credit union.

An application was received from WesTex Community Credit Union (Kermit) seeking approval to merge with Ward County Credit Union (Monahans), with WesTex Community Credit Union being the surviving credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-202200562

John J. Kolhoff

Commissioner

Credit Union Department

Filed: February 16, 2022



Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final actions taken on the following applications:

Field of Membership - Approved

First Central Credit Union, Waco, Texas - See *Texas Register* dated August 27, 2021.

Merger or Consolidation - Approved

Texas Trust Credit Union (Mansfield) and Texas Federal Credit Union (Dallas) - See *Texas Register* dated on April 30, 2021.

Articles of Incorporation Change - Approved

Cen-Tex Manufacturing Credit Union (Brownwood) - See *Texas Register* dated on December 24, 2021.

TRD-202200559

John J. Kolhoff

Commissioner

Credit Union Department

Filed: February 16, 2022



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 **March 28, 2022**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **March 28, 2022**. 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 Texas, Incorporated; DOCKET NUMBER: 2021-0733-MWD-E; IDENTIFIER: RN101519668; LOCATION: Houston, Harris 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 WQ0014117001, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, by failing to comply with permitted effluent limitations; PENALTY: \$5,625; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5865; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: Aqua Utilities, Incorporated; DOCKET NUMBER: 2021-1077-PWS-E; IDENTIFIER: RN102679438; LOCATION: Granbury, Hood County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(b)(1)(C)(i) and Texas Health and Safety Code, §341.0315(c), by failing to provide a well capacity of 0.6 gallons per minute per connection; and 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; PENALTY: \$1,500; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Braskem America, Incorporated; DOCKET NUMBER: 2021-0224-AIR-E; IDENTIFIER: RN106302508; LOCATION: Freeport, Brazoria County; TYPE OF FACILITY: polypropylene plant; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 37884, Special Conditions Number 1, Federal Operating Permit Number O2313, General Terms and Conditions and Special Terms and Conditions Number 12, and Texas Health and Safety Code, §382.085(b), by failing to prevent

unauthorized emissions; PENALTY: \$7,238; ENFORCEMENT COORDINATOR: Mackenzie Mehlmann, (512) 239-2572; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: BURLINGTON RESOURCES OIL & GAS COMPANY LP; DOCKET NUMBER: 2021-0828-PWS-E; IDENTIFIER: RN106836968; LOCATION: Kenedy, Karnes County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(3)(A), by failing to submit well completion data for review and approval prior to placing the facility's well into service; and 30 TAC §290.42(g), by failing to obtain an exception, in accordance with 30 TAC §290.39(l), prior to using innovative/alternate treatment processes; PENALTY: \$200; ENFORCEMENT COORDINATOR: Carlos Molina, (512) 239-2557; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(5) COMPANY: GOLD STAR RENTAL CAR LLC dba Best Mart; DOCKET NUMBER: 2021-1059-PST-E; IDENTIFIER: RN102718038; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(C), by failing to obtain a delivery certificate by submitting a properly completed underground storage tank (UST) registration and self-certification form within 30 days of an ownership change; 30 TAC §334.8(c)(5)(A)(i), by failing to make the delivery certificate available to a common carrier before delivery of a regulated substance into the USTs is accepted; and 30 TAC §334.602(a), by failing to identify and designate for the UST facility at least one named individual for each class of operator, Class A, Class B, and Class C; PENALTY: \$7,070; ENFORCEMENT COORDINATOR: Tyler Richardson, (512) 756-3994; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: Mullin Independent School District; DOCKET NUMBER: 2020-1561-PWS-E; IDENTIFIER: RN101256550; LOCATION: Mullin, Mills County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(2) and Texas Health and Safety Code (THSC), §341.031(a), by failing to comply with the acute maximum contaminant level of ten milligrams per liter for nitrate; 30 TAC §290.117(c)(2)(A), (h), and (i)(1), by failing to collect lead and copper tap samples at the required ten sample sites, have the samples analyzed, and report the results to the executive director (ED) for the January 1, 2020 - June 30, 2020, monitoring period; 30 TAC §290.117(i)(6) and (j), by failing to provide a consumer notification of lead tap water monitoring results to persons served at the sites that were tested, and failing to mail a copy of the consumer notification of tap results to the ED along with certification that the consumer notification has been distributed in a manner consistent with TCEQ requirements for the July 1, 2019 - December 31, 2019, monitoring period; and 30 TAC §290.122(c)(2)(A) and (f), by failing to issue public notification and submit a copy of the public notification, accompanied with a signed Certificate of Delivery, to the ED regarding the failure to conduct water quality parameter sampling at each of the facility's entry points and the required distribution sample sites, have the samples analyzed, and report the results to the ED for the January 1, 2019 - June 30, 2019, monitoring period; PENALTY: \$4,042; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$1,837; ENFORCEMENT COORDINATOR: Samantha Salas, (512) 239-1543; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(7) COMPANY: Patrick C. Elliott Properties, Ltd.; DOCKET NUMBER: 2021-0356-MLM-E; IDENTIFIER: RN111145223; LOCATION: Georgetown, Williamson County; TYPE OF FACILITY: construction site; RULES VIOLATED: 30 TAC §213.4(a)(1), by

failing to obtain approval of an Edwards Aquifer Protection Program plan prior to commencing regulated activity over the Edwards Aquifer Recharge Zone; and 30 TAC §281.25(a)(4), TWC, §26.121, and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge stormwater associated with construction activities; PENALTY: \$15,750; ENFORCEMENT COORDINATOR: Alyssa Loveday, (512) 239-5504; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(8) COMPANY: Ragle Incorporated dba Ragle and STRIPING TECHNOLOGY, LP; DOCKET NUMBER: 2021-0701-IHW-E; IDENTIFIER: RN111216123; LOCATION: Aubrey, Denton County; TYPE OF FACILITY: unauthorized waste disposal; RULES VIOLATED: 30 TAC §335.4 and TWC, §26.121, by failing to not cause, suffer, allow, or permit the unauthorized disposal of industrial hazardous waste; PENALTY: \$11,250; ENFORCEMENT COORDINATOR: Stephanie McCurley, (512) 239-2607; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: Tri County Special Utility District; DOCKET NUMBER: 2021-0926-PWS-E; IDENTIFIER: RN101399749; LOCATION: Marlin, Falls County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(q)(2), by failing to institute special precautions as described in the flowchart found in 30 TAC §290.47(e) in the event of low distribution pressure and water outages; PENALTY: \$1,425; ENFORCEMENT COORDINATOR: Amanda Conner, (512) 239-2521; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(10) COMPANY: Valero Refining-Texas, L.P.; DOCKET NUMBER: 2021-0202-AIR-E; IDENTIFIER: RN100219310; LOCATION: Houston, Harris County; TYPE OF FACILITY: petroleum refining plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), New Source Review Permit Numbers 2501A, 124424, and PSDTX767M2, Special Conditions Number 1, Federal Operating Permit (FOP) Number O1381, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 24, and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §101.201(b)(1)(G) and (H) and §122.143(4), FOP Number O1381, GTC and STC Number 2.F, and THSC, §382.085(b), by failing to identify all required information on the final record for a reportable emissions event; PENALTY: \$27,414; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$10,966; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-202200543

Gitanjali Yadav

Acting Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: February 15, 2022



Amended Notice of Hearing (to Change Applicant Representative Information.) on City of Liberty Hill: SOAH Docket No. 582-22-1222; TCEQ Docket No. 2021-0999-MWD; Permit No. WQ0014477001

APPLICATION.

City of Liberty Hill, 926 Loop 332, Liberty Hill, Texas 78642, has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014477001, which authorizes the discharge of treated

domestic wastewater at an annual average flow not to exceed 4,000,000 gallons per day. TCEQ received this application on September 5, 2018.

The facility is located approximately 8,800 feet southeast of the intersection of U.S. Highway 29 and U.S. Highway 183, in Williamson County, Texas 78641. The treated effluent is discharged to South Fork San Gabriel River in Segment No. 1250 of the Brazos River Basin. The designated uses for Segment No. 1250 are primary contact recreation, public water supply, aquifer protection, and high aquatic life use. As a public courtesy, we have provided the following Web page to an online map of the site or the facility's general location. The online map is not part of the application or the notice: <https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-97.861666%2C30.631944&level=12>. For the exact location, refer to the application.

The TCEQ Executive Director has prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at City of Liberty Hill City Hall, 926 Loop 332, Liberty Hill, Texas.

CONTESTED CASE HEARING.

Considering directives to protect public health, the State Office of Administrative Hearings (SOAH) will conduct a preliminary hearing via Zoom videoconference. A Zoom meeting is a secure, free meeting held over the internet that allows video, audio, or audio/video conferencing.

10:00 a.m. - March 28, 2022

To join the Zoom meeting via computer:

<https://soah-texas.zoomgov.com/>

Meeting ID: 160 661 7368

Password: TCEQ32822

or

To join the Zoom meeting via telephone:

(669) 254-5252 or (646) 828-7666

Meeting ID: 160 661 7368

Password: 516463718

Visit the SOAH website for registration at: <http://www.soah.texas.gov/> or call SOAH at (512) 475-4993.

The purpose of a preliminary hearing is to establish jurisdiction, name the parties, establish a procedural schedule for the remainder of the proceeding, and to address other matters as determined by the judge. The evidentiary hearing phase of the proceeding, which will occur at a later date, will be similar to a civil trial in state district court. The hearing will address the disputed issues of fact identified in the TCEQ order concerning this application issued on October 19, 2021. In addition to these issues, the judge may consider additional issues if certain factors are met.

The hearing will be conducted in accordance with Chapter 2001, Texas Government Code; Chapter 26, Texas Water Code; and the procedural rules of the TCEQ and SOAH, including 30 Texas Administrative Code (TAC) Chapter 80 and 1 TAC Chapter 155. The hearing will be held unless all timely hearing requests have been withdrawn or denied.

To request to be a party, you must attend the hearing and show you would be adversely affected by the application in a way not common to members of the general public. Any person may attend the hearing and

request to be a party. Only persons named as parties may participate at the hearing.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

INFORMATION.

If you need more information about the hearing process for this application, please call the Public Education Program, toll free, at (800) 687-4040. General information about the TCEQ can be found at our website at www.tceq.texas.gov.

Further information may also be obtained from City of Liberty Hill at the address stated above or by calling **Mr. Jay Holmes, Public Works Manager**, City of Liberty Hill, at (512) 778-5449.

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-4993, at least one week prior to the hearing.

Issued: February 15, 2022

TRD-202200555

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 15, 2022



Cancellation of Public Meeting on Walton Texas, LP: Proposed Permit No. WQ0015918001

Thank you for your recent interest regarding the above-referenced application. This letter is your notice that the public meeting previously scheduled for February 28, 2022, has been cancelled. The public meeting will be rescheduled for a later date. Once the public meeting is scheduled, you will receive notice of the public meeting in the mail.

If you have any questions, please contact Mr. Brad Patterson, Section Manager, Office of the Chief Clerk, at (512) 239-1201.

The Texas Commission on Environmental Quality appreciates your interest in matters pending before the agency.

TRD-202200544

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 15, 2022



Enforcement Orders

An agreed order was adopted regarding Acton Municipal Utility District, Docket No. 2020-0899-MWD-E on February 15, 2022 assessing \$7,187 in administrative penalties with \$1,437 deferred. Information concerning any aspect of this order may be obtained by contacting Mark Gamble, 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 Cook's Garage, LLC, Docket No. 2020-1131-PWS-E on February 15, 2022 assessing \$4,270 in administrative penalties with \$854 deferred. Information concerning any aspect of this order may be obtained by contacting Epi Villarreal, En-

forcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Cesar Martinez, Docket No. 2020-1192-OSS-E on February 15, 2022 assessing \$2,250 in administrative penalties with \$450 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 Sasol Chemicals (USA) LLC, Docket No. 2021-0123-AIR-E on February 15, 2022 assessing \$5,925 in administrative penalties with \$1,185 deferred. Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, 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 Aqua Utilities, Inc., Docket No. 2021-0198-PWS-E on February 15, 2022 assessing \$220 in administrative penalties with \$44 deferred. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, 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 City of Electra, Docket No. 2021-0246-PWS-E on February 15, 2022 assessing \$1,688 in administrative penalties with \$337 deferred. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, 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 Aqua Utilities, Inc., Docket No. 2021-0247-PWS-E on February 15, 2022 assessing \$750 in administrative penalties with \$150 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 Fred Bara, Docket No. 2021-0289-OSI-E on February 15, 2022 assessing \$255 in administrative penalties with \$51 deferred. Information concerning any aspect of this order may be obtained by contacting Harley Hobson, 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 Jeetpur Corporation dba Quick Track #55, Docket No. 2021-0450-PST-E on February 15, 2022 assessing \$3,750 in administrative penalties with \$750 deferred. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, 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 TOM-TOM INVESTMENTS, INC. dba Texas Meat Market 4, Docket No. 2021-0456-PST-E on February 15, 2022 assessing \$3,375 in administrative penalties with \$675 deferred. Information concerning any aspect of this order may be obtained by contacting Epi 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 Johan Alexander DeBoer and Klazina Jikke DeBoer dba Fluit South Dairy, Docket No. 2021-0479-AGR-E on February 15, 2022 assessing \$3,000 in administrative penalties with \$600 deferred. Information concerning any aspect of this order may be obtained by contacting Katelyn Tubbs, 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 DIAMOND MESQUITE VENTURE, INC. dba Mesquite Food Mart, Docket No. 2021-0489-PST-E on February 15, 2022 assessing \$3,375 in administrative penalties with \$675 deferred. 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 JCT GANDHI LLC dba Super Sak 3, Docket No. 2021-0496-PST-E on February 15, 2022 assessing \$2,438 in administrative penalties with \$487 deferred. Information concerning any aspect of this order may be obtained by contacting Ken Moller, 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 City of Carrollton, Docket No. 2021-0547-PST-E on February 15, 2022 assessing \$2,438 in administrative penalties with \$487 deferred. Information concerning any aspect of this order may be obtained by contacting Alain Elegbe, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A filed citation was adopted regarding R & S Stone, Inc., Docket No. 2021-1026-WQ-E on February 15, 2022 assessing \$875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202200568

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 16, 2022



Notice of Application and Public Hearing for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls: Proposed Air Quality Registration Number 167644

APPLICATION. Bartoo Ready Mix, LLC, 500 West University Drive, Suite 101, McKinney, Texas 75069-4822 has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Registration Number 167644 to authorize the operation of a permanent concrete batch plant. The facility is proposed to be located at 12128 Mustang Road, Pilot Point, Denton County, Texas 76258. This application is being processed in an expedited manner, as allowed by the commission's rules in 30 Texas Administrative Code, Chapter 101, Subchapter J. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. <http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=33.314639&lng=-96.919639&zoom=13&type=r>. This application was submitted to the TCEQ on January 11, 2022. The primary function of this plant is to manufacture concrete by mixing materials including (but not limited to) sand, aggregate, cement and water. The executive director has determined the application was technically complete on February 2, 2022.

PUBLIC COMMENT / PUBLIC HEARING. Public written comments about this application may be submitted at any time during the public comment period. The public comment period begins on the first date notice is published and extends to the close of the public hearing. Public comments may be submitted either in writing to the Texas

Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087, or electronically at www14.tceq.texas.gov/epic/eComment/. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record.

A public hearing has been scheduled, that will consist of two parts, an informal discussion period and a formal comment period. During the informal discussion period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the application, but comments made during the informal period will not be considered by the executive director before reaching a decision on the permit, and no formal response will be made to the informal comments. During the formal comment period, members of the public may state their comments into the official record. **Written comments about this application may also be submitted at any time during the hearing.** The purpose of a public hearing is to provide the opportunity to submit written comments or an oral statement about the application. **The public hearing is not an evidentiary proceeding.**

The Public Hearing is to be held:

Wednesday, March 30, 2022, at 6:00 p.m.

Members of the public who would like to ask questions or provide comments during the hearing may access the hearing via webcast by following this link: <https://www.gotomeeting.com/webinar/join-webinar> and entering Webinar ID 456-518-371. It is recommended that you join the webinar and register for the public hearing at least 15 minutes before the hearing begins. You will be given the option to use your computer audio or to use your phone for participating in the webinar.

Those without internet access must call (512) 239-1201 **at least one day prior** to the hearing to register for the hearing and to obtain information for participating telephonically. Members of the public who wish to only listen to the hearing may call, toll free, (415) 655-0060 and enter access code 334-102-206. Additional information will be available on the agency calendar of events at the following link:

<https://www.tceq.texas.gov/agency/decisions/hearings/calendar.html>.

RESPONSE TO COMMENTS. A written response to all formal comments will be prepared by the executive director after the comment period closes. The response, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments and the response to comments will be posted in the permit file for viewing.

The executive director shall approve or deny the application not later than 35 days after the date of the public hearing, considering all comments received within the comment period, and base this decision on whether the application meets the requirements of the standard permit.

CENTRAL/REGIONAL OFFICE. The application will be available for viewing and copying at the TCEQ Central Office and the TCEQ Dallas/Fort Worth Regional Office, located at 2309 Gravel Drive, Fort Worth, Texas 76118-6951, during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, beginning the first day of publication of this notice.

INFORMATION. If you need more information about this permit application or the permitting process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Bartoo Ready Mix, LLC, 500 West University Drive, Suite 101, McKinney, Texas 75069-4822, or by calling Mrs. LaCretia White, Project Manager, Elm Creek Environmental LLC at (972) 768-9093.

Notice Issuance Date: February 10, 2022
TRD-202200479
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 11, 2022



Notice of District Petition

Notice issued February 9, 2022

TCEQ Internal Control No. D-06152021-018; CILB III, LP, a Texas limited partnership, Barta Ranches, LLC, a Texas limited liability company, Donna Nichols, and Robin Shelden submitted a revised petition for creation of Fort Bend County MUD No. 236 (District) with the Texas Commission on Environmental Quality (TCEQ). The revised petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The revised petition states that: (1) the Petitioner holds title to all of the land in the proposed District and is owner of all of the value of the Land; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 269.08 acres located within Fort Bend County, Texas; and (4) all of the land within the proposed District is wholly within the extraterritorial jurisdiction of the City of Needville, Texas.

The revised petition further states that the general nature of the work proposed to be done by the District, as contemplated at the present time, is (1) to purchase, construct, acquire, provide, operate, maintain, repair, improve, or extend, inside or outside of its boundaries, any and all works, improvements, facilities, systems, plants, equipment, and appliances necessary or helpful to supply and distribute water for municipal, domestic, industrial, and commercial purposes; (2) to collect, transport, process, dispose of, and control domestic, industrial, and commercial wastes; (3) to gather, conduct, divert, abate, amend, and control local storm water or other local harmful excesses of water or provide adequate drainage in the District; and (4) to purchase, construct, acquire, provide, operate, maintain, repair, improve, or extend, inside or outside of its boundaries, such additional facilities, systems, plants, equipment, appliances, and enterprises as shall be consonant with the purposes for which the District is created. Additional work and services which may be performed by the District include the purchase, construction, acquisition, provision, operation, maintenance, repair, improvement, extension, and development of a roadway system and park and recreational facilities for the inhabitants of the District. According to the revised petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners, from the information available at this time, that the cost of said project will be approximately \$41,670,000 (\$24,105,000 for water, wastewater, and drainage facilities, \$4,570,000 for parks and recreational facilities and \$12,995,000 for roads).

INFORMATION SECTION

To view the complete issued notice, view the notice on our website at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the website, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an

official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our website at www.tceq.texas.gov.

TRD-202200444
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 9, 2022



Notice of District Petition

Notice issued February 10, 2022

TCEQ Internal Control No. D-12212021-038; Conroe 1097 Investments, Ltd., a Texas limited partnership (Petitioner) filed a petition for creation of Montgomery County Municipal Utility District No. 213 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ.

The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there is one lienholder, Greenbay Real Estate Investment LP, on the property to be included in the proposed District and the lienholder consents to the creation of the proposed District; (3) the proposed District will contain approximately 289.366 acres located within Montgomery County, Texas; and (4) all of the land within the proposed District is within the extraterritorial jurisdiction of the City of Conroe. By Resolution No. 2595-21, passed and adopted on October 28, 2021, the City of Conroe, Texas, gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain and operate a waterworks and sanitary sewer system, park and recreational facilities, and road facilities for residential and commercial purposes (2) construct, acquire, improve, extend, maintain and operate works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the District; (3) to control, abate and amend local storm waters or other harmful excesses of water; and (4) purchase, construct, acquire, improve, maintain and operate such additional facilities, systems, plants, and enterprises as shall

be consonant with all of the purposes for which the District is created. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately \$77,809,868 (\$53,775,582 for utilities plus \$14,828,675 for roads plus \$9,205,611 for recreational).

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the website, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our website at www.tceq.texas.gov.

TRD-202200495

Laurie Gharis
Chief Clerk

Texas Commission on Environmental Quality
Filed: February 11, 2022



Notice of District Petition

Notice issued February 16, 2022

TCEQ Internal Control No. D-12132021-019; Lackland Grayson County Development, LLC, a Texas limited liability company (Petitioner) filed a petition for creation of Grayson County Municipal Utility District No. 9 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ.

The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there is one

lienholder, Community National Bank & Trust of Texas, on the property to be included in the proposed District and the lienholder consents to the creation of the proposed District; (3) the proposed District will contain approximately 170.535 acres located within Grayson County, Texas; and (4) all of the land within the proposed District is within the extraterritorial jurisdiction of the City of Sherman. By Resolution No. 6759 passed and approved on August 2, 2021, the City of Sherman, Texas, gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016. The petition further states that the proposed District will: (1) purchase, construct, acquire, improve, or extend inside or outside of its boundaries any and all works, improvements, facilities, plants, equipment, and appliances necessary or helpful to supply and distribute water for municipal, domestic, and commercial purposes; (2) collect, transport, process, dispose of and control domestic, and commercial wastes; (3) gather, conduct, divert, abate, amend and control local storm water or other local harmful excesses of water in the proposed District; (4) design, acquire, construct, finance, improve, operate, and maintain macadamized, graveled, or paved roads and turnpikes, or improvements in aid of those roads; and (5) purchase, construct, acquire, improve or extend inside or outside its boundaries such additional facilities, systems, plants, and enterprises as shall be consonant with all of the purposes for which the proposed District is created. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately \$6,910,000 (\$3,630,000 for water, wastewater, and drainage plus \$3,280,000 for roads).

INFORMATION SECTION

To view the complete issued notice, view the notice on our website at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the website, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our website at www.tceq.texas.gov.

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Notice of Opportunity to Comment on Agreed Orders of
Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 28, 2022**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 28, 2022**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Iftkhar Ali dba Food Stop; DOCKET NUMBER: 2019-1020-PST-E; TCEQ ID NUMBER: RN102425865; LOCATION: 7701 9th Avenue, Port Arthur, Jefferson County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A) and §334.54(c)(1), by failing to monitor a temporarily out-of-service UST system for releases - specifically, all tanks were registered as temporarily removed from service; however, tank number 3 contained 7.5 inches of fuel and was not being monitored for releases; PENALTY: \$2,626; STAFF ATTORNEY: Ben Warms, Litigation, MC 175, (512) 239-5144; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(2) COMPANY: Lilbert-Looneyville Water Supply Corporation; DOCKET NUMBER: 2021-0077-PWS-E; TCEQ ID NUMBER: RN101187433; LOCATION: approximately two miles east of Lilbert on Farm-to-Market Road 343 near Nacogdoches, Nacogdoches County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.121(a) and (b), by failing to maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and

specifies the analytical procedures and laboratories the facility will use to comply with the monitoring requirements; 30 TAC §290.46(p)(2), by failing to provide the executive director with a list of all operators and operating companies the public water system uses on an annual basis; 30 TAC §290.46(f)(2) and (f)(3)(D)(ii), by failing to maintain water works operation and maintenance records and make them readily available for review by the executive director upon request; 30 TAC §290.42(l), by failing to maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.118(a) and (b), by failing to comply with the maximum secondary constituent level for pH of greater than 7.0 standard units; 30 TAC §290.42(e)(4)(A), by failing to provide a full-face self-contained breathing apparatus or supplied air respirator at the Flower Mountain Booster Plant that meets Occupational Safety and Health Administration standards and is readily accessible outside the chlorinator room and immediately available to the operator in the event of an emergency; and Texas Health and Safety Code, §341.0351(c) and 30 TAC §290.45(b)(1)(C)(iii), by failing to provide two or more service pumps with a total capacity of 2.0 gallons per minute per connection at each pump station or pressure plane; PENALTY: \$3,419; STAFF ATTORNEY: Clayton Smith, Litigation, MC 175, (512) 239-6224; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-202200542
Gitanjali Yadav
Acting Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: February 15, 2022

◆ ◆ ◆
Notice of Public Hearing on Assessment of Administrative
Penalties and Requiring Certain Actions of HEAVENIN,
INC.: SOAH Docket No. 582-22-1568; TCEQ Docket No.
2020-0481-PST-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - March 10, 2022

To join the Zoom meeting via computer:

<https://soah-texas.zoomgov.com/>

Meeting ID: 160 180 5751

Password: 582TCEQ

or

To join the Zoom meeting via telephone dial:

+1 (669) 254-5252

Meeting ID: 160 180 5751

Password: 1741277

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed June 29, 2021 concerning assessing administrative penalties against and requiring certain actions of HEAVENIN, INC., for violations in Travis County, Texas, of: Texas Water Code §26.3475(a) and (c)(1), and 30 Texas Administrative Code §§334.49(a)(1), 334.50(b)(1)(A) and (b)(2)(B)(i)(I), and 334.606.

The hearing will allow HEAVENIN, INC., the Executive Director, and the Commission's Public Interest Counsel to present evidence on

whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford HEAVENIN, INC., the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of HEAVENIN, INC. to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.** HEAVENIN, INC., the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Texas Water Code §7.054 and chs. 7 and 26, and 30 Texas Administrative Code chs. 70 and 334; Texas Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting John S. Mercurief II, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at www.tceq.texas.gov/goto/efilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: February 11, 2022

TRD-202200505

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 11, 2022



Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of Kunwar Ventures

LLC: SOAH Docket No. 582-22-1519; TCEQ Docket No. 2021-0431-PST-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - March 10, 2022

To join the Zoom meeting via computer:

<https://soah-texas.zoomgov.com/>

Meeting ID: 160 180 5751

Password: 582TCEQ

or

To join the Zoom meeting via telephone dial:

+1 (669) 254-5252

Meeting ID: 160 180 5751

Password: 1741277

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed October 14, 2021 concerning assessing administrative penalties against and requiring certain actions of Kunwar Ventures LLC, for violations in Guadalupe County, Texas, of: Texas Water Code §26.3475(d), 30 Texas Administrative Code §§334.10(b)(2), 334.49(c)(2)(C), 334.54(b)(3), and 334.605(a).

The hearing will allow Kunwar Ventures LLC, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford Kunwar Ventures LLC, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of Kunwar Ventures LLC to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.** Kunwar Ventures LLC, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Texas Water Code §7.054 and Texas Water Code chs. 7 and 26 and 30 Texas Administrative Code chs. 70, and 334; Texas Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Cynthia Sirois, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at www.tceq.texas.gov/goto/efilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: February 11, 2022

TRD-202200503

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 11, 2022



Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of NAMOR Holdings LLC: SOAH Docket No. 582-22-1565; TCEQ Docket No. 2020-0417-MSW-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - March 10, 2022

To join the Zoom meeting via computer:

<https://soah-texas.zoomgov.com/>

Meeting ID: 160 180 5751

Password: 582TCEQ

or

To join the Zoom meeting via telephone dial:

+1 (669) 254-5252

Meeting ID: 160 180 5751

Password: 1741277

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed September 17, 2021 concerning assessing administrative penalties against and requiring certain actions of NAMOR Holdings LLC, for violations in Grayson County, Texas, of: 30 Texas Administrative Code §330.15(a) and (c).

The hearing will allow NAMOR Holdings LLC, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford NAMOR Holdings LLC, the Executive Director of the Commission,

and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of NAMOR Holdings LLC to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.** NAMOR Holdings LLC, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Texas Water Code §7.054, Texas Health & Safety Code ch. 361, and 30 Texas Administrative Code chs. 70 and 330; Texas Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting John S. Mercurief II, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at www.tceq.texas.gov/goto/efilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: February 11, 2022

TRD-202200504

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 11, 2022



Notice of Public Meeting for Municipal Solid Waste Permit: Proposed Permit No. 2406

Application. PC-II, LLC, 300 Concourse Boulevard, Suite 101, Ridgeland, Mississippi 39157, a Mississippi limited liability company, has applied to the Texas Commission on Environmental Quality (TCEQ) for a permit to authorize a new Municipal Solid Waste Type

I Landfill. The proposed facility is located in San Jacinto County and does not have a street address. Its physical location is from the intersection of Farm to Market 1725 and Fostoria Tram Road, south 1.9 miles on Fostoria Tram Road to Jayhawker Road, west approximately 0.7 miles to Rajak Road, north 0.3 miles to the facility entrance road. The TCEQ received Parts I and II of this application on August 28, 2019, and Parts III and IV of the complete application on September 16, 2020. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: <https://arcg.is/08jO4L>. For the exact location, please refer to the application.

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements.

Public Comment/Public Meeting. A public meeting was held on September 28, 2021. A second public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all formal comments will be prepared by the Executive Director. All formal comments will be considered before a decision is reached on the permit application. A copy of the written response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Tuesday, March 22, 2022 at 7:00 p.m.

Members of the public who would like to ask questions or provide comments during the meeting may access the meeting via webcast by following this link: <https://www.gotomeeting.com/webinar/join-webinar> and entering Webinar ID 844-640-627. It is recommended that you join the webinar and register for the public meeting at least 15 minutes before the meeting begins. You will be given the option to use your computer audio or to use your phone for participating in the webinar.

Those without internet access must call (512) 239-1201 **at least one day prior** to the meeting to register for the meeting and to obtain information for participating telephonically. Members of the public who wish to **only listen** to the meeting may call, toll free, (914) 614-3221 and enter access code 574-683-032.

Additional information will be available on the agency calendar of events at the following link: <https://www.tceq.texas.gov/agency/decisions/hearings/calendar.html>.

Information. Members of the public are encouraged to submit written comments anytime during the public meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at <https://www14.tceq.texas.gov/epic/eComment/>. If you need more

information about the permit application or the permitting process, please call the TCEQ Public Education Program, toll free, at (800) -687-4040. General information can be found at our Website at www.tceq.texas.gov. *Si desea información en español, puede llamar al (800) -687-4040.*

The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at the Shepherd Public Library, 30 North Liberty Street, Shepherd, Texas 77371. The permit application may be viewed online at <https://peachcreekp.com/resources/>. Further information may also be obtained from PC-II, LLC at the address stated above or by calling Mr. Jeffery Hobby, Project Manager at (601) 362-3333 ext. 70.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) -RELAY-TX (TDD) at least five business days prior to the meeting.

Issued Date: February 16, 2022

TRD-202200556

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 16, 2022



**Notice of Public Meeting for Municipal Wastewater Renewal:
Permit No. WQ0014488001**

APPLICATION. City of Dripping Springs, P.O. Box 384, Dripping Springs, Texas 78620, has applied to the Texas Commission on Environmental Quality (TCEQ) for a major amendment to TCEQ Permit No. WQ0014488001 to authorize the addition of a subsurface drip irrigation site of 13.8 acres with a flow volume not to exceed a daily average flow of 60,000 gallons per day in the final phase and the addition of a surface irrigation site of 17 acres with a flow volume not to exceed a daily average flow of 50,000 gallons per day in the final phase, an increase in the total land application acreage from 113.53 acres to 144.33 acres, and an increase in the total wastewater treatment facility flow volume in the final phase to a volume not to exceed a daily average flow from 319,000 gallons per day to 429,000 gallons per day. The existing permit authorizes the disposal of treated wastewater at a volume not to exceed a daily average flow of 133,000 gallons per day via subsurface area drip irrigation of 30.53 acres of public access land and the disposal of treated wastewater at a volume not to exceed a daily average flow not to exceed 186,000 gallons via surface irrigation of 83 acres of public access land. This permit will not authorize a discharge of pollutants into water in the state. TCEQ received this application on February 16, 2018.

The wastewater treatment facility and on-site subsurface disposal site are located approximately 0.55 miles east of the intersection of Ranch Road 12 and Farm-to-Market Road 150, as measured along Farm-to-Market Road 150, and from that point, approximately 1,110 feet south of Farm-to-Market Road 150, in Hays County. An existing offsite subsurface disposal area is located approximately 0.44 miles south of the intersection of U.S. Highway 290 and Ranch Road 12, as measured along Ranch Road 12, and from that point, approximately 1,280 feet east of Ranch Road 12, in Hays County. Another existing offsite surface disposal area is located approximately 1.5 miles south of the intersection of U.S. Highway 290 and Ranch Road 12, and from that point approximately 1,000 feet west of Ranch Road 12 in Hays County. The proposed subsurface disposal area will be located approximately 0.31 miles north of the intersection of U.S. Highway 290 and Ranch Road 12, along Ranch Road 12, and, from that point, approximately 0.26

miles west of Ranch Road 12, in Hays County. The proposed surface disposal site will be located approximately 1.65 miles west and 0.65 miles south of the intersection of U.S. Highway 290 and Ranch Road 12, in Hays County. The wastewater treatment facility and on-site sub-surface disposal site are located in Hays County, Texas 78619. All other disposal sites are located in Hays County, Texas 78620. The wastewater treatment facility and the disposal sites are located in the drainage basin of Onion Creek in Segment No. 1427 of the Colorado River Basin.

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For the exact location, refer to the application.

<https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-98.080277%2C30.154166&level=12>

PUBLIC COMMENT / PUBLIC MEETING. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all timely, relevant and material, or significant comments will be prepared by the Executive Director. All formal comments will be considered before a decision is reached on the permit application. A copy of the written response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Monday, March 28, 2022 at 7:00 p.m.

Members of the public who would like to ask questions or provide comments during the meeting may access the meeting via webcast by following this link: <https://www.gotomeeting.com/webinar/join-webinar> and entering Webinar ID 503-810-979. It is recommended that you join the webinar and register for the public meeting at least 15 minutes before the meeting begins. You will be given the option to use your computer audio or to use your phone for participating in the webinar.

Those without internet access must call (512) 239-1201 **at least one day prior** to the meeting to register for the meeting and to obtain information for participating telephonically. Members of the public who wish to **only listen** to the meeting may call, toll free, (631) 992-3221 and enter access code 705-217-705. Additional information will be available on the agency calendar of events at the following link:

<https://www.tceq.texas.gov/agency/decisions/hearings/calendar.html>.

INFORMATION. Citizens are encouraged to submit written comments anytime during the meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail

Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at <https://www14.tceq.texas.gov/epic/eComment/>. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. *Si desea información en español, puede llamar (800) 687-4040.* General information about the TCEQ can be found at our website at <https://www.tceq.texas.gov>.

The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Dripping Springs City Hall, 511 Mercer Street, Dripping Springs, Texas. Further information may also be obtained from City of Dripping Springs at the address stated above or by calling Mr. Robert Callegari, P.E., Burgess & Niple, Inc. at (512) 432-1000. Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least five business days prior to the meeting.

Issuance Date: February 16, 2022

TRD-202200561

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 16, 2022

◆ ◆ ◆
General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 *Federal Register* pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of January 25, 2022, to February 11, 2022. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on Friday, February 18, 2022. The public comment period for this project will close at 5:00 p.m. on Sunday, March 20, 2022.

FEDERAL AGENCY ACTIVITIES:

Applicant: United States Department of Energy, SPR, Big Hill Site

Location: The project site is located wetlands near Hillebrandt Bayou, at an area approximately 4 miles east of Nederland, in Jefferson County, Texas.

Latitude & Longitude (NAD 83): 29.937928, -94.059539

Project Description: The applicant proposes to permanently discharge fill into approximately 3.30 acres of palustrine emergent (PEM) wetlands for the construction of a new Shell-Zydeco Metering Station and access road within the Big Hill crude oil distribution system. The new metering station will measure 154-foot by 154-foot (23,716-square-foot) and be constructed on a 4-foot-high pad of fill material and paved crushed stone. The crushed limestone access road will be 4,850-foot-long by 24-foot-wide and encompass an area of 116,400-square-foot. There will also be temporary discharge of fill into 7.2 acres PEM wetlands within the construction workspaces and

laydown areas. This temporary discharge includes the covering of ditches at the Farm-to-Market (FM) 365/access road intersection to allow larger construction/transport vehicles to make the turn in to the access road leading to the new metering station. This intersection and all temporary workspaces/laydown areas will be restored back to original contours once construction is complete. The applicant proposed to mitigate for the proposed impacts by purchasing habitat credits from an approved mitigation bank within the project service area.

Type of Application: U.S. Army Corps of Engineers permit application # SWG-1997-01648. This application will be reviewed pursuant to Section 404 of the Clean Water Act. Note: The consistency review for this project may be conducted by the Texas Railroad Commission as part of its certification under §401 of the Clean Water Act.

CMP Project No: 22-1162-F2

FEDERAL AGENCY ACTIONS:

Applicant: Aransas County

Location: The project site is located in Aransas Bay in Rockport, Texas, specifically at three locations including Blevins Channel, Leggett Channel, and Key Allegro Bridge.

Latitude & Longitude (NAD 83): 28.038166, -97.036726 (Center Coordinates)

Project Description: The applicant proposes to impact approximately 2 acres of bay bottom in association with the construction of scour protection, repairing vinyl sheet piling, and dredging where scour protection will be placed.

Approximately 5,000 cubic yards of dredge material would be mechanically dredged from Blevins Channel, Leggett Channel, and Key Allegro Bridge within the scour protection construction footprint in order to accommodate the installation of scour protection materials. The dredged material would be placed on a barge and de-watered on a barge. The barge would then dock at the staging area shown on the permit drawings and the de-watered material would be unloaded via excavator and stockpiled at the staging area.

The scour protection would include installing a geotextile layer on the bay bottom along the breakwaters on both sides of the Blevins and Leggett Channels and would not extend more than 20 feet inward of the breakwaters. A geotextile layer would also be installed on the bay bottom of the Key Allegro Bridge area, spanning between the toes of the existing riprap and extending past the bridge to the north and south. Either marine mattresses or riprap would be placed on top of the geotextile layer in all three locations and would not exceed more than 2 feet in height from the bay bottom at the two channels and match the existing height of riprap at the Key Allegro Bridge.

Approximately 800 linear feet of vinyl sheet pile would be installed along Blevins and Leggett Channels to replace missing or damaged sheet pile bulkheads.

Type of Application: U.S. Army Corps of Engineers permit application # SWG-2021-00652. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

CMP Project No: 22-1166-F1

Applicant: Sunset Island, LLC

Location: The project site is located at 13317 S Padre Island Dr., Corpus Christi, Nueces County, Texas.

Latitude & Longitude (NAD 83): 27.631169, -97.239599

Project Description: This is an after the fact permit request to modify the permit to keep the following structures that either had dimensional/configuration modifications or were not previously authorized. The following are the requested items to be added or modified:

1. Widening the 7-ft wide by 325-ft long section of the dock to 33 ft and tapering down to 23 ft.
2. Addition of six (6) 6-ft by 10-ft finger piers.
3. Widening the 7-ft by 600-ft long section of the dock to 12 ft max.
4. Addition of two (2) 55-ft by 24-ft concrete boat ramps, both structures sitting on select fill material.
5. Addition of five (5) 6-ft by 10-ft finger piers in a different location than the previously authorized piers.
6. Addition of covered boat slips (24 10-foot by 25-foot and 7 10-foot by 23-foot) and lifts attached to the bulkhead on the northeast side of the marina and the conversion of one (1) boat slip into a t-shirt shop.
 - a. The majority of the boat slips were authorized as non-covered slips.
7. Addition of a 12-ft by 6.5-ft kayak launch at the end of the 600-ft long section of the pier.

The majority of the changes are reconstruction activities related to severe damage caused in 2017 by Hurricane Harvey. All of the footprint changes except for the kayak launch are within the marina's main channel.

Type of Application: U.S. Army Corps of Engineers permit application # SWG-2003-01790. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899.

CMP Project No: 22-1146-F1

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from the Texas General Land Office Public Information Officer at 1700 N. Congress Avenue, Austin, Texas 78701, or via email at pialegal@glo.texas.gov. Comments should be sent to the Texas General Land Office Coastal Management Program Coordinator at the above address or via email at federal.consistency@glo.texas.gov.

TRD-202200571

Mark Havens

Chief Clerk, Deputy Land Commissioner

General Land Office

Filed: February 16, 2022

◆ ◆ ◆
Texas Health and Human Services Commission

Corrected Public Notice: Texas State Plan for Medical Assistance Amendment

The Texas Health and Human Services Commission (HHSC) announces its intent to submit amendments to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. This corrected notice updates fiscal data published in the *Texas Register* on February 18, 2022.

The purpose of the amendment is to make clarifying revisions to the inflation projection methodology for the DAHS, HCBS, Intermediate Care Facilities for Individuals with an Intellectual Disability (ICF/IID), NF, and PHC programs. A revision will also be made to the nursing wage inflation methodology, which will affect only the DAHS, HCBS, ICF/IID, and NF programs.

The proposed amendments are effective March 1, 2022.

Corrected: The proposed amendments are estimated to result in an annual aggregate expenditure of \$458,293 for federal fiscal year (FFY) 2022, consisting of \$292,849 in federal funds and \$165,444 in state general revenue. For FFY 2023, the estimated annual aggregate expenditure is \$1,042,713, consisting of \$624,272 in federal funds and \$418,441 in state general revenue. For FFY 2024, the estimated annual aggregate expenditure is \$1,055,644, consisting of \$632,014 in federal funds and \$423,630 in state general revenue.

Information about the proposed changes can be found in the September 17, 2021, issue of the *Texas Register* at (46 *TexReg* 6002) at <http://www.sos.state.tx.us/texreg/index.shtml>.

Copy of Proposed Amendment(s). Interested parties may obtain additional information or a free copy of the proposed amendments from Holly Freed, State Plan Team Lead, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 428-1932; by facsimile at (512) 730-7472; or by email at Medicaid_Chip_SPA_Inquiries@hhsc.state.tx.us. Copies of the proposed amendments will be available for review at the local county offices of HHSC, (which were formerly the local offices of the Texas Department of Aging and Disability Services).

Written Comments. Written comments and/or requests to review comments may be sent by U.S. mail, overnight mail, special delivery mail, hand delivery, fax, or email:

U.S. Mail Texas Health and Human Services Commission Attention: Provider Finance, Mail Code H-400 P.O. Box 149030 Austin, Texas 78714-9030

Overnight mail, special delivery mail, or hand delivery Texas Health and Human Services Commission Attention: Provider Finance, Mail Code H-400 North Austin Complex

4601 West Guadalupe Street

Austin, Texas 78751 Phone number for package delivery: (512) 730-7401

Fax Attention: Provider Finance at (512) 730-7475

Email PFD-LTSS@hhs.texas.gov

Preferred Communication. During the current state of disaster due to COVID-19, physical forms of communication are checked with less frequency than during normal business operations. For the quickest response, and to help curb the possible transmission of infection, please use email or phone if possible for communication with HHSC related to this rate hearing.

TRD-202200557

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: February 16, 2022



Public Notice Amendment to the Youth Empowerment Services (YES) Waiver Application

The Texas Health and Human Services Commission (HHSC) is submitting a request to the Centers for Medicare & Medicaid Services (CMS) to amend the waiver application for the Youth Empowerment Services (YES) Program. HHSC administers the YES Program under the authority of Section 1915(c) of the Social Security Act. CMS has approved the YES waiver application through March 31, 2023. The proposed effective date for the amendment is August 1, 2022, and does not affect the cost neutrality of the waiver.

Proposed Changes

One purpose of the request to CMS is to allow an additional category of HHSC staff to review and make a recommendation regarding level of care, as set forth in Appendix B-6 C and F related to the Evaluation/Reevaluation of Level of Care.

Currently, the YES waiver application requires a licensed practitioner of the healing arts (LPHA) to review and make a recommendation regarding level of care. An LPHA is a physician, licensed clinical social worker, advanced practice registered nurse, physician assistant, licensed marriage and family therapist, licensed professional counselor or licensed psychologist.

HHSC is requesting that a person who meets the following qualifications also be allowed to review and make a recommendation regarding level of care:

- 1) have a Bachelor's degree, a Master's preferred, from a U.S. accredited college or university in health services, business administration, human services, public policy, social work or related areas; and
- 2) complete HHSC-approved training in evaluating individuals for the YES waiver program.

If CMS grants HHSC's request, both an LPHA and a person who meets the qualifications in (1) and (2) above would be allowed to review and make a recommendation regarding level of care.

Another purpose of the request to CMS is to update Appendix B, section B-6 to reflect the current process for level of care evaluations and reevaluations. The current YES waiver application does not provide an accurate description of the process for level of care evaluations and reevaluations in response to the question presented in this section. Appendix B, section B-6, as updated, reads as follows:

Process for Level of Care Evaluation/Reevaluation

The local mental or behavioral health authority completes the Uniform Assessment and requests a level of care determination for an applicant, or annually for an enrolled participant, by electronically submitting the initial or renewal Uniform Assessment, via the Clinical Management for Behavioral Health Services database system, indicating the recommended level of care. The process for evaluation and annual reevaluation is the same.

A level of care determination must be made by HHSC in accordance with criteria specified in B-6.c of this Appendix and is assigned based on information submitted electronically via the Clinical Management for Behavioral Health Services system utilizing the Uniform Assessment. Information on the Uniform Assessment must be supported by current data obtained from standardized evaluations and formal assessments that measure physical, emotional, social, and cognitive factors.

The YES Program is designed to provide home and community-based services to children with serious emotional disturbances and their families, with a goal of reducing or preventing children's inpatient psychiatric treatment and the consequent removal from their families. The program currently serves eligible children who are at least three years of age and under 19 years of age.

To obtain a free copy of the proposed waiver amendment, ask questions, obtain additional information, or submit comments regarding this amendment, please contact Basundhara Raychaudhuri by U.S. mail, telephone, fax or email at the address and numbers listed below. Comments about the proposed waiver amendment must be submitted to HHSC by March 21, 2022.

U.S. Mail

Texas Health and Human Services Commission

Attention: Basundhara Raychaudhuri, Waiver Coordinator, Federal Coordination, Rules, and Committees

John H. Winters Building, East Tower

701 W. 51st Street

Mail Code: H-310

Austin, Texas 78751

Telephone

(512) 438-4321

Fax

(512) 323-1905 Attention: Basundhara Raychaudhuri

Email

TX_Medicaid_Waivers@hhs.texas.gov

The local mental health authority (LMHA) offices will post this notice for 30 days.

The request to amend the waiver is on the HHSC website at <https://www.hhs.texas.gov/laws-regulations/policies-rules/waivers>

TRD-202200554

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: February 15, 2022



Public Notice - Texas State Plan Amendment

The Texas Health and Human Services Commission (HHSC) announces its intent to submit an amendment to the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act. The proposed amendment is effective January 1, 2022.

The purpose of the amendment is to conform the state plan to Section 210 of the Consolidated Appropriations Act, 2021 (Public Law 116-260). Section 210 amended section 1905(a) of the Social Security Act (the Act), by adding to the definition of medical assistance a new benefit at section 1905(a)(30) for routine patient costs for items and services furnished in connection with participation by Medicaid beneficiaries in qualifying clinical trials, subject to further provisions in a new section 1905(gg). Section 210 also amended sections 1902(a)(10)(A) and 1937(b)(5) of the Act to make coverage of this new benefit mandatory under the state plan with respect to items and services furnished on or after January 1, 2022.

The proposed amendment is estimated to have no fiscal impact.

Copy of Proposed Amendment - Interested parties may obtain additional information and/or a free copy of the proposed amendments by contacting Shae James, State Plan Coordinator, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; or by email at Medicaid_Chip_SPA_Inquiries@hhs.texas.gov. Copies of proposed amendment will be available for review at the local county offices of HHSC, (which were formerly the local offices of Texas Department of Aging and Disability Services).

Written Comments - Written comments about the proposed amendment and/or requests to review comments may be sent by U.S. mail, overnight mail special delivery mail, hand delivery, fax, or email:

U.S. Mail

Texas Health and Human Services Commission

Attention: Medical Benefits Office of Policy

Mail Code H-310 P.O. Box 149030

Austin, Texas 78756

Overnight Mail, special Deliver mail, or hand delivery

Texas Health and Human Services Commission

Attention: Medical Benefits Office of Policy

John H. Winters Building

Mail Code H-310

701 W. 51st St.

Austin, Texas 78751

Fax

Attention: Office of Policy at (512) 730-7474

Email

MedicaidBenefitRequest@hhs.texas.gov

Preferred Communication - During the current state of disaster due to COVID-19, physical forms of communication are checked with less frequency than normal business operations. For the quickest response, and to help curb the possible transmission of infection, please use email or phone if possible for communication with HHSC related to this state plan amendment.

TRD-202200480

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: February 11, 2022



Texas Lottery Commission

Scratch Ticket Game Number 2391 "30TH ANNIVERSARY"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2391 is "30TH ANNIVERSARY". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2391 shall be \$5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2391.

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: CACTUS SYMBOL, LEMON SYMBOL, HEART SYMBOL, MOON SYMBOL, DIAMOND SYMBOL, MELON SYMBOL, SUN SYMBOL, HAT SYMBOL, HORSESHOE SYMBOL, BOOT SYMBOL, BOAT SYMBOL, LIGHTNING BOLT SYMBOL, 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, CAKE SYMBOL, 2X SYMBOL, 5X SYMBOL, \$5.00, \$10.00, \$20.00, \$30.00, \$50.00, \$100, \$300, \$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. 2391 - 1.2D

| PLAY SYMBOL | CAPTION |
|-----------------------|---------|
| CACTUS SYMBOL | CACTUS |
| LEMON SYMBOL | LEMON |
| HEART SYMBOL | HEART |
| MOON SYMBOL | MOON |
| DIAMOND SYMBOL | DIAMND |
| MELON SYMBOL | MELON |
| SUN SYMBOL | SUN |
| HAT SYMBOL | HAT |
| HORSESHOE SYMBOL | HRSHOE |
| BOOT SYMBOL | BOOT |
| BOAT SYMBOL | BOAT |
| LIGHTNING BOLT SYMBOL | BOLT |
| 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 | TWFV |
| 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 |
| CAKE SYMBOL | WIN\$30 |
| 2X SYMBOL | DBL |
| 5X SYMBOL | WINX5 |
| \$5.00 | FIV\$ |
| \$10.00 | TEN\$ |
| \$20.00 | TWY\$ |
| \$30.00 | TRTY\$ |
| \$50.00 | FFTY\$ |
| \$100 | ONHN |
| \$300 | THHN |
| \$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 (2391), 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: 2391-0000001-001.

H. Pack - A Pack of the "30TH ANNIVERSARY" Scratch Ticket Game contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded 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 "30TH ANNIVERSARY" Scratch Ticket Game No. 2391.

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 "30TH ANNIVERSARY" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose sixty-one (61) Play Symbols. BONUS QUICK WIN PLAY AREA: If a player reveals 2 matching Play Symbols in the same BONUS QUICK WIN, the player wins \$100! GAMES 1-5 PLAY AREA: In each GAME, if a player matches any of the YOUR NUMBERS Play Symbols to the WINNING NUMBER Play Symbol, the player wins the prize for that number. If the player reveals a "2X" Play Symbol, the player wins DOUBLE the prize for that Play Symbol. If the player reveals a "5X" Play Symbol, the player wins 5 TIMES the prize for that Play Symbol. If the player reveals a "CAKE" Play Symbol, the player wins \$30 instantly! EACH GAME IS PLAYED SEPARATELY. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

- A. To be a valid Scratch Ticket, all of the following requirements must be met:
1. Exactly sixty-one (61) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
 2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
 3. Each of the Play Symbols must be present in its entirety and be fully legible;
 4. Each of the Play Symbols must be printed in black ink except for dual image games;
 5. The Scratch Ticket shall be intact;
 6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;
 7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
 8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
 9. The Scratch Ticket must not be counterfeit in whole or in part;
 10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
 11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;
 12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;
 13. The Scratch Ticket must be complete and not miscut, and have exactly sixty-one (61) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;
 14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;
 15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
 16. Each of the sixty-one (61) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
 17. Each of the sixty-one (61) 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 twenty-eight (28) times.

D. GENERAL: The "CAKE" (WIN\$30), "2X" (DBL) and "5X" (WINX5) Play Symbols will never appear in any of the three (3) BONUS QUICK WIN play areas.

E. BONUS QUICK WIN: A Ticket can win up to one (1) time in each of the three (3) BONUS QUICK WIN play areas.

F. BONUS QUICK WIN: Winning Tickets will contain two (2) matching Play Symbols in a BONUS QUICK WIN play area.

G. BONUS QUICK WIN: A non-winning BONUS QUICK WIN play area will have two (2) different Play Symbols.

H. BONUS QUICK WIN: Winning combinations across all three (3) BONUS QUICK WIN play areas will be different.

I. BONUS QUICK WIN: A BONUS QUICK WIN Play Symbol will not appear more than one (1) time per Ticket across all three (3) BONUS QUICK WIN play areas unless used in a winning combination.

J. BONUS QUICK WIN: There will never be more than two (2) matching BONUS QUICK WIN Play Symbols on a Ticket.

K. BONUS QUICK WIN: Consecutive Non-Winning Tickets within a Pack will not have matching BONUS QUICK WIN play areas. For example, if the first Ticket contains a "CACTUS" Play Symbol and a "HEART" Play Symbol in any BONUS QUICK WIN play area, then the next Ticket may not contain a "CACTUS" Play Symbol and a "HEART" Play Symbol in any BONUS QUICK WIN play area in any order.

L. GAMES 1-5: A Ticket can win up to twenty-five (25) times in the main play area.

M. GAMES 1-5: All non-winning YOUR NUMBERS Play Symbols will be different.

N. GAMES 1-5: All WINNING NUMBER Play Symbols will be different.

O. GAMES 1-5: On both winning and Non-Winning Tickets, a WINNING NUMBER Play Symbol in a GAME will never match a YOUR NUMBERS Play Symbol from a different GAME.

P. GAMES 1-5: On all Tickets, a Prize Symbol will not appear more than four (4) times, except as required by the prize structure to create multiple wins.

Q. GAMES 1-5: Non-winning Prize Symbols will not appear more than two (2) times in the same GAME.

R. GAMES 1-5: On Non-Winning Tickets, a WINNING NUMBER Play Symbol will never match a YOUR NUMBERS Play Symbol.

S. GAMES 1-5: All YOUR NUMBERS Play Symbols will never equal the corresponding Prize Symbol (i.e., \$10 and 10, \$20 and 20, \$30 and 30 and \$50 and 50).

T. GAMES 1-5: Consecutive Non-Winning Tickets within a Pack will not have matching GAMES.

U. GAMES 1-5: On winning and Non-Winning Tickets, the top cash prizes of \$1,000 and \$100,000 will each appear at least once, with respect to other parameters, play action or prize structure.

V. GAMES 1-5: The "CAKE" (WIN\$30) Play Symbol will never appear as a WINNING NUMBER Play Symbol.

W. GAMES 1-5: The "CAKE" (WIN\$30) Play Symbol will never appear on a Non-Winning Ticket.

X. GAMES 1-5: The "CAKE" (WIN\$30) Play Symbol will never appear more than one (1) time on a Ticket.

Y. GAMES 1-5: The "CAKE" (WIN\$30) Play Symbol will win \$30 instantly and will only appear with the \$30 Prize Symbol.

Z. GAMES 1-5: The "2X" (DBL) Play Symbol will never appear as a WINNING NUMBER Play Symbol.

AA. GAMES 1-5: The "2X" (DBL) Play Symbol will never appear on a Non-Winning Ticket.

BB. GAMES 1-5: The "2X" (DBL) Play Symbol will win DOUBLE the prize for that Play Symbol and will win as per the prize structure.

CC. GAMES 1-5: The "2X" (DBL) Play Symbol will never appear more than one (1) time on a Ticket.

DD. GAMES 1-5: The "5X" (WINX5) Play Symbol will never appear as a WINNING NUMBER Play Symbol.

EE. GAMES 1-5: The "5X" (WINX5) Play Symbol will never appear on a Non-Winning Ticket.

FF. GAMES 1-5: The "5X" (WINX5) Play Symbol will win 5 TIMES the prize for that Play Symbol and will win as per the prize structure.

GG. GAMES 1-5: The "5X" (WINX5) Play Symbol will never appear more than one (1) time on a Ticket.

HH. GAMES 1-5: The "2X" (DBL) and "5X" (WINX5) Play Symbols can appear on the same winning Ticket, as indicated by the prize structure.

II. GAMES 1-5: The "CAKE" (WIN\$30) and "2X" (DBL) Play Symbols can appear on the same Ticket as part of a winning combination.

JJ. GAMES 1-5: The "CAKE" (WIN\$30) and "5X" (WINX5) Play Symbols can appear on the same Ticket as part of a winning combination.

KK. GAMES 1-5: The "CAKE" (WIN\$30), "2X" (DBL) and "5X" (WINX5) Play Symbols will never appear all together on the same Ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "30TH ANNIVERSARY" Scratch Ticket Game prize of \$5.00, \$10.00, \$20.00, \$30.00, \$50.00, \$100 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 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 "30TH ANNIVERSARY" 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 "30TH ANNIVERSARY" 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 lia-

bility 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 "30TH ANNIVERSARY" 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 "30TH ANNIVERSARY" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A

Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 7,200,000 Scratch Tickets in Scratch Ticket Game No. 2391. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2391 - 4.0

| Prize Amount | Approximate Number of Winners* | Approximate Odds are 1 in ** |
|--------------|--------------------------------|------------------------------|
| \$5.00 | 832,000 | 8.65 |
| \$10.00 | 608,000 | 11.84 |
| \$20.00 | 160,000 | 45.00 |
| \$30.00 | 96,000 | 75.00 |
| \$50.00 | 92,000 | 78.26 |
| \$100 | 22,640 | 318.02 |
| \$300 | 2,440 | 2,950.82 |
| \$1,000 | 65 | 110,769.23 |
| \$100,000 | 5 | 1,440,000.00 |

*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 3.97. 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. 2391 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. 2391, 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-202200553
Bob Biard
General Counsel
Texas Lottery Commission
Filed: February 15, 2022



Scratch Ticket Game Number 2430 "BONUS BREAK THE BANK"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2430 is "BONUS BREAK THE BANK". The play style is "multiple games".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2430 shall be \$5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2430.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 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, STACK OF CASH SYMBOL, MONEY BAG SYMBOL, \$5.00, \$10.00, \$15.00, \$20.00, \$25.00, \$50.00, \$100, \$500, \$5,000 and \$100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2430 - 1.2D

| PLAY SYMBOL | CAPTION |
|-------------|---------|
| 01 | ONE |
| 02 | TWO |
| 03 | THR |
| 04 | FOR |
| 05 | FIV |
| 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 | TWFV |
| 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 |
| STACK OF CASH SYMBOL | WIN\$50 |
| MONEY BAG SYMBOL | WIN\$50 |
| \$5.00 | FIV\$ |
| \$10.00 | TEN\$ |
| \$15.00 | FFN\$ |
| \$20.00 | TWY\$ |
| \$25.00 | TWV\$ |
| \$50.00 | FFTY\$ |
| \$100 | ONHN |
| \$500 | FVHN |
| \$5,000 | FVTH |
| \$100,000 | 100TH |

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten

(10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2430), 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: 2430-0000001-001.

H. Pack - A Pack of the "BONUS BREAK THE BANK" Scratch Ticket Game contains 075 Tickets, packed in plastic shrink-wrapping and fan-folded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "BONUS BREAK THE BANK" Scratch Ticket Game No. 2430.

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 "BONUS BREAK THE BANK" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose thirty-eight (38) Play Symbols. GAME 1: If a player matches any of the YOUR NUMBERS Play Symbols to any of the 3 LOCK NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a "STACK OF CASH" Play Symbol, the player wins \$50 instantly! GAME 2: If a player matches any of the YOUR NUMBERS Play Symbols to any of the 3 LOCK NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a "MONEY BAG" Play Symbol, the player wins \$50 instantly! 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 thirty-eight (38) 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 thirty-eight (38) 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 thirty-eight (38) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the thirty-eight (38) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

B. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. KEY NUMBER MATCH: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 05 and \$5).

D. KEY NUMBER MATCH: No matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

E. KEY NUMBER MATCH: No matching LOCK NUMBERS Play Symbols on a Ticket.

F. KEY NUMBER MATCH: A non-winning Prize Symbol will never match a winning Prize Symbol in a GAME.

G. KEY NUMBER MATCH: A Ticket may have up to two (2) matching non-winning Prize Symbols within the same GAME, unless restricted by other parameters, play action or prize structure.

H. KEY NUMBER MATCH: The "STACK OF CASH" (WIN\$50) Play Symbol will only appear on intended winning Tickets as dictated by the prize structure and will only appear with the \$50 Prize Symbol in GAME 1.

I. KEY NUMBER MATCH: The "MONEY BAG" (WIN\$50) Play Symbol will only appear on intended winning Tickets as dictated by the prize structure and will only appear with the \$50 Prize Symbol in GAME 2.

2.3 Procedure for Claiming Prizes.

A. To claim a "BONUS BREAK THE BANK" Scratch Ticket Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00, \$100 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "BONUS BREAK THE BANK" Scratch Ticket Game prize of \$5,000 or \$100,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "BONUS BREAK THE BANK" 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 "BONUS BREAK THE BANK" 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 "BONUS BREAK THE BANK" 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 20,040,000 Scratch Tickets in Scratch Ticket Game No. 2430. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2430 - 4.0

| Prize Amount | Approximate Number of Winners* | Approximate Odds are 1 in ** |
|--------------|--------------------------------|------------------------------|
| \$5.00 | 1,736,800 | 11.54 |
| \$10.00 | 1,336,000 | 15.00 |
| \$15.00 | 801,600 | 25.00 |
| \$20.00 | 400,800 | 50.00 |
| \$50.00 | 334,000 | 60.00 |
| \$100 | 65,965 | 303.80 |
| \$500 | 2,505 | 8,000.00 |
| \$5,000 | 100 | 200,400.00 |
| \$100,000 | 10 | 2,004,000.00 |

*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 4.28. 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. 2430 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. 2430, 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-202200513
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: February 14, 2022



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 47 (2022) is cited as follows: 47 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 “47 TexReg 2 issue date,” while on the opposite page, page 3, in the lower right-hand corner, would be written “issue date 47 TexReg 3.”

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State’s website at <http://www.sos.state.tx.us/tac>.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule’s *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION Part 4. Office of the Secretary of State Chapter 91. Texas Register

1 TAC §91.1.....950 (P)

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