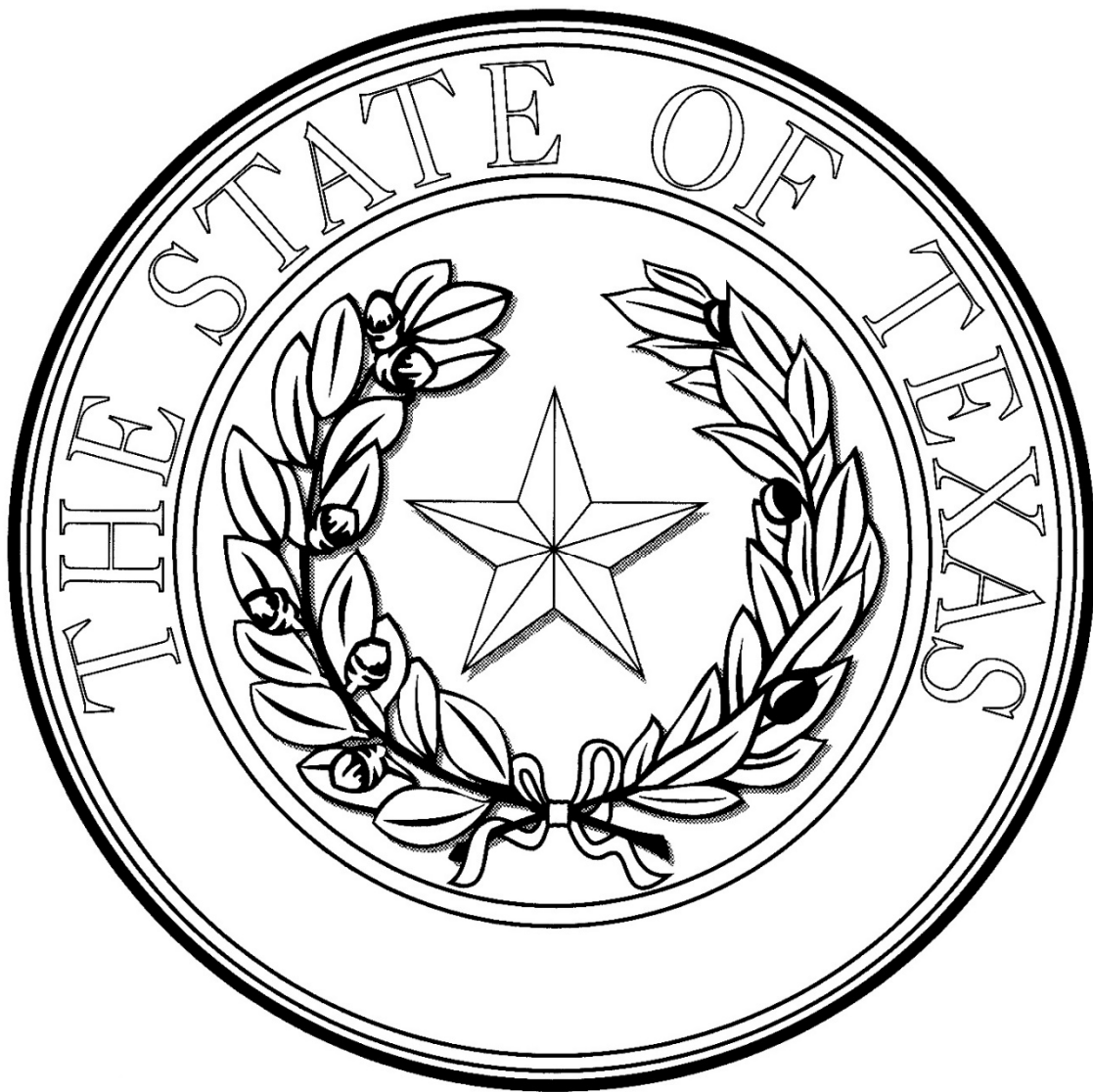

TEXAS REGISTER

Volume 47 Number 30

July 29, 2022

Pages 4387 - 4594



TEXAS REGISTER

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

<https://www.sos.texas.gov>
register@sos.texas.gov

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

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

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

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

Secretary of State - John B. Scott

Director - Je T'aime Swindell

Editor-in-Chief - Jill S. Ledbetter

Editors

Leti Benavides

Brandy M. Hammack

Belinda Kirk

Joy L. Morgan

Matthew Muir

Breanna Mutschler

Barbara Strickland

IN THIS ISSUE

GOVERNOR

Appointments.....	4393
Proclamation 41-3915.....	4393
Proclamation 41-3916.....	4393

ATTORNEY GENERAL

Requests for Opinions.....	4395
----------------------------	------

PROPOSED RULES

OFFICE OF THE ATTORNEY GENERAL

ADMINISTRATION

1 TAC §52.2.....	4398
1 TAC §52.2, §52.3.....	4398

TEXAS DEPARTMENT OF AGRICULTURE

GENERAL PROCEDURES

4 TAC §§1.201, 1.202, 1.204, 1.210, 1.212.....	4399
--	------

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

UNIFORM MULTIFAMILY RULES

10 TAC §§10.601, 10.602, 10.604, 10.607 - 10.616, 10.618, 10.619, 10.621 - 10.625.....	4400
--	------

TEXAS JUVENILE JUSTICE DEPARTMENT

RULES FOR STATE-OPERATED PROGRAMS AND FACILITIES

37 TAC §380.8501.....	4421
37 TAC §380.8521.....	4423
37 TAC §380.8702, §380.8703.....	4424
37 TAC §380.8751.....	4427

RULES FOR STATE-OPERATED PROGRAMS AND FACILITIES

37 TAC §§380.9503, 380.9504, 380.9510, 380.9520.....	4433
37 TAC §380.9517, §380.9535.....	4442
37 TAC §§380.9551, 380.9555, 380.9557.....	4442
37 TAC §380.9729.....	4449

STATE PENSION REVIEW BOARD

FUNDING SOUNDNESS RESTORATION PLANS

40 TAC §§610.11, 610.13 - 610.15, 610.20 - 610.22, 610.30 - 610.32.....	4450
---	------

TEXAS WORKFORCE COMMISSION

CAREER SCHOOLS AND COLLEGES

40 TAC §§807.1 - 807.3, 807.5 - 807.8.....	4461
40 TAC §§807.11 - 807.17.....	4465
40 TAC §§807.31 - 807.35, 807.37.....	4467

40 TAC §§807.51, 807.53, 807.54.....	4468
40 TAC §§807.62 - 807.64, 807.66.....	4469
40 TAC §§807.81 - 807.84.....	4470
40 TAC §807.101, §807.102.....	4472
40 TAC §§807.121 - 807.123, 807.129 - 807.134.....	4473
40 TAC §§807.124 - 807.127.....	4476
40 TAC §§807.151 - 807.153.....	4476
40 TAC §§807.171 - 807.173, 807.175.....	4477
40 TAC §807.176.....	4478
40 TAC §§807.191 - 807.194, 807.196, 807.197.....	4478
40 TAC §§807.221, 807.223, 807.224.....	4481
40 TAC §§807.241 - 807.245.....	4481
40 TAC §807.261, §807.263.....	4483
40 TAC §§807.281 - 807.284.....	4483
40 TAC §807.301, §807.302.....	4485
40 TAC §§807.321, 807.322, 807.324, 807.325.....	4486
40 TAC §807.341, §807.342.....	4487
40 TAC §§807.351 - 807.353.....	4489
40 TAC §§807.362, 807.365, 807.366.....	4489
40 TAC §§807.385 - 807.387, 807.395.....	4490

TEXAS DEPARTMENT OF TRANSPORTATION

DESIGN

43 TAC §§11.401, 11.404 - 11.406, 11.408.....	4491
---	------

PUBLIC TRANSPORTATION

43 TAC §31.36.....	4494
--------------------	------

ADOPTED RULES

TEXAS EDUCATION AGENCY

CURRICULUM REQUIREMENTS

19 TAC §74.3.....	4501
19 TAC §74.11 - 74.14.....	4502

TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR SOCIAL STUDIES

19 TAC §113.76.....	4511
---------------------	------

TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR HEALTH EDUCATION

19 TAC §§115.1 - 115.7.....	4516
19 TAC §§115.21 - 115.23.....	4516
19 TAC §§115.31 - 115.33.....	4517

TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR PHYSICAL EDUCATION

19 TAC §§116.1 - 116.7.....	4517
-----------------------------	------

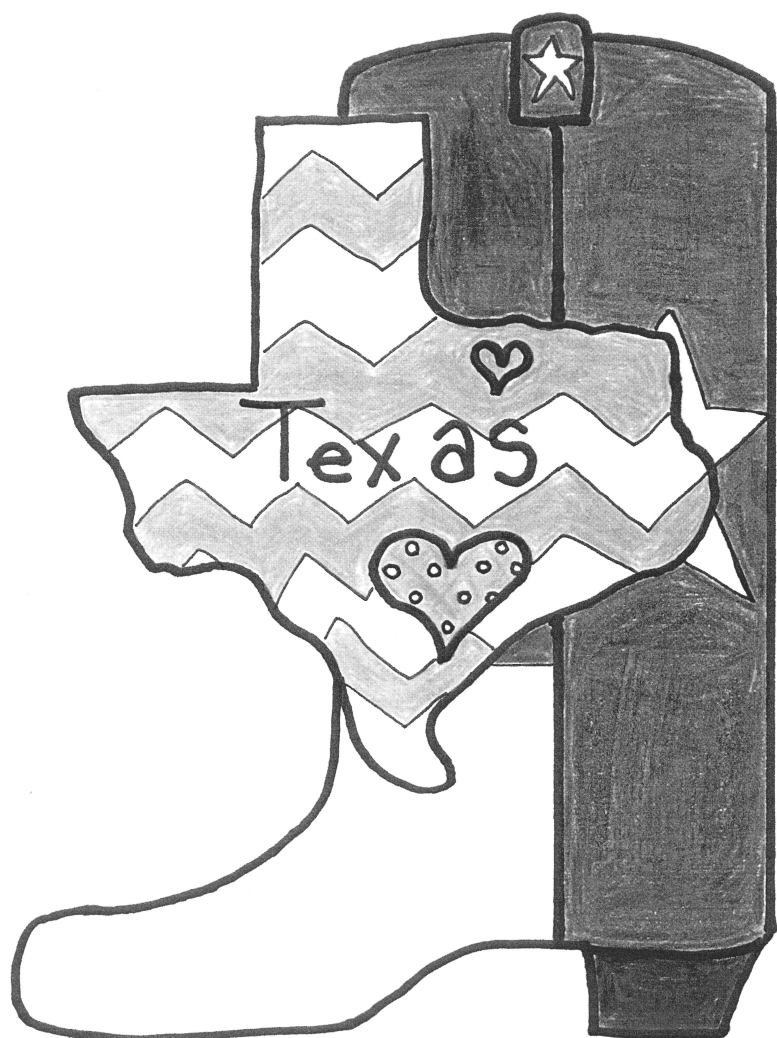
19 TAC §§116.21 - 116.24.....	4518	43 TAC §§4.70 - 4.78	4560
19 TAC §§116.51 - 116.56.....	4518	RULE REVIEW	
TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR TECHNOLOGY APPLICATIONS		Proposed Rule Reviews	
19 TAC §§126.1 - 126.3, 126.8 - 126.10	4521	Commission on State Emergency Communications.....	4561
19 TAC §§126.17 - 126.19	4521	Credit Union Department.....	4561
TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR CAREER DEVELOPMENT AND CAREER AND TECHNICAL EDUCATION		TABLES AND GRAPHICS	
19 TAC §§127.310, 127.312, 127.313.....	4522	4563
19 TAC §127.409.....	4522	IN ADDITION	
19 TAC §127.753, §127.755.....	4522	Office of the Attorney General	
TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR CAREER DEVELOPMENT AND CAREER AND TECHNICAL EDUCATION		Texas Water Code and Texas Health and Safety Code Settlement No- tice.....	4577
19 TAC §§127.788 - 127.794	4523	Comptroller of Public Accounts	
TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR CAREER AND TECHNICAL EDUCATION		Notice of General Meeting of the Multistate Tax Commission.....	4577
19 TAC §130.277.....	4533	Office of Consumer Credit Commissioner	
TEXAS DEPARTMENT OF INSURANCE		Notice of Rate Ceilings.....	4577
WORKERS' COMPENSATION HEALTH CARE NETWORKS		Court of Criminal Appeals	
28 TAC §§10.1 - 10.3	4545	Final Approval of Amendment to Texas Rule of Appellate Procedure 9.4	4577
28 TAC §§10.20 - 10.27	4546	Credit Union Department	
28 TAC §§10.40 - 10.42	4549	Application to Expand Field of Membership.....	4580
28 TAC §§10.60 - 10.63	4550	Notice of Final Action Taken.....	4580
28 TAC §§10.80 - 10.86	4553	Texas Commission on Environmental Quality	
28 TAC §§10.100, 10.101, 10.104.....	4555	Agreed Orders	4580
28 TAC §10.102, §10.103.....	4555	Enforcement Orders.....	4582
28 TAC §§10.120 - 10.122	4555	Enforcement Orders.....	4583
28 TAC §10.200.....	4556	Notice of Correction to Agreed Order Number 7	4585
COMPTROLLER OF PUBLIC ACCOUNTS		Notice of District Petition	4585
TAX ADMINISTRATION		Notice of Hearing on Restore the Grasslands, LLC and Harring- ton/Turner Enterprises, LP: SOAH Docket No. 582-22-02856; TCEQ Docket No. 2022-0326-MWD; Permit No. WQ0016003001	4586
34 TAC §3.340.....	4556	Notice of Opportunity to Comment on a Default Order of Administra- tive Enforcement Actions	4587
34 TAC §3.599.....	4557	Notice of Opportunity to Comment on an Agreed Order of Adminis- trative Enforcement Actions	4588
PROPERTY TAX ADMINISTRATION		Notice of Water Rights Application.....	4588
34 TAC §9.3061.....	4558	Notice of Water Rights Applications	4589
TEXAS DEPARTMENT OF TRANSPORTATION		General Land Office	
EMPLOYMENT PRACTICES		Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Pro- gram	4590
43 TAC §§4.10 - 4.15	4559	Texas Health and Human Services Commission	
43 TAC §§4.10 - 4.16	4560	Public Notice - Texas State Plan for Medical Assistance Amend- ment	4591
43 TAC §§4.22 - 4.25	4560		

Department of Information Resources

Notice of Public Hearing for Texas Work Group on Blockchain Mat-
ters.....4592

Texas Department of Insurance

Company Licensing4592



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 July 14, 2022

Appointed to the Sabine River Compact Administration for a term to expire July 12, 2028, Connie Wade Gipson of Longview, Texas (replacing Jerry Franklin Gipson of Longview, whose term expired).

Greg Abbott, Governor

TRD-202202727



Proclamation 41-3915

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, issued a disaster proclamation on July 8, 2022, certifying that exceptional drought conditions posed a threat of imminent disaster in Andrews, Aransas, Armstrong, Atascosa, Austin, Bailey, Bandera, Baylor, Bee, Bell, Bexar, Blanco, Borden, Bosque, Brazoria, Brewster, Briscoe, Brown, Burnet, Caldwell, Calhoun, Callahan, Cameron, Camp, Castro, Chambers, Childress, Cochran, Coke, Coleman, Colorado, Comal, Comanche, Concho, Coryell, Cottle, Crane, Crosby, Culberson, Dallam, Dawson, Deaf Smith, DeWitt, Dickens, Dimmit, Eastland, Ector, Edwards, Ellis, Erath, Fisher, Floyd, Foard, Fort Bend, Franklin, Frio, Gaines, Galveston, Garza, Gillespie, Glasscock, Goliad, Gonzales, Guadalupe, Hale, Hall, Hamilton, Hansford, Hardeman, Harris, Hartley, Haskell, Hays, Hidalgo, Hill, Hockley, Hood, Howard, Hudspeth, Irion, Jackson, Jeff Davis, Jefferson, Johnson, Jones, Karnes, Kendall, Kent, Kerr, Kimble, King, Kinney, Knox, La Salle, Lamb, Lampasas, Lavaca, Live Oak, Llano, Loving, Lubbock, Lynn, Martin, Mason, Matagorda, Maverick, McCulloch, McLennan, McMullen, Medina, Midland, Mills, Mitchell, Moore, Motley, Navarro, Nolan, Oldham, Orange, Parker, Parmer, Pecos, Potter, Presidio, Randall, Real, Reeves, Refugio, Roberts, Rockwall, Runnels, San Patricio, San Saba, Schleicher, Scurry, Shackelford, Sherman, Somervell, Stephens, Sterling, Stonewall, Sutton, Swisher, Tarrant, Taylor, Terrell, Terry, Tom Green, Travis, Upton, Uvalde, Val Verde, Victoria, Waller, Ward, Webb, Wharton, Wichita, Wilbarger, Williamson, Wilson, Winkler, Yoakum, and Zavala counties; and

WHEREAS, those same drought conditions continue to exist in these and other counties in Texas;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby amend and renew the aforementioned proclamation and declare a disaster in these additional counties: Anderson, Carson, Collingsworth, Dallas, Donley, Duval, Falls, Freestone, Gregg, Henderson, Hutchinson, Kaufman, Lamar, Limestone, Menard, Nueces, Ochiltree, Rains, Reagan, Starr, Upshur, Van Zandt, Walker, Wood, and Zapata.

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

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

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 15th day of July, 2022.

Greg Abbott, Governor

TRD-202202720



Proclamation 41-3916

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, issued a disaster proclamation on March 18, 2022, as amended and renewed in a number of subsequent proclamations, certifying the wildfires that began on February 23, 2022, posed an imminent threat of widespread or severe damage, injury, or loss of life or property in Andrews, Aransas, Archer, Bee, Bell, Blanco, Borden, Bosque, Brewster, Brooks, Brown, Cameron, Coke, Coleman, Comanche, Concho, Cooke, Crane, Crockett, Culberson, Dawson, Dimmit, Duval, Eastland, Ector, Edwards, Erath, Gaines, Garza, Grayson, Hemphill, Hidalgo, Hood, Howard, Hudspeth, Jeff Davis, Jim Hogg, Jim Wells, Kenedy, Kimble, Kleberg, Live Oak, Martin, Mason, Maverick, McCulloch, Medina, Menard, Midland, Nueces, Palo Pinto, Parker, Pecos, Potter, Presidio, Randall, Reagan, Real, Refugio, Roberts, Runnels, Starr, Taylor, Terrell, Tom Green, Upton, Wichita, Willacy, Williamson, Winkler, Wise, Zapata, and Zavala counties; and

WHEREAS, those same conditions continue to exist in these counties;

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

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

Pursuant to Section 418.016 of the code, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder, or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the ex-

tent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to protect life or property threatened by this declared disaster, I hereby authorize the suspension of such statutes and rules for the duration of this declared disaster.

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 16th day of July, 2022.

Greg Abbott, Governor

TRD-202202721



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-0467-KP

Requestor:

The Honorable Constance Filley Johnson
Victoria County Criminal District Attorney
205 North Bridge, Suite 301
Victoria, Texas 77901-8085

Re: Authority of a water control and improvement district to use surplus funds from its interest and sinking fund (RQ-0467-KP)

Briefs requested by August 11, 2022

RQ-0468-KP

Requestor:

The Honorable Matt Krause
Chair, House Committee on General Investigating
Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether a county's reimbursement of taxes under certain agreements constitute a grant of public money within the scope of Local Government Code subsection 381.004(h)

(RQ-0468-KP)

Briefs requested by August 11, 2022

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

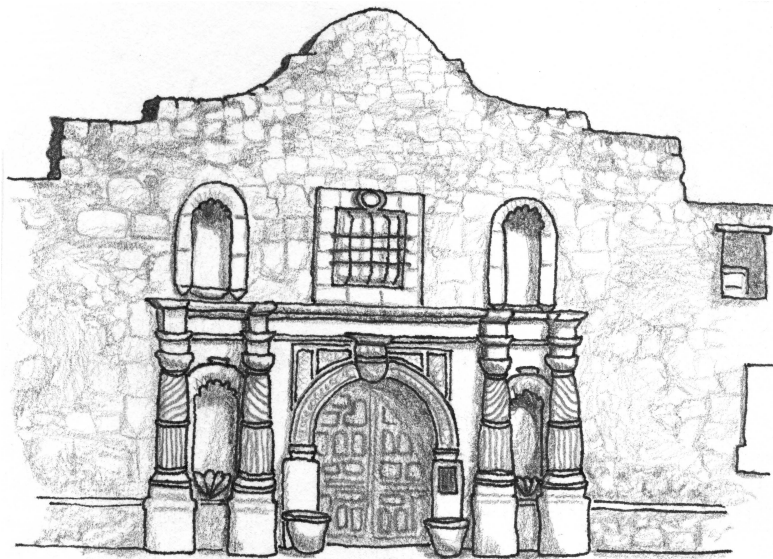
TRD-202202711

Austin Kinghorn
General Counsel

Office of the Attorney General

Filed: July 19, 2022





PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to

submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

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

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 52. ADMINISTRATION

SUBCHAPTER A. GENERAL PROVISIONS

The Office of the Attorney General (OAG) proposes adding new §52.2 which will address the new Family Leave Pool program. The creation of the Family Leave Pool will provide eligible state employees more flexibility in bonding with and caring for children during a child's first year following birth, adoption, or foster placement as well as assist employees who are caring for a seriously ill family member of the employee. In addition, to implementing the new Family Leave Pool, the OAG proposes reorganizing the sections in Chapter 52, Subchapter A (General Provisions) to implement a more logical order for the chapter's rules.

EXPLANATION AND JUSTIFICATION OF RULES

The Legislature, in the 87th Regular Session (2021), added subchapter A-1 to Texas Government Code Chapter 661 (H.B. 2063), which requires state agencies to establish a Family Leave Pool program. Specifically, the law states that the "governing body of the state agency shall adopt rules and prescribe procedures relating to the operation of the agency family leave pool." Tex. Gov't Code §661.022(c). The program provides leave for state employees for family-care needs that do not necessarily fall under the existing Sick Leave Pool or the federal Family and Medical Leave Act of 1993.

Generally, the Family Leave Pool authorizes any state employee to contribute one or more days of the employee's accrued sick or vacation leave for use by another state employee. Any state employee may also apply to the pool administrator to withdraw time from the Family Leave Pool. Proposed §52.2 will implement this program. Specifically, the proposed rules will designate the pool administrator, authorize the administrator to recommend a policy for approval by the First Assistant Attorney General, and require that the program operate in compliance with Texas Government Code, Chapter 661.

In addition, the OAG proposes reorganizing Chapter 52 of the Texas Administrative Code, Title 1, Part 3. Current §52.2 (Employee Education and Training) will be repealed and replaced with new §52.2 (Family Leave Pool). In addition, repealed §52.2 (Employee Education and Training) will become new §52.3 (Employee Education and Training). This reorganization will put Chapter 52's provisions in a more logical format as the proposed new §52.2 (Family Leave Pool) is similar to §52.1 (Sick Leave Pool).

SECTION-BY-SECTION SUMMARY

Proposed new §52.2 addresses the Family Leave Pool administration and requirements. This proposed section is nearly identical to §52.1, which addresses the Sick Leave Pool. Similar to the Sick Leave Pool, the statutory provisions for the Family Leave Pool require that a state agency establish the program and designate the Director of Human Resources as the pool administrator. Operation of the pool will be consistent with Chapter 661 of the Texas Government Code.

Proposed §52.3 addresses employee education and training. This proposed new section is identical to current §52.2. Under this section, the agency may use state funds to provide education and training for its employees relating to the employees' position and its benefits to the agency.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

Henry De La Garza, Division Chief for Human Resources, has determined that for the first five-year period the proposed rules are in effect, enforcing or administering the rules does not have foreseeable implications relating to cost or revenues of the state or local governments.

Should a large number of donations or a significant amount of leave be donated to the Family Leave Pool, there may be costs to the OAG for additional resources, such as human capital and updated software, which may be necessary to address the administrative challenges stemming from the potential tax implications to both donating and receiving employees. This increase in needed resources would result from possible tax implications that may arise, as briefed by the Texas Comptroller's Office (https://fmx.cpa.texas.gov/fmx/payper/family_leave/a049_all.php). Specifically, certain donations to the Family Leave Pool may be considered taxable income and subject to withholding and other requirements. But at this time, there is no way for the OAG to estimate the amount of leave that will be donated to the Family Leave Pool; thus, the OAG is unable to estimate any associated state government costs.

PUBLIC BENEFIT AND COST NOTE

Mr. De La Garza has determined that for the first five-year period the proposed rules are in effect, the public will benefit by having flexibility in bonding with and caring for children during the child's first year following birth, adoption, or foster placement; and caring for a seriously ill family member or themselves, including pandemic-related illnesses or complications caused by a pandemic. Even though this program is only available for state employees, all persons, children or otherwise, who are impacted by the Family Leave Pool, will benefit from the Pool by receiving additional care from the state-employee family member.

Mr. De La Garza has also determined that for each year of the first five-year period the proposed rules are in effect, there are potential economic costs to persons who are required

to comply with the proposed rules. As briefed by the Texas Comptroller's Office (https://fm.x.cpa.texas.gov/fmx/payper/family_leave/a049_all.php), an employee that donates leave to the Family Leave Pool may incur costs via increased taxes. The costs will vary for each donating employee and will be impacted by factors including the amount of leave donated as well as the type. For these reasons, the OAG is unable to estimate any potential public costs at this time.

IMPACT ON LOCAL EMPLOYMENT OR ECONOMY

The Human Resources Division has determined that the proposed rules do not have an impact on local employment or economies because the proposed rules impact state agencies and their employees only. Therefore, no local employment or economy impact statement is required under Tex. Gov't Code §2001.022.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES

The Human Resources Division has determined that for each year of the first five-year period the proposed rules are in effect, there will be no foreseeable adverse fiscal impact on small business, micro-businesses, or rural communities as a result of the proposed rules. The proposed rules only impact state agencies under Texas Government Code, Chapter 661. Therefore, Texas Government Code Chapter 2006 does not apply.

Since the proposed rules will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

TAKINGS IMPACT ASSESSMENT

The OAG has determined that no private real property interests are affected by the proposed rules, and the proposed rules do not restrict, limit, or impose a burden on an owner's rights to the owner's private real property that would otherwise exist in the absence of government action. As a result, the proposed rules do not constitute a taking or require a takings impact assessment under Texas Government Code §2007.043.

GOVERNMENT GROWTH IMPACT STATEMENT

In compliance with Texas Government Code §2001.0221, the agency has prepared a government growth impact statement. During the first five years the proposed rules are in effect, the proposed rules:

- will create a government program;
- will not require the creation or elimination of employee positions, however, if there are a large number of donations, as discussed in the fiscal note, additional employee positions may be required;
- will not require an increase or decrease in future legislative appropriations to the agency, however, if there are a large number of donations, as discussed in the fiscal note, additional appropriations may be required;
- will not lead to an increase or decrease in fees paid to a state agency;
- will create a new regulation;

- will repeal an existing regulation;
- will not result in an increase or decrease in the number of individuals subject to the rule; and
- will not positively or adversely affect the state's economy.

REQUEST FOR PUBLIC COMMENT

Written comments on the proposed rules may be submitted electronically to the OAG's Human Resources Division by email to HR-Help@oag.texas.gov or by mail to Human Resources Division, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548. The OAG will consider any written comments on the proposal that are received by the OAG no later than 5:00 p.m., central time, on Monday, August 29, 2022.

To request a public hearing on the proposal, submit a request before the end of the comment period by email to HR-Help@oag.texas.gov or by mail to Human Resources Division, Attn. Director of Human Resources, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548.

1 TAC §52.2

STATUTORY AUTHORITY. 1 TAC §52.2 proposed repeal is pursuant to Texas Government Code §661.022, which directs the OAG to adopt rules and prescribe procedures relating to the operation of the agency's Family Leave Pool.

CROSS-REFERENCE TO STATUTE. No other regulations or statutes are affected by this proposed change.

§52.2. Employee Education and Training.

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

Filed with the Office of the Secretary of State on July 15, 2022.

TRD-202202687

Austin Kinghorn

General Counsel

Office of the Attorney General

Earliest possible date of adoption: August 28, 2022

For further information, please call: (512) 463-2100



1 TAC §52.2, §52.3

STATUTORY AUTHORITY. New 1 TAC §52.2 and §52.3 are proposed pursuant to Texas Government Code §661.022, which directs the OAG to adopt rules and prescribe procedures relating to the operation of the agency Family Leave Pool.

CROSS-REFERENCE TO STATUTE. No other regulations or statutes are affected by this proposed change.

§52.2. Family Leave Pool.

A family leave pool is established to allow eligible employees to apply for leave time to bond with and care 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 Office of the Attorney General's Human Resources Director is designated as the pool administrator.

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

(3) Operation of the pool shall be consistent with Texas Government Code, Chapter 661.

§52.3. Employee Education and Training.

(a) The agency may use state funds to provide education and training for its employees in accordance with the State Employees Training Act (Texas Government Code, §§656.041-656.104).

(b) The education or training shall be related to the employee's current position or prospective job duties within the agency.

(c) When an employee seeks reimbursement for a training or education program offered by an institution of higher education or private or independent institution of higher education, the agency shall only reimburse the tuition expenses for a program course successfully completed by an employee at an accredited institution of higher education.

(d) The agency's education and training program benefits both the agency and the employees participating by:

(1) preparing for technological and legal developments;

(2) increasing work capabilities;

(3) increasing the number of qualified employees in areas for which the agency has difficulty in recruiting and retaining employees; and

(4) increasing the competence of agency employees.

(e) Agency employees may be required to complete an education or training program related to the employee's duties or prospective duties as a condition of employment.

(f) Participation in an education or training program requires the appropriate level of approval prior to participation and is subject to the availability of funds within the agency's budget.

(g) Reimbursement for completing program courses offered by institutions of higher education, such as those credited towards a degree, requires the approval of the First Assistant Attorney General.

(h) The employee education and training program for the agency may include:

(1) mandatory agency-sponsored training required for all employees;

(2) education relating to technical or professional certifications and licenses;

(3) education and training relating to the promotion of employee development;

(4) employee-funded external education;

(5) agency-funded external education, including continuing legal education, online courses, and courses not credited towards a degree; and

(6) other agency-sponsored education and training determined by the agency to fulfill the purposes of the State Employees Training Act.

(i) The Office of the Attorney General's Human Resources Director is designated as the administrator of the agency's education and training program.

(j) The administrator or administrator's designee shall develop policies for administering each of the components of the employee ed-

ucation and training program. These policies shall provide clear and objective guidelines and shall include, at a minimum, the following:

(1) eligibility requirements for participation;

(2) approval procedures for participation; and

(3) obligations of program participants.

(k) Approval to participate in any portion of the agency's education and training program shall not in any way affect an employee's at-will status or constitute a guarantee or indication of continued employment, nor shall it constitute a guarantee or indication of future employment in a current or prospective position.

(l) Permission to participate in any education and training program may be withdrawn if the agency determines, in its sole discretion, that participation would negatively impact the employee's job duties or performance.

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 July 15, 2022.

TRD-202202688

Austin Kinghorn

General Counsel

Office of the Attorney General

Earliest possible date of adoption: August 28, 2022

For further information, please call: (512) 463-2100



TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 1. GENERAL PROCEDURES

SUBCHAPTER E. ADVISORY COMMITTEES

4 TAC §§1.201, 1.202, 1.204, 1.210, 1.212

The Texas Department of Agriculture (Department) proposes the repeal of 4 Texas Administrative Code, Chapter 1, Subchapter E, §1.201, concerning Citrus Budwood Advisory Council; §1.202, concerning Pest Management Zone Administrative Committees; §1.204, concerning Boll Weevil Foundation Rules Advisory Committee; §1.210, concerning Healthy Students = Healthy Families Advisory Committee, and §1.212, concerning Texas Bioenergy Policy Council and Committee.

The Department proposes the repeal of §1.201 because Section 19.005 of the Texas Agriculture Code provides for the composition, responsibilities, and oversight of the Citrus Budwood Advisory Council (Council). In addition, Senate Bill No. 703 (S.B. 703), 87th Legislature, Regular Session, 2021 amended Section 19.005 to exempt the Council from the duration requirements of Chapter 2110, Texas Government Code.

S.B. 703 repealed Section 74.003(d) of the Texas Agriculture Code related to administrative committees for cotton pest management zones, which necessitates the repeal of corresponding rules.

S.B. 703 also repealed Section 74.120(d) of the Texas Agriculture Code related to an advisory committee to assist the com-

missioner of agriculture in the development of rules to protect individuals, livestock, wildlife, and honeybee colonies on any premises in an eradication zone on which cotton plants are being grown that have been or are being treated to eradicate the boll weevil or the pink bollworm, which necessitates the repeal of corresponding rules.

The Department further proposes the repeal of §1.210 related to the Healthy Students = Healthy Families Advisory Committee due to a determination that a business necessity no longer exists to support this committee's continuation.

Section 3 of Senate Bill No. 1731, 85th Legislature, Regular Session, 2017 abolished the Texas Bioenergy Policy Council and the Texas Bioenergy Research Committee, which necessitates the repeal of corresponding rules.

LOCAL EMPLOYMENT IMPACT STATEMENT: The Department has determined that the proposed repeals will not affect a local economy, so the Department is not required to prepare a local employment impact statement under Texas Government Code, §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT: Pursuant to Texas Government Code, §2001.0221, the Department provides the following Government Growth Impact Statement for the proposed repeals. For each year of the first five years the proposed repeals will be in effect, the Department has determined the following:

1. the proposed repeals do not create or eliminate a government program;
2. implementation of the proposed repeals does not require the creation or elimination of employee positions;
3. implementation of the proposed repeals does not require an increase or decrease in future legislative appropriations to the Department;
4. the proposed repeals do not require an increase or decrease in fees paid to the Department;
5. the proposed repeals do not create a new regulation;
6. the proposed repeals will repeal an existing regulation;
7. the proposed repeals do not increase or decrease the number of individuals subject to the rule's applicability; and
8. the proposed repeals do not positively or adversely affect this state's economy.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT: Susan Maldonado, Lead Deputy General Counsel, has determined that for each year of the first five years the proposed repeals are in effect, enforcing or administering the proposed repeals does not have foreseeable implications relating to costs or revenues of state or local governments.

PUBLIC BENEFITS AND PROBABLE ECONOMIC COST: Ms. Maldonado has determined that for each year of the first five-year period the proposed repeals are in effect, the public benefit will be the elimination of rules that will no longer be administered by the Department. Ms. Maldonado has also determined that for each year of the first five-year period the proposed repeals are in effect, there will be no cost to persons who are required to comply with the proposed repeals.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES: The Department has determined there will be no adverse economic effect on small

businesses, micro-businesses, or rural communities as a result of the proposed repeals, therefore preparation of an economic impact statement and a regulatory flexibility analysis, as detailed under Texas Government Code, §2006.002, is not required.

Comments on the proposed repeals may be submitted to Skyler Shafer, Assistant General Counsel, P.O. Box 12847, Austin, Texas 78711, or by email to skyler.shafer@texasagriculture.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The repeals are proposed under Section 12.016 of the Texas Agriculture Code, which provides that the Department may adopt rules as necessary for the administration of its powers and duties under the Code.

Chapters 12, 19 and 74, Texas Agriculture Code are affected by the proposed repeals.

§1.201. *Citrus Budwood Advisory Council.*

§1.202. *Pest Management Zone Administrative Committees.*

§1.204. *Boll Weevil Foundation Rules Advisory Committee.*

§1.210. *Healthy Students = Healthy Families Advisory Committee.*

§1.212. *Texas Bioenergy Policy Council and Committee.*

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

Filed with the Office of the Secretary of State on July 13, 2022.

TRD-202202674

Skyler Shafer

Assistant General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: August 28, 2022

For further information, please call: (512) 936-9360

◆ ◆ ◆
TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 10. UNIFORM MULTIFAMILY RULES

SUBCHAPTER F. COMPLIANCE MONITORING

10 TAC §§10.601, 10.602, 10.604, 10.607 - 10.616, 10.618, 10.619, 10.621 - 10.625

The Texas Department of Housing and Community Affairs (the "Department") proposes amendments to the following rules in Chapter 10, Uniform Multifamily Rules, Subchapter F, Compliance Monitoring: §10.601, concerning Compliance Monitoring Objectives; §10.602, concerning Notice to Owners and Corrective Action Periods; §10.604, concerning Options for Review; §10.607, concerning Reporting Requirements; §10.608, concerning Record Keeping Requirements; §10.609, concerning Notices to the Department; §10.610, concerning Written Policies and Procedures; §10.611, concerning Determination, Documentation and Certification of Annual Income; §10.612, concerning Tenant File Requirements; §10.613, concerning

Lease Requirements; §10.614, concerning Utility Allowances; §10.615, concerning Elections under IRC §42 and Additional Income and Rent Restrictions for HTC, Exchange, and TCAP Developments; §10.616, concerning Household Unit Transfer Requirements for All Programs; §10.618, concerning Onsite Monitoring; §10.619, concerning Monitoring for Social Services; §10.621, concerning Property Condition Standards; §10.622, concerning Special Rules Regarding Rents and Rent Limit Violations; §10.623, concerning Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period; §10.624, concerning Compliance Requirements for Developments with 811 PRA Units; and §10.625, concerning Events of Noncompliance. The amendments include HOME-ARP rental program requirements within numerous section of the rule; deletion of unnecessary requirements from the rule, simplification of language when an owner may change a household's income/rent designation, and addition of new notification requirements regarding rent increases, when a Development's LURA term is expiring and when the PHA utility allowance requirement becomes effective. Additionally, the new rule codifies corrective action requirements for Casualty Loss and Exigent Health and Safety issues.

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.

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed rule action would be in effect, the proposed actions do not create or eliminate a government program, but relate to changes to an existing activity, compliance monitoring.

2. The proposed rule action does not require a change in work that would require the creation of new employee positions, nor are the proposed actions significant enough to reduce workload to a degree that any existing employee positions are eliminated.

3. The proposed rule action does not require additional future legislative appropriations.

4. The proposed rule action does not result in an increase in fees paid to the Department or in a substantial decrease in fees paid to the Department.

5. The proposed rule action is not creating a new regulation.

6. The proposed rule action will not repeal an existing regulation.

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

8. The proposed rule action 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.

1. The Department has evaluated this rule action and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. This rule relates to the procedures for the handling of compliance monitoring activities of multifamily developments awarded funds through various Department programs. Other than, in the case of a small or micro-business that is an owner or a party to one of the Department's properties, no small or micro-businesses are subject to the rule. If a small or micro-business is such an owner or participant, the proposed rule provides for more clear, transparent processes and does not result in a negative impact for those small or micro-businesses. There are not likely to be any rural communities subject to the proposed rule because this rule is applicable only to the owners or operators of properties in the Department's portfolio, not municipalities.

3. The Department has determined that because this rule relates only to the process in use for compliance monitoring activities of the Department's portfolio, 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 proposed rule action does not contemplate nor 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 proposed rule action as to its possible effects on local economies and has determined that for the first five years the proposed actions are in effect, there will be no economic effect on local employment, therefore, no local employment impact statement is required to be prepared for the rule.

Texas 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 no impact is expected on a statewide basis, there are also 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 proposed rule action is in effect, the public benefit anticipated as a result of the action will be a clearer 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 proposed rule action is in effect, enforcing or administering the proposed rule action 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 from July 29, 2022, to August 29, 2022, to receive input on the proposed rule action. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Wendy Quackenbush, Compliance Monitoring Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email to wendy.quackenbush@tdhca.state.tx.us. **ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time August 22, 2022.**

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

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

§10.601. Compliance Monitoring Objectives and Applicability.

(a) The objectives of the Department in performing regular monitoring of affordable rental housing are:

(1) To provide for monitoring that meets applicable requirements of:

- (A) The U.S. Department of Housing and Urban Development (HUD);
- (B) The U.S. Department of the Treasury (Treasury);
- (C) The Internal Revenue Service (the IRS); and
- (D) Applicable state laws and rules;

(2) To enable the Department to report information to HUD, Treasury, the IRS, and the Governing Board, as required, regarding the condition and operations of such developments;

(3) To enable the Department to communicate with responsible persons regarding the condition and operation of their developments and understand clearly, with a documented record, how they are performing in meeting their obligations;

(4) To identify matters of noncompliance so that they can be appropriately addressed and to assist in targeting issues that may require compliance assistance education;

(5) To ensure that responsible persons understand the compliance status of their developments and the implications of such status;

(6) To articulate and communicate clear standards to promote the maintenance and operation of such developments in a manner that meets the high standards of the Department's affordable rental programs; and

(7) To provide a transparent system whereby all interested parties, including residents, community organizations, local governmental entities, and the affordable housing industry, may find accountability, consistency, and an awareness of the high quality standards of affordable housing in the State of Texas.

(b) This subchapter applies to the monitoring of affordable rental housing under the programs described in paragraphs (1) - ~~(11)~~ [40] of this subsection:

- (1) The Housing Tax Credit Program (HTC);
- (2) The HOME Investment Partnerships Program (HOME);
- (3) The Tax Exempt Bond Program (Bond);
- (4) The Texas Housing Trust Fund Program (HTF₂ [or] SHTF, or THTF);
- (5) The Tax Credit Assistance Program (TCAP);
- (6) The Tax Credit Exchange Program (Exchange);
- (7) The Neighborhood Stabilization Program (NSP);
- (8) Section 811 Project Rental Assistance (811 PRA or 811) Program;
- (9) Tax Credit Assistance Program Repayment Funds (TCAP RF); ~~[and]~~
- (10) The National Housing Trust Fund (NHTF); ~~and~~ [-];
- (11) HOME American Rescue Plan (HOME-ARP).

(c) Monitoring activity evaluates the physical condition of the Developments and whether they are being operated in documented compliance with program requirements.

(d) The results of the Department's monitoring activities will be documented and, communicated to the owner in writing within 90 days of the monitoring visit.

(e) The Department may contract with an independent third party to monitor a Development during its construction or rehabilitation and during its operation for compliance with any conditions imposed by the Department in connection with the award of any Department funds, including allocations of housing tax credits, and appropriate state and federal laws, rules, regulations, orders, and other applicable legal requirements.

(f) The capitalized terms or phrases used herein are defined in this title. Any other capitalized terms in this subchapter shall have the meaning as defined in Tex. Gov't Code Chapter 2306, Internal Revenue Code (the Code) §42, the HOME Final Rule, and other federal or Department rules, as applicable. Defined terms, when not capitalized, are to be read in context and construed according to common usage.

§10.602. Notice to Owners and Corrective Action Periods.

(a) The Department will provide written notice to the Owner if the Department does not receive the Annual Owner Compliance Report (AOCR) timely or if the Department discovers through monitoring, audit, inspection, review, or any other manner that the Development is not in compliance with the provisions of the LURA, deed restrictions, application for funding, conditions imposed by the Department, this subchapter, or other program rules and regulations, including but not limited to §42 of the Internal Revenue Code.

(b) For a violation other than a violation that poses an imminent hazard or threat to health and safety, the notice will specify a 30 day Corrective Action Period for noncompliance related to the AOCR, and a 90 day Corrective Action Period for other violations. During the Corrective Action Period, the Owner has the opportunity to show that either the Development was never in noncompliance or that the Event of Noncompliance has been corrected. Documentation of correction must be received during the Corrective Action Period for an event to be considered corrected during the Corrective Action Period. The Department may extend the Corrective Action Period for up to six months from the date of the notice to the Development Owner only if there is good cause for granting an extension and the Owner requests an extension during the original 90 day Corrective Action Period, and the request would not cause the Department or the Owner to miss a federal deadline. Requests for an extension may be submitted to: compliance.extensionrequest@tdhca.state.tx.us. If an Owner submits evidence of corrective action during the Corrective Action Period that addresses each finding, but does not fully address all findings, the Department will give the Owner written notice and an additional 10 calendar day period to submit evidence of full corrective action. References in this subchapter to the Corrective Action Period include this additional 10 calendar day period.

(c) If any communication to the Owner under this section is returned to the Department as refused, unclaimed, or undeliverable, the Development may be considered not in compliance without further notice to the Owner. The Owner is responsible for providing the Department with current contact information, including address(es) (physical and electronic) and phone number(s). The Owner must also provide current contact information to the Department as required by §1.22 of this title (relating to Providing Contact Information to the Department), and ensure that such information is at all times current and correct.

(d) ~~[Treasury Regulations require the]~~ The Department will ~~[to]~~ notify ~~[Housing Tax Credit]~~ Owners of upcoming reviews and in-

stances of noncompliance. The Department will rely solely on the information supplied by the Owner in the Department's web-based Compliance Monitoring and Tracking System (CMTS) to meet this requirement. It is the Owner's sole responsibility to ensure at all times that such information is current, accurate, and complete. Correspondence sent to the email or physical address shown in CMTS will be deemed delivered to the Owner. Correspondence from the Department may be directly uploaded to the property's CMTS account using the secure electronic document attachment system. Once uploaded, notification of the attachment will be sent electronically to the email address listed in CMTS. The Department is not required to send a paper copy, and if it does so it does as a voluntary and non-precedential courtesy only.

(e) Unless otherwise required by law or regulation, Events of Noncompliance will not be reported to the IRS, referred for enforcement action, considered as cause for possible debarment, or reported in an applicant's compliance history or Previous Participation Review, until after the end of the Corrective Action Period described in this section.

(f) Upon receipt of facially valid complaints the Department may contact the Owner and request submission of documents or written explanations to address the issues raised by the complainant. The deadline to respond to the issue will be specific to the matter. Whenever possible and not otherwise prohibited or limited by law, regulation, or court order, the complaint received by the Department will be provided along with the request for documents or Owner response.

§10.604. Options for Review.

~~[(a) If, during the Corrective Action Period, an Owner supplies evidence of continual compliance, the issue of noncompliance will be dropped, and no further action will be taken (e.g., for HTC properties, IRS Form 8823 will not be filed with the IRS).]~~

(a) ~~[(b)]~~ If, following the submission of corrective action documentation, Compliance staff continues to find the Owner in noncompliance, the Owner may request or initiate review of the matter using the following options, where applicable:

(1) If the issue is related to the inclusion or exclusion of tenant income, assets, or appropriate household size, the National Center for Housing Management (NCHM) can be contacted. In order to obtain guidance from NCHM, the requestor must have an active Certified Occupancy Specialist designation. If no representative of the owner has this designation, Department staff may make the request on the owner's behalf.

(2) If the compliance matter is related to the Housing Tax Credit program, Owners may contact the IRS Program Analyst for guidance or request that Department staff contact the IRS for general guidance without identifying the taxpayer. The issue will be handled in accordance with the guidance received from the IRS.

(3) If the compliance matter is related to the HOME, NHTF, ~~[or]~~ NSP, or HOME-ARP program, Owners may request that the Department contact the U.S. Department of Housing and Urban Development Texas Field Office for guidance. The issue will be handled in accordance with guidance received from a HUD official with oversight responsibility, provided it is clear and can be corroborated (e.g., such guidance is provided in writing).

(4) Owners may request Alternative Dispute Resolution (ADR). An Owner may send a proposal to the Department's Dispute Resolution Coordinator to initiate ADR pursuant to §1.17 of this title (relating to Alternative Dispute Resolution). Note that even if the Department and Owner are engaged in ADR, the Department must meet Treasury Regulation §1.42-5 and file IRS Form 8823 within 45 days after the end of the Corrective Action Period. Therefore, it

is possible that the Owner and Department may still be engaged in ADR when an IRS Form 8823 is filed. Should this happen, the form, including all Owner-supplied documentation, will be sent to the IRS with an explanation that the Owner disagrees with the Department's assessment and is pursuing ADR. Although the violation will be reported to the IRS within the required timeframes, it will not be considered part of an applicant's compliance history nor subject to administrative penalties pending the outcome of the ADR process.

§10.607. Reporting Requirements.

(a) The Department requires reports to be submitted electronically through CMTS and in the format prescribed by the Department. The Electronic Compliance Reporting Filing Agreement and the Owner's Designation of Administrator of Accounts forms must be emailed to cmts.requests@tdhca.state.tx.us for:

(1) 9% Housing Tax Credit Developments - no later than ~~[the date prescribed in §10.402(g) of this chapter (relating to) the 10% Test]~~;

(2) 4% Housing Tax Credit Developments - no later than ~~[the date prescribed in §10.402(e) of this chapter (relating to) Post Bond Closing Documentation Requirements]~~; or

(3) For all other rental Developments, no later than September 1st of the year following the award.

(b) Each Development is required to submit an Annual Owner's Compliance Report (AOCR). Depending on the Development, some or all of the Report must be submitted. The first AOCR is due the second year following the award in accordance with the deadlines set out in subsection (e) of this section. Example 607(1): A Development was allocated Housing Tax Credits in July 2019 ~~[2015]~~. The first report is due April 30, ~~2021~~~~[2017]~~, even if the Development has not yet commenced leasing activities.

(c) The AOCR is comprised of four parts:

(1) Part A "Owner's Certification of Program Compliance." All Owners must annually certify compliance with applicable program requirements. The AOCR Part A shall include answers to all questions required by the U. S. Department of the Treasury to be addressed, including those required by Treasury Regulation 1.42-5(b)(1) or the applicable program rules;

(2) Part B "Unit Status Report." All Developments must annually report and certify the information related to individual household income, rent, certification dates and other necessary data to ensure compliance with applicable program regulations. In addition, Owners are required to report on the race and ethnicity, family composition, age, use of rental assistance, disability status, and monthly rental payments of individuals and families applying for and receiving assistance or if the household elects not to disclose the information, such election;

(3) Part C "Housing for Persons with Disabilities." The Department is required to establish a system that requires Owners of state or federally assisted housing Developments with 20 or more housing Units to report information regarding housing Units designed for persons with disabilities. The certified answers to the questions on Part C satisfy this requirement; and

(4) Part D "Form 8703." Tax exempt bond properties funded by the Department must file Form 8703 each calendar year of the qualified project period. The form is due to the IRS by March 31 after the close of the calendar year for which the certification is made. The Department requires Tax Exempt Bond Development Owners to submit a copy of the filed Form 8703 for the preceding calendar year.

(d) The Owner is required to report certain financial information to the Department electronically through CMTS. If supplementen-

tal information is required, it must be uploaded to the Development's CMTS account.

~~[(1)]~~ "Annual Owner's Financial Certification" (formerly Part D of the AOCR). Developments funded by the Department must annually provide and certify to the data requested in the Annual Owner's Financial Certification (AOFC).]

~~[(2)]~~ Developments funded with Exchange or TCAP must also submit a "Quarterly Owner's Financial Certification" and these must be submitted in January, April, July, and October on the 15th business day of the month.

(e) Parts A, B, C, and D of the AOCR and the AOFC [Annual Owner's Financial Certification] must be provided to the Department no later than April 30th of each year, reporting data current as of December 31st of the previous year (the reporting year).

(f) Periodic Unit Status Reports. All Developments must submit a Quarterly Unit Status Report to the Department through the Compliance Monitoring and Tracking System. Quarterly reports are due in January, April, July, and October on the 10th day of the month. The report must report occupancy as of the last day of the previous month for the reporting period. For example, the report due October 10th should report occupancy as of September 30th of the preceding month. The first quarterly report is due on the first quarterly reporting date after leasing activity commences. Failure to report occupancy timely will result in a finding of noncompliance.

(g) Owners are encouraged to continuously maintain current resident data in the Department's CMTS. Under certain circumstances, such as in the event of a natural disaster, the Department may alter the reporting schedule and require all Developments to provide current occupancy data through CMTS.

(h) All rental Developments funded or administered by the Department will be required to submit an accurate [a current up-to-date] Unit Status Report prior to a monitoring review and/or a physical inspection [an onsite visit].

(i) Housing Tax Credit Developments must submit IRS Form(s) 8609 with Part II complete through CMTS by the end of the first year of the credit period. If an owner elects to group buildings together into one or more multiple building projects, the owner must attach a statement identifying the buildings within the project.

(j) Within six (6) months but at least 90 days prior to the end of the Affordability Period and/or the end of the Land Use Restriction Term, the Owner must provide written notice to the current tenants and applicants. If the Development Owner has been approved for new funding, through the Department, and/or awarded new credits such notice is not required. The Notice must contain the following: proposed new rents, any rehabilitation plans and information on how to access the Departments Vacancy Clearinghouse to locate other affordable housing options.

§10.608. Recordkeeping [Record Keeping] Requirements.

(a) Development Owners must comply with program record-keeping requirements. Records must include sufficient information to comply with the reporting requirements of §10.607 of this chapter (relating to Reporting Requirements) and any additional programmatic requirements. HTC Development Owners must retain records sufficient to comply with the reporting requirements of Treasury Regulation 1.42-5(b)(1). Records must be kept for each qualified Low-Income Unit and building in the Development, commencing with lease up activities and continuing on a monthly basis until the end of the Affordability Period.

(b) Each Development that is administered by the Department must retain records as required by the specific funding program rules and regulations and executed contracts or Land Use Restriction Agreements. In general, retention schedules include, but are not limited to, the provision of subsections (c) - (g) of this section.

(c) HTC records must be retained for at least six years after the due date (with extensions) for filing the federal income tax return for that year; however, the records for the first year of the Credit Period must be retained for at least six years beyond the due date (with extensions) for filing the federal income tax return for the last year of the Compliance Period of the building (§1.42-5(b)(2) of the Code).

(d) Retention of records for [NHTF,] TCAP-RF, HOME, and HOME-ARP rental Developments must comply with the provisions of 24 CFR §92.508(c) [and 24 CFR §93.407(b)], which generally require retention of rental housing records for five years after the Affordability Period terminates. HOME-ARP rental Developments must also comply with HUD CPD Notice 21-10.

(e) Retention of records for NHTF must comply with the provisions of 24 CFR §93.407(b), which generally require retention of rental housing records for five years after the Affordability Period terminates.

(f) [(e)] Retention of records for NSP rental Developments must comply with the provisions of 24 CFR §570.506, which generally requires retention of rental housing records for five years after the Department has closed out the grant with HUD.

(g) [(f)] THTF [Texas Housing Trust Fund] rental Developments must retain tenant files for at least three years beyond the date the tenant moves from the Development. Records pertinent to the funding of the award, including, but not limited to, the Application and Development costs and documentation, must be retained for at least five years after the Affordability Period terminates.

(h) [(g)] Section 811 PRA tenant records must be maintained for the term of tenancy plus three years. After the end of the record retention period, all Enterprise Income Verification (EIV) data must be destroyed.

(i) [(h)] Other rental Developments funded or administered in whole or in part by the Department must comply with record retention requirements as required by federal regulations, statute, rule, or deed restriction.

(j) [(i)] All required records must be made available and accessible for [on site when an onsite] monitoring review, physical inspection, and whenever requested by the Department [occurs]. The Department permits electronic records. Digital signatures of both property management and household are acceptable. Developments should have policies in place that allow the household to choose between electronic or hard copy documents. It is the responsibility of the Development Owner to maintain policies and procedures that mitigate fraud, waste, and abuse on an ongoing basis.

(k) Prior to completion of ownership and/or management agent change, a current waitlist must be submitted to the Department through CMTS.

§10.609. Notices to the Department.

If any of the events described in paragraphs (1) - (7) of this section occur, written notice must be provided to the Department within the respective timeframes. Failure to do so will result in an Event of Non-compliance, and may be taken into consideration during Previous Participation Reviews in accordance with Chapter 1 Subchapter C of this title, or in Enforcement actions in accordance with Chapter 2 of this title.

(1) Written notice must be provided at least 30 days prior to any proposed sale, transfer, or exchange of the Development or any portion of the Development, and the Department must give its prior written approval to any such sale, transfer, or exchange, which will include a previous participation review on the proposed new ownership, requiring that they complete and provide a Previous Participation Review Form, in accordance with §10.405 of this chapter (relating to Amendments and Extensions);

(2) Notification must be provided within 30 days following the event of any casualty loss, in whole or in part, to the Development, using the Department's Notice of Casualty Loss (for general casualty losses) or Notice of Disaster Casualty Loss (specific to loss as a result of a Presidentially Declared Disaster). Within 30 days of completion of all restorative repairs, the Owner must provide the executed Notice of Property Restoration accompanied by all supporting documentation. Supporting documentation can include, but is not limited to: Certificates of Occupancy, photographs of all restorative repairs completed on buildings and/or units, invoices from contractors, insurance assessments and/or a written summary of restorative repairs required. The Department may require additional documentation not specified in this section on a case-by-case basis;

(3) Owners of Bond Developments shall notify the Department of the date on which 10% of the Units are occupied and the date on which 50% of the Units are occupied, and notice must occur within 90 days of each such date;

(4) Within 30 days after a foreclosure, the Department must be provided with documentation evidencing the foreclosure and a rent roll establishing occupancy on the day of the foreclosure;

(5) Within 10 days of a change in the contact information (including contact persons, physical addresses, mailing addresses, email addresses, phone numbers, and/or the name of the property as know by the public) for the Ownership entity, management company, and/or Development the Department's CMTS must be updated. Separate contact information must be provided for Ownership entity, management company, and onsite manager at the Development. A single contact may be used for the owner and management if they are the same entity.

(6) Within 30 days of completion of the American Institute of Architects form G704- Certificate of Substantial Completion, or Form HUD-92485 for instances in which a federally insured HUD loan is utilized, an Owner must request a Final Construction Inspection; and

(7) Development Owners that have agreed to participate [Owners of Developments that participate] in the Section 811 PRA program are required to notify the Department about the availability of Units as described in accordance with §8.4(1)(3) and §8.4(1)(4) of this title (relating to Program Regulations and Requirements) [§10.624 of this subchapter].

§10.610. Written Policies and Procedures.

Written Policies and Procedures are required as specified [a requirement of the Department on monitored Developments as provided for in more specificity] at §10.802 of this chapter (relating to Written Policies and Procedures).

§10.611. Determination, Documentation and Certification of Annual Income.

(a) For all rental programs administered by the Department, annual income shall be determined consistent with the Section 8 Program administered by HUD, using the definitions of annual income described in 24 CFR §5.609 as further described in the HUD Handbook 4350.3, as amended from time to time. For the Housing Tax Credit

program, where there is a conflict between the HUD Handbook 4350.3 and the IRS Guide for Completing IRS Form 8823, the IRS guidance will be controlling. At the time of program designation as a low income household, Owners must certify and document household income. In general, all low income households must be certified prior to move in. Certification and documentation of household income is an Owner's responsibility, even if the Owner is using a manager's or management company's services to handle tenant intake and leasing. Accordingly, Owners should ensure that they hire competent and properly trained managers or management companies and that they exercise appropriate oversight of any manager's or management company's activities.

(b) For the initial certification of a household residing in a HOME, NHTF, NSP, [or] TCAP RF, or HOME-ARP assisted unit, Owners must examine at least two months (60 days) of source documents evidencing annual income (e.g., wage statement, interest statement, unemployment compensation). Qualified populations in HOME-ARP units may not need to meet an income requirement upon move-in, but will have their income verified to determine rental portion of payment.

(c) A household's lowest designation, as recorded on the Income Certification and Unit Status Report, at the time of move in, cannot be increased unless the household no longer income qualifies for the unit or program rules required the change. [A household's income designation at the time of move in cannot be changed unless:]

{(1) The household goes over income and they are replaced with another low income household;}

{(2) The Development has a written policy and procedure for changing household designations as household income changes; }

{(3) The household receives rental assistance, and due to changes in their income, their portion of required rent exceeds the rent limit of their move in designation; }

{(4) The household is designated as Market Rate and a certification is performed that completely and clearly documents that the household is qualified as low income;}

{(5) The household has been designated as low income and they become, or it is determined that they have been, an ineligible full time student household. If the Development has Units that do not have student restrictions, the household can continue occupancy, and their designation may be removed; or}

{(6) The household's designation is being lowered}

§10.612. Tenant File Requirements.

(a) At the time of program designation as a low income household or Qualified Population for HOME-ARP, typically at initial occupancy, Owners must create and maintain a file that at a minimum contains:

(1) A Department approved Income Certification form signed by all adults. At the time of program designation as a low income household or Qualified Population, Owners must certify and document household income. In general, all low-income households and Qualified Populations for HOME-ARP must be certified prior to move in. The Department requires the use of the TDHCA Income Certification form, unless the Development also participates in the USDA-Rural Development or a Project Based HUD Program, in which case, the other program's Income Certification form will be accepted;

(2) Documentation to support the Income Certification form including, but not limited to, applications, first hand or third party verification of income and assets, and documentation of student status (if applicable). Beginning January 1, 2021, the application

must provide a space for applicants to indicate if they are a veteran. In addition, the application must include the following statement: "Important Information for Former Military Services Members. Women and men who served in any branch of the United States Armed Forces, including Army, Navy, Marines, Coast Guard, Air Force, Reserves or National Guard, may be eligible for additional benefits and services. For more information please visit the Texas Veterans Portal at <https://veterans.portal.texas.gov/>;

(3) The Department permits Owners to use check stubs or other firsthand documentation of income and assets provided by the applicant or household in lieu of third party verification forms. It is not necessary to first attempt to obtain a third party verification form. Owners should scrutinize these documents to identify and address any obvious attempts at forgery, alteration, or generation of falsified documents; and

(4) A lease with all necessary addendums to ensure that compliance with applicable federal regulations and §10.613 of this subchapter (relating to Lease Requirements).

(b) Annually thereafter on the anniversary date of the household's move in or initial designation:

(1) Throughout the Affordability Period, all Owners of Housing Tax Credit, TCAP, and Exchange Developments must collect and maintain current data on each household that includes the number of household members, age, ethnicity, race, disability status, student status, and rental assistance (if any). This information can be collected on the Department's Annual Eligibility Certification form, ~~or~~ the Income Certification form, ~~or~~ HUD Income Certification form, or the USDA-Rural Development Income Certification form (as applicable).

(2) During the Compliance Period for all Housing Tax Credit, TCAP, and Exchange Developments and throughout the Affordability Period for all Bond Developments [developments] and HOME, HOME Match [and] TCAP RF, and HOME-ARP Developments, Owners must collect and maintain current student status data for each low-income household. This information must be collected within 120 days before the anniversary of the effective date of the original Income Certification [student verification] and can be collected on the Department's Annual Eligibility Certification or the Department's Certification of Student Eligibility form or the Department's Income Certification form. Throughout the Compliance Period for HTC, TCAP, and Exchange developments, low-income households comprised entirely of full-time students must qualify for a HTC program exception, and supporting documentation must be maintained in the household's file. For Bond Developments, if the household is not an eligible student household, it may be possible to re-designate the full-time student household to an Eligible Tenant (ET). For HOME, HOME Match [and] TCAP RF, and HOME-ARP Developments, an individual does not qualify as a low income or very low income family if the individual is a student who is not eligible to receive Section 8 assistance under 24 CFR §5.612.

(3) The types of Developments described in subparagraphs (A) - (D) of this paragraph are required to recertify annually the income of each low-income household using a Department approved Income Certification form and documentation to support the Income Certification (see subsection (a)(1) - (2) of this section):

(A) Mixed income Housing Tax Credit, TCAP and Exchange projects (as defined by line 8(b) of IRS Form(s) 8609 and accompanying statements, if any) that have not completed the 15 year Compliance Period.

(B) All Bond Developments with less than 100% of the units set aside for households with an income less than 50% or 60% of area median income.

(C) THTF Developments with Market Rate units. However, THTF Developments with other Department administered programs will comply with the requirements of the other program.

(D) HOME, TCAP RF, ~~and~~ NHTF, and HOME-ARP Developments. Refer to subsection (c) of this section.

(c) Ongoing tenant file requirements for HOME, TCAP RF, ~~and~~ NHTF, and HOME-ARP Developments:

(1) HOME, TCAP RF, ~~and~~ NHTF, and HOME-ARP Developments must complete a recertification with verifications of each assisted Unit every sixth year of the Development's Affordability Period [affordability period]. The recertification is due on the anniversary of the household's move-in date. For purposes of this section, the beginning of a HOME, TCAP RF, ~~and~~ NHTF, and HOME-ARP Development Affordability Period [affordability period] is the effective date in the HOME, TCAP RF, ~~and~~ NHTF, and HOME-ARP LURA. For example, a HOME Development with a LURA effective date of May 2011[;] will have the years of the affordability determined in Example ~~{642}~~(1):

- (A) Year 1: May 15, 2011 - May 14, 2012;
- (B) Year 2: May 15, 2012 - May 14, 2013;
- (C) Year 3: May 15, 2013 - May 14, 2014;
- (D) Year 4: May 15, 2014 - May 14, 2015;
- (E) Year 5: May 15, 2015 - May 14, 2016;
- (F) Year 6: May 15, 2016 - May 14, 2017;
- (G) Year 7: May 15, 2017 - May 14, 2018;
- (H) Year 8: May 15, 2018 - May 14, 2019;
- (I) Year 9: May 15, 2019 - May 14, 2020;
- (J) Year 10: May 15, 2020 - May 14, 2021;
- (K) Year 11: May 15, 2021 - May 14, 2022; and
- (L) Year 12: May 15, 2022 - May 14, 2023.

(2) In the scenario described in paragraph (1) of this subsection, all households in HOME, TCAP RF, ~~and~~ NHTF, and HOME-ARP Units must be recertified with source documentation during the sixth and twelfth years or between May 15, 2016, to May 14, 2017, and between May 15, 2022, and May 14, 2023.

(3) In the intervening years the Development must collect a self-certification within 120 days before the anniversary of the ~~[by the]~~ effective date of the original Income Certification from each household that is assisted with HOME, TCAP RF, ~~and~~ NHTF, and HOME-ARP funds. The Development must use the Department's Income Certification form, unless the property also participates in the Rural Development or a project Based HUD program, in which case, the other program's Income Certification form will be accepted. If the household reports on their self-certification that their annual income exceeds the current 80% applicable income limit or there is evidence that the household's written statement failed to completely and accurately provide information about the household's characteristics and/or income, then an annual income recertification with verifications is required.

(d) Tenant File requirements for HOME-ARP Qualified Populations units. Files for households assisted under the HOME-ARP program as Qualified Population must document evidence that the households meet the definition of:

- (1) Homeless as defined in 24 CFR §91.5;
 - (2) At-risk of homelessness as defined in 24 CFR §91.5;
 - (3) Fleeing, or Attempting to Flee, Domestic Violence, Dating Violence, Sexual Assault, Stalking, or Human Trafficking, as defined in CPD Notice 21-10;
 - (4) Other Families Requiring Services or Housing Assistance to Prevent Homelessness, which are households who have previously been qualified as homeless, are currently housed due to temporary, or emergency assistance, including financial assistance, services, temporary rental assistance or some type of other assistance to allow the household to be housed, and who need additional housing assistance or supportive services to avoid a return to homelessness;
 - (5) At Greatest Risk of Housing Instability as cost burdened, which are households who have an annual income that is less than or equal to 30% of the area median income, as determined by HUD and is experiencing severe cost burden (i.e. is paying more than 50% of monthly household income toward housing costs.); or
 - (6) At Greatest Risk of Housing Instability, which meets the definition of at-risk of homelessness as defined in 24 CFR §91.5, but with an income up to 50% AMI.
- (c) ~~[(d)]~~ Tenant File requirements for Section 811 PRA Units. Files for households assisted under the Section 811 program must document the household's eligibility for the program, the deductions for which the household qualifies and the following HUD forms (or any subsequent HUD form number):
- (1) Section 811 Project Rental Assistance Application;
 - (2) Verification of disability[, HUD 90402];
 - (3) House Rules;
 - (4) Move in/move out inspection form [HUD 90406], and ~~[or]~~ TDHCA Section 811 Waiver of Move-in (as applicable);
 - (5) Tenant acknowledgement of the Fact Sheet "How your rent is determined";
 - (6) Tenant acknowledgement of Resident Rights and Responsibilities;
 - (7) Tenant acknowledgement of EIV and You Brochure;
 - (8) Verification of Age;
 - (9) Verification of Social Security number;
 - (10) Screening for drug abuse and other criminal activity;
 - (11) 811 Tenant Selection Plan;
 - (12) Supplement to Application for Federally Assisted Housing: Form 92006;
 - (13) Annual Recertification Initial Notice;
 - (14) Annual Recertification First Reminder Notice;
 - (15) Annual Recertification Second Reminder Notice;
 - (16) Annual Recertification Third Reminder Notice;
 - (17) Race and Ethnic Data Reporting form: HUD 27061-H;
 - (18) HUD 9887 and HUD 9887-A;
 - (19) Annual Unit inspection;
 - (20) Owner's Certification of Compliance with HUD's Tenant Eligibility and Rent Procedures: HUD form 50059; and

- (21) HUD Model lease 92236-PRA [92336-PRA].

§10.613. *Lease Requirements.*

(a) Eviction and/or termination of a lease. HTC, TCAP, and Exchange Developments must specifically state in the lease or in an addendum attached to the lease that evictions or terminations of tenancy for other than good cause are prohibited. To terminate tenancy, the Owner must serve written notice to the tenant specifying the grounds for the action. For nonpayment of rent, a thirty (30) day written notice is required.

(b) HOME, TCAP RF, NHTF, ~~[and]~~ NSP, and HOME-ARP Developments are prohibited from evicting low income residents or refusing to renew a lease except for serious or repeated violations of the terms and conditions of the lease, for violations of applicable federal, state or local law, for completion of the tenancy period for Transitional Housing (if applicable), or for other good cause. It must be specifically stated in the lease or in an addendum attached to the lease that evictions or non-renewal of leases for other than good cause are prohibited (24 CFR §92.253 and 24 CFR §93.303). Owners must also comply with all other lease requirements and prohibitions stated in 24 CFR §92.253 or 24 CFR §93.303, as applicable. To terminate or refuse to renew tenancy in HOME, TCAP RF, ~~[and]~~ NSP, and HOME-ARP Developments, the Owner must serve written notice to the tenant specifying the grounds for the action at least 30 days before the termination of tenancy. For HOME-ARP, Owners may not terminate the tenancy or refuse to renew the lease of the Qualifying Household in any Unit that is supported by capitalized operating costs because of the household's inability to pay rent of more than 30 percent of the qualifying household's income toward rent during the longer of the federal affordability period or the time period identified in the Contract.

(c) In accordance with the Violence Against Women Act, an incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking against the documented victim of such actual or threatened domestic violence, dating violence, sexual assault, or stalking shall not be construed as a serious or repeated violation of a lease or good cause for termination of tenancy. The Department does not determine if an Owner has good cause or if a resident has violated the lease terms for other reasons. Challenges for evictions or terminations of tenancy must be made by a court of competent jurisdiction or an agreement of the parties (including an agreement made in arbitration), and the Department will rely on that determination.

(d) A Development must use a lease or lease addendum that requires households to report changes in student status.

(e) Owners of HTC Developments are prohibited from locking out or threatening to lock out any Development resident, except by judicial process, unless the exclusion is necessary for the purpose of performing repairs or construction work, or in cases of emergency. Owners are further prohibited from seizing or threatening to seize the personal property of a resident except by judicial process unless the resident has abandoned the premises. These prohibitions must be included in the lease or lease addendum.

(f) For HOME, TCAP, TCAP RF, NHTF, 811 PRA, ~~[and]~~ NSP, and HOME-ARP Developments, properties that were initially built for occupancy prior to 1978 must include in their lease or lease addendum a Lead Warning Statement. To demonstrate compliance, the Department will monitor that all households at HOME, TCAP, TCAP RF, NHTF, ~~[and]~~ NSP, and HOME-ARP Developments have signed the Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards. (24 CFR §92.355, 24 CFR §93.361 and §570.487(c)). The addendum and disclosure are not required if all lead has been certified to have been cleared from the Development in accordance with 24 CFR §35.130, and the Owner has the required certification in its on-site records.

(g) An Owner may bifurcate a lease to terminate the tenancy of an individual who is a tenant or lawful occupant and engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against another lawful occupant living in the Unit or other affiliated individual as defined in the VAWA 2013.

(h) All NHTF, TCAP RF, NSP, ~~[and] HOME, and HOME-ARP~~ Developments for which the contract is executed on or after December 16, 2016, must use the Department created VAWA lease addendum which provides the ability for the tenant to terminate the lease without penalty if the Department determines that the tenant qualifies for an emergency transfer under 24 CFR §5.2005(e). 811 PRA Units are prohibited from using the expired 2005 VAWA lease addendum. After OMB approval of a VAWA lease addendum, all 811 PRA households must have a valid and executed VAWA lease addendum. For the 811 PRA program certain addenda for the HUD model lease may be required such as Lead Based Paint Disclosure form, house rules, and pet rules. No other attachments to the lease are permissible without approval from the Department's 811 PRA staff.

(i) Leasing of HOME, HOME Match, TCAP RF, or NHTF Units to an organization that, in turn, rents those Units to individuals is not permissible for Developments with contracts dated on or after August 23, 2013. Leases must be between the Development and an eligible household. NSP and HOME-ARP Developments may only utilize Master Leases, if specifically allowed in the Development's LURA.

(j) Housing Tax Credit Units leased to an organization through a supportive housing program where the owner receives a rental payment for the unit regardless of physical occupancy will be found out of compliance if the Unit remains vacant for over 60 days. The Unit will be found out of compliance under the Event of Noncompliance "Violation of the Unit Vacancy Rule."

(k) It is a Development Owner's responsibility at all times to know what it has agreed to provide by way of common amenities, Unit amenities, and services.

(l) A Development Owner shall post in a common area of the leasing office a copy and provide each household, during the application process and upon a subsequent change to the items described in paragraph (2) of this subsection, the brochure made available by the Department, A Tenant Rights and Resources Guide, which includes:

- (1) Information about Fair Housing and tenant choice;
- (2) Information regarding common amenities, Unit amenities, and services; and
- (3) A certification that a representative of the household must sign prior to, but no more than 120 days prior to, the initial lease execution acknowledging receipt of this brochure.
- (4) In the event this brochure is not provided timely or the household does not certify to receipt of the brochure, correction will be achieved by providing the household with the brochure and receiving a signed certification that it was received.

(m) For Section 811 PRA Units, Owners must use the HUD Model lease, HUD form 92236-PRA.

§10.614. Utility Allowances.

(a) Purpose. The purpose of this section is to provide the guidelines for calculating a Utility Allowance under the Department's multifamily programs. The Department will cite noncompliance and/or not approve a Utility Allowance if it is not calculated in accordance with this section. Owners are required to comply with the provisions of this section as well as any existing federal or state program guidance.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise. Other capitalized terms used in this section herein have the meanings assigned in Chapters 1, 2, 10, 11, and 12 of this title.

(1) Building Type. The HUD Office of Public and Indian Housing (PIH) characterizes building and unit configurations for HUD programs. The Department will defer to the guidance provided by HUD found at: http://portal.hud.gov/hudportal/documents/hud-doc?id=DOC_11608.pdf (or successor Uniform Resource Locator (URL)) when making determinations regarding the appropriate building type(s) at a Development.

(2) Power to Choose. The Public Utility Commission of Texas database of retail electric providers in the areas of the state where the sale of electricity is open to retail competition: <http://www.powertochoose.org/> (or successor URL). In areas of the state where electric service is deregulated, the Department will verify the availability of residential service directly with the Utility Provider. If the Utility Provider is not listed as a provider of residential service in the Development's ZIP code for an area that is deregulated, the request will not be approved.

(3) Component Charges. The actual cost associated with the billing of a residential utility. Each Utility Provider may publish specific utility service information in varying formats depending on the service area. Such costs include, but are not limited to:

(A) Rate(s). The cost for the actual unit of measure for the utility (e.g., cost per kilowatt hour for electricity);

(B) Fees. The cost associated with a residential utility that is incurred regardless of the amount of the utility the household consumes (e.g., Customer Charge); ~~and~~

(C) Delivery Charges. The fees associated with servicing and delivering electricity to the meter from the generation source as listed on the Transmission and Distribution Utility (TDU) website; and

(D) ~~(E)~~ Taxes. Taxes for electricity and gas are regulated by the Texas Comptroller of Public Accounts and can be found at <http://comptroller.texas.gov/> (or successor URL). Local Utility Providers have control of the tax structure related to water, sewer and trash. To identify if taxes are imposed for these utilities, obtain documentation directly from the Utility Provider.

(4) Multifamily Direct Loan (MFDL). Funds provided through the HOME, NSP, NHTF, TCAP RF, HOME-ARP ~~[Program (HOME), Neighborhood Stabilization Program (NSP), National Housing Trust Fund (NHTF), Repayments from the Tax Credit Assistance Program (TCAP RF)]~~, or other program available through the Department, local political subdivision, or administrating agency for multifamily development that require a Utility Allowance. MFDLs may also include deferred forgivable loans or other similar direct funding, regardless if it is required to be repaid. Housing Tax Credits, Tax Exempt Bonds, and Project Based Vouchers are not MFDLs.

(5) Renewable Source. Energy produced from energy property described in IRC §48 or IRC §45(d)(1) through (4), (6), (9), or (11). The manner in which a resident is billed is limited to the rate at which the local Utility Provider would have charged the residents for the utility if that entity had provided it to them, and as may be further limited by the Texas Utilities Code or by regulation.

(6) Submetered Utility. A utility purchased from or through a local Utility Provider by the building Owner where the

resident is billed directly by Owner of the building or to a third party billing company and the utility is:

(A) Based on the residents' actual consumption of that utility and not an allocation method or Ratio Utility Billing System (RUBS); and

(B) The rate at which the utility is billed does not exceed the rate incurred by the building Owner for that utility.

(7) Utility Allowance. An estimate of the expected monthly cost of any utility for which a resident is financially responsible, other than telephone, cable television, or internet. A utility allowance is considered implemented once the Unit Status Report is updated and rents are restricted.

(A) For HTC, TCAP, Exchange buildings, Bonds, and THTF include:

- (i) Utilities paid by the resident directly to the Utility Provider;
- (ii) Submetered Utilities; and
- (iii) Renewable Source Utilities.

(B) For a Development with an MFDL, unless otherwise prescribed in the program's Regulatory Agreement, include all utilities regardless of how they are paid.

(8) Utility Provider. The company that provides residential utility service (e.g., electric, gas, water, wastewater, and/or trash) to the buildings.

(c) Methods. The following options are available to establish a Utility Allowance for all programs except most Developments funded with MFDL funds, which are addressed in subsection (d) of this section. HOME-ARP may use methods in this subsection or in subsection (d) of this section, but cannot combine two methods in one building.

(1) Rural Housing Services (RHS) buildings or buildings with RHS assisted residents. The applicable Utility Allowance for the Development will be determined under the method prescribed by the RHS (or successor agency). No other utility method described in this section can be used by RHS buildings or buildings with RHS assisted residents.

(2) HUD-Regulated buildings layered with any Department program. If neither the building nor any resident in the building receives RHS rental assistance payments, and the rents and the Utility Allowances of the building are regulated by HUD (HUD-regulated building), the applicable Utility Allowance for all rent restricted Units in the building is the applicable HUD Utility Allowance. No other utility method described in this section can be used by HUD-regulated buildings. Unless further guidance is received from the U.S. Department of Treasury or the Internal Revenue Service (IRS), the Department considers Developments awarded an MFDL (e.g., HOME) to be HUD-Regulated buildings.

(3) Other Buildings. For all other rent-restricted Units, Development Owners must use one of the methods described in subparagraphs (A) - (E) of this paragraph:

(A) Public Housing Authority (PHA). The Utility Allowance established by the applicable PHA for the Housing Choice Voucher Program. The Department will utilize the Texas Local Government Code, Chapter 392 to determine which PHA is the most applicable to the Development.

(i) If the PHA publishes different schedules based on Building Type, the Owner is responsible for implementing the correct schedule based on the Development's Building Type(s). Example

614(1): The applicable PHA publishes a separate Utility Allowance schedule for Apartments (5+ units), one for Duplex/Townhomes and another for Single Family Homes. The Development consists of 20 buildings, 10 of which are Apartments (5+ units) and the other 10 buildings are Duplexes. The Owner must use the correct schedule for each Building Type.

(ii) In the event the PHA publishes a Utility Allowance schedule specifically for energy efficient units, and the Owner desires to use such a schedule, the Owner must demonstrate that the building(s) meet the housing authority's specifications for energy efficiency once every five years.

(iii) If the applicable PHA allowance lists flat fees for any utility, those flat fees must be included in the calculation of the Utility Allowance if the resident is responsible for that utility.

(iv) If the individual components of a Utility Allowance are not in whole number format, the correct way to calculate the total allowance is to add each amount and then round the total up to the next whole dollar. Example [614](2): Electric cooking is \$8.63, Electric Heating is \$5.27, Other Electric is \$24.39, Water and Sewer is \$15. The Utility Allowance in this example is \$54.00. If the PHA schedule reflects a rounded amount, then the PHA method of rounding should be used.

(v) If an Owner chooses to implement a methodology as described in subparagraph (B), (C), (D), or (E) of this paragraph, for Units occupied by Section 8 voucher holders, the Utility Allowance remains the applicable PHA Utility Allowance established by the PHA from which the household's voucher is received.

(vi) If the Development is located in an area that does not have a municipal, county, or regional housing authority that publishes a Utility Allowance schedule for the Housing Choice Voucher Program, Owners must select an alternative methodology, unless the building(s) is located in the published Housing Choice Voucher service area of:

(I) A Council of Government created under Texas Local Government Code, Chapter 303, that operates a Housing Choice Voucher Program;

(II) The Department's Housing Choice Voucher Program; or

(III) Another PHA which publishes a separate utility allowance schedule specific to the Development's location.

(B) Written Local Estimate. The estimate must come from the local Utility Provider, be signed by the Utility Provider representative, and specifically include all Component Charges for providing the utility service.

(C) HUD Utility Schedule Model. The HUD Utility Schedule Model and related resources can be found at <http://www.huduser.gov/portal/resources/utilallowance.html> (or successor URL). Each item on the schedule must be displayed out two decimal places. The total allowance must be rounded up to the next whole dollar amount. The Component Charges used can be no older than those in effect 60 days prior to the beginning of the 90 day period described in subsection (f)(3) of this section related to Effective Dates.

(i) The allowance must be calculated using the MS Excel version available at <http://www.huduser.org/portal/resources/utilmodel.html> (or successor URL), as updated from time to time, with no changes or adjustments made other than entry of the required information needed to complete the model.

(ii) In the event that the zip [PHA] code for the [local PHA to the] Development is not listed in "Location" tab of the workbook, the Department will default to [use] the PHA code for the PHA that is closest in distance to the Development using online mapping tools (e.g., Google Maps [MapQuest]). The Department will obtain the PHA codes from https://www.hud.gov/sites/dfiles/PIH/documents/PHA_Contact_Report_TX.pdf (or successor Uniform Resource Locator (URL)).

(iii) Green Discount. If the Owner elects any of the Green Discount options for a Development, documentation to evidence that the units and the buildings meet the Green Discount standard as prescribed in the model is required for the initial approval and every subsequent annual review.

(I) In the event the allowance is being calculated for an application of Department funding (e.g., 9% Housing Tax Credits), upon request, the Department will provide both the Green Discount and the non-Green Discount results for application purposes.

(II) At lease up, the owner may use the utility allowance taking into consideration the green discount if they obtain written documentation from a qualified professional (e.g., a qualified energy efficiency consultant) indicating that the units and buildings will meet the qualifications for the Green Discount within six months of the placed in service date or for MFDL within six months of the construction completion date.

(iv) Do not take into consideration any costs (e.g., penalty) or credits that a consumer would incur because of their actual usage. Example 614(3): The Electric Fact Label for ABC Electric Utility Provider provides a Credit Line of \$40 per billing cycle that is applied to the bill when the usage is greater than 999 kWh and less than [that] 2000 kWh. Example 614(4): A monthly minimum usage fee of \$9.95 is applied when the usage is less than 1000 kWh in the billing cycle. When calculating the allowance, disregard these types of costs or credits.

(D) Energy Consumption Model. The model must be calculated by a properly licensed mechanical engineer. The license of the engineer must be submitted along with the model. The individual must not be related to the Owner within the meaning of §267(b) or §707(b) of the Code. The utility consumption estimate must, at minimum, take into consideration specific factors that include, but are not limited to, Unit size, building type and orientation, design and materials, mechanical systems, appliances, characteristics of building location, and available historical data. Component Charges used must be no older than those in effect 60 days prior to the beginning of the 90 day period described in subsection (f)(3) of this section related to Effective Dates; and

(E) An allowance based upon an average of the actual use of similarly constructed and sized Units in the building using actual utility usage data and Component Charges, provided that the Development Owner has the written permission of the Department. This methodology is referred to as the "Actual Use Method." For a Development Owner to use the Actual Use Method they must:

(i) Provide a minimum sample size of usage data for at least five Continuously Occupied Units of each Unit Type or 20% of each Unit Type, whichever is greater. If there are less than five Units of any Unit Type, data for 100% of the Unit Type must be provided; and

(ii) Upload the information in subclauses (I) - (IV) of this clause to the Development's CMTS account no later than the beginning of the 90 day period after which the Owner intends to implement the allowance, reflecting data no older than 60 days prior to

the 90 day implementation period described in described in subsection (f)(3) of this section related to Effective Dates.

(I) An Excel spreadsheet listing each Unit for which data was obtained to meet the minimum sample size requirement of a Unit Type, the number of bedrooms, bathrooms and square footage for each Unit, the household's move-in date, the utility usage (e.g., actual kilowatt usage for electricity) for each month of the 12 month period for each Unit for which data was obtained, and the Component Charges in place at the time of the submission;

(II) All documentation obtained from the Utility Provider (or billing entity for the utility provider) and/or copies of actual utility bills gathered from the residents, including all usage data not needed to meet the minimum sample size requirement and any written correspondence from the utility provider;

(III) The rent roll showing occupancy as of the end of the month for the month in which the data was requested from the utility provider; and

(IV) Documentation of the current Utility Allowance used by the Development.

(iii) Upon receipt of the required information, the Department will determine if the Development Owner has provided the minimum information necessary to calculate an allowance using the Actual Use Method. If so, the Department shall calculate the Utility Allowance for each bedroom size using the guidelines described in subclauses (I) - (V) of this clause;

(I) If data is obtained for more than the sample requirement for the Unit Type, all data will be used to calculate the allowance;

(II) If more than 12 months of data is provided for any Unit, only the data for the most current 12 will be averaged;

(III) The allowance will be calculated by multiplying the average units of measure for the applicable utility (i.e., kilowatts over the last 12 months by the current rate) for all Unit Types within that bedroom size. For example, if sufficient data is supplied for 18 two bedroom/one bath Units, and 12 two bedroom/two bath Units, the data for all 30 Units will be averaged to calculate the allowance for all two bedroom Units;

(IV) The allowance will be rounded up to the next whole dollar amount. If allowances are calculated for different utilities, each utility's allowance will be rounded up to the next whole dollar amount and then added together for the total allowance; and

(V) If the data submitted indicates zero usage for any month, the data for that Unit will not be used to calculate the Utility Allowance.

(iv) The Department will complete its evaluation and calculation within 45 days of receipt of all the information requested in clause (ii) of this subparagraph.[;]

(d) In accordance with 24 CFR §§92.252 and 93.302, for an MFDL in which the Department is the funding source, the Utility Allowance will be established in the following manner:

(1) For Developments that, as a result of funding, must calculate the Utility Allowance under HUD Multifamily Notice H-2015-4, as revised from time to time, the applicable Utility Allowance for all rent restricted Units in the building is the applicable Utility Allowance calculated under that Notice. No other utility method described in this section can be used.

(2) Other Buildings. The Utility Allowance may be initiated by the Owner using the methodologies described in subsection (c)(3)(B), (C), (D), or (E) of this section related to Methods.

(A) Buildings for which the only source of MFDL funding is HOME-ARP and which contain no HOME-Match Units may calculate the Utility Allowance using the methodology described in subsection (c)(3)(A).

(B) The methodology must be annually reviewed and approved by the Department.

(3) If a request is not received by October 1st, the Department will calculate the Utility Allowance using the HUD Utility Schedule Model. For property specific data, the Department will use:

(A) The information submitted in the Annual Owner's Compliance Report;

(B) Entrance Interview Questionnaires submitted with prior monitoring [onsite] reviews; or

(C) The owner may be contacted and required to complete the Utility Allowance Questionnaire. In such case, a five day period will be provided to return the completed questionnaire.

(D) Utilities will be evaluated in the following manner:

(i) For regulated utilities, the Department will contact the Utility Provider directly and apply the Component Charges in effect no later than 60 days before the allowance will be effective.

(ii) For deregulated utilities:

(I) The Department will use the Power to Choose website and search available Utility Providers by ZIP code;

(II) The plan chosen will be the median cost per kWh based on average price per kWh for the average monthly use of 1000 kWh of all available plans; and

(III) The actual Component Charges from the plan chosen in effect no later than 60 days before the allowance will be effective will be entered into the Model.

(E) The Department will notify the Owner contact in CMTS of the new allowance and, if requested, provide the backup for how the allowance was calculated. The owner will be provided a five day period to review the Department's calculation and note any errors. Only errors related to the physical characteristics of the building(s) and utilities paid by the residents will be reconsidered; the utility plan and Utility Provider selected by the Department and Component Charges used in calculating the allowance will not be changed. During this five day period, the owner also has the opportunity to submit documentation and request use of any of the available Green Discounts.

(F) The allowance must be implemented for rent due in all program units thirty days after the Department notifies the Owner of the allowance.

(4) HTC Buildings in which there are units under an MFDL program are considered HUD-Regulated buildings and the applicable Utility Allowance for all rent restricted Units in the building is the Utility Allowance calculated under the MFDL program. If the Department is the awarding entity, no [No] other utility method described in this section can be used [by HUD-regulated buildings]. If the Department is not the awarding jurisdiction, Owners are required to obtain, annually, the Utility Allowance established by the awarding jurisdiction, and to document all efforts to obtain such allowance to evidence due diligence in the event that the jurisdiction is nonresponsive. In such an event, provided that[.] sufficient evidence of due diligence is demonstrated, the Department, in its sole discretion, may allow for the use of the methods

described in subsection (c)(3)(B), (C), (D) or (E) [~~(c)(3)(A), (B), (C), or (D)~~] of this section related to Methods to calculate and establish its utility allowance.

(e) Acceptable Documentation. For the Methods where utility specific information is required to calculate the allowance (e.g., base charges, cost per unit of measure, taxes) Owners should obtain documentation directly from the Utility Provider and/or Regulating State Agency. Any Component Charges related to the utility that are published by the Utility Provider and/or Regulating State Agency must be included. In the case where a utility is billed to the Owner of the building(s) and the Owner is billing residents through a third party billing company, the Component Charges published by the Utility Provider and not the third party billing company will be used.

(f) Changes in the Utility Allowance. An Owner may not change Utility Allowance methods, start or stop charging residents for a utility without prior written approval from the Department. Example 614(5): A Housing Tax Credit Development has been paying for water and sewer since the beginning of the Compliance Period. In year eight, the Owner decides to require residents to pay for water and sewer. Prior written approval from the Department is required. Any such request must include the Utility Allowance Questionnaire found on the Department's website and supporting documentation. Developments may not start or stop charging residents for a utility during a lease term.

(1) The Department will review all requests, with the exception of the methodology prescribed in subsection (c)(3)(E) of this section related to Methods, within 90 days of the receipt of the request.

(2) If the Owner fails to post the notice to the residents and simultaneously submit the request to the Department by the beginning of the 90 day period, the Department's approval or denial will be delayed for up to 90 days after Department notification. Example 614(6): The Owner has chosen to calculate the electric portion of the Utility Allowance using the written local estimate. The annual letter is dated July 5, 2022, and the notice to the residents was posted in the leasing office on July 5, 2022. However, the Owner failed to submit the request to the Department for review until September 15, 2022. Although the Notice to the Residents was dated the date of the letter from the utility provider, the Department was not provided the full 90 days for review. As a result, the allowance cannot be implemented by the owner until approved by the Department.

(3) Effective dates. If the Owner uses the methodology as described in subsection (c)(3)(A) of this section related to Methods, no posting is required, and any changes to the allowance can be implemented immediately, but must be implemented for rent due at least 90 days after the change. For methodologies as described in subsection (c)(3)(B), (C), (D) and (E) of this section related to Methods, the allowance cannot be implemented until the estimate is submitted to the Department and is made available to the residents by posting in a common area of the leasing office at the Development. This action must be taken by the beginning of the 90 day period in which the Owner intends to implement the Utility Allowance. Nothing in this section prohibits an Owner from reducing a resident's rent prior to the end of the 90 day period when the proposed allowance would result in a gross rent issue. Figure: 10 TAC §10.614(f)(3) (No change.)

(g) Requirements for Annual Review.

(1) RHS and HUD-Regulated Buildings. Owners must demonstrate that the utility allowance has been reviewed annually and in accordance with the RHS or HUD regulations.

(2) Buildings using the PHA Allowance. Owners are responsible for periodically determining if the applicable PHA released

an updated schedule to ensure timely implementation. When the allowance changes or a new allowance is made available by the PHA, it can be implemented immediately, but must be implemented for rent due 90 days after the PHA published effective date [releases an updated scheduled].

(3) Written Local Estimate, HUD Utility Model Schedule and Energy Consumption Model. Owners must update the allowance once a calendar year. The update and all back up documentation required by the method must be submitted to the Department no later than October 1st of each year. However, Owners are encouraged to submit prior to the deadline to ensure the Department has time to review. At the same time the request is submitted to the Department, the Owner must post, at the Development, the Utility Allowance estimate in a common area of the leasing office where such notice is unobstructed and visible in plain sight. The Department will review the request for compliance with all applicable requirements and reasonableness. If, in comparison to other approved Utility Allowances for properties of similar size, construction and population in the same geographic area, the allowance does not appear reasonable or appears understated, the Department may require additional support and/or deny the request. With the exception of MFDL developments, if an Owner fails to submit for annual review during the calendar year, the Development's Utility Allowance will default to the applicable PHA allowance. If the Development is located in an area that does not have a PHA, the Development fails to have a properly calculated Utility Allowance. The Utility Allowance for MFDL Developments that fail to submit for annual review will be calculated pursuant to subsection (d) of this section.

(4) Actual Use Method. Owners must update the allowance once a calendar year. The update and all back up documentation required by the method must be submitted to the Department no later than August 1st of each year. However, Owners are encouraged to submit prior to the deadline to ensure the Department has time to review. With the exception of MFDL developments, if an Owner fails to submit for annual review during the calendar year, the Development's Utility Allowance will default to the applicable PHA allowance. If the Development is located in an area that does not have a PHA, the Development fails to have a properly calculated Utility Allowance. The Utility Allowance for MFDL Developments that fail to submit for annual review will be calculated using the HUD Utility Model Schedule.

(h) For Owners participating in the Department's Section 811 Project Rental Assistance (PRA) Program, the Department will establish the Utility Allowance for all 811 units. On an annual basis, the Department will calculate a Utility Allowance and provide the Owner with a property-specific rent schedule containing the approved Utility Allowance. The allowance listed on the rent schedule only applies to 811 PRA units, not the entire building, and is the only allowance approved for use on 811 PRA units.

(i) Combining Methods. In general, Owners may combine any methodology described in this section for each utility service type paid directly by the resident and not by or through the Owner of the building (e.g., electric, gas). For example, if residents are responsible for electricity and gas, an Owner may use the appropriate PHA allowance to determine the gas portion of the allowance and use the Actual Use Method to determine the electric portion of the allowance. RHS and certain HUD-Regulated buildings (e.g., buildings with MFDL [HOME/ TCAP RF] funds) are not allowed to combine methodologies.

(j) The Owner shall maintain and make available for inspection by the resident all documentation, including, but not limited to, the data, underlying assumptions and methodology that was used to calculate the allowance. Records shall be made available at the resi-

dent manager's office during reasonable business hours or, if there is no resident manager, at the dwelling Unit of the resident at the convenience of both the Owner and resident.

(k) Utility Allowances for Applications.

(1) If the application includes RHS assisted buildings or tenants, the utility allowance is prescribed by the RHS program. No other method is allowed.

(2) If the application includes HUD-Regulated buildings for HUD programs other than an MFDL program the applicable Utility Allowance for all rent restricted Units in the building is the applicable HUD Utility Allowance. No other utility method is allowed.

(3) If the application includes MFDL funds from the Department, Applicants may calculate the utility allowance in accordance with subsection (c)(3)(B), (C), (D) or (E) of this section related to Methods. Applicants must submit their utility allowance to the Compliance Division prior to full application submission. In the event that the application has an MFDL from the Department, and receives federal funds from a unit of local government, the Department will require the use of the allowance approved by the Department. HOME-ARP may use subsection (c)(3)(A) of this section.

(4) If the application includes federal funds from a unit of local government but no MFDL from the Department, Applicants are required to request in writing the Utility Allowance from the awarding jurisdiction. If the awarding jurisdiction does not respond or requests the Department calculate the allowance, the Department will establish the initial Utility Allowance in accordance with subsection (d)(3) of this section.

(5) For all other applications, Applicants may calculate the utility allowance in accordance with subsection (c)(3)(A), (B), (C), (D), or (E) of this section related to Methods. If using the method described in subsection (c)(3)(B), (C), (D), or (E) of this section, applicants must submit their utility allowance to the Compliance Division prior to full application submission.

(A) Upon request, the Compliance Division will calculate or review an allowance for application. The request must be submitted to the Compliance Division no later than [within] 21 days, but no earlier than 90 days, from when the application is due.

(B) Example 7 [614(8)]: An application for a 9% HTC is due March 1, 2022 [2017]. The applicant would like Department approval to use an alternative method by February 15, 2022 [2017]. The request must be submitted to the Compliance Division no later than January 25, 2022 [2017], three weeks before February 15, 2022 [2017].

(C) Example 8 [614(8)]: An Applicant intends to submit an application for a 4% HTC with Tax Exempt Bonds on August 11, 2022, and would like to use an alternative method. Because approval is needed prior to application submission, the request can be submitted no earlier than May 13, 2022 [2017], (90 days prior to August 11, 2022 [2017]) and no later than July 21, 2022 [2017], (21 days prior to August 11, 2022).

(D) Any requests for new resources (either additional funds or tax credits) on a Development with an existing Department LURA must use the method that is in effect on the existing Development. If the Owner wishes to change or if for an MFDL application is required to change the methods for the purposes of the application, a request for the existing Development must first be submitted to the Compliance Division for approval.

(6) All Utility Allowance requests related to applications of funding must:

(A) Be submitted directly to UA-Application@tdhca.state.tx.us [ua_application@tdhca.state.tx.us]. Requests not submitted to this email address will not be recognized.

(B) Include the "Utility Allowance Questionnaire for Applications" along with all required back up based on the method. If back-up is not submitted the Utility Allowance will be calculated using the HUD Utility Schedule Model as described in subsection (d)(3) of this section.

(l) If Owners want to change to a utility allowance other than what was used for underwriting the Owner must submit Utility Allowance documentation for Department approval, at minimum, 90 days prior to the commencement of leasing activities. The Owner is not required to review the utility allowances, or implement new utility allowances, until the building has achieved 90% occupancy for a period of 90 consecutive days or the end of the first year of the Credit Period (if applicable), whichever is earlier. Once a request to change the utility allowance is approved or implemented, the utility allowance used at underwriting is no longer valid.

(m) The Department reserves the right to outsource to a third party the review and approval of all or any Utility Allowance requests to use the Energy Consumption Model or when review requires the use of expertise outside the resources of the Department. In accordance with Treasury Regulation §1.42-10(c) any costs associated with the review and approval shall be paid by the Owner.

(n) All requests described in this subsection must be complete and uploaded directly to the Development's CMTS account using the "Utility Allowance Documents" in the type field and "Utility Allowance" as the TDHCA Contact. The Department will not be able to approve requests that are incomplete and/or are not submitted correctly.

§10.615. Elections under IRC §42(g) and Additional Income and Rent Restrictions for HTC, Exchange, and TCAP Developments.

(a) Under the Code, HTC Development Owners may elect 20% of the Units restricted at the 50% income and rent limits (20/50), 40% of the Units restricted at the 60% income and rent limits (40/60) or the average income minimum set aside. Many Developments have additional income and rent requirements (e.g., 30%, 40% and 50%) that are lower than or in addition to the election requirement. This requirement is referred to as "additional occupancy restrictions" and is reflected in the Development's LURA.

(b) A Development with additional rent and occupancy restrictions must maintain a waiting list for their lower rent restricted Units. The Development's waitlist policy must inform applicants and current residents of the availability of lower rent Units and the process for renting a lower rent Unit. Unless otherwise approved at Application, underwriting, and cost certification, all Unit sizes must be available at the lower rent limits. The waitlist policy for Developments with lower rent restricted Units must address how the waiting list for their lower rent restricted Units will be managed. The policy must not give a preference to prospective applicants over existing households. However, a Development may, but is not required to, prioritize existing households over prospective applicants.

(c) The Department will examine the actual gross rent (tenant portion of rent plus utility allowance plus any mandatory fees) and income levels of all households to determine if the additional income and rent requirements of the LURA are met. Until and unless the Internal Revenue Service or Treasury Department issue conflicting guidance, the Department will examine the actual gross rent and income of all households to determine if Developments that elected the average income minimum set aside have met the federal requirements and any

lower additional occupancy restriction reflected in the Development's LURA.

(d) Until and unless the Internal Revenue Service or the Treasury Department issue conflicting or additional guidance, the Department will monitor the Available Unit Rule in the following manner for Developments that elected the average income minimum set aside:

(1) If the income of the household who, at the last certification, had an income and rent less than the 60% limits exceeds 140% of the 60% limit, the household must be redesignated as over income.

(2) If the income of a household with an income or rent above the 60% level and less than or equal to the 70% limits exceeds 140% of the 70% limit, the household must be designated as over income.

(3) If the income of a household with an income or rent above the 70% level and less than or equal to the 80% limits exceeds 140% of the 80% limit, the household must be designated as over income.

(4) Owners are not required to terminate the tenancy of over income households. When the Unit occupied by an over income household is vacated, it must be reoccupied by a household with an income and rent level equal to or less than the rent level of the household that went over income. In addition, the Unit must be reoccupied by a household that restores the low income average of the project to 60% or less.

(e) Units at 80% area median income and rent on HTC Developments. In certain years, the Department's Qualified Allocation Plan provided incentives to lease 10% of the Development's Market Rate Units to households at 80% income and rents. This section provides guidance for implementation. If the LURA requires 10% of the Market Rate Units be leased to households at 80% income and rent limits, the Owner must certify the 80% households at the time of move in only. Recertifications will not be required. Student rules do not apply to Units occupied by 80% households. Noncompliance with the requirement to lease to 80% households is not reportable to the IRS on IRS Form 8823 but will be cited as noncompliance under the event "Development failed to meet additional state required rent and occupancy restrictions."

(f) The Department does not require Developments to lease more Units under the additional occupancy restrictions than established in their LURA. However, if a Development inadvertently designates more households than required under the additional rent and occupancy restrictions, they may only decrease to the minimum number through attrition and new move ins, not by removing designations.

§10.616. Household Unit Transfer Requirements for All Programs.

(a) The requirements and restrictions regarding household transfers for HTC, Exchange, and TCAP Developments are based on whether the tax credit project is 100% low-income or mixed income and if the Owner elected to treat buildings in the project as part of a multiple building project. To determine if a Development is a multiple building project, refer to the election on IRS Form(s) 8609 line 8(b) and accompanying statements (if any). If IRS Form(s) 8609 have not yet been issued by the Department and filed by the Owner, each building is its own project. The Department may allow Owners to indicate their intended 8(b) elections and will monitor accordingly. Failure to file the same elections with the IRS may result in noncompliance, additional monitoring, an additional monitoring fee and findings of noncompliance.

(1) 100% low-income multiple building projects: Households may transfer to any Unit in a 100% low-income multiple building project and retain their program designation. The household does

not need to be and should not be certified at the time of transfer. The move in date remains the date the household was first designated under the program.

(2) Each building is its own project (100% low-income and mixed income projects). Developments that made the 20/50 or 40/60 election: at the time of transfer, the household must be certified and have a current annual income less than the income limit established by the minimum set aside the Owner selected. Developments that elected the average income test under IRC §42(g): the household must be certified and their current designation averaged together with the designations of the other households in the project must be equal to or less than the percentage represented at the time of Application.

(3) Mixed income multiple building projects: Low-income households retain their program designation when they transfer to any Unit in a multiple building project if at the last annual certification their income was less than 140% of area median income level set by the minimum set aside.

(b) Household transfers for Bond, THTF, NHTF, HOME, TCAP RF, HOME Match, [and] NSP, and HOME-ARP with floating Units. Households may transfer to any Unit within the Development. A certification is not required at the time of transfer. If the household transfers to a different Unit Type, the Development must maintain the Unit Type dispersion as reflected in its LURA, by re-leasing the vacated Unit to a program eligible household. If the Development is required to perform annual income recertifications, the recertification is due on the anniversary date the household originally moved into the Development. If the Development is layered with Housing Tax Credits, use the transfer guidelines described in subsection (a) of this section (relating to Household Unit Transfer Requirements).

(c) Household transfers for NHTF, HOME, TCAP RF, HOME Match, [and] NSP, and HOME-ARP with fixed Units. Households may transfer to any Unit and do not need to be certified at the time of the transfer. If the household transfers to a Unit that is not fixed, the Development must re-lease the vacated Unit to a program eligible household. If the Development is required to perform annual income recertifications, the recertification is due on the anniversary date the household originally moved into the Development. If the Development is layered with Housing Tax Credits, use the transfer guidelines described in subsection (a) of this section (relating to Household Unit Transfer Requirements).

(d) Household Transfers in the Same Building for the HTC Programs. A Household may transfer to a new Unit within the same building (for the HTC program within the meaning of IRS Notice 88-91). The Unit designations will swap status.

§10.618. *[Onsite] Monitoring and Inspections.*

(a) The Department may perform an onsite monitoring review, a mail in desk review and physical inspection of any Development, and review and photocopy all documents and records supporting compliance with Departmental programs through the end of the Compliance Period or the end of the period covered by the LURA, whichever is later. The Development Owner shall permit the Department access to the Development premises and records.

(b) The Department will perform [onsite] monitoring reviews of each low-income Development. The Department will conduct:

(1) The first review of HTC Developments by the end of the second calendar year following the year the last building in the Development is placed in service;

(2) The first review of all Developments, other than those described in paragraph (1) of this subsection, as leasing commences;

(3) During the Federal Compliance Period subsequent reviews will be conducted at least once every three years;

(4) After the Federal Compliance Period, Developments will be monitored in accordance with §10.623 of this chapter (relating to Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period);

(5) A physical inspection of the Development including the exterior of the Development, Development amenities, and an interior inspection of a sample of Units;

(6) Limited reviews of physical conditions, including follow-up inspections to verify completion of reported corrective action, may be conducted without prior notice (unless access to tenant units is required, in which case at least 48 hours notice will be provided); and

(7) Reviews, meetings, and other appropriate activity in response to complaints or investigations.

(c) The Department will perform onsite file reviews or a mail in desk review and monitor:

(1) Low-income resident files in each Development, and review the Income Certifications;

(2) The documentation the Development Owner has received to support the certifications;

(3) The rent records; and

(4) Any additional aspects of the Development or its operation that the Department deems necessary or appropriate.

(d) The LURA for most HOME, NSP, TCAP RF₂ [and] NHTF₂ and HOME-ARP Developments specifies a required Unit Mix and income level. During the [onsite] monitoring review [visits] it will be determined if the minimum number of affordable Units and exact square footage has been provided. Failure to provide the exact square footage listed in the LURA will be cited as "Failure to provide correct square footage". Failure to provide the required number of Units required by the LURA will be cited as "Household income above income limit upon initial occupancy".

(1) Example 2 [612(2)]. A TCAP RF LURA requires eight low-income units at 60% AMI with the following Unit mix:

(A) Three one bedroom, one bath units with a Net Rentable Area (NRA) of 770 sq ft;

(B) One two bedroom one bath units with a NRA of 900 sq ft; and

(C) Four three bedroom two bath units with a NRA of 1000 sq ft.

(2) If during the monitoring [onsite] review the Development has eight units designated as TCAP RF, but is not exactly the Units and square footage mix shown in subparagraphs (A) - (C) of this paragraph in Example 612(2) (even if the actual square footage provided is greater) the noncompliance "Failure to provide correct square footage" will be cited.

(e) At times other than monitoring [onsite] reviews, the Department may request for review, in a format designated by the Department, information on tenant income and rent for each Low-Income Unit and may require a Development Owner to submit copies of the tenant files, including copies of the Income Certification, the documentation the Development Owner has received to support that certification, and the rent record for any low-income tenant.

(f) The Department will select the Low-Income Units and tenant records that are to be inspected and reviewed. Original records

are required for review. The Department will not give Development Owners advance notice that a particular Unit, tenant record, or a particular year will be inspected or reviewed. However, the Department will give reasonable notice, as defined in Treasury Regulation 1.42-5, to the Development Owner that an onsite inspection or a tenant record review will occur so the Development Owner may notify tenants of the inspection or assemble original tenant records for review. If a credible complaint of fraud or other egregious alleged or suspected noncompliance is received, the Department reserves the right to conduct unannounced onsite monitoring visits and/or physical inspections.

(g) In order to prepare for monitoring reviews and physical inspections and to reduce the amount of time spent onsite, Department staff must review certain requested documentation described in the [onsite] notification [announcement]. Owners are required to submit documentation by the required deadline indicated in the [onsite] notification [announcement]. Failure to submit required documentation will result in a finding of noncompliance.

§10.619. Monitoring for Social Services.

(a) If a Development's LURA requires the provision of social services, the Department will confirm this requirement is being met in accordance with the LURA. Owners are required to maintain sufficient documentation to evidence that services are actually being provided. Documentation will be reviewed during monitoring reviews [onsite visits] beginning with the first monitoring [onsite] review. Planned services with specific dates may suffice as evidence of compliance during the first [onsite] monitoring review [visit]. Evidence of services must be submitted to the Department upon request. [The first onsite visit] Example 619(1): The Owner's LURA requires provision of onsite daycare services. The Owner maintains daily sign in sheets to demonstrate attendance and keeps a roster of the households that are regularly participating in the program. The Owner also keeps copies of all newsletters and fliers mailed out to the Development tenants that reference daycare services. Example 619(2): The Owner's LURA requires a monetary amount to be expended on a monthly basis for supportive services. The Owner maintains a copy of an agreement with a Supportive Service provider and documents the amount expended as evidence that this requirement is being met.

(b) A substantive modification of the scope of tenant services requires Board approval. Such requests must comply with procedures in §10.405 of this chapter (relating to Amendments and Extensions). It is not necessary to obtain prior written approval to change the provider of services unless the scope of services is being changed. Failure to comply with the requirements of this section shall result in a finding of noncompliance.

(c) If the Development's LURA requires a monthly expenditure for the provision of services, the Department will monitor to confirm compliance. Includable costs to support the expenditure include those costs directly related to providing the service(s). Such costs can include, but are not limited to, the cost of contracting the services with a qualified provider, cost of notification of such services (for example, a monthly newsletter), and other costs that can be documented and would only be incurred as a result of the service. An Owner cannot include any costs related to the normal expense of maintaining or operating a Development, utility bills of any kind, in-kind contributions or services, cleaning or contracted janitorial services, office supplies, cost of copier or fax, costs incurred for maintenance of machinery, or volunteer hours. This list is not inclusive, but any other costs identified by the Owner shall be reviewed for consistency with this subsection.

§10.621. Property Condition Standards.

(a) All Developments funded by the Department must be decent, safe, sanitary, in good repair, and suitable for occupancy throughout the Affordability Period. The Department will use HUD's Uniform

Physical Condition Standards (UPCS) to determine compliance with property condition standards. In addition, Developments must comply with all local health, safety, and building codes.

(b) HTC Development Owners are required by Treasury Regulation §1.42-5 to report (through the Annual Owner's Compliance Report) any local health, safety, or building code violations. HTC Developments that fail to comply with local codes shall be reported to the IRS.

(c) The Department is required to report any HTC Development that fails to comply with any requirements of the UPCS or local codes at any time during the compliance period to the IRS on IRS Form 8823. Accordingly, the Department will submit IRS Form 8823 for any UPCS violation.

(d) Acceptable evidence of correction of deficiencies is a certification from an appropriate licensed professional that the item now complies with the inspection standard or other documentation that will allow the Department to reasonably determine when the repair was made and whether the repair sufficiently corrected the violation(s) of UPCS standards. Acceptable documentation includes: copies of work orders (listing the deficiency, action taken or repairs made to correct the deficiency, date of corrective action, and signature of the person responsible for the correction), invoices (from vendors, etc.), or other proof of correction. Photographs are not required but may be submitted if labeled and only in support of a work order or invoice. The Department will determine if submitted materials satisfactorily document correction of noncompliance.

(e) Selection of Units for Inspection.

(1) Vacant Units will not be inspected (alternate Units will be selected) if a Unit has been vacant for fewer than 30 days.

(2) Units vacant for more than 30 days are assumed to be ready for occupancy and may be inspected. No deficiencies will be cited for inspectable items that require utility service, if utilities are turned off and the inspectable item is present and appears to be in working order.

(f) The Department will consider a request for review of a UPCS score using a process similar to the process established by the U. S. Department of Housing and Urban Development Real Estate Assessment Center. The request must be submitted in writing within 45 calendar days of receiving the initial UPCS inspection report and score.

(g) Examples of items that can be adjusted include, but are not limited to:

(1) Building Data Errors--The inspection includes the wrong building or a building that is not owned by the Development.

(2) Unit Count Errors--The total number of units considered in scoring is incorrect as reported at the time of the inspection.

(3) Non-Existent Deficiency Errors--The inspection cites a deficiency that did not exist at the time of the inspection.

(4) Local Conditions and Exceptions--Circumstances include inconsistencies between local code requirements and the UPCS inspection protocol, such as conditions permitted by local variance or license (e.g., child guards allowed on sleeping room windows by local building codes) or preexisting physical features that do not conform to or are inconsistent with the Department's physical condition protocol.

(5) Ownership Issues--Items that were captured and scored during the inspection that are not owned and/or not the responsibility of the Development. Examples include sidewalks, roads, fences, retaining walls, and mailboxes owned and maintained by adjoining proper-

ties or the city/county/state and resident-owned appliances that are not maintained by the Owner.

(6) Modernization Work In Progress--Developments undergoing extensive modernization work in progress, underway at the time of the physical inspection, may qualify for an adjustment. All elements of the unit that are not undergoing modernization at the time of the inspection (even if modernization is planned) will be subject to the Department's physical inspection protocol without adjustment. Any request for a Database adjustment for modernization work in progress must include proof the work was contracted before any notice of inspection was issued by the Department.

(h) Examples of items that cannot be adjusted include, but are not limited to:

(1) Disagreements over the severity of a defect, such as deficiencies rated Level 3 that the Owner believes should be rated Level 1 or 2;

(2) Deficiencies that were repaired or corrected during or after the inspection; or

(3) Deficiencies recorded with no associated point loss (for example, inoperable smoke detectors) or deficiencies for survey purposes only (for example, fair housing accessibility).

(i) All Exigent and Fire Safety (E&FS or EH&S) deficiencies must be corrected immediately. Project Owner's Certification That All Exigent and Fire Safety Deficiencies Have Been Corrected must be completed and uploaded to CMTS within 72 hours (three days).

§10.622. Special Rules Regarding Rents and Rent Limit Violations.

(a) Rent or Utility Allowance Violations of the maximum allowable limit for the HTC program. Under the HTC program, the amount of rent paid by the household plus an allowance for utilities, plus any mandatory fees, cannot exceed the maximum applicable limit (as determined by the minimum set-aside elected by the Owner) published by the Department. If it is determined that an HTC Development, during the Compliance Period, collected rent in excess of the rent limit established by the minimum set-aside, the Owner must correct the violation by reducing the rent charged. The Department will report the violation as corrected on January 1st of the year following the violation. The refunding of overcharged rent does not avoid the disallowance of the credit by the IRS.

(b) Rent or Utility Allowance Violations of additional rent restrictions under the HTC program. If Owners agreed to additional rent and occupancy restrictions, the Department will monitor to confirm compliance. If noncompliance is discovered, the Department will require the Owner to restore compliance by refunding (not a credit to amounts owed the Development) any excess rents to a sufficient number of households to meet the set aside.

(c) Rent Violations of the maximum allowable limit due to application fees [~~or application deposits not promptly converted into a security deposit under the HTC program~~]. Under the HTC program, Owners may not charge tenants any overhead costs as part of the application fee. Owners must only charge the actual cost for application fees as supported by invoices from the screening company the Owner uses.

(1) The amount of time Development staff spends checking an applicant's income, credit history, and landlord references may be included in the Development's application fee. Development Owners may add up to \$5.50 per Unit for their other out of pocket costs for processing an application without providing documentation. Example 622(2): A Development's out of pocket cost for processing an applica-

tion is \$17.00 per adult. The property may charge \$22.50 for the first adult and \$17.00 for each additional adult.

(2) Documentation of Development costs for application processing or screening fees must be made available during monitoring reviews [onsite visits] or upon request. The Department will review application fee documentation during [onsite] monitoring reviews [visits]. If the Development pays a flat monthly fee to a third party for credit or criminal background checks, Owners must calculate the appropriate fee to be charged applicants by using the total number of applications processed, not just approved applications. Developments that pay a flat monthly fee must determine the appropriate application fee at least annually based on the prior year's activity. If the Department determines from a review of the documentation that the Owner has overcharged residents an application fee or collected impermissible deposits, the noncompliance will be reported to the IRS on Form 8823 under the category "gross rent(s) exceeds tax credit limits." The noncompliance will be corrected on January 1st of the next year.

(3) Owners are not required to refund the overcharged fee amount. To correct the issue, Owners must reduce the application fee for prospective applicants. Once the fee is reduced for prospective applicants, the Department will report the affected back in compliance on January 1st of the year after they were overcharged the application fee or an impermissible deposit.

(4) Throughout the Affordability Period, Owners may not charge a deposit or any type of fee (other than an application fee) for a household to be placed on a waiting list.

(d) Rent or Utility Allowance Violations on MFDL programs, the amount of rent paid by the household plus an allowance for utilities, plus any mandatory fees and any rental assistance (unless otherwise described in the LURA) cannot exceed the designated applicable limit published by the Department [Non-HTC Developments, HTC Developments after the Compliance Period, and foreclosed HTC properties for three years after foreclosure]. If it is determined that the Development collected rent in excess of the allowable limit, the Department will require the Owner to refund or credit [(not a credit to amounts owed the Development) to] the affected residents the amount of rent that was overcharged. The Owner must obtain in writing, from the household, the election to receive a full refund check or to have the entire overpaid amount credited to their household's account. In the absence of a household's election, a full refund check must be presented to the household within thirty days.

(e) Rent or Utility Allowance Violations on HTC Developments after the Compliance Period, HTC properties for three years after the LURA is released as a result of a foreclosure or deed in lieu of foreclosure (as applicable), BOND, and THTF the amount of rent paid by the household plus an allowance for utilities, plus any mandatory fees cannot exceed the designated applicable limit published by the Department. If it is determined that the Development collected rent in excess of the allowable limit, the Department will require the Owner to refund or credit the affected residents the amount of rent that was overcharged. The Owner must obtain in writing, from the household, the election to receive a full refund check or to have the entire overpaid amount credited to their household account. In the absence of a tenant election, a full refund check must be presented to the household within thirty days.

(f) [(e)] Trust Account to be established. If the Owner is required to refund rent under subsection (b) or (d) of this section and cannot locate the resident, the excess monies must be deposited into a trust account for the household [tenant]. If the violation affects multiple households, the Owner may set up a single account with all of the unclaimed funds. The account must remain open for the shorter of a

four year period, ~~[or]~~ until all funds are claimed, or the expiration of the Extended Use Agreement. If funds are not claimed after the required period, the unclaimed funds must be remitted to the Texas Comptroller of Public Accounts Unclaimed Property Holder Reporting Section to be disbursed as required by Texas unclaimed property statutes. All unclaimed property remissions to the Comptroller must be broken out by individuals and particular amounts.

(g) ~~[(#)]~~ Rent Adjustments for HOME, ~~[and]~~ TCAP RF, and HOME-ARP Developments:

(1) 100% HOME/TCAP-RF/HOME-ARP assisted Developments. If a household's income exceeds 80% at recertification, the Owner must charge rent equal to 30% of the household's adjusted income;

(2) HOME/TCAP-RF/HOME-ARP Developments with any Market Rate units. If a household's income exceeds 80% at recertification, the Owner must charge rent equal to the lesser of 30% of the household's adjusted income or the comparable Market rent; and

(3) HOME/TCAP-RF/HOME-ARP Developments layered with other Department affordable housing programs. If a household's income exceeds 80% at recertification, the owner must charge rent equal to the lesser of 30% of the household's adjusted income or the rent allowable under the other Program.

(h) Rent Adjustments for HOME-ARP Qualified Populations:

(1) Units restricted for occupancy by Qualifying Populations with incomes equal or less than 50% will have rents of 30% of the adjusted income of the household, with adjustments for number of bedrooms in the unit.

(2) Units restricted for occupancy by Qualifying Populations with incomes greater than 50% of median income but at or below 80% of the median income must pay rent specified in 24 CFR §92.252(a), high HOME rent.

(3) Units restricted for occupancy by Qualifying Populations with incomes greater than 80% of median income will follow the rent adjustments of subsection (g) of this section.

~~[(g) Special conditions for NSP Developments. To determine if a Unit is rent restricted, the amount of rent paid by the household, plus an allowance for utilities, plus any rental assistance payment must be less than the applicable limit.]~~

(i) ~~[(#)]~~ Employee Occupied Units (HTC and THTF Developments). IRS Revenue Rulings 92-61, 2004-82 and Chief Counsel Advice Memorandum POSTN-111812-14 provide guidance on employee occupied units. In general, employee occupied units are considered facilities reasonably required for the project(s) and not residential rental units. Since the building's applicable fraction is calculated using the residential rental units/space in a building, employee occupied units are taken out of both the numerator and the denominator.

(j) ~~[(#)]~~ Owners of HOME, NSP, TCAP-RF, ~~[and]~~ NHTF, and HOME-ARP must comply with §10.403 of this chapter which requires annual rent review and approval by the Department's Asset Management Division or Department-procured vendor. Failure to do so will result in an Event of Noncompliance.

(k) ~~[(#)]~~ Owners are not permitted to increase the ~~tenant~~ household portion of rent more than once during a 12 month period, even if there are increases in rent limits or decreases in utility allowances, unless the Unit or household is governed by a federal housing program that requires such changes or the household transfers to a larger unit size. If it is determined that the Development increases rent more than once in a 12 month period, the Department will require the Owner to

refund or credit the affected household. The Owner must obtain in writing, from the household, the election to receive a full refund check or to have the entire overpaid amount credited to their household account. In the absence of a tenant election, a full refund check must be presented to the household.

(l) If an Owner is increasing a household's rent \$75 or more per month, the Owner is required to provide the household a 120 day written notice of such increase, unless the Unit or household is governed by a federal housing program that requires such a change. If an Owner increases the household's rent more than \$75 without giving a 120 day notice, any amounts in excess of \$75 per month must be refunded or credited to the affected household(s). The Owner must obtain in writing, from the household, the election to receive a full refund check or to have the entire overpaid amount credited to their tenant account. In the absence of a tenant election, a full refund check must be presented to the household within thirty days.

§10.623. Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period.

(a) HTC properties allocated credit in 1990 and after are required under §42(h)(6) of the Code to record a LURA restricting the Development for at least 30 years. Various sections of the Code specify monitoring rules State Housing Finance Agencies must implement during the Compliance Period.

(b) After the Compliance Period, the Department will continue to monitor HTC Developments using the criteria detailed in paragraphs (1) - (14) of this subsection:

(1) The frequency and depth of monitoring household income, rents, social services and other requirements of the LURA will be determined based on risk. Factors will include changes in ownership or management, compliance history, timeliness of reports and timeliness of responses to Department requests;

(2) At least once every three years the property will be physically inspected including the exterior of the Development, all building systems and 10% of Low-Income Units. No less than five but no more than 35 of the Development's HTC Low-Income Units will be physically inspected to determine compliance with HUD's Uniform Physical Condition Standards;

(3) Each Development shall submit an annual report in the format prescribed by the Department;

(4) Reports to the Department must be submitted electronically as required in §10.607 of this subchapter (relating to Reporting Requirements);

(5) Compliance monitoring fees will continue to be submitted to the Department annually in the amount stated in the LURA;

(6) All HTC households must be income qualified upon initial occupancy of any Low Income Unit. Proper verifications of income are required, and the Department's Income Certification form must be completed unless the Development participates in the Rural Rental Housing Program or a project-based HUD program, in which case the other program's certification form will be accepted;

(7) Rents will remain restricted for all HTC Low-Income Units. After the Compliance Period, utilities paid to the Owner are accounted for in the utility allowance. TCAP, Exchange, Bond, and THTF Developments layered with Housing Tax Credits no longer within the Compliance Period also include utilities paid to the Owner as part of the utility allowance. The tenant paid portion of the rent plus the applicable utility allowance must not exceed the applicable limit. Any excess rent collected must be refunded;

(8) All additional income and rent restrictions defined in the LURA remain in effect;

(9) For Additional Use Restrictions, defined in the LURA (such as supportive services, nonprofit participation, elderly, etc.), refer to the Development's LURA to determine if compliance is required after the completion of the Compliance Period or if the Compliance Period was specifically extended beyond 15 years;

(10) The Owner shall not terminate the lease or evict low-income residents for other than good cause;

(11) The total number of required HTC Low-Income Units must ~~ean~~ be maintained Development wide;

(12) Owners may not charge fees for amenities that were included in the Development's Eligible Basis;

(13) Once a calendar year, Owners must continue to collect and maintain current data on each household that includes the number of household members, age, ethnicity, race, disability status, student status, ~~[rental amounts]~~ and rental assistance (if any). This information can be collected on the Department's Annual Eligibility Certification form or the Income Certification form or HUD Income Certification form or USDA Income Certification form; and

(14) Employee occupied units will be treated in the manner prescribed in §10.622(h) of this chapter (relating to Special Rules Regarding Rents and Rent Limit Violations).

(c) After the first 15 years of the Extended Use Period, certain requirements will not be monitored as detailed in paragraphs (1) - (4) of this subsection.

(1) The student restrictions found in §42(i)(3)(D) of the Code. An income qualified household consisting entirely of full time students may occupy a Low-Income Unit. If a Development markets to students or leases more than 15% of the total number of units to student households, the property will be found in noncompliance unless the LURA is amended through the Material Amendments procedures found in §10.405 of this chapter (relating to Amendments);

(2) All households, regardless of income level or 8609 elections, will be allowed to transfer between buildings within the Development;

(3) The Department will not monitor the Development's application fee after the Compliance Period is over; and

(4) Mixed income Developments are not required to conduct annual income recertifications. However, Owners must continue to collect and report data in accordance with subsection (b)(13) of this section.

(d) While the requirements of the LURA may provide additional requirements, right and remedies to the Department or the tenants, the Department will monitor post year 15 in accordance with this section as amended.

(e) Unless specifically noted in this section, all requirements of this chapter, the LURA and §42 of the Code remain in effect for the Extended Use Period. These Post-Year 15 Monitoring Rules apply only to the HTC Developments administered by the Department. Participation in other programs administered by the Department may require additional monitoring to ensure compliance with the requirements of those programs.

§10.624. *Compliance Requirements for Developments with 811 PRA Units.*

~~[(a) One hundred and eighty days prior to the date an Owner expects to begin leasing, Developments that have agreed to rent Units~~

~~to households assisted by Section 811 PRA must contact Department staff and begin accepting referrals. Failure to reserve the agreed upon number of Units for 811 households will be cited as noncompliance, be referred for administrative penalties, and be considered possible grounds for debarment.]~~

~~[(b) Throughout the term of an 811 PRA Use Agreement, Owners must maintain the required number of 811 PRA households, and provide notice to the Department when an 811 PRA household is expected to vacate. Notice must be provided within seven calendar days of when the Development is notified that the household will vacate or in the event that the resident vacates without notice, upon discovery that the unit is vacant. Failure to notify the Department will be cited as noncompliance and will be referred to the Enforcement Committee to be considered for possible administrative penalties and may be proposed for debarment, in accordance with the Enforcement Rule under 40 TAC Chapter 2.]~~

~~(a) [(e)] Compliance with 811 PRA requirements will be monitored at least once every three years, either through an onsite review or a desk review. During the review, Department staff will monitor for compliance with program eligibility which includes the following:~~

~~(1) The household must include at least one person with a disability and who is 18 years of age or older and less than 62 years of age at the time of admission into the Development; and the person with a disability must be part of one or more of the target populations for the 811 program.~~

~~(2) The household's income is less than the extremely low income limit at move in.~~

~~(3) The Owner must check the following criminal history related to drug use of the household. Households in the 811 PRA program must not include:~~

~~(A) Any member(s) who was evicted in the last three years from federally assisted housing for drug-related criminal activity;~~

~~(B) Any member that is currently engaged in illegal use of drugs or for which the Owner has reasonable cause to believe that a member's illegal use or pattern of illegal use of a drug may interfere with the health, safety, and right to peaceful enjoyment of the property by other residents; and~~

~~(C) Any member who is subject to a State sex offender lifetime registration requirement.~~

~~(4) Student Status. If the household includes a student, the student must meet all of the criteria described in HUD handbook 4350.3 par. 3-13B, as modified by the September 21, 2016, Federal Register Notice 5969-N-01.~~

~~(b) [(d)] Noncompliance will be cited if the Development:~~

~~(1) Leased a Unit to a household that is not qualified for the 811 PRA program in accordance with the requirements of subsection (a)(1) - (4) [(e)(1) - (4)] of this section;~~

~~(2) Fails to Use the Enterprise Income Verification system; [for documenting the household's income;]~~

~~(A) EIV summary report;~~

~~(B) EIV income report;~~

~~(C) EIV income discrepancy report;~~

~~(D) EIV No income reported;~~

~~(E) EIV no income report by health and human services or social security administration;~~

- (F) EIV new hires report;
- (G) Existing tenant search;
- (H) Multiple Subsidy report;
- (I) Failed EIV pre-screening report;
- (J) Failed verification report;
- (K) Deceased tenants report;
- (L) Owner approval letter authorizing access to EIV for the EIV coordinators;
- (M) EIV Coordinator Access Authorization form (CAAF);
- (N) The rules of behavior for staff that use EIV reports/data to perform their job functions; and
- (O) Cyber awareness challenge certificates of completion for anyone that uses EIV or has access to EIV data (annually);

(3) Fails to properly document and calculate deductions in order to determine adjusted income (dependent, child care, disability assistance, elderly/disabled family, unreimbursed medical expenses);

(4) Fails to use the required HUD forms listed in §10.612(d) of this subchapter; [or the following forms when applicable:]

- [(A) EIV summary report;]
- [(B) EIV income report;]
- [(C) EIV income discrepancy report;]
- [(D) EIV No income reported;]
- [(E) EIV no income report by health and human services or social security administration;]
- [(F) EIV new hires report;]
- [(G) Existing tenant search;]
- [(H) Multiple Subsidy report;]
- [(I) Failed EIV pre-screening report;]
- [(J) Failed verification report;]
- [(K) Deceased tenants report;]

[(L) Owner approval letter authorizing access to EIV for the EIV coordinators;]

[(M) EIV Coordinator Access Authorization form (CAAF);]

[(N) The rules of behavior for staff that use EIV reports/data to perform their job functions; and]

[(O) Cyber awareness challenge certificates of completion for anyone that uses EIV or has access to EIV data (annually);]

(5) Accepts funding that limits the ability for the Department to place the agreed upon number of 811 Units at the Development;

(6) Violates §1.15 of this title (relating to Integrated Housing);

(7) Fails to properly calculate the tenant portion of rent;

(8) Fails to properly calculate the tenant security deposit;

(9) Fails to use the HUD model lease;

(10) Egregiously fails to disperse 811 PRA Units throughout the Development;

(11) Fails to conduct required interim certifications;

(12) Fails to conduct annual income recertification; [or]

(13) Fails to prominently display 11 x 14 sized, as required by 24 CFR Part 110, Fair Housing Poster HUD-928.1 (English), HUD 928.1A (Spanish), and in other languages as required by Limited English Proficiency Requirements;

(14) Improperly charges an application or late fee;

(15) Fails to issue HUD notices as required; or

(16) Fails to issue utility allowance reimbursement in accordance with §8.4 of this title (relating to Qualification Requirements for Existing Developments) and the specifications outlined in §10.625 of this title (relating to Events of Noncompliance).

§10.625. Events of Noncompliance.

Figure: 10 TAC §10.625 lists events for which a multifamily rental Development may be found to be in noncompliance for compliance monitoring purposes. This list is not an exclusive list of events and issues for which an Owner may be subject to an administrative penalty, debarment or other enforcement action. The first column of the chart identifies the noncompliance event. The second column indicates to which program(s) the noncompliance event applies. The last column indicates if the issue is reportable on IRS Form 8823 for HTC Developments.

Figure: 10 TAC §10.625

[Figure: 10 TAC §10.625]

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 July 14, 2022.

TRD-202202679

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: August 28, 2022

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

◆ ◆ ◆
TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

CHAPTER 380. RULES FOR STATE-OPERATED PROGRAMS AND FACILITIES

The Texas Juvenile Justice Department (TJJD) proposes to amend §§380.8501, 380.8521, 380.8702, 380.8703, and 380.8751, concerning admission, placement, release, and discharge and treatment.

SUMMARY OF CHANGES

The amendments to §380.8501, concerning Definitions, will include deleting the definitions for the terms *Indicator*, *Objective*, *Program Completion*, and *Stage*; adding definitions for the terms *Program Completion Criteria* and *Risk Level*; modifying the def-

initions of the terms *Community Reentry/Transition Plan*, *Home Placement*, *Initial Placement*, *Release under Supervision*, *Revocation Offense*, and *Transition*; and making non-substantive revisions to the definitions of the terms *Discharge*, *Final Decision Authority*, *Most Serious of the Relevant Offenses*, *Parole Status*, and *Transfer*.

The amendments to §380.8521, concerning Facility Assignment System, will include adding a statement that TJJD seeks to place youth in the least restrictive setting possible to address the youth's treatment needs while considering public safety; adding that this rule applies to placements made *after* initial commitment or recommitment (rather than *upon release from an intake unit*); adding intellectual impairment as a factor that is considered in determining an appropriate facility assignment; adding *reduction in risk level* as a reason youth may be assigned to a subsequent placement; revising the list of factors that contribute to the risk assessment (i.e., added *age at first offense*, deleted *age at first referral*, and deleted *behavior at the orientation and assessment unit or while on parole*) and adding that these are examples, not required factors; and adding that the *executive director or designee* (rather than the division director over residential services or designee) may waive certain facility restriction levels required by this rule.

The amendments to §380.8702, concerning Rehabilitation Program Overview, will include adding that the rehabilitation provided by TJJD is for the purpose of reducing future delinquent behavior and increasing *public safety* (rather than *youth accountability*); adding that TJJD provides a trauma-informed rehabilitative program that is focused on delivering needed treatment, assessing behavioral progress, assessing increases in protective factors and decreases in risk factors, and assessing the ability of youth to use skills learned in treatment and programming (rather than each TJJD facility using an integrated, system-wide rehabilitative program that offers a menu of therapeutic techniques, tools, and program components to help individual youth increase their ability to be productive citizens and to avoid re-offending); adding that all treatment and programming is delivered in the least restrictive setting appropriate to the youth, consistent with the rules of this chapter; removing the requirement for youth in residential facilities to be reviewed and assessed by a multidisciplinary team and for youth on parole in the community to be reviewed and assessed by the assigned parole officer; removing a reference to another TJJD rule; adding that TJJD facilities maintain a *structured daily schedule* (rather than a *16-hour day*); specifying that youth are *given the opportunity* to participate (rather than *must participate*) in regular large-muscle exercise and recreation programs; and removing the provision stating that TJJD facilities provide and youth are required to participate in skills development groups.

The amendments to §380.8703, concerning Rehabilitation Program Stage Requirements and Assessment, will make numerous changes in several areas.

Changes relating to the general themes of the program will include replacing the section relating to the general themes of the rehabilitation program; adding areas such as educational/vocational activities, treatment/intervention activities, therapeutic tools, individual goals, and safe behavior as areas of focus, in addition to risk and protective factors; removing a reference to engaging the youth's family in the section on general themes; and adding that the objectives for each stage of the program are provided in writing to the youth.

Changes relating to stage assessment will include removing a description of specific items that are reviewed and/or discussed during a stage assessment; adding that, following a stage assessment, the youth is assigned to the most appropriate stage, *which could be more than one stage higher than the current stage*; adding that each youth's specific needs and responsibility must be considered when assessing a youth's stage; removing a reference to demotion of a youth's stage as a disciplinary consequence and adding that lowering a youth's stage is allowed after a determination that behavior proven in a Level II hearing indicates the youth no longer meets the requirements of the currently assigned stage; adding that, if a youth loses release eligibility under §380.8555 or §380.8559, the youth is no longer designated as having completed the rehabilitative program and will be assigned to stage 4; and removing a statement requiring that, if appropriate, an updated case plan is developed following a stage assessment meeting.

Changes relating to stage descriptions will include revising the descriptions of each stage and the factors indicating completion of each stage.

Other changes to §380.8703 will include removing statements relating to how long it may take to complete each stage and to complete the entire program with reasonable effort by the youth; adding that youth will be *reassessed and placed the most appropriate stage based on the youth's current behavior and progress in the program* (rather than automatically placed on a pre-set stage level) when a youth is recommitted to TJJD for a new offense or returned to a TJJD facility for disciplinary reasons; removing the requirement to reassess a youth's stage assignment when the youth is returned to a TJJD facility for non-disciplinary reasons; and removing the section on appeals relating to stage assessments or opportunities to demonstrate completion of requirements.

The amendments to §380.8751, concerning Specialized Treatment, will make changes relating to the requirement to participate in or complete specialized treatment including adding that, for youth who have specialized treatment requirement as part of transition or release criteria, a youth may qualify for the transition or release *if a designee of the executive director with appropriate expertise determines that the youth has made sufficient progress toward treatment goals or that the goals can be addressed in a non-high-restriction setting*. This replaces requirements that the youth must be scheduled to begin the specialized treatment in a medium-restriction facility or on parole, as documented in the youth's most recent treatment plan, with a requirement to complete treatment included in the youth's conditions of release or make sufficient progress in the assigned treatment program with a corresponding reduction in risk to allow for the youth to continue treatment in a non-high-restriction setting, with a requirement to complete treatment included in the youth's conditions of release.

Other changes to §380.8751 will include removing the requirement for intensive treatment programs to be delivered in a setting where all youth in the program reside in a common dormitory and where the milieu is designed to address the specialized need on a continuous basis; adding that treatment in such programs is generally delivered in specialized groups; specifying that moderate-intensity treatment programs are *generally* delivered in specialized groups; removing the statement that such programs include individual counseling, and renamed these programs as *moderate-intensity* (rather than *short-term*) treatment programs; clarifying that TJJD's specialized treatment programs

are *designed* (rather than *shown*) to reduce risk to reoffend; clarifying that, when a youth cannot be provided the type of specialized program designed in this rule for the youth's assessed need level, the youth will be provided with the most appropriate alternate form of *intervention* (rather than *specialized intervention*); removing a provision stating that the orientation and assessment unit is where assessments of specialized treatment needs are conducted; removing a provision stating that upon arrival at the initial placement is when the youth's comprehensive plan for specialized treatment is completed; adding that the mental health needs assessment and intellectual disability diagnosis is provided by *mental health* staff (rather than *psychology or psychiatry* staff); specifying that youth with a moderate mental health need are placed at a facility offering the necessary clinical *and/or* psychiatric (rather than clinical *and* psychiatric) support; modifying the descriptions of youth with a low mental health need or no mental health need to be based on whether the youth requires follow-up mental health or psychiatric services, *regardless of whether the youth has a diagnosis*; adding that a *mental health professional* (rather than only a *psychologist*) may refer a youth for a determination of need for capital and serious violent offender treatment, and that the determination of need is based on a *clinical* (rather than *psychological*) assessment; adding that the assessment of need for substance use services is conducted by *mental health staff or a chemical dependency counselor* (rather than a *psychologist or mental health professional*); and adding that youth are provided specialized aftercare as needed and as available. This replaces a listing of the programs that, if completed, would qualify the youth for specialized outpatient aftercare as needed, as recommended, and as available.

FISCAL NOTE

Emily Anderson, Chief Financial and Operating Officer, has determined that, for each year of the first five years the amended sections are in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the sections.

PUBLIC BENEFITS/COSTS

Cameron Taylor, Policy Advisor, has determined that, for each year of the first five years the amended sections are in effect, the public benefit anticipated as a result of administering the sections will be improvements to the rehabilitative stage system to more appropriately indicate a youth's motivation and readiness to change patterns of behavior and thinking, to more clearly articulate expectations of each stage in the program to youth and staff, and to more accurately capture a youth's readiness for parole in order to enhance public safety.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. No private real property rights are affected by adoption of these sections.

GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the proposed rules are in effect, the rules will have the following impacts.

1. The proposed rules do not create or eliminate a government program.

2. The proposed rules do not require the creation or elimination of employee positions at TJJD.
3. The proposed rules do not require an increase or decrease in future legislative appropriations to TJJD.
4. The proposed rules do not impact fees paid to TJJD.
5. The proposed rules do not create a new regulation.
6. The proposed rules do not expand, limit, or repeal an existing regulation.
7. The proposed rules do not increase or decrease the number of individuals subject to the rules' applicability.
8. The proposed rules will not positively or adversely affect this state's economy.

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Josh Bauermeister, Policy Writer, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas, 78711, or email to policy.proposals@tjjd.texas.gov.

SUBCHAPTER A. ADMISSION, PLACEMENT, RELEASE, AND DISCHARGE

DIVISION 1. DEFINITIONS

37 TAC §380.8501

STATUTORY AUTHORITY

The amended sections are proposed under Section 242.003, Human Resources Code, which requires TJJD to adopt rules appropriate to the proper accomplishment of TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs.

No other statute, code, or article is affected by this proposal.

§380.8501. *Definitions.*

As used in this chapter, the following words and terms shall have the following meanings unless the context clearly indicates otherwise.

(1) *Assessment Rating*--a score derived from evidence-based criminogenic factors in a youth's history used to assess the danger a youth poses to the community.

(2) *Committing Offense*--the most serious of the relevant offenses found at the youth's commitment proceeding and any probated offense(s) modified by the commitment order. If a committing offense is a violation of a federal statute, the offense will be treated as a violation of a state statute which prohibits the same conduct as the relevant federal offense.

(3) *Community Reentry/Transition Plan*--an individual case plan that includes conditions of parole or placement for youth who are moving to a less restrictive environment. The community reentry/transition plan summarizes the youth's progress [to date], identifies risk factors and protective factors, provides referrals to community services and supports, and identifies objectives for the youth to complete at the next placement.

(4) *Conditional Placement*--a trial living arrangement at a lower restriction level without changing the youth's currently assigned placement. Conditional placements may be to medium-restriction facilities or approved home placements. Continued placement at the lower restriction level is dependent on meeting pre-established conditions.

(5) Determinate Sentence Review--a review conducted for youth with determinate sentences who have not met program completion criteria in which staff determines the appropriate action (e.g., request a transfer hearing under Section 54.11, Family Code, transfer to TDCJ parole).

(6) Discharge--an action that ends the jurisdiction of the Texas Juvenile Justice Department (TJJD) [~~Department's (TJJD's) jurisdiction~~] over a youth.

(7) Final Decision Authority--the TJJD executive director or a staff member designated by the executive director in writing (e.g., via operational manual, administrative directive).

(8) High Restriction and Medium Restriction--see definitions in §380.8527 of this chapter.

(9) Home Placement--a placement in the home of the parent, other relative or individual acting in the role of parent, managing conservator, or guardian, or in an independent living arrangement (excluding contract independent living programs); ~~for youth who have earned parole status~~].

(10) Home Substitute Placement--a program placement in the community that is not high restriction for youth who have earned parole status.

~~[(11) Indicator--tasks that clarify and show evidence of completing the stage objective. These tasks are completed by the youth and involve discussion with the youth's case manager, group, multi-disciplinary team, and/or family/adult mentor. To complete an objective, all indicators must be completed.]~~

(11) ~~[(12)]~~ Initial Placement--a placement to which youth are assigned [~~following a period of assessment at a TJJD orientation and assessment unit~~] upon being committed to TJJD. This definition does not include a youth's placement at the orientation and assessment unit.

(12) ~~[(13)]~~ Minimum Length of Stay--the predetermined minimum period of time established by TJJD that a youth will be assigned to live in a high- or medium-restriction placement before being placed on parole status.

(13) ~~[(14)]~~ Minimum Period of Confinement--the predetermined minimum period of time established by law that a youth committed to TJJD on a determinate sentence must remain confined in a high-restriction placement.

(14) ~~[(15)]~~ Most Serious of the Relevant Offenses--the offense that carries the most severe consequences, which are, from most to least severe:

(A) an offense which carries a determinate sentence;

(B) the offense for which the designated minimum length of stay will produce the longest time in the physical custody of TJJD;

(C) the offense which requires the highest facility restriction level [~~of restriction in placement~~];

(D) the offense which carries the most severe criminal penalty; and

(E) the most recently adjudicated offense.

(15) ~~[(16)]~~ Non-Sentenced Offender--a youth who is committed to TJJD for an indeterminate period of time, not to exceed age 19.

~~[(17) Objective--the most important concepts or skills necessary to earn a stage and to progress in the rehabilitation program. Each objective has one or more indicators of completion.]~~

(16) ~~[(18)]~~ Offense Severity--a rating of high, moderate, or low based on the degree of the committing or revocation offense as defined by the Penal Code or relevant federal statute and any of the following applicable aggravating factors:

(A) sex offense as identified in Section 62.001, Code of Criminal Procedure;

(B) felony against a person;

(C) possession or use of a weapon or firearm during the commission of the committing offense.

(17) ~~[(19)]~~ Parole Status--a status assigned to a youth when program completion criteria have been met or the Release Review Panel has ordered [~~orders~~] the youth's release under supervision. Parole status qualifies the youth for placement in the home or a home substitute and ensures that the youth may not be moved to a high-restriction placement without the highest level of due process afforded to TJJD youth.

(18) ~~[(20)]~~ Program Completion Criteria--~~[occurs when a youth has met]~~ specific requirements established by rule that entitle a youth to parole when met [~~in order to earn release from a residential program~~].

(19) ~~[(21)]~~ Program Completion Review--a review in which staff determines whether a youth appears to meet program completion criteria.

(20) ~~[(22)]~~ Release under [~~Under~~] Supervision (or Release)--the act of placing a youth on parole status under TJJD supervision. [~~The youth remains under the jurisdiction of TJJD and is subject to the conditions of parole supervision.~~]

(21) ~~[(23)]~~ Revocation Offense--the offense on which a youth's minimum length of stay is based following a parole revocation hearing. It is the most serious of the relevant offenses found at the [~~parole revocation~~] hearing.

(22) ~~[(24)]~~ Risk and Protective Factors--risk factors are aspects of a youth's environment, behavior, and mental processes that contribute to potential for further delinquent activity. Protective factors are positive aspects of individual youth situations that keep a youth away from delinquent activity.

(23) Risk Level--a level derived from the risk assessment tool used to assess the danger a youth poses to the community.

(24) ~~[(25)]~~ Sentenced Offender--a youth committed to TJJD pursuant to Section 54.04(d)(3) or Section 54.05(f), Family Code, with a fixed sentence assigned by the committing court. Depending on the length of the sentence, a youth may be transferred to the Texas Department of Criminal Justice (TDCJ) to complete the sentence.

~~[(26) Stage--measure of progress through TJJD's rehabilitation program. The youth's stage assignment reflects the stage objectives the youth is currently working on.]~~

(25) ~~[(27)]~~ Transfer--a movement of a sentenced offender to the TDCJ - Correctional Institutions [~~Institutional~~] Division or TDCJ - Parole Division.

(26) ~~[(28)]~~ Transition--the act of moving a youth from a high-restriction facility to a medium-restriction facility based on the youth's progress in the rehabilitation program. Transition does not result in the youth being placed [~~without placing the youth~~] on parole

status. [Transitions are used to facilitate the youth's adjustment to the community.]

(27) [(29)] Transition Review--a review in which staff determines whether a youth meets criteria for transition under §380.8545 of this chapter.

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 July 15, 2022.

TRD-202202690

Christian von Wupperfeld

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: August 28, 2022

For further information, please call: (512) 490-7278



DIVISION 3. PLACEMENT PLANNING

37 TAC §380.8521

STATUTORY AUTHORITY

The amended sections are proposed under Section 242.003, Human Resources Code, which requires TJJD to adopt rules appropriate to the proper accomplishment of TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs.

No other statute, code, or article is affected by this proposal.

§380.8521. *Facility Assignment System.*

(a) Purpose. The purpose of this rule is to establish an objective system of assigning youth to the most appropriate facility considering the Texas Juvenile Justice Department's (TJJD's) responsibilities to provide for public protection and promotion of rehabilitation. TJJD seeks to place youth in the least restrictive setting possible to address the youth's treatment needs while considering public safety.

(b) General Provisions.

(1) This rule applies to placement decisions made:

(A) after [upon release from an intake unit on] initial commitment or recommitment to TJJD; and

(B) following a parole revocation hearing.

(2) Youth may be assigned to subsequent residential placements based on changing treatment needs, reduction in risk level, progress in rehabilitation programming, safety issues, or overpopulation concerns. For more information on transfers between facilities and transitions to less restrictive placements, see §380.8545 of this chapter [title].

(3) Placements described in this rule are limited to high- or medium-restriction [high or medium restriction] facilities. For more information on facility restriction levels, see §380.8527 of this chapter [title].

(c) Placement System Factors. Placement decisions are based on factors including, but not limited to, those listed in paragraphs (1) - (4) of this subsection, with each factor given priority in the order listed.

(1) Gender--Youth are generally assigned to male-only or female-only facilities. However, during orientation and assessment or to receive treatment for certain specialized treatment needs, youth may

be assigned to co-educational facilities. Youth in co-educational facilities have equal access to agency programs and activities.

(2) Treatment Needs--Of the facilities available for the youth's gender, youth are assigned to the facility that is best suited to meet the youth's individual treatment needs. Youth with the highest need for any of the following specialized treatment services will be placed in a facility that provides those services: mental health, intellectual disability, [mental retardation,] sexual behavior, capital or serious violent [capital/violent] offender, or substance use services [alcohol or other drugs]. Whenever possible, youth with co-occurring specialized treatment needs are assigned to placements providing each indicated type of treatment. See §380.8751 of this chapter [title] for more information on the assessment of specialized treatment needs. Age, [and] medical needs, and intellectual impairment are also considered in determining an appropriate facility assignment.

(3) Risk Assessment--Of the facilities available for the youth's gender and treatment needs, youth are assigned to a high- or medium-restriction [high or medium restriction] facility based on an assessment of risk factors, such as [that includes] offense history, age at first offense [referral to juvenile court], past facility escapes, [behavior while at the orientation and assessment unit or on parole,] and other criminogenic factors.

(A) Placement upon Initial Commitment or Recombitment to TJJD.

(i) Sentenced offenders are initially assigned to a high-restriction facility.

(ii) [(i)] Non-sentenced [Except as provided in clause (ii) of this subparagraph, non-sentenced] offenders with a committing offense of high [or moderate] severity [and all sentenced offenders] are initially assigned to a high-restriction [high restriction] facility.

(iii) Non-sentenced offenders with a committing offense of moderate severity who score in the high or medium category on the risk assessment are initially assigned to a high-restriction facility.

(iv) [(ii)] Non-sentenced offenders with a committing offense of moderate severity who score in the lowest category on the risk assessment are initially assigned to a high- or medium-restriction [high or medium restriction] facility, depending on the nature of the committing offense and other factors identified in this rule.

(v) [(iii)] Non-sentenced offenders with a committing offense of low severity are initially assigned to a high- or medium-restriction [high or medium restriction] facility, depending on the results of the risk assessment and other factors identified in this rule.

(B) Placement after Level I Revocation Hearing [upon Disciplinary Transfer from Parole to a Residential Facility].

(i) Following revocation as a result of a Level I due process hearing held in accordance with §380.9551 of this chapter [title], non-sentenced offenders found to have engaged in felony-level conduct while on parole and all sentenced offenders are assigned to high-restriction [high restriction] facilities.

(ii) Following revocation as a result of a Level I due process hearing held in accordance with §380.9551 of this chapter [title], non-sentenced offenders found to have violated conditions of parole that are not law violations or engaged in misdemeanor-level conduct are assigned to high- or medium-restriction [high or medium restriction] facilities, depending on the results of the risk assessment and other factors identified in this rule.

(4) Proximity to Home--Of the facilities available for the youth's gender, treatment needs, and risk assessment, youth are assigned to the facility closest to the residence of the youth's parent/guardian. In cases where the closest placement is at or above established population capacity or specialized treatment population capacity, the youth may be assigned to another appropriate placement.

(d) Waivers. Except for non-sentenced offenders with a committing offense of high severity and sentenced offenders, the facility restriction level required under this rule may be waived by the executive director or designee [division director over residential services or his/her designee]. A designated restriction level may be waived in order to meet a youth's specific treatment needs or when it is determined that a youth has a disability or special medical condition that would prevent the youth from functioning in the designated restriction level.

(e) Parent Notification. Parents or guardians of youth are notified of placement assignments in accordance with §380.8705 of this chapter [title].

(f) Individual Exceptions. The executive director or [his/her] designee may make exceptions to placement assignments under this rule on a case-by-case basis, taking into consideration a youth's specific treatment needs and public safety.

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

Filed with the Office of the Secretary of State on July 15, 2022.

TRD-202202691

Christian von Wupperfeld

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: August 28, 2022

For further information, please call: (512) 490-7278



SUBCHAPTER B. TREATMENT DIVISION 1. PROGRAM PLANNING

37 TAC §380.8702, §380.8703

STATUTORY AUTHORITY

The amended sections are proposed under Section 242.003, Human Resources Code, which requires TJJD to adopt rules appropriate to the proper accomplishment of TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs.

No other statute, code, or article is affected by this proposal.

§380.8702. *Rehabilitation Program Overview.*

(a) Purpose. The purpose of this rule is to identify the [agency's] philosophy and approach of the Texas Juvenile Justice Department (TJJD) to the rehabilitation of youth in TJJD's care [juvenile delinquents] in order to reduce future delinquent behavior and increase public safety [youth accountability].

(b) Applicability. This rule applies to youth committed to TJJD [the Texas Juvenile Justice Department (TJJD)].

(c) Definitions. See §380.8501 of this chapter [title] for definitions of terms used in this rule.

(d) General Provisions.

(1) TJJD provides a trauma-informed rehabilitative program that is focused on delivering needed treatment, assessing behavioral progress, assessing increases in protective factors and decreases in risk factors, and assessing the ability of youth to use skills learned in treatment and programming.

~~(1) Each TJJD-operated residential facility uses an integrated, system-wide rehabilitative program that offers a menu of therapeutic techniques, tools, and program components to help individual youth increase their ability to be productive citizens and to avoid re-offending.~~

(2) All treatment and programming is delivered in the least restrictive setting appropriate to the youth, consistent with the rules of this chapter.

(3) ~~(2)~~ To the extent possible, TJJD's rehabilitative program offers programs that ensure [in an adequate manner so that] youth receive appropriate rehabilitation services, including those recommended by the committing court.

(4) ~~(3)~~ All aspects of the TJJD rehabilitation program are individualized and performance-based, with clearly defined expectations as set forth in §380.8703 of this chapter [title].

(5) ~~(4)~~ Each youth's individual progress is reviewed monthly. The review addresses identified risk and protective factors and individual abilities.

~~(5) Youth in residential facilities are reviewed and assessed by a multi-disciplinary team. Youth on parole in the community are reviewed and assessed by the assigned parole officer.~~

(6) As youth progress in the rehabilitation program, there are increased expectations for demonstrating developed skills and social responsibility, a decreased need for staff intervention, and an increase in earned privileges [as set forth in §380.9502 of this title].

(7) TJJD facilities maintain a structured daily schedule [16-hour day] for all youth. Each [During each] day, youth work on components of the rehabilitation program.

(8) TJJD facilities provide for and youth are required to participate in a structured, individually appropriate educational program or equivalent, with appropriate supports.

(9) TJJD facilities provide and eligible youth may participate in work experiences.

(10) TJJD facilities must provide and youth are given the opportunity [required] to participate in regular large-muscle exercise and recreation programs.

~~(11) TJJD facilities provide and youth are required to participate in skills development groups.~~

(11) ~~(12)~~ Staff members receive appropriate training and certification related to their role in the rehabilitation program and the types of services they provide.

(12) ~~(13)~~ TJJD may pilot new programs or program components for youth whose needs cannot be met by existing program components.

§380.8703. *Rehabilitation Program Stage Requirements and Assessment.*

(a) Purpose. Youth [Texas Juvenile Justice Department (TJJD) youth] earn the ability to move to less restrictive placements by progressing through a stage system that measures progress in the rehabilitation program. The purpose of this rule is to provide a general outline of the areas in which a youth must demonstrate progress and to describe the process for assessing progress.

(b) Applicability. This rule applies to all residential facilities operated by the Texas Juvenile Justice Department (TJJD) [TJJD]. This rule does not apply to youth in contract-care [contract care] programs that are not required to provide the TJJD rehabilitation program. This rule does not apply to youth on parole status.

(c) Definitions. See §380.8501 of this chapter for definitions of terms used in this rule.

(d) General Themes in the Rehabilitation Program. [For each stage, a youth completes objectives around the following general themes:]

(1) TJJD's rehabilitation program is composed of a set of stages with objectives related to each youth's rehabilitative needs. Expectations generally increase as youth progress through the stages.

{(1) demonstrate an understanding of risk and protective factors and show a decrease in risk factors and an increase in protective factors over the course of the rehabilitation program;}

(2) Progress is measured through an assessment of the youth's demonstration of skills in areas such as:

(A) appropriate participation in education/vocational and treatment/intervention activities;

(B) understanding and use of therapeutic tools;

(C) ability to develop, discuss, and work toward individual goals;

(D) application of regulation tools to maintain safe behavior; and

(E) reducing risk factors and increasing protective factors;

{(2) demonstrate increased understanding of how those personal risk factors relate to success/lack of success in the community and an understanding of how the youth's committing offense was related to risk factors; and}

(3) The objectives for each youth shall be in writing and provided to the youth.

{(3) engage the youth's family in programming;}

(4) Each youth is provided an equal opportunity, as the youth's behavior warrants, to participate in the scheduled activities needed to progress.

(e) [Process for] Stage Assessment.

(1) A stage assessment shall be conducted when the youth completes the required objectives for the stage or within 90 days from the previous stage assessment, whichever occurs first.

(2) Each stage assessment includes a comprehensive assessment of the youth's progress in the rehabilitation program.

(3) [(A)] The parent/guardian must be given an opportunity [and parole officer are invited to each meeting and allowed] to provide input to be considered at each stage assessment.

{(B) The youth is responsible for being prepared to discuss information related to the youth's program and preparing any information the youth is required to present for stage progression;}

{(C) During the stage assessment;}

{(i) the youth's general progress in the program and on specific case plan objectives is reviewed;}

{(ii) risk and protective factors are reviewed;}

{(iii) medical and mental health information is discussed (if applicable);}

{(iv) feedback is provided to the youth on areas of strength and areas needing improvement;}

{(v) interventions to assist the youth's progress are discussed and developed; and}

{(vi) community reentry planning is discussed;}

(4) [(3)] As a result of a stage assessment, the youth is assigned to the most appropriate stage. Youth may be assigned to a stage that is more than one level higher than the current stage, if appropriate. [If it is determined that the youth meets the requirements for completing the stage, the youth is promoted to the next stage.]

{(4) If it is determined that the youth does not meet the requirements for completing the stage, the youth remains on the current stage;}

(5) Each youth's specific needs and responsivity must be considered when assessing a youth's stage. If a youth fails to progress through the stages, staff must conduct a review for responsivity needs and, if appropriate, implement individualized interventions.

(6) [(5)] Youth may not be assigned to a lower [demoted in] stage, except [when]:

(A) when it is determined that behavior proven at a Level II due process hearing held in accordance with §380.9555 of this chapter indicates the youth no longer meets the requirements of the current stage assignment; or [stage demotion is assigned as a disciplinary consequence following a due process hearing, in accordance with §380.9503 of this chapter; or]

(B) [a youth is returned to a high- or medium-restriction facility;] in accordance with subsection (g) [(h)] of this section.

(7) If a youth loses release eligibility under §380.8555 or §380.8559 of this chapter, the youth is no longer designated as having completed the rehabilitative program under this rule and is assigned to stage 4.

(8) [(6)] The youth and the youth's parent/guardian are notified of the results of the stage assessment. [If appropriate, an updated individual case plan must be developed following the meeting;]

(f) Requirements for Stage Promotion.

(1) Stage 1--this stage focuses on building a foundation of safety and regulation. During this stage, the youth will gain [is completed when TJJD determines that the youth has demonstrated] basic knowledge of the TJJD stage objectives and requirements for program completion. The youth attends the foundational skills development groups and participates in individual sessions with the case manager to develop an assessment of risk and protective factors. To determine whether youth have completed this stage, youth are assessed on factors including [complete stage 1, the youth must]:

{(A) complete the following objectives in accordance with the specified indicators for each objective;}

(A) [(i)] reviewing the youth's own unique [understand the definition of] risk and protective factors with the case manager;

{(ii) explore risk factors related to TJJD commitment;}

{(iii) attempt to involve a family member or an adult mentor, with assistance from the family liaison and case manager; and}

~~[(iv)]~~ establish a personal goal and identify strategies to achieve that goal;]

(B) discussing [~~present and discuss~~] the youth's progress toward goals with [the] staff [as specified in the stage indicators];

(C) working on [~~complete~~] case plan objectives with the case manager; and

(D) participating [~~consistently participate~~] in the following other areas of programming:

(i) treatment and intervention activities;

~~[(i)]~~ groups and individual counseling sessions;

~~[(ii)]~~ specialized treatment programs (if applicable);]

(ii) [~~(iii)]~~ academic and workforce development programs; and

(iii) [~~(iv)]~~ application of learned skills in daily behavior.

(2) Stage 2--this stage focuses on healthy connection and the ability to make repairs after relational harm. Youth on this stage are moving beyond the pre-contemplation stage of change to accept that changes are needed to improve their ability to be successful in the future. To determine whether youth have completed this stage, youth are assessed on factors including: [~~is completed when TJJD determines that the youth has identified and discussed personal risk and protective factors; identified patterns in the youth's thoughts, feelings, attitudes, values, and beliefs that relate to TJJD commitment and ongoing behaviors; and participated with staff in targeting specific skills for development based on the youth's risk and protective factors. To complete stage 2, the youth must:]~~

~~[(A)]~~ complete the following objectives in accordance with the specified indicators for each objective:]

(A) [~~(i)]~~ exploring [~~explore~~] personal risk and protective factors, including those related to TJJD commitment;

(B) [~~(ii)]~~ sharing plans for community reintegration [~~share identified risk and protective factors~~] with the youth's family, community supports, or adult mentor; [~~and~~]

(C) [~~(iii)]~~ exploring [~~identify~~] patterns in thoughts, feeling, attitudes, beliefs, and values;

(D) making progress towards personalized goals;

(E) [~~(B)]~~ presenting and discussing [~~present and discuss~~] the youth's progress with the youth's treatment team [~~evaluating staff as specified in the stage indicators];~~

(F) [~~(C)]~~ completing [~~complete~~] case plan objectives; and

(G) [~~(D)]~~ participating [~~consistently participate~~] in other areas of programming as described in paragraph (1)(D) of this subsection.

(3) Stage 3--this stage focuses on taking responsibility and making prosocial decisions. Youth on this stage are preparing to move into the action stage of change through continued acknowledgment of the need to change and planning for their future. To determine whether youth have completed this stage, youth are assessed on factors including: [~~is completed when TJJD determines that the youth has completed assigned skill lessons designed to reduce risk factors and enhance protective factors. The youth is expected to take responsibility for the committing offense, identify patterns in thinking, and be able to discuss~~

the impact of the offense on direct and indirect victims. The youth is expected to incorporate the new skills learned while in the facility into daily living situations. To complete stage 3, the youth must:]

~~[(A)]~~ complete the following objectives in accordance with the specified indicators for each objective:]

(A) [~~(i)]~~ demonstrating [~~show~~] a reduction in [~~of~~] risk factors and an increase in protective factors;

(B) [~~(ii)]~~ taking [~~take~~] responsibility for behaviors leading to commitment [~~the committing offense];~~ [~~and~~]

~~[(iii)]~~ share progress on reducing risk factors and increasing protective factors with the youth's family member or adult mentor;]

~~[(B)]~~ present and discuss the youth's progress with the evaluating staff as specified in the stage indicators;]

(C) completing [~~complete~~] case plan objectives; and

(D) participating [~~consistently participate~~] in other areas of programming as described in paragraph (1)(D) of this subsection.

(4) Stage 4--this stage focuses on demonstrating and practicing learned skills for youth. The purpose of this stage is demonstrating independence through application of treatment concepts and skills learned in earlier stages. [~~is completed when TJJD determines that the youth demonstrates and practices skills learned in skills groups through daily application in situations that present increased risk for the youth. Youth are expected to engage in responsible behaviors that are consistent with identified protective factors on a regular basis. Additional skills are learned as assigned.] This stage is considered the second-highest stage for purposes of eligibility for transition under §380.8545 of this chapter. To determine whether youth have completed this stage, youth are assessed on factors including~~ [~~To complete stage 4, the youth must:]~~

~~[(A)]~~ complete the following objectives in accordance with the specified indicators for each objective:]

(A) [~~(i)]~~ demonstrating continued [~~show a~~] reduction in [~~of~~] risk factors and [~~an~~] increase in protective factors; [~~and~~]

(B) [~~(ii)]~~ identifying [~~identify~~] new thoughts, feelings, attitudes, beliefs, and values that might increase success in the community;

~~[(B)]~~ present and discuss the youth's progress with the evaluating staff as specified in the stage indicators;]

(C) completing [~~complete~~] case plan objectives; and

(D) participating [~~consistently participate~~] in other areas of programming as described in paragraph (1)(D) of this subsection.

(5) Rehabilitative stages completion status--this designation indicates that a youth has completed stage 4 and [~~Youth Empowerment Status (YES)--youth who complete stage 4 and remain in a residential facility are assigned to Youth Empowerment Status. This status requires youth to continue to work in the program to maintain their gains, continue to reduce risk factors and increase protective factors, continue their skills development, and contribute positively to their living environment. If TJJD determines that the youth meets all objectives, the youth is placed on active status. If TJJD determines that the youth does not meet all objectives, the youth is placed on inactive status. Stage YES-Active] is considered the highest stage for purposes of program completion under §380.8555 and §380.8559 of this chapter. Youth are in the maintenance stage of change and will be given the op-~~

portunity to demonstrate and apply learned skills. Youth are expected to [The youth's objectives are:]

[(A) show a reduction of risk factors and an increase in protective factors;]

[(B) complete case plan objectives; and]

[(C) consistently] participate in other areas of programming as described in paragraph (1)(D) of this subsection [subsection (f)(1)(D) of this section].

[(g) Opportunity to Demonstrate Completion of Requirements.]

[(1) Some objectives may be completed in a single month. Completion of all stage requirements for promotion is demonstrated primarily through consistent participation in scheduled activities and development of skills to address risk factors, which will generally take longer than one month to achieve. The stage requirements are generally sequential.]

[(2) During each monthly assessment period, the youth is provided an equal opportunity, as the youth's behavior warrants, to participate in the scheduled activities needed to progress. With reasonable effort by the youth, the requirements of the highest stage will be completed within the youth's initial minimum length of stay or minimum period of confinement. For youth whose minimum length of stay or minimum period of confinement exceeds 12 months, the schedule must provide an opportunity for completion of the highest stage within one year.]

(g) [(h)] Stage Assessment upon Return to a High- or Medium-Restriction Facility or upon New Commitment. A youth is reassessed and placed on the most appropriate stage for the youth's current behavior and progress in the rehabilitation program when the youth is:[:]

(1) [If a youth is] returned to a high-restriction facility for disciplinary reasons through a Level II due process hearing; [other than a parole revocation hearing, the youth is placed on stage 3 or retained on the current stage if currently assigned to stage 1 or 2.]

(2) [If a youth is] returned to a high- or medium-restriction [high-restriction] facility for disciplinary reasons through a Level I due process hearing; or [as a result of a parole revocation hearing, the youth is placed on stage 1.]

(3) [If a youth is] recommitted to TJJD for a new offense [committed while in the community, the youth is placed on stage 1].

[(4) If a youth is recommitted to TJJD for a new offense committed in a TJJD-operated or TJJD-contracted facility, the youth is reassessed by TJJD and placed on the most appropriate stage for the youth's current behavior and progress in the rehabilitation program.]

[(5) If a youth is returned to a high- or medium-restriction facility for non-disciplinary reasons, the youth is reassessed by TJJD and placed on the most appropriate stage for the youth's current behavior and progress in the rehabilitation program.]

[(6) A youth whose stage is assigned under paragraphs (1) - (3) of this subsection may be promoted more than one stage at the first stage assessment following the return or recommitment.]

[(i) Appeal of Assessment. A youth may appeal the results of a stage assessment or of the lack of opportunity to demonstrate completion of requirements by filing a grievance in accordance with §380.9331 of this chapter. The person assigned to respond to the grievance must not be a staff member who was involved in the assessment being grieved.]

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 July 15, 2022.

TRD-202202692

Christian von Wupperfeld

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: August 28, 2022

For further information, please call: (512) 490-7278



DIVISION 2. PROGRAMMING FOR YOUTH WITH SPECIALIZED TREATMENT NEEDS

37 TAC §380.8751

STATUTORY AUTHORITY

The amended sections are proposed under Section 242.003, Human Resources Code, which requires TJJD to adopt rules appropriate to the proper accomplishment of TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs.

No other statute, code, or article is affected by this proposal.

§380.8751. *Specialized Treatment.*

(a) Purpose. The purpose of this rule is to establish the process by which youth committed to the Texas Juvenile Justice Department (TJJD) are assessed and treated for specialized treatment needs. The purpose of all provisions in this rule is to promote successful youth reentry and reduce risk to the community by addressing individual specialized treatment needs through programs that are designed [shown] to reduce risk to reoffend.

(b) Definitions. Except as indicated in this subsection, see §380.8501 of this chapter [title] for definitions of terms used in this rule.

(1) Intensive Treatment Program--a high-intensity treatment program [; residential program in which all youth receiving treatment reside in a common dormitory. Intensive treatment programs are] designed to address youth with a high need for specialized treatment. Treatment is generally delivered in specialized groups by licensed or appropriately trained staff [in a milieu that is designed to address the specialized need on a continuous basis].

(2) Psycho-educational Program--a low-intensity [education] program delivered by appropriately trained staff that is designed to address youth with a low need for specialized treatment.

(3) Sex Offense--a reportable adjudication as defined in Article 62.001 of the Texas Code of Criminal Procedure.

(4) Mental Health Professional--see definition in §380.9187 of this chapter [title].

(5) Moderate-Intensity [Short-Term] Treatment Program--a [moderate-intensity treatment] program designed to address youth with a moderate need for specialized treatment. Treatment is generally [involving specialized groups and individual counseling] delivered in specialized groups by licensed or appropriately trained staff. [Short-term treatment programs are designed to address youth with a moderate need for specialized treatment.]

(c) General Provisions.

(1) Youth with one or more specialized needs will have these needs addressed while under TJJD jurisdiction. [~~Some specialized programs may be provided concurrently and others successively.~~] Youth may have specialized needs addressed while in a high- or medium-restriction [~~high or medium restriction~~] facility or on parole status [~~based on assessment outcomes, treatment team recommendations, and any necessary administrator approvals~~].

(2) If a youth cannot be provided the type(s) of specialized program designated in this rule for the youth's [~~his/her~~] assessed need level, the youth will be provided with the most appropriate alternate form of [~~specialized~~] intervention for that treatment need.

(d) Treatment Planning.

(1) Upon admission to TJJD, comprehensive assessments are conducted [~~at the orientation and assessment unit~~] to determine if a youth has any specialized treatment needs and to identify the type of specialized program that is best suited to address those needs. For each youth assessed as having a specialized treatment need, an initial plan documenting all specialized treatment needs and recommended programs is developed as soon as possible [~~before the youth leaves the orientation and assessment unit~~].

(2) In addition to the initial plan, a [~~A~~] comprehensive plan is developed for each youth with specialized treatment needs [~~upon the youth's arrival at his/her initial placement~~]. The comprehensive plan must:

(A) include individually tailored statements regarding treatment goals and objectives;

(B) include the tentative sequence and start dates for each specialized program;

(C) be developed with input from the youth; and

(D) be documented in the youth's individual case plan.

(3) The sequence and start dates for specialized programs are based on individual youth needs, facility schedules, and program openings, with consideration given to the youth's minimum length of stay or minimum period of confinement.

(4) The comprehensive specialized treatment plan is reviewed, reevaluated [~~re-evaluated~~], and modified in accordance with rules for the review and modification of the individual case plan, as set forth in §380.8701 of this chapter [~~title~~]. The plan is also modified following each reassessment of a youth's specialized treatment needs.

(5) Specialized treatment needs may be reassessed at any time during a youth's stay in TJJD.

(e) Specialized Treatment Needs. The areas of specialized treatment need are set forth in paragraphs (1) - (6) of this subsection, with each area given priority for placement and treatment based on urgency of need.

(1) Medical. Each youth is provided comprehensive medical and dental examinations. Based on the results of these examinations, each youth is assigned a need level for medical or dental services. Non-compliance with treatment may cause any youth to be designated as higher need than the underlying condition would typically warrant.

(A) High Need--includes youth who require medical, surgical, or dental services of an intense/acute nature. The youth has a serious acute condition, experiences an exacerbation of a chronic medical or dental condition, sustains a serious injury, and/or may require hospitalization. The youth's condition is unstable or unpredictable, and recovery requires 24-hour nursing care or supervision beyond the scope of normal infirmary services. The youth's medical needs, un-

til resolved, take precedence over other therapeutic interventions and temporarily prevent active participation in programming.

(B) Moderate Need--includes youth who are diagnosed with a medical or dental condition that is moderate to serious in severity and that may require frequent access to clinical and/or hospital services for symptom exacerbation.

(C) Low Need--includes youth who are diagnosed with a condition that is mild to moderate in severity and does not require ongoing treatment or monitoring. The youth may be temporarily restricted from an activity due to an accident, injury, or illness of mild to moderate severity.

(D) None--includes youth with no medical or dental diagnosis requiring ongoing attention.

(2) Mental Health. The mental health needs assessment is provided by mental health [~~psychology and psychiatry~~] staff through comprehensive psychological and/or [~~and~~] psychiatric evaluation using the most current edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM). Based on this assessment, each youth is assigned a need level for mental health treatment services.

(A) High Need - Level 1.

(i) This level of treatment need includes youth who:

(I) are diagnosed with a mental disorder. As a result of the disorder, there is disorganized, bizarre, and/or grossly inappropriate behavior in one or more of the following areas: social or interpersonal interactions, educational or vocational participation, or the ability to manage daily living requirements;

(II) have an assessment of adaptive functioning that is consistent with the level of impairment noted;

(III) cannot meaningfully participate in programming until the underlying disorder is stabilized; and/or

(IV) are an imminent danger to themselves or others as a result of the mental disorder.

(ii) This level of impairment is not the result of a Conduct Disorder, Oppositional Defiant Disorder, or similar impulse control/behavioral [~~behavioral~~] disorders and is not the result of intoxication or withdrawal from drugs.

(iii) Youth with this level of impairment require a protective environment during this phase of the disorder and are treated at an agency-operated crisis stabilization unit or a psychiatric hospital with psychiatric care as the highest priority.

(B) High Need - Level 2.

(i) This level of treatment need includes youth who:

(I) are diagnosed with a mental disorder. As a result of the disorder, there is moderate to severe impairment in one or more of the following areas: social or interpersonal interaction, educational or vocational participation, or the ability to manage daily living requirements despite receiving psychiatric care and clinical support services;

(II) have an assessment of adaptive functioning that is consistent with the level of impairment noted; and/or

(III) are having a difficult time maintaining stability and program participation despite receiving psychiatric services and local clinical support.

(ii) This level of impairment is not the result of a Conduct Disorder, Oppositional Defiant Disorder, or similar impulse

control/behavioral [behavioral] disorders and is not the result of intoxication or withdrawal from drugs.

(iii) Youth with this level of treatment need are placed in an intensive mental health treatment program with structured interventions and enhanced clinical support services in addition to regular psychiatric services.

(C) Moderate Need.

(i) This level of treatment need includes youth who:

(I) are diagnosed with a mental disorder. As a result of the disorder, behavior is mildly impaired by signs and symptoms of the mental disorder in one or more of the following areas: social or interpersonal interaction, educational or vocational participation, or ability to manage daily living requirements with regular psychiatric care and/or psychological intervention;

(II) have an assessment of adaptive functioning that is consistent with the level of impairment noted; and/or

(III) display symptoms or difficulties with adaptive behavior as a result of abuse or trauma.

(ii) This level of treatment need is not the result of a Conduct Disorder, Oppositional Defiant Disorder, or similar impulse control/behavioral [behavioral] disorders and is not the result of intoxication or withdrawal from drugs.

(iii) Youth with this level of treatment need are placed in an agency facility offering the necessary clinical and/or psychiatric [and clinical] support. Youth identified with a history of abuse or trauma are offered interventions specific to the trauma to help maintain their ability to function and participate in programming.

(D) Low Need--includes youth who [have a psychiatric diagnosis and] require only periodic mental health services, regardless of whether the youth have a mental health diagnosis, or regular psychiatric services. For youth with a psychiatric diagnosis, the [The] assessment of adaptive functioning is consistent with the level of impairment noted.

(E) None--includes youth who do not require follow-up services from mental health or psychiatric providers, regardless of whether the youth have a mental health diagnosis. [have:]

~~/(i) no mental health diagnosis;]~~

~~/(ii) a mental health diagnosis that is made by history but its influence on the youth's functioning is so mild that it is not a focus of any specialized mental health treatment; or]~~

~~/(iii) a diagnosis that is in remission without any current treatment intervention.]~~

(3) Intellectual Disability. The diagnosis of Intellectual Disability is made by mental health [a psychology and psychiatry] staff based on the results of a culturally validated assessment of cognitive functioning, mental abilities, reasoning, problem solving, abstract thinking, and adaptive behavior as defined in the latest edition of the DSM. Based on this diagnosis, each youth is assigned a need level for intellectual disability services. Youth are assigned to the placement that is best suited to meet the youth's individual treatment needs.

(A) High Need--includes youth diagnosed with Moderate or Severe Intellectual Disability who have [and] corresponding deficits in intellectual and adaptive functioning.

(B) Moderate--includes youth diagnosed with mild Intellectual Disability who have [and] a co-occurring mental health treatment need of moderate or low.

(C) Low Need--includes youth diagnosed with ~~[for]~~ mild Intellectual Disability who have [and] no co-occurring mental health treatment needs.

(D) None--includes youth who have no diagnosis of Intellectual Disability.

(4) Sexual Behavior. The sexual behavior treatment need assessment is provided by a psychologist, mental health professional, or licensed sex offender treatment provider through a clinical interview and an agency-approved juvenile sexual offender assessment instrument. The assessment is provided for youth who have been adjudicated for a sex offense or who have a documented history of sexually inappropriate behavior. Based on this assessment, each youth is assigned a need level for sexual behavior treatment services.

(A) High Need--includes youth who receive an assessment rating of high need for sexual behavior treatment, based on the results of the clinical interview and the agency-approved juvenile sexual offender assessment instrument. Youth with this level of treatment need are assigned to participate in an intensive sexual behavior treatment program.

(B) Moderate Need--includes youth who receive an assessment rating of moderate need for sexual behavior treatment based on the results of the clinical interview and the agency-approved juvenile sexual offender assessment instrument. Youth with this level of treatment need are assigned to participate in a moderate-intensity [short-term] sexual behavior treatment program.

(C) Low Need--includes youth who receive an assessment rating of low need for sexual behavior treatment based on the results of the clinical interview and the agency-approved juvenile sexual offender assessment instrument. Youth with this level of treatment need are assigned to participate in a psychosexual education curriculum.

(D) None--includes youth who have no assessed need for sexual behavior treatment.

(5) Capital and Serious Violent Offender. A psychologist or mental health professional makes a determination of need for capital and serious violent offender treatment for any youth who was found by a court or a Level I due process [an administrative parole revocation] hearing to have engaged in conduct that resulted in the death of or serious bodily injury to a person[; resulted in serious bodily injury to a person;] or involved using or exhibiting a deadly weapon~~[;]~~ and any youth referred by a mental health professional [psychologist] based on a reasonable belief the youth is in need of capital and serious violent offender treatment. The determination is based on the youth's offense history and clinical [psychological] assessment of the youth's need for specialized treatment intervention.

(A) High Need--youth are assigned to participate in an intensive capital and serious violent offender program.

(B) Medium Need--youth are assigned to participate in a moderate-intensity [short-term] program designed to address aggression and violent behavior issues.

(C) Low Need--youth are assigned to participate in a psycho-educational anger management supplemental curriculum.

(D) None--includes youth who are assessed as not having a significant risk related to violent offending or behavior.

(6) Substance Use Services [Alcohol or Other Drug Treatment]. All youth are screened to determine if they should be assessed for a need for substance use services. Those who need further assessment [Youth identified through a screening process as needing further

alcohol or other drug (AOD) assessment] are assessed and diagnosed by mental health staff or a chemical dependency counselor [a psychologist or mental health professional] using the latest edition of the DSM. Based on a clinical interview and the results of an agency-approved, comprehensive assessment instrument, each youth is assigned a need level for substance use services [AOD programming].

(A) High Need--includes youth with a diagnosis of Substance Use Disorder and a high-intensity substance-use-services [AOD] treatment need based on the results of an agency-approved assessment instrument. Youth with this level of treatment need are assigned to participate in an intensive substance-use-services [AOD] treatment program.

(B) Moderate Need--includes youth with a diagnosis of Substance Use Disorder and a moderate-intensity substance-use-services [AOD] treatment need based on the results of an agency-approved assessment instrument. Youth with this level of treatment need are assigned to participate in a moderate-intensity substance-use-services [short-term AOD] treatment program.

(C) Low Need--includes youth with any identified substance use [abuse] history or risk that does not rise to the diagnostic level of Substance Use Disorder. Youth with this level of treatment need are assigned to participate in a psycho-educational substance-use-services [AOD] program.

(D) None--includes youth who have no history of substance use [abuse] or risk of use.

(f) Requirement to Complete Specialized Treatment.

(1) This subsection applies only to youth [committed to TJJD on or after September 1, 2009,] who are assessed as having a high or moderate treatment need in the following treatment areas: sexual behavior, capital and serious violent offender, or substance use services [Sexual Behavior; Capital and Serious Violent Offender; or Alcohol or Other Drug Treatment]. This subsection does not apply to youth assigned to complete psycho-educational supplemental curricula in these treatment areas.

(2) For purposes of §§380.8545, 380.8555, and 380.8559 of this chapter, participation in or completion of assigned specialized treatment programs means:

(A) the youth has completed assigned specialized treatment programs; or

(B) a designee of the executive director with appropriate expertise determines that the youth has made sufficient progress toward treatment goals or that the goals can be addressed in a non-high-restriction setting.

(3) [(2)] This subsection does not apply to decisions made by the Release Review Panel under §380.8557 of this chapter [title].

[(3) To qualify for transition to a medium restriction placement under §380.8545 of this title, a youth who has been assessed as having a high or moderate need must:]

[(A) complete the assigned specialized treatment program(s) while in a high restriction facility; or]

[(B) be scheduled to begin the assigned specialized treatment program(s) in a medium restriction facility, as documented in the youth's most recent specialized treatment plan. A requirement to complete treatment must be included in the youth's conditions of placement; or]

[(C) as approved by the final decision authority for transition in consultation with the division director over treatment program-

ming or designee, make sufficient progress in the assigned specialized treatment program with a corresponding reduction in risk to allow for the youth to continue the specialized treatment in a medium restriction facility. A requirement to complete treatment must be included in the youth's conditions of placement.]

[(4) To earn release to parole under §§380.8555, 380.8559, or 380.8569 of this title, a youth who has been assessed as having a high or moderate need must:]

[(A) complete the assigned specialized treatment program(s) while placed in the youth's current facility restriction level; or]

[(B) as approved by the division director over treatment programming or designee:]

[(i) be scheduled to begin the assigned specialized treatment program(s) while on parole status, as documented in the youth's most recent specialized treatment plan. A requirement to complete treatment must be included in the youth's conditions of placement or conditions of parole, as appropriate; or]

[(ii) make sufficient progress in the assigned specialized treatment program with a corresponding reduction in risk to allow for the youth to continue the specialized treatment while on parole status. A requirement to complete treatment must be included in the youth's conditions of placement or conditions of parole, as appropriate.]

(g) Individual Exceptions.

(1) The requirement to complete specialized treatment as described in subsection (f) of this section may be waived if the division director over specialized treatment [programming] or designee determines that the youth is unable to participate in the assigned specialized treatment program [or curriculum] due to a medical or mental health condition or due to an intellectual disability.

(2) Each youth's individual circumstances are considered when determining the most appropriate type of specialized treatment intervention to assign. A youth may be assigned or reassigned to a specialized program designated for a higher or lower need level than the youth's assessed need level for any reason deemed appropriate by the division director over specialized treatment [programming] or designee.

(3) The executive director or [his/her] designee may make exceptions to provisions of this rule on a case-by-case basis, based on a consideration of the youth's best interests and public safety.

(4) The justification for any individual exceptions granted under this subsection must be documented.

(h) Specialized Aftercare. Youth will be provided specialized aftercare as needed and as available. [Youth who successfully complete one of the following specialized treatment programs, or who otherwise need specialized aftercare as determined by the youth's treatment team, will receive specialized aftercare on an outpatient basis as needed, as recommended by the treatment team, and as available:]

[(1) mental health treatment program;]

[(2) intensive or short-term sexual behavior treatment program;]

[(3) intensive or short-term alcohol or other drug treatment program; or]

[(4) intensive or short-term capital and serious violent offender treatment program.]

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 July 15, 2022.

TRD-202202693

Christian von Wupperfeld

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: August 28, 2022

For further information, please call: (512) 490-7278



CHAPTER 380. RULES FOR STATE-OPERATED PROGRAMS AND FACILITIES

The Texas Juvenile Justice Department (TJJD) proposes to amend §§380.9503, 380.9504, 380.9520, 380.9551, 380.9555, 380.9557, and 380.9729 concerning behavior management, due process hearings, and security and control. TJJD simultaneously proposes to repeal §380.9517 and §380.9535, concerning behavior management. TJJD also proposes new §380.9510, concerning a behavioral intervention program.

SUMMARY OF CHANGES

The amendments to §380.9503, concerning Rules and Consequences for Residential Facilities, will make numerous changes in several areas.

Changes relating to rule violations will include the following: 1) adding that, for disciplinary purposes, directing someone to commit a rule violation is treated the same as committing that violation; 2) adding a definition for "direct someone to commit" a violation; 3) changing the definitions of *Assault of Youth (No Injury)* and *Assault of Staff (No Injury)* to require intent to cause injury and to no longer be limited to making unauthorized physical contact; 4) changing the definition of *Escape* to be limited to high-restriction facilities (rather than applying also to medium-restriction facilities); 5) adding *Unauthorized Absence* as a major rule violation, which means leaving a medium-restriction facility without permission or failing to return from an authorized leave; 6) clarifying that *Attempted Escape* requires that youth have a specific intent to escape; 7) adding *Possessing, Selling, or Attempting to Purchase Ammunition* as a major rule violation; 8) modifying the definition of *Possession of a Weapon* to include selling or attempting to purchase a weapon; 9) adding *Tampering with Monitoring Equipment* to the list of major rule violations; 10) adding *Unauthorized Physical Contact with Another Youth (No Injury)* and *Unauthorized Physical Contact with Staff (No Injury)* as minor rule violations; 11) adding that the violation involving repeated non-compliance with staff applies when a youth fails to comply with a monthly requirement twice in a 60-day period (rather than a 90-day period); 12) clarifying that several rule violations contain the element that the youth intentionally, knowingly, or recklessly engaged in the prohibited conduct (rather than doing so only intentionally, or in some cases, intentionally and knowingly or recklessly); and 13) clarifying that the violations *Sexual Misconduct* and *Tampering with Monitoring Equipment* contain the element that the youth intentionally or knowingly (rather than intentionally and knowingly) engaged in the prohibited conduct.

Changes in §380.9503 relating to disciplinary consequences will include the following: 1) removing the list of specific disciplinary

consequences and adding a list of types of discipline that are prohibited; 2) adding a list of examples of types of discipline that may be used; 3) adding a requirement for TJJD to establish each specific disciplinary consequences in writing in its procedural manuals; 4) adding that a consequence may be imposed only if it is established in writing before the occurrence of the conduct for which the consequence is being issued; 5) specifying that a Level II due process hearing is required before imposing a consequence that materially alters a youth's living conditions and that TJJD will specify in its procedural manuals which consequences require this hearing; 6) adding that consequences requiring a Level II hearing are considered major consequences; 7) specifying the amount of due process required before issuing a consequence if a Level II hearing is not required; 8) specifying that all disciplinary consequences (rather than just certain minor consequences) must be reviewed for policy compliance and that the reviews must be conducted within three calendar days; and 9) adding that the staff member reviewing discipline for policy compliance shall not be the staff member who issued the discipline.

Additional changes in §380.9503 will include the following: 1) adding a definition for the term *Possession*; 2) adding that the term *Attempt to Commit* requires that youth have *specific intent* to commit a rule violation and engage in conduct that amounts to more than mere planning *that tends but fails to effect the commission of the intended rule violation*; 3) clarifying that an incident report is not proof that a youth committed a rule violation and that rule violations are considered proven only through a Level I or Level II due process hearing; 4) adding that an incident report cannot be appealed or grieved, but discipline that results from an incident report may be appealed or grieved; 5) clarifying that youth may appeal any consequence (rather than major consequences) issued through a Level II hearing; 6) specifying that youth in high-restriction facilities may grieve any consequence issued without a Level II hearing (rather than minor consequences); 7) adding that youth in medium-restriction facilities may appeal any consequences issued through a Level III hearing, in accordance with §380.9557; 8) removing the requirement to begin an investigation into certain alleged rule violations within 24 hours; 9) removing a reference to which staff member decides to hold a Level II hearing--however, requests to hold such hearings are addressed in §380.9555; 10) adding that formal incident reports are written for alleged rule violations as required by internal operational procedures rather than specifying the instances in which they must be written; 11) removing the requirement for a youth to be provided a copy of any incident report prepared for an alleged rule violation; 12) removing the requirement for rules of conduct to be physically posted in facilities; 13) removing a statement about issuing more than one consequence for a violation; 14) removing a provision concerning the multidisciplinary team's authority to reduce, extend, or modify certain privilege suspensions--however, §380.9555 addresses the treatment team's ability to reduce or suspend the imposition of a consequence for violations proven in a Level II hearing; 15) removing a provision allowed requirements in this rule to be restated or adapted to accommodate a particular program; 16) removing a statement concerning the possibility of repeated violations of the same rule leading to more serious consequences; 17) removing a reference to a non-disciplinary placement option (i.e., placement in the Redirect Program); and 20) removing definitions for terms that will no longer be used in the rule and a term for which a definition is unnecessary.

New §380.9510, concerning Intervention Program, will include certain elements of current §380.9517 and §380.9535 and will also include new content. This new rule will establish three levels of intervention within an overarching behavior management program. In some cases, youth may be moved between levels of the program based on their conduct while in the program. The moderate and intensive levels of the program will require a rule violation proven through a Level II due process hearing before a youth can be placed at that level.

The repeal of §380.9517, concerning Redirect Program, will allow for this level of intervention to be addressed as part of new §380.9510.

The amendments to §380.9520, concerning Cooling-Off Period for Youth Out of Control, will include changing both the maximum duration of segregation for youth in TJJD institutions to 90 minutes (rather than 55 minutes) and the maximum duration of segregation for youth in TJJD halfway houses to 90 minutes (rather than two hours).

The repeal of §380.9535, concerning Phoenix Program, will allow for this level of intervention to be addressed as part of new §380.9510.

The amendments to §380.9551, concerning Level I Hearing Procedure, will include clarifying that, except in certain limited circumstances, a Level I hearing on any allegation must be *requested* (rather than scheduled) as soon as possible but no later than seven days after the date of the alleged offense, excluding weekends and holidays; clarifying that a hearing examiner may direct a Level I hearing to be held in a location other than the community where the alleged rule violation occurred provided the examiner *determines that doing so will not deprive the youth of his/her due process rights*; adding that, with the consent of the parties involved, witnesses may appear via telephone or video conference unless the hearing examiner determines that doing so will deprive the youth of his/her due process rights; and adding that, if a witness appears via telephone or video conference, all required participants must be able to simultaneously hear one another.

The amendments to §380.9555, concerning Level II Hearing Procedure, will make numerous changes in several areas.

Changes relating to requesting and scheduling the hearing will include the following: 1) removing that, when a youth in a residential facility is alleged to have committed a major rule violation or a minor rule violation requiring a security referral, an investigation into the alleged violation must be started within 24 hours after the alleged offense, completed within 24 hours after the time started, and conducted by a staff member other than the one who reported the alleged violation; 2) removing the requirement that a decision on whether to pursue a Level II hearing must be made within 24 hours after the completion of an investigation; 3) adding that the appropriate staff person, *as specified in TJJD procedural manuals*, must request permission to schedule a hearing; 4) adding that a Level II hearing must be *requested and scheduled* (rather than conducted) as soon as practical but no later than seven days, excluding weekends and holidays, after the alleged violation *or discovery of the alleged violation*; and 5) removing the five-day timeframe for Level II hearings involving youth being held in a security unit due to potential interference with a pending Level II hearing.

Changes to §380.9555 relating to the disposition phase of the hearing will include the following: 1) adding that the youth will be given the opportunity to present evidence of extenuating circum-

stances; 2) adding that a finding of extenuating circumstances does not prohibit placement of a youth in the intervention program under §380.9510, but the admission review shall take the finding into account; 3) adding that, if extenuating circumstances are found, the youth may not be assigned *any consequence designated as a major consequence in accordance with §380.9503* (rather than the requested disciplinary dispositions or any other major consequences); 4) clarifying that, during disposition, if no extenuating circumstances are found, the hearing manager must make *the disposition finding the youth was given notice of* (instead of the disposition recommended by staff); 5) removing a statement regarding the appropriate administrator's approval of a hearing manager's decision to transfer a youth; 6) removing a statement regarding the approval by facility administration of a hearing manager's decision to demote a youth's stage in the rehabilitation program; and 7) adding that a hearing manager's decision to impose a disciplinary consequence is final, subject to appeal, but a youth's treatment team may reduce or suspend the imposition of the consequence if warranted.

Additional changes to §380.9555 will include the following: 1) adding that a Level II hearing is required before placing a youth in the *moderate or intensive level of the intervention program* (rather than in the Redirect Program); 2) clarifying that a Level II hearing is required before transferring an *institutional-status* youth who was initially at a medium-restriction facility to a high-restriction facility for non-disciplinary reasons; 3) adding that the criteria for placing a youth in the *moderate or intensive level of the intervention program* (rather than placing a youth in the Redirect Program) include finding that the youth committed an eligible rule violation; 4) clarifying that a hearing manager must find that a youth committed an eligible rule violation and that there are not extenuating circumstances in order to have contraband money *seized and* placed in the student benefit fund; 5) adding that, if a youth hires his or her own counsel, no advocate will be appointed; 6) clarifying that, not later than 24 hours before a hearing, the youth and the youth's advocate must be given *written notice* of the proposed action to be taken and *written notice and copies* of the evidence to be relied upon; 7) adding that video created by TJJD is generally considered "readily available" and shall be shown to the youth if used as evidence during a hearing; 8) clarifying that a hearing may be held by conference call or *videoconference*; 9) adding that, when a hearing is held by conference call *or videoconference*, all required participants must be able to simultaneously hear one another; 10) removing the requirement for the hearing manager to determine that holding a hearing by conference call will not deprive the youth of his/her due process rights; 10) removing a provision stating that, if a youth waives his/her presence, the hearing may be conducted by teleconference, which conflicted with an existing provision allowing any hearing to be held by teleconference; 11) specifying that youth in all contract placements (whether secure or non-secure) must be given the hearing packet at least 24 hours before the hearing; 12) adding that a youth's failure to testify shall not create a presumption *or inference* against the youth; 13) clarifying that a victim who appears as a witness should be provided a waiting area where he/she is not likely to come in contact with the youth *or the youth's parent/guardian* except during the hearing; and 14) replacing one instance of the term *parent(s)* with *parent/guardian*.

The amendments to §380.9557, concerning Level III Hearing Procedure will make numerous changes in several areas.

Overall changes to the rule include the following: 1) dividing the procedures into those to be used when determining admission

to or extension in the security program and those to be used when determining disciplinary consequences; and 2) removing references to *minor* disciplinary consequences and explaining which disciplinary consequences can be imposed through this hearing type.

Changes to §380.9557 relating to appeals involving disciplinary consequences will include the following: 1) clarifying that, if it is determined that *there were not reasonable grounds to believe* the youth committed the violation (instead of determining that the youth *did not commit* the violation), *the fact that the violation was overturned will be documented appropriately* (instead of stating that the youth's behavioral record will be updated); and 2) adding that, if it is determined that the youth committed the violation but *the imposed disciplinary measure* (instead of the disciplinary decision) was inappropriate, that fact *will be documented appropriately* (instead of stating only that the violation will remain on the youth's behavioral record) and the appeal authority shall determine some form of equitable relief for a youth who has started or completed serving the disciplinary measure and may impose a different disciplinary measure if the youth has not yet started serving the disciplinary measure.

The amendments to §380.9729, concerning Directives to Apprehend, will include adding that a directive to apprehend may be also issued when a youth has an unauthorized absence from a halfway house or has failed to comply with the conditions of placement; and adding that, when TJJD issues a directive to apprehend, TJJD may notify the Texas Missing Persons Clearinghouse and the National Center for Missing and Exploited Children. If the youth is at high risk for victimization due to human trafficking, sexual assault, exploitation, abuse, or neglectful supervision, these notifications must be made.

FISCAL NOTE

Emily Anderson, Chief Financial and Operating Officer, has determined that, for each year of the first five years the repealed, amended, and new sections are in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the sections.

PUBLIC BENEFITS/COSTS

Cameron Taylor, Policy Advisor, has determined that, for each year of the first five years the repealed, amended, and new sections are in effect, the public benefit anticipated as a result of administering the sections will be safety, as these rules address the behavior of youth in TJJD's care, with the goal of improving self-regulation when they are released.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. No private real property rights are affected by adoption of these sections.

GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the proposed rules are in effect, the rules will have the following impacts.

- (1) The proposed rules do not create or eliminate a government program.
- (2) The proposed rules do not require the creation or elimination of employee positions at TJJD.

(3) The proposed rules do not require an increase or decrease in future legislative appropriations to TJJD.

(4) The proposed rules do not impact fees paid to TJJD.

(5) The proposed rules do not create a new regulation.

(6) The proposed rules do not expand, limit, or repeal an existing regulation.

(7) The proposed rules do not increase or decrease the number of individuals subject to the rules' applicability.

(8) The proposed rules will not positively or adversely affect this state's economy.

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Josh Bauermeister, Policy Writer, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas, 78711, or email to policy.proposals@tjjd.texas.gov.

SUBCHAPTER E. BEHAVIOR MANAGEMENT AND YOUTH DISCIPLINE

DIVISION 1. BEHAVIOR MANAGEMENT

37 TAC §§380.9503, 380.9504, 380.9510, 380.9520

STATUTORY AUTHORITY

The new and amended sections are proposed under Section 242.003, Human Resources Code, which requires TJJD to adopt rules appropriate to the proper accomplishment of TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs.

No other statute, code, or article is affected by this proposal.

§380.9503. Rules and Consequences for Residential Facilities.

(a) Purpose. This rule establishes the actions that constitute violations of the rules of conduct for residential facilities. Violations of the rules may result in disciplinary consequences that are proportional to the severity and extent of the violation. Appropriate due process, including a consideration of extenuating circumstances, shall ~~must~~ be followed before imposing consequences.

(b) Applicability. This rule applies to youth assigned to residential facilities operated by the Texas Juvenile Justice Department (TJJD).

(c) Definitions. The following terms, as used in this rule, have the following meanings unless the context clearly indicates otherwise.

(1) Attempt to Commit--a youth, with specific intent to commit a rule violation, engages in conduct that amounts to more than mere planning that tends but fails to effect the commission of the intended rule violation.

(2) [(4)] Bodily Injury--physical pain, illness, or impairment of physical condition. Fleeting pain or minor discomfort does not constitute bodily injury.

[(2) Multi-Disciplinary Team--has the meaning assigned by §380.8501 of this title.]

[(3) Residential Facility--includes high and medium restriction residential facilities.]

[(4) Attempting to Commit--engaging in conduct that amounts to more than mere planning, but failing to commit the intended rule violation.]

(3) Direct Someone to Commit--occurs when:

(A) a youth communicates with another youth;

(B) the communication is intended to cause the other youth to commit a rule violation; and

(C) the other youth commits or attempts to commit a rule violation.

(4) Possession--actual care, custody, control, or management.

[(5) Serious Bodily Injury--bodily injury that involves:]

[(A) a substantial risk of death;]

[(B) extreme physical pain;]

[(C) protracted and obvious disfigurement; or]

[(D) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.]

(d) General Provisions.

(1) Formal incident reports are completed for alleged rule violations as required by internal operational procedures.

[(1) Rules in this policy may be restated or otherwise adapted to accommodate a particular program to help clarify expected behavior in that program. All adapted or restated rules must remain consistent with the general rules of conduct.]

[(2) The rules of conduct must be posted in a visible area that is accessible to youth in each facility and program.]

[(3) Repeated violations of any rule of conduct may result in more serious disciplinary consequences.]

[(4) Youth may be issued more than one disciplinary consequence for a rule violation proven in a Level II or Level III due process hearing held in accordance with §380.9555 or §380.9557 of this title, respectively.]

[(5) Major rule violations require the completion of a formal incident report.]

(2) [(6)] A formal incident report is not proof that a youth committed an alleged rule violation. Only [A youth's disciplinary record consists only of] rule violations that are proven through a Level I or Level II due process hearing in accordance with §380.9551 or §380.9555 of this title, respectively, are considered proven and are considered a part of a youth's disciplinary record. A formal incident report is not appealable or grievable; only disciplinary consequences may be appealed or grieved, as provided below.

[(7) An appropriate investigation must be started within 24 hours after a report of a major rule violation or a minor rule violation resulting in a referral to the security unit. Based on available evidence, the facility administrator or designee must determine whether to hold a Level II due process hearing in order to pursue major consequences and/or placement of the violation on the youth's disciplinary record.]

(3) [(8)] When a youth is found to be in possession of prohibited money as defined in this rule, a Level II [due process] hearing is required to seize the money. Seized money shall [must] be placed in the student benefit fund in accordance with §380.9555 of this title.

[(9) Except as noted in paragraph (10) of this subsection, minor rule violations must be documented on the appropriate activity log. A formal incident report is not required.]

[(10) A minor rule violation that escalates to the point that the current program/activity cannot continue due to the disruption or that poses a substantial risk to personal safety or facility security must

be documented on a formal incident report. In high restriction facilities, this type of minor rule violation also includes a referral to the security unit.]

[(11) Any time a formal incident report is prepared for an alleged rule violation, a copy of the incident report must be given to the youth within 24 hours after the alleged violation.]

[(12) Although certain rule violations may not result in immediate disciplinary consequences, a rule violation proven through a Level II due process hearing may be considered upon expiration of the youth's minimum length of stay in determining whether a youth is in need of additional rehabilitation.]

[(13) For youth who receive privilege suspensions, the multi-disciplinary team may:]

[(A) lessen the duration of the suspension; or]

[(B) extend (one time only) or modify an on-site privilege suspension issued by direct care staff if warranted by the youth's behavior.]

(e) Disciplinary Consequences.

(1) Disciplinary consequences shall be established in writing in TJJD's procedural manuals. Appropriate disciplinary consequences may be imposed only if the consequences are established in writing in TJJD's procedural manuals prior to the occurrence of the conduct for which the consequence is issued.

(2) Disciplinary consequences may include, but are not limited to, the following:

(A) suspension of privileges;

(B) restriction from planned activities;

(C) trust-fund restriction; and

(D) disciplinary transfer to a high-restriction facility (available only for youth on institutional status in a medium-restriction facility).

(3) The following are prohibited as disciplinary consequences:

(A) corporal or unusual punishment;

(B) subjecting a youth to humiliation, harassment, or physical or mental abuse;

(C) subjecting a youth to personal injury;

(D) subjecting a youth to property damage or disease;

(E) punitive interference with the daily functions of living, such as eating or sleeping;

(F) purposeless or degrading work, including group exercise as a consequence;

(G) placement in the intervention program under §380.9510 of this title;

(H) disciplinary isolation; and

(I) extending a youth's stay in a TJJD facility.

(4) A Level II hearing is required before imposing a disciplinary consequence that materially alters a youth's living conditions, including disciplinary transfer from a medium-restriction facility to a high-restriction facility. TJJD's procedural manuals will specify which disciplinary consequences require a Level II hearing. Disciplinary consequences requiring a Level II hearing are considered major consequences.

(5) If a Level II hearing is not required, the following must occur before imposing disciplinary consequences for a youth in a high-restriction facility:

(A) a formal incident report must be prepared;

(B) staff must tell the youth which rule violation the youth allegedly committed and describe the information staff has that establishes the youth committed it;

(C) staff must tell the youth what disciplinary consequence(s) staff is considering imposing; and

(D) the youth must be given the opportunity to address the allegation, including providing any extenuating circumstances and information on the appropriateness of the intended consequence(s).

(6) If a Level II hearing is not required, a Level III hearing must occur before imposing disciplinary consequences for a youth in a medium-restriction facility, in accordance with §380.9557 of this title.

[(e) Consequences for High Restriction Facilities.]

[(1) Major Disciplinary Consequences.]

[(A) Placement in the Phoenix Program—in accordance with §380.9535 of this title, a youth may be placed in the Phoenix program when it is found that the youth engaged in certain aggressive behavior.]

[(B) Major Suspension of Privileges—a youth has all privileges suspended for 30 calendar days from the date of the hearing. This consequence may be issued only for minor rule violations resulting in a referral to the security unit or major rule violations, and only if the rule violation is proven through a Level II due process hearing in accordance with §380.9555 of this title.]

[(C) Loss of Transition Eligibility—a youth who has not completed the minimum length of stay serves an additional month in high restriction facilities before becoming eligible for transition to a medium restriction facility under §380.8545 of this title. This consequence may be issued only if it is proven through a Level II due process hearing that the youth committed a major rule violation.]

[(D) Stage Demotion—a youth's assigned stage in the agency's rehabilitation program is lowered by one or more stages. This consequence may be issued only if it is proven through a Level II due process hearing that the youth committed a major rule violation.]

[(2) Minor Disciplinary Consequences.]

[(A) Suspension of Privileges by Multi-Disciplinary Team—a youth has one or more privileges removed for up to 14 calendar days from the date of the multi-disciplinary team meeting. This consequence may be issued for major or minor rule violations. In order to issue this consequence, the multi-disciplinary team must:]

[(i) meet with the youth to discuss the youth's behavior and potential consequences;]

[(ii) consider any on-site suspension of privileges already imposed for the behavior; and]

[(iii) document the discussion of the youth's conduct and consequence imposed.]

[(B) On-Site Suspension of Privileges—a youth has one specific privilege removed for up to seven calendar days from the date of the violation or all privileges removed for up to three calendar days. This consequence may be issued by a staff member with direct supervisory responsibility for the youth after witnessing a major or minor rule violation. This consequence should be issued only after non-disciplinary interventions have been attempted. The staff member must

document the conduct and consequence and discuss the consequence and the reasons for it with the youth.]

[(f) Consequences for Medium Restriction Facilities.]

[(1) Major Consequences.]

[(A) Disciplinary Transfer—a youth assigned to a medium restriction facility is transferred to a high restriction facility. Disciplinary transfer may be issued only for major rule violations that are proven through a Level II due process hearing in accordance with §380.9555 of this title. This consequence does not apply to youth who are on parole status in a medium restriction facility.]

[(B) Placement in the Phoenix Program—in accordance with §380.9535 of this title, a youth on institutional status may be transferred to a high restriction facility and placed in the Phoenix program when the youth has been found to have engaged in certain aggressive behavior.]

[(C) Major Suspension of Privileges—a youth has all privileges suspended for 30 calendar days from the date of the hearing. This consequence may be issued only for major rule violations that are proven through a Level II due process hearing.]

[(D) Stage Demotion—a youth's assigned stage in the agency's rehabilitation program is lowered by one or more stages. This consequence may be issued only if it is proven through a Level II due process hearing that the youth committed a major rule violation.]

[(2) Minor Consequences. Minor disciplinary consequences include but are not limited to consequences described in this paragraph. Minor consequences may be imposed only after a Level III due process hearing held in accordance with §380.9557 of this title.]

[(A) Privilege Suspension—a suspension of one or more privileges for no more than 14 calendar days.]

[(B) Community Service Hours—disciplinary assignment of up to 40 hours in an approved community service assignment.]

[(C) Trust Fund Restriction—youth is restricted from accessing his/her accrued personal funds for up to seven calendar days.]

[(D) Facility Restriction—youth is restricted for up to 48 hours from participating in any activity outside the assigned placement other than approved constructive activities.]

(f) [(g) Review and Appeal of Consequences.

(1) All [minor] disciplinary consequences shall [issued by staff other than the youth's multi-disciplinary team must] be reviewed for policy compliance by the facility administrator or designee [youth's assigned case manager, dorm supervisor, facility administrator, or other designee] within three calendar days [one workday] after issuance. The reviewing staff shall not be the staff who issued the discipline.

[(2) The facility administrator or designee:]

[(A) must review any minor consequence issued for longer than 14 days within three workdays after issuance of the consequence; and]

(2) [(B)] The reviewing staff may remove or reduce any disciplinary consequence [overturn or modify any privilege suspension] determined to be excessive or not validly related to the nature or seriousness of the conduct.

(3) Youth may appeal [major] disciplinary consequences issued through a Level II hearing by filing an appeal in accordance with §380.9555 of this title.

(4) Youth in medium-restriction facilities may appeal disciplinary consequences issued through a Level III hearing by filing an appeal in accordance with §380.9557 of this title.

(5) Youth in high-restriction facilities may grieve [minor] disciplinary consequences issued without a Level II hearing by filing a grievance in accordance with §380.9331 of this title.

~~[(h) Placement Disposition Options. In accordance with §380.9517 of this title, youth in high restriction facilities may be placed in the Redirect program when the youth is found to have engaged in certain major rule violations. Placement in the Redirect program is not a disciplinary consequence.]~~

(g) [(+) Major Rule Violations. It is a violation to knowingly commit, attempt to commit, direct someone to commit, or aid [help] someone else in committing [commit] any of the following:

(1) Assault of [- Unauthorized Physical Contact with] Another Youth (No Injury)--intentionally, knowingly, or recklessly engaging in conduct with the intent to cause bodily injury to [making unauthorized physical contact with] another youth but the conduct [that] does not result in bodily injury[, such as, but not limited to, pushing, poking, and grabbing].

(2) Assault of [- Unauthorized Physical Contact with] Staff (No Injury)--intentionally, knowingly, or recklessly engaging in conduct with the intent to cause bodily injury to [making unauthorized physical contact with] a staff member, contract employee, or volunteer with the intent to cause injury but the conduct [that] does not result in bodily injury[, such as, but not limited to, pushing, poking, and grabbing].

(3) Assault Causing Bodily Injury to Another Youth--intentionally, [and] knowingly, or recklessly engaging in conduct that causes another youth to suffer bodily injury.

(4) Assault Causing Bodily Injury to Staff--intentionally, [and] knowingly, or recklessly engaging in conduct that causes a staff member, contract employee, or volunteer to suffer bodily injury.

(5) Attempted Escape--committing an act with specific intent to escape that amounts to more than mere planning [but] that tends but fails to effect an escape.

(6) Chunking Bodily Fluids--causing a person to contact the blood, seminal fluid, vaginal fluid, saliva, urine, and/or feces of another with the intent to harass, alarm, or annoy another person.

(7) Distribution of Prohibited Substances--distributing or selling any prohibited substances or items.

(8) Escape--leaving a high-restriction [high or medium restriction] residential placement without permission or failing to return from an authorized leave.

(9) Extortion or Blackmail--demanding or receiving favors, money, actions, or anything of value from another in return for protection against others, to avoid bodily harm, or in exchange for not reporting a violation.

(10) Fighting Not Resulting in Bodily Injury--engaging in a mutually instigated physical altercation with another person or persons that does not result in bodily injury.

(11) Fighting That [that] Results in Bodily Injury--engaging in a mutually instigated physical altercation with another person or persons that results in bodily injury.

(12) Fleeing Apprehension--running from or refusing to come to staff when called and such act results in disruption of facility operations.

~~[(13) Two or More Failures to Comply with Written, Reasonable Request (for Youth in Medium Restriction Residential Placement)--failing on two or more occasions to comply with a written, reasonable request of staff. If the expectation is daily or weekly, the two failures to comply must be within a 30-day period. If the expectation is monthly, the two failures to comply must be within a 90-day period.]~~

(13) [(14)] Misuse of Medication--using medication provided to the youth [juvenile] by authorized personnel in a manner inconsistent with specific instructions for use, including removing the medication from the dispensing area.

(14) [(15)] Participating in a Major Disruption of Facility Operations--intentionally participating with two [(2)] or more persons in conduct that poses a threat to persons or property and substantially disrupts the performance of facility operations or programs.

(15) Possessing, Selling, or Attempting to Purchase Ammunition--possessing, selling, or attempting to purchase ammunition.

(16) Possession of Prohibited Items--possessing the following prohibited items:

(A) cellular telephone;

(B) matches or lighters;

(C) jewelry, unless allowed by facility rules;

(D) money in excess of the amount or in a form not permitted by facility rules (see §380.9555 of this title for procedures concerning seizure of such money);

(E) pornography;

(F) items which have been fashioned to produce tattoos or body piercing;

(G) cleaning products when the youth is not using them for a legitimate purpose; or

(H) other items that are being used inappropriately in a way that poses a danger to persons or property or threatens facility security.

(17) Possessing, Selling, or Attempting to Purchase [Possession of] a Weapon--possessing, selling, or attempting to purchase a weapon or an item [item(s)] that has been made or adapted for use as a weapon.

(18) Possession or Use of Prohibited Substances and Paraphernalia--possessing or using any unauthorized substance, including controlled substances or intoxicants [(including alcohol and tobacco)], medications not prescribed for the youth [juvenile] by authorized medical or dental staff, alcohol, tobacco products, [similar intoxicants,] or related paraphernalia such as that used to deliver or make any prohibited substance.

(19) Refusing a Drug Screen--refusing to take a drug screen when requested to do so by staff or tampering with or contaminating the urine sample provided for a drug screen. (Note: If the youth says he/she cannot provide a sample, the youth shall [must] be given water to drink and two hours to provide the sample.)

(20) Refusing a Search--refusing to submit to an authorized search of person or area.

(21) Repeated Non-Compliance with a Written, Reasonable Request of Staff (for Youth in Medium-Restriction Residential Placement)--failing on two or more occasions to comply with a specific written, reasonable request of staff. If the request requires the youth to do something daily or weekly, the two failures to comply must be within a 30-day period. If the request requires the youth to do some-

thing monthly, the two failures to comply must be within a 60-day period.

(22) [(21)] Sexual Misconduct--intentionally or [and] knowingly engaging in any of the following:

(A) causing contact, including penetration (however slight), between the penis and the vagina or anus; between the mouth and penis, vagina or anus; or penetration (however slight) of the anal or genital opening of another person by hand, finger, or other object;

(B) touching or fondling, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of another person;

(C) kissing for sexual stimulation;

(D) exposing the anus, buttocks, breasts, or genitals to another or exposing oneself knowing the act is likely to be observed by another person; or

(E) masturbating in an open and obvious way, whether or not the genitals are exposed.

(23) [(22)] Stealing--intentionally taking property with an estimated value of \$100 or more from another without permission.

(24) Tampering with Monitoring Equipment--a youth intentionally or knowingly tampers with monitoring equipment assigned to any youth.

(25) [(23)] Tampering with Safety Equipment--intentionally tampering with, damaging, or blocking any device used for safety or security of the facility. This includes, but is not limited to, any locking device or item that provides security access or clearance, any fire alarm or fire suppression system or device, video camera, radio, telephone (when the tampering prevents it from being used as necessary for safety and/or security), handcuffs, or shackles.

(26) [(24)] Tattooing/Body Piercing--engaging in tattooing or body piercing of self or others. Tattooing is defined as making a mark on the body by inserting pigment into the skin.

(27) [(25)] Threatening Another with a Weapon--intentionally and knowingly threatening another with a weapon. A weapon is something that is capable of inflicting bodily injury in the manner in which it is being used.

(28) Unauthorized Absence--leaving a medium-restriction residential placement without permission or failing to return from an authorized leave.

(29) [(26)] Vandalism--intentionally causing \$100 or more in damage to state property or personal property of another.

(30) [(27)] Violation of Any Law--violating a Texas or federal law that is not already defined as a major or minor rule violation.

(h) [(f)] Minor Rule Violations. It is a violation to knowingly commit, attempt to commit, direct someone to commit, or aid [help] someone else in committing [commit] any of the following:

(1) Breaching Group Confidentiality--disclosing or discussing information provided in a group session to another person not present in that group session.

(2) Disruption of Program--engaging in behavior that requires intervention to the extent that the current program of the youth and/or others is disrupted. This includes, but is not limited to:

(A) disrupting a scheduled activity;

(B) being loud or disruptive without staff permission;

(C) using profanity or engaging in disrespectful behavior toward staff or peers; or

(D) refusing to participate in a scheduled activity or abide by program rules.

(3) Failure to Abide by Dress Code--failing to follow the rules of dress and appearance as provided by facility rules.

(4) Failure to do Proper Housekeeping--failing to complete the daily chores of cleaning the living environment to the expected standard.

(5) Gang Activity--participating in an activity or behavior that promotes the interests of a gang or possessing or exhibiting anything related to or signifying a gang, such as, but not limited to, gang-related literature, symbols, or signs.

(6) Gambling or Possession of Gambling Paraphernalia--engaging in a bet or wager with another person or possessing paraphernalia that may be used for gambling.

(7) Horseplay--engaging in wrestling, roughhousing, or playful interaction with another person or persons that does not rise to the level of an assault. Horseplay does not result in any party getting upset or causing injury to another.

(8) Improper Use of Telephone/Mail/Computer--using the mail, a computer, or the telephone system for communication that is prohibited by facility rules, at a time prohibited by facility rules, or to inappropriately access information.

(9) Lending/Borrowing/Trading Items--lending or giving to another youth, borrowing from another youth, or trading with another youth possessions, including food items, without permission from staff.

(10) Lying/Falsifying Documentation/Cheating--lying or withholding information from staff, falsifying a document, and/or cheating on an assignment or test.

(11) Possession of an Unauthorized Item--possessing an item the youth is not authorized to have (possession of which is not a major rule violation), including items not listed on the youth's personal property inventory. This does not include personal letters or photographs.

(12) Refusal to Follow Staff Verbal Instructions--deliberately failing to comply with a specific reasonable verbal instruction made by a staff member.

(13) Stealing--intentionally taking property with an estimated value under \$100 from another without permission.

(14) Threatening Others--making verbal or physical threats toward another person or persons.

(15) Unauthorized Physical Contact with Another Youth (No Injury)--intentionally making unauthorized physical contact with another youth without the intent to cause injury and that does not cause injury, such as, but not limited to, pushing, poking, or grabbing.

(16) Unauthorized Physical Contact with Staff (No Injury)--intentionally making unauthorized physical contact with a staff member, contract employee, or volunteer without the intent to cause injury and that does not cause injury, such as, but not limited to, pushing, poking, and grabbing.

(17) [(15)] Undesignated Area--being in any area without the appropriate permission to be in that area.

(18) [(16)] Vandalism--intentionally causing less than \$100 in damage to state or personal property.

§380.9504. *Rules and Consequences for Youth on Parole.*

(a) Purpose. This rule establishes the actions that constitute violations of the rules of conduct youth are expected to follow while under parole supervision. Violations of the rules may result in disciplinary consequences, including revocation of parole, that are proportional to the severity and extent of the violation. Appropriate due process must be followed before imposing consequences.

(b) Applicability.

(1) This rule applies to youth on parole status who are assigned to a home placement.

(2) For parole revocation purposes, this rule also applies to youth on parole status who are assigned to a residential placement as a home substitute. However, this rule does not apply to the daily rules of conduct for these youth. For the daily rules of conduct, see §380.9503 of this chapter [title].

(c) General Provisions.

(1) Conditions of parole are provided to the youth before release on parole.

(2) Conditions of parole, including the rules of conduct, are reviewed with [the] youth when they initially meet with their parole officers and at other times as necessary.

(3) Repeated violations of any rule of conduct may result in more serious disciplinary consequences.

(d) Definitions. Possession--actual care, custody, control, or management. It does not require the item to be on or about the youth's person.

(e) ~~[(4)]~~ Parole Rule Violations. It is a violation to knowingly commit [violate], attempt to commit [violate], or aid [help] someone else in committing [violate] any of the following:

(1) Abscond--leaving a home placement or failing to return from an authorized leave when:

(A) [without permission of] the youth's parole officer did not give permission; and

(B) the youth's whereabouts are unknown to the youth's [his/her] parole officer.

~~[(2) Escape--leaving a high- or medium-restriction residential placement without permission or failing to return from an authorized leave.]~~

(2) ~~[(3)]~~ Failure to Comply with Sex Offender Conditions of Parole--intentionally or [and] knowingly failing to comply with one of the following conditions present in the youth's sex offender conditions of parole addendum:

(A) do not have unsupervised contact with children under the age specified by the conditions of parole;

(B) do not babysit or participate in any activity where the youth is responsible for supervising or disciplining children under the age specified by the conditions of parole; or

(C) do not initiate physical contact or touching of any kind with a child, victim, or potential victim.

(3) Failure to Report an Arrest or Citation--failing to report an arrest or receipt of a citation to the youth's parole officer within 24 hours of arrest or citation.

(4) Possessing, Selling, or Attempting to Purchase Ammunition--possessing, selling, or attempting to purchase ammunition.

~~(5) [(4)] Possessing, Selling, or Attempting to Purchase [Possession of] a Weapon--possessing, selling, or attempting to purchase a weapon or an item [item(s)] that has been made or adapted for use as a weapon.~~

~~[(5) Use of Unauthorized Substances--using an unauthorized substance or intoxicant including controlled substances or intoxicants (including alcohol and tobacco if the youth is underage), medications not prescribed for the youth by authorized medical or dental staff, or similar intoxicants.]~~

(6) Refusing a Drug Screen--refusing to take a drug screen when requested to do so by staff or tampering with or contaminating the urine sample provided for a drug screen.

(7) Repeated Non-Compliance with a Written, Reasonable Request of Staff--failing on two or more occasions to comply with a specific condition of release under supervision and/or a specific written, reasonable request of staff. If the request requires the youth to do something [expectation is] daily or weekly, the two failures to comply must be within a 30-day period. If the request requires the youth to do something [expectation is] monthly, the two failures to comply must be within a 60-day period.

(8) Photos, Videos, or Social Media Posts with Weapon, Ammunition, or Unauthorized Substance--appearing in photos, videos, or other images, whether or not posted to social media, with any weapon, ammunition, or unauthorized substance or related paraphernalia, including any object that reasonably resembles a weapon, ammunition, or unauthorized substance or related paraphernalia. The term weapon includes, but is not limited to, guns, explosive devices, knives, blades, and clubs. The term related paraphernalia includes, but is not limited to, items used to make or deliver unauthorized substances.

(9) ~~[(8)]~~ Tampering with Monitoring Equipment--a youth intentionally or [and] knowingly tampers with monitoring equipment assigned to any youth.

(10) Unauthorized Absence--leaving a medium-restriction residential placement without permission or failing to return from an authorized leave.

(11) Possession or Use of Unauthorized Substances--possessing, ingesting, inhaling, or otherwise consuming any unauthorized substance, including controlled substances or intoxicants, medications not prescribed for the youth by authorized medical or dental staff, alcohol or tobacco products, or related paraphernalia such as that used to deliver or make any unauthorized substance.

(12) ~~[(9)]~~ Violation of Any Law--violating a federal or state law or municipal ordinance.

(f) ~~[(e)]~~ Possible Consequences.

(1) A parole rule violation may result in a Level I hearing or a Level III hearing conducted in accordance with §380.9551 or §380.9557 of this chapter [title], respectively. Parole officers are encouraged to be creative in determining a consequence appropriate to address and correct the youth's behavior. Staff should use evidence-based interventions that relate to the youth's risk, needs, and responsibility when appropriate. All assigned consequences should be related to the misconduct when possible.

(2) Consequences through a Level III hearing for a youth on parole include, but are not limited to:

(A) Verbal Reprimand--conference with a youth including a verbal reprimand that draws [drawing] attention to the misbehavior and serves [serving] as a warning that continued misbehavior could

result in more severe consequences. [A verbal reprimand may not be considered as a less severe disciplinary consequence for the purpose of parole revocation.]

(B) Curfew Restriction--an immediate change in existing curfew requirements outlined in the youth's conditions of parole.

(C) Community Service Hours--disciplinary assignment of a specific number of hours the youth is to perform community service in addition to the hours assigned when the youth was placed on parole. In no event may more than 20 community service hours be assigned through a Level III hearing.

(D) Increased Level of Supervision--an assigned increase in the number of primary contacts between the youth and parole officer in order to increase the youth's accountability.

(E) Electronic Tracking--assignment to a system that electronically tracks a youth's movement and location.

(F) Writing Assignment--an assignment designed for the youth to address the misbehavior and identify appropriate behavior in similar situations.

(3) Consequences through a Level I hearing for a youth on parole, including youth assigned to a residential placement as a home substitute, include:

(A) parole revocation and placement in any high- or medium-restriction program operated by or under contract with the Texas Juvenile Justice Department; and

(B) assignment of a length of stay consistent with §380.8525 of this chapter [title].

§380.9510. Intervention Program.

(a) Purpose. The Texas Juvenile Justice Department (TJJD) delivers interventions in a structured environment for youth who have engaged in certain serious conduct. The interventions are designed to promote violence reduction and skill building to increase safety on TJJD campuses and to help the youth regulate their behavior in order to progress in treatment. Placement in an intervention program is not considered a disciplinary consequence. This rule sets forth eligibility criteria, program requirements, and services to be provided to youth.

(b) Applicability. This rule applies only to high-restriction facilities operated by TJJD.

(c) Definitions.

(1) Admission, Review, and Dismissal (ARD) Committee--a committee that makes decisions on educational matters relating to special-education-eligible youth.

(2) Individualized Education Program (IEP)--the program of special education and related services developed by a youth's ARD committee.

(3) Isolation--the confinement of a youth in a locked room or cubicle as a tool to manage the behavior of a youth. Rules regarding isolation do not apply:

(A) when doors are routinely locked during normal sleeping hours and isolation has not otherwise been imposed; or

(B) when a youth is placed in the security program.

(4) Manifestation Determination Review--a review conducted by a youth's ARD committee when a decision has been made to change a special-education-eligible youth's school placement due to a violation of the code of conduct. The committee determines whether a youth's conduct is a manifestation of the youth's disability and whether the youth's IEP was fully implemented.

(d) Eligibility.

(1) At a minimum, a youth must be reviewed to determine appropriateness for placement at any level of the intervention program if the youth engages in one or more of the following rule violations as defined in §380.9503 of this title:

(A) assault of youth (with or without injury);

(B) assault of staff (with or without injury);

(C) fighting (with or without injury);

(D) threatening another with a weapon;

(E) escape;

(F) extortion or blackmail;

(G) possession of a weapon;

(H) sexual misconduct;

(I) threatening others; or

(J) any other rule violation that the executive director or designee establishes in writing as an eligible violation.

(2) A youth may be reviewed to determine appropriateness for placement at any level of the intervention program based on any other rule violation defined in §380.9503 of this title or based on a pattern of rule violations that suggests the youth would benefit from the program.

(e) Program Intervention Levels.

(1) Primary. The primary level of the intervention program provides short-term intervention that cannot be provided during regular campus programming.

(A) Youth at this level of intervention in the program continue to sleep at their assigned dorm but other activities are conducted at the site of the program.

(B) A Level II hearing is not required for placement at this level of intervention. However, designated treatment and direct-care staff must review the youth for appropriateness in the intervention program, including the youth's treatment needs and the severity of the youth's behavior.

(2) Moderate. The moderate level of the intervention program provides short-term intervention in a self-contained unit with a gradual transition back to regular campus programming.

(A) Youth at this level of intervention in the program live on the unit where the program operates.

(B) Youth may be placed at this level of the intervention program only if:

(i) a Level II due process hearing has been held in accordance with §380.9555 of this title;

(ii) there is a finding of true that the youth committed a rule violation listed in subsection (d) of this section; and

(iii) the youth and the youth's advocate were given notice before the hearing that a true finding on one or more of the allegations would make the youth eligible for placement in the intervention program.

(3) Intensive. The intensive level of the intervention program provides longer-term intervention in a highly structured environment.

(A) Youth at this level of intervention in the program live on the unit where the program operates.

(B) Youth may be placed at this level of the intervention program only if:

(i) a Level II due process hearing has been held in accordance with §380.9555 of this title;

(ii) there is a finding of true that the youth committed a rule violation listed in subsection (d) of this section; and

(iii) the youth and the youth's advocate were given notice before the hearing that a true finding on one or more of the allegations would make the youth eligible for placement in the intervention program.

(f) Placement in the Program.

(1) Each youth being considered for placement in the intervention program is reviewed to determine if placement is appropriate and, if so, which level of the program is appropriate.

(2) If it is determined that the youth should be placed in the intensive level of the program but space is not available, the youth may be temporarily placed in a lower level of the program until space becomes available at the intensive level or the youth otherwise successfully meets the criteria under subsection (j) of this section.

(3) TJJD procedural manuals shall establish a process that allows a youth to be moved from one level of the program to another, if appropriate. A youth may be placed in the moderate or intensive level of the program only if the youth was given notice of the potential placement before the Level II hearing. Once a youth has been removed from the intervention program, new conduct and a new Level II due process hearing, if necessary for the program level, are required to return the youth to the intervention program.

(4) TJJD procedural manuals shall establish the factors to be considered when determining if a youth should be placed in the intervention program and which level of intervention is most appropriate or when determining if a youth should be moved from one level to another. The procedural manuals shall include a requirement that, at a minimum, the following factors be considered:

(A) whether the youth poses a continuing risk to the safety of the facility;

(B) whether less restrictive methods of documented intervention have been attempted when appropriate; and

(C) whether there are any therapeutic contraindications to placing the youth in the intervention program or at a particular level in the intervention program.

(5) A youth shall not be placed at any level in the intervention program if a therapeutic contraindication to placement at that level exists.

(6) TJJD shall make reasonable efforts to provide notice to the parent/guardian that the child is being considered for placement in the intervention program or for moving to a different level of the program.

(g) Additional Considerations for Youth Receiving Special Education Services.

(1) If a youth who is receiving special education services engages in a rule violation during school-related activities and that violation is the basis for placement or potential placement in the intervention program, the requirements of the Individuals with Disabilities Education Act, including a manifestation determination review when

required, must be met. TJJD's procedural manuals shall include specific instructions for compliance and shall include a routine review to ensure the requirements are met.

(2) All special education services shall be provided in accordance with ARD committee decisions. For youth who are eligible to participate in special education services, an ARD committee meeting to review the IEP is held within ten days after admission to the intervention program. Subsequent ARD committee meetings and evaluations are completed in compliance with state and federal regulations.

(h) Program Requirements.

(1) The intervention program is administered in units designated for such purpose. Each level may be administered in a different unit.

(2) A structured daily schedule is maintained and posted to provide a predictable and safe environment.

(3) On scheduled academic days, youth shall be provided with the amount of education services established by the approved master schedule for the regular school program.

(4) Youth with limited English proficiency shall be provided with appropriate adaptations to the educational program as recommended by the Language Proficiency Assessment Committee.

(5) An individual plan shall be developed or modified for each youth. The plan shall be written in a language the youth clearly understands. The plan shall address the reasons for admission to the program, including providing strategies for intervention and prevention of the admitting behavior, include a component that addresses transition to the general campus population, and provide clearly written objectives for completion of the program. The plan shall also take into consideration any recommendations by a mental health specialist to address the motivation for the behavior.

(6) TJJD procedural manuals will set out how the individual plan and youth's progress will be reviewed and evaluated. This review shall occur at least once every seven days.

(7) Youth in the moderate and intensive levels of the intervention program are provided daily contact and weekly individual sessions with the assigned case manager or other designated staff for counseling and case management services.

(8) Staff shall immediately refer a youth to a mental health professional if concerns exist as to the youth's mental health status.

(9) Youth shall be provided with at least one hour of large-muscle exercise seven days per week.

(10) Youth are allowed phone calls and visitation with approved family members and other individuals according to program visitation procedures.

(11) A youth in the moderate level of the program:

(A) earns privileges based on progress through the program;

(B) shall be gradually reintegrated into campus programming as soon as he/she demonstrates comprehension of the goals established in the individual plan; and

(C) shall receive weekly mental health status exams by mental health staff as long as the youth's movement and program activities are restricted to the program unit. If deemed necessary by mental health staff, youth shall receive psychological counseling. Psychological counseling will be at the frequency determined appropriate by the mental health professional providing the counseling.

(12) A youth in the intensive level of the program:

(A) earns privileges based on progress through the program; and

(B) shall receive weekly mental health status exams by mental health staff. If deemed necessary by mental health staff, youth receive psychological counseling. Psychological counseling will be at the frequency determined appropriate by the mental health professional providing the counseling.

(13) For youth assigned to the primary and moderate levels, staff not assigned to the intervention program shall review each youth's progress at least once every 30 days to ensure the individual plan is being implemented appropriately.

(14) For youth assigned to the intensive level, staff not assigned to the intervention program shall review each youth's progress when the youth has been at that level for 60 days and every 30 days thereafter to ensure the individual plan is being implemented appropriately.

(15) A youth may remain in the moderate level of the program for more than 90 days only if approved by the executive director or designee.

(16) A youth may remain in the intensive level of the program for more than 120 days only if approved by the executive director or designee.

(17) In all levels of the program, mechanical restraints may be used in a manner consistent with the use of such restraints as provided by §380.9723 of this title. In the intensive level of the program only, mechanical restraints may also be used in a manner consistent with the use of such restraints in a security unit as provided by §380.9723 of this title.

(i) Room Isolation and Security Unit.

(1) Youth may be referred to the security program while assigned to the intervention program if the youth meets criteria in §380.9740 of this title. A security unit and program may be operated at the location of each level of the intervention program.

(2) Room isolation may be used as necessary in accordance with §380.9739 of this title.

(j) Criteria for Release from the Intervention Program. A youth shall be released from the intervention program upon the earliest of the following events:

(1) a determination by the executive director or designee that the youth has:

(A) met the goals in his/her individual plan; and

(B) based on a totality of circumstances, demonstrated an ability to safely transition to campus programming; or

(2) a decision by the executive director or designee to return the youth to the youth's assigned dorm or transfer to an alternative placement based on a recommendation by a mental health professional due to the youth's mental health condition; or

(3) a decision by appropriate staff not to continue the youth in the intervention program after an administrative transfer of the youth to another high-restriction facility while assigned to the intervention program.

(k) Family Notification. The youth's parent/guardian shall be notified of the decision to place the youth in the intervention program no later than the end of the next business day following the day the

decision was made. In accordance with §380.8705 of this title, the notification may occur only with the youth's consent if the youth is 18 years of age.

(l) Program Monitoring and Youth Rights.

(1) To ensure the intervention program is being implemented according to the provisions of this rule, staff from facility administration shall visit each program unit seven days per week. Staff from psychology administration shall visit each program unit weekly.

(2) Youth rights staff or a designee shall visit each program unit seven days per week to ensure that youth have access to the youth grievance system.

(3) Staff are not required to visit a program unit on days when there are no youth in that unit.

(m) Grievance Regarding Assessment of Progress. A youth in the intervention program may address disagreement with the results of an assessment of progress or may address the lack of opportunity to demonstrate completion of requirements by filing a grievance in accordance with §380.9331 of this title. The person assigned to respond to the youth's grievance may not be a person involved in the subject of the youth's grievance.

§380.9520. Cooling-Off Period for Youth Out of Control.

(a) Purpose. This rule provides for the temporary segregation of a youth as a cooling-off ["cooling off"] time when he or she appears to have temporarily lost control of behavior. The segregation is intended to allow the youth time to regain self-control. Segregation addressed in this rule is not a disciplinary consequence and is generally in a location near the activity in process.

(b) General Restrictions.

(1) Either staff or the youth may request the youth's removal from an activity. The youth's group may not request the youth's removal.

(2) The youth may be removed to any room in the same building away from the regular activity. Doors must not be locked.

(3) The reason for the segregation is explained to the youth and he/she is given the opportunity to explain his/her [his] behavior.

(4) The youth must be joined by staff every 15 minutes for counseling.

(5) The youth may assist in determining his/her readiness to resume regular activity.

(c) Institutions. Segregation is limited to 90 [55] minutes. If the youth is unable to regain control after 90 [55] minutes, staff should take other measures.

(d) Halfway Houses.

(1) Segregation is limited to 90 minutes [two hours]. If the youth is unable to regain control after 90 minutes [two hours], staff should take other measures.

(2) Youth may not be segregated to their bedrooms.

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 July 15, 2022.

TRD-202202694

Christian von Wupperfeld
General Counsel
Texas Juvenile Justice Department
Earliest possible date of adoption: August 28, 2022
For further information, please call: (512) 490-7278



37 TAC §§380.9517, §380.9535

STATUTORY AUTHORITY

The repealed sections are proposed under Section 242.003, Human Resources Code, which requires TJJJ to adopt rules appropriate to the proper accomplishment of TJJJ's functions and to adopt rules for governing TJJJ schools, facilities, and programs.

No other statute, code, or article is affected by this proposal.

§380.9517. *Redirect Program.*

§380.9535. *Phoenix Program.*

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 July 15, 2022.

TRD-202202696

Christian von Wupperfeld
General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: August 28, 2022

For further information, please call: (512) 490-7278



DIVISION 2. DUE PROCESS HEARINGS

37 TAC §§380.9551, 380.9555, 380.9557

STATUTORY AUTHORITY

The amended sections are proposed under Section 242.003, Human Resources Code, which requires TJJJ to adopt rules appropriate to the proper accomplishment of TJJJ's functions and to adopt rules for governing TJJJ schools, facilities, and programs.

No other statute, code, or article is affected by this proposal.

§380.9551. *Level I Hearing Procedure.*

(a) Purpose. This rule establishes the [~~The purpose of this rule is to establish a~~] due process procedure to be followed when seeking to revoke the parole status of a youth due to [~~as a disciplinary consequence for~~] behavior that presents an unacceptable risk to the safety of persons and property.

(b) Definitions. Definitions pertaining to this rule are under §380.9550 of this title.

(c) General Provisions.

(1) A Level I hearing is required to revoke a youth's parole status. Parole status may be revoked if it is found that a youth has committed a law violation or a parole rule violation as established in §380.9504 of this title and:

(A) revocation is determined to be in the best interest of the youth or community; and/or

(B) the youth is found to be in need of further rehabilitation at a residential facility operated by the Texas Juvenile Justice Department (TJJJ) or under contract with TJJJ.

(2) The hearing examiner must consider the following information to determine if parole revocation is appropriate:

(A) the severity of the offense(s) found true at the hearing;

(B) any behavioral or adjustment issues while on parole and the steps taken by the staff representative to address those issues;

(C) whether or not the youth's conduct while on parole presents a threat to persons or property;

(D) reasons the youth is in need of services offered at a TJJJ or contract facility;

(E) whether appropriate community-based alternatives have been exhausted;

(F) any impact statement(s) written by the victim(s);

(G) any participation in constructive activity; and

(H) any extenuating circumstances.

(3) The youth must be assisted by an attorney at the hearing. The agency will appoint an attorney for indigent youth from the list of defense attorneys who contract with TJJJ for this purpose.

(4) A Level I hearing on any allegation(s) must be requested [~~scheduled~~] as soon as possible but no later than seven days after the date of the alleged offense, excluding weekends and holidays, except when:

(A) TJJJ staff documents that it was impossible, impractical, or inappropriate to have requested [~~scheduled~~] the hearing sooner; or

(B) local authorities make a written request that TJJJ defer an allegation to their jurisdiction for prosecution; or

(C) TJJJ staff elects to defer a Level I hearing on all allegations of misconduct due to criminal allegation(s) pending or filed as adult charges, except that if the pending charge is a first degree felony or capital offense, there must be a written request as described in subparagraph (B) of this paragraph to defer the allegation.

(5) TJJJ may re-issue a directive to apprehend and request a Level I hearing concerning new or previously deferred allegation(s) if later circumstances make such action appropriate.

(6) If a youth is on parole from another state and is being supervised by TJJJ under agreement with the other state, a parole revocation hearing may be held by TJJJ and the youth may be returned to the sending state. Such a hearing is coordinated by the Texas Interstate Compact for Juveniles [(ICJ)] Office and the TJJJ Office of General Counsel.

(7) If a TJJJ parolee commits an offense in another state, the return of the youth is coordinated by the Texas Interstate Compact for Juveniles [(ICJ)] Office and the TJJJ Office of General Counsel. A parole revocation hearing is coordinated by and held at the request of the assigned TJJJ staff representative.

(d) Notice.

(1) The staff representative must provide the youth with written notice of the date and time of the hearing not less than three working days before the scheduled hearing date. This notice must include:

- (A) the reason(s) for the hearing;
- (B) the proposed action to be taken; and
- (C) the youth's rights in connection with the hearing.

(2) If the youth is under 18 years of age, the staff representative must make reasonable efforts to inform the youth's parent/guardian [parent(s) or guardian] of the date, time, and location of the hearing and the reasons for the hearing not less than three working days before the scheduled hearing date. If the youth is 18 years of age or older, this notice may be provided only with the youth's written authorization.

(3) The staff representative must provide the youth's attorney with written notice of the date, time, and location of the hearing and the reasons for the hearing not less than three working days before the scheduled hearing date. The notice to the attorney must also include:

- (A) the name, address, and telephone number of the staff representative and the hearing examiner;
- (B) a list of all witnesses the staff representative intends to call;
- (C) an indication of the expected testimony of each witness;
- (D) copies of any statements made by the youth;
- (E) copies of any statements, affidavits, reports, or other documentation relied upon as grounds for the proposed action; and
- (F) copies of any reports or summaries that will be relied upon at disposition.

(4) The staff representative must provide the youth's attorney with reasonable access to all information held by TJJD concerning the youth. The youth's attorney must respect the confidential nature of this information and must comply with TJJD requests to withhold sensitive information from the youth or the youth's family.

(5) As soon as possible after receiving the hearing notice and no later than the commencement of the hearing, the youth's attorney must inform the staff representative of any witnesses he/she wishes to call on behalf of the youth. If necessary and possible, the staff representative must assist the youth's attorney in contacting those witnesses and securing their attendance at the hearing.

(6) The staff representative must ensure that all witnesses he/she intends to call are given written notice of the time, date, and location of the hearing not less than three days before the hearing.

(e) Evidence.

(1) All factual issues are determined by a preponderance of evidence.

(2) The Texas Rules of Evidence generally apply to the fact-finding portion of the hearing. Unless specifically precluded by statute, evidence that is not admissible under those rules may be admitted if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. Criminal exclusionary rules do not apply in TJJD hearings.

(3) The hearing examiner must determine the admissibility of evidence. Irrelevant, immaterial, or unduly repetitious evidence is excluded.

(4) A judgment from a court indicating a youth has pled guilty or true to an offense and has not received deferred adjudication or deferred prosecution is sufficient to prove the youth committed the offense.

(5) Copies of due process hearing documents need not be certified if these documents are part of the youth's record(s) or have been received through the Interstate Compact for Juveniles [ICJ]. These documents are considered reliable and admissible for all purposes.

(6) Accomplice testimony is sufficient to prove an allegation if it is corroborated by other evidence tending to connect the youth with the alleged violation. The corroboration is not sufficient if it merely shows the commission of the alleged violation. If two accomplices testify, the testimony of each may serve to corroborate the other.

(7) Legally recognized privileges of relationships are given effect.

(8) Evidence that is otherwise admissible may be received in written form if doing so will expedite the hearing and will not significantly prejudice the rights or interests of the youth. This includes but is not limited to use of affidavits admitted to show the following:

- (A) ownership and lack of consent;
- (B) identity of signature on instrument and lack of consent of complaining witness in a forgery case;
- (C) lack of permission to leave designated placement;
- (D) chain of custody;
- (E) identity of substance found in urine sample; and
- (F) identity of controlled substance found in youth's possession.

(9) A youth's written statement concerning his/her possible involvement in an alleged violation is admissible if it is signed by the youth and accompanied by evidence indicating that the youth made the statement voluntarily after being advised of:

- (A) the right to remain silent;
- (B) the possible consequences of giving the statement;
- (C) the right to consult with an attorney prior to giving the statement; and
- (D) the right to have an attorney provided if the youth is indigent.

(10) A youth's non-recorded oral statement is admissible if it:

- (A) relates facts that are found to be true and that tend to establish the youth's guilt; or
- (B) was *res gestae* of the conduct that is the subject of the hearing or the arrest; or
- (C) does not stem from law enforcement or TJJD staff questioning of youth, even if the statement does not meet criteria in subparagraph (A) or (B) of this paragraph; or
- (D) is voluntary and bears on the youth's credibility as a witness, even if the statement stems from law enforcement or TJJD staff questioning of the youth.

(11) A youth's recorded oral statement (i.e., audio recorded or visually or otherwise electronically recorded) concerning his/her possible involvement in illegal activities is admissible if it is accompanied by evidence on the recording that it was given after the youth was advised of the rights in paragraph (9) of this subsection. All voices on the recording must be identified and the recording must be accurate and unaltered. A transcript of the recordings is not sufficient.

(12) A youth's admissible out-of-hearing/court statement admitting he/she committed an offense is sufficient to prove the offense only if it is corroborated by other evidence that the offense was committed.

(f) Hearing Process.

(1) The hearing must be conducted by an impartial hearing examiner appointed by the TJJD general counsel.

(2) The TJJD staff member requesting a hearing must appoint a staff representative to appear at the hearing and to present the reasons for the proposed action. The staff representative is also responsible for making relevant information available to all parties to the hearing.

(3) The hearing must be held in the community where the alleged rule violation occurred unless the hearing examiner directs that it be held in another location and determines that doing so will not deprive the youth of his/her due process rights.

(4) All necessary parties must be present at the hearing site unless the hearing is conducted by telephone pursuant to §380.9553 of this title.

(5) With the consent of the parties, witnesses may appear via telephone or video conference unless the hearing examiner determines that doing so will deprive the youth of his/her due process rights. If a witness appears via telephone or video conference, all required participants must be able to simultaneously hear one another.

(6) [(5)] At the request of the staff representative or defense attorney, the hearing examiner may sign and issue a subpoena to compel the attendance of a necessary witness at the hearing or the production of books, records, papers, or other objects. A person who testifies falsely, fails to appear when subpoenaed, or fails or refuses to produce material under the subpoena is subject to the same orders and penalties as a person who takes those actions before a court.

(7) [(6)] Before the hearing, the hearing examiner may review copies of any documentation previously provided to the youth's attorney except for those documents that relate solely to dispositional criteria. The hearing examiner may review information relating solely to dispositional criteria only if the hearing proceeds to disposition.

(8) [(7)] To protect the confidential nature of the hearing, persons other than the youth, the youth's attorney, the staff representative, and the youth's parent/guardian [parent(s) or guardian] may be excluded from the hearing room at the discretion of the hearing examiner; however:

(A) observers may be permitted with the consent of the youth and the youth's attorney; and

(B) any person except the youth's attorney or the staff representative may be excluded from the hearing room if his/her presence causes undue disruption or delay of the hearing. The reason(s) for the youth's exclusion must be stated on the record.

(9) [(8)] A victim who appears as a witness must be provided a waiting area that eliminates or minimizes contact between the victim and the youth, the youth's family, and witnesses on behalf of the youth.

(10) [(9)] The hearing is conducted in two parts: fact-finding and disposition.

(A) The purpose of the fact-finding is to establish whether there is a preponderance of evidence to prove the youth engaged in the alleged misconduct.

(B) The purpose of the disposition is to determine whether revocation of parole status is appropriate under the circumstances.

(11) [(10)] The hearing must be recorded. The hearing examiner must retain copies of all documents admitted into evidence. Physical evidence may be retained at the discretion of the hearing examiner; however, if it is not retained, an adequate description of the item(s) must be entered in the record by oral stipulation.

(12) [(11)] Factual issues not in dispute may be stipulated by the staff representative and the youth's attorney. Such stipulations must be made on the record of the hearing.

(13) [(12)] The youth must be given the opportunity to respond "true" or "not true" to each allegation before any evidence concerning the allegation is heard.

(A) The youth has a right to respond "not true" to each allegation and to require that proof of the allegation be presented at the hearing.

(B) A response of "true" to any allegation is sufficient to establish each and every element necessary to prove that allegation without the presentation of any other evidence.

(14) [(13)] The hearing examiner must administer an oath to all witnesses to testify truthfully.

(15) [(14)] With the exception of the youth and the staff representative, any person designated as a witness may be excluded from the hearing room during the testimony of other witnesses and may be instructed to refrain from discussing his/her testimony with anyone until all the witnesses have been dismissed.

(16) [(15)] The hearing examiner may question each witness at the hearing examiner's discretion. The youth's attorney and the staff representative must be given an opportunity to question each witness.

(17) [(16)] The hearing examiner may allow a witness to testify outside the presence of the youth if doing so appears reasonable and necessary to secure the testimony of the witness. If the youth is excluded from the hearing room during testimony, the youth's attorney must be present during the testimony and must have the opportunity to review the testimony with the youth before questioning the witness.

(18) [(17)] The youth may not be called as a witness unless, after consulting with his/her attorney, the youth waives his/her right to remain silent on the record.

(A) The youth's decision not to testify does not create a presumption against him/her.

(B) A youth who waives his/her right to remain silent may be questioned only concerning those issues addressed by the youth's testimony.

(19) [(18)] The hearing examiner must rule immediately on any motions or objections made in the course of the hearing. The motions, objections, and rulings must be included in the hearing examiner's written report.

(20) [(19)] The hearing examiner may, upon his/her own motion or the good cause motion of any party, recess or continue the hearing when doing so is necessary to ensure an informed fact finding.

(21) [(20)] After the presentation of all evidence pertaining to the factual issues raised at the hearing, the hearing examiner must announce his/her findings on those issues.

(A) The hearing examiner may find that the evidence suffices to prove conduct other than the conduct that was originally alleged if the original allegation gave sufficient notice of the conduct proved.

(B) Regardless of the evidence, the hearing examiner may not find a criminal offense more serious than the offense that was originally alleged unless the original allegation has been amended on the record and after notice to the youth's attorney.

(C) If the hearing examiner finds any allegation to be true, the hearing proceeds to disposition. If the hearing examiner does not find any allegation to be true, the hearing is adjourned with no change in the youth's status.

(22) [(21)] In the disposition phase, the staff representative presents evidence to establish why he/she believes the youth's parole status should be revoked. The youth is given the opportunity to present evidence as to why his/her parole status should not be revoked, including evidence of extenuating circumstances.

(23) [(22)] The evidence considered during disposition may be in the form of testimony from witnesses submitted during fact-finding or disposition, as well as written reports offered by youth, staff, professionals, counselors, or consultants. Relevant documents contained in the youth's record may be admitted and considered. All written documents to be offered must be provided to the parties no later than three days before the hearing unless otherwise waived. Hearsay evidence is admissible in disposition.

(24) [(23)] Parole status may be revoked if the hearing examiner determines that revocation is:

- (A) in the best interest of the youth; and/or
- (B) in the best interest of the community; and/or

(C) the youth is in need of further rehabilitation at a residential facility operated by TJJD or under contract with TJJD.

(25) [(24)] If parole is revoked, the youth is assigned a minimum length of stay in accordance with §380.8525 of this title, based on the most serious offense found true at the hearing. This minimum length of stay may be reduced in accordance with §380.8525 of this title.

(26) [(25)] If the hearing examiner determines there are extenuating circumstances, the hearing examiner must take that into account when determining if the criteria for parole revocation exist. If, despite a finding of extenuating circumstances relevant to the proven offense, the hearing examiner finds revocation is appropriate under the circumstances, the youth's parole status will be revoked but the assigned minimum length of stay will be reduced, as determined by the hearing examiner.

(27) [(26)] If the youth's parole status is not revoked, lesser disciplinary consequences may be imposed for any rule violation(s) proved at the hearing.

(28) [(27)] After announcing the disposition decision, the hearing examiner must inform the youth of the right to appeal any or all findings and decisions made at the hearing.

(29) [(28)] Immediately after the hearing is closed, the hearing examiner must give the youth a copy of the hearing report form.

(30) [(29)] The hearing examiner's decision is effective and implemented when announced at the hearing, even if the youth appeals and a response is pending.

(31) [(30)] As soon as possible after the hearing is closed, the hearing examiner must prepare a written report that includes:

- (A) a summary of the evidence presented;
- (B) findings of fact, including the reliability of the evidence and the credibility of the witnesses, and the reasons for those findings;
- (C) conclusions of law;
- (D) an explanation of the dispositional decision; and
- (E) rulings made on motions and objections and the reasons for those rulings.

(32) [(31)] Copies of the hearing examiner's report must be provided to the youth, the youth's attorney, and the staff representative. §380.9555. *Level II Hearing Procedure.*

(a) Purpose. This rule establishes the procedure to be followed to ensure youth are afforded appropriate due process before certain actions are taken.

(b) Definitions. Definitions pertaining to this rule are under §380.9550 of this title unless otherwise defined within this rule.

(c) Applicability. A Level II hearing is appropriate due process in the following instances [required before taking any of the following actions]:

(1) imposing a [~~major~~] disciplinary consequence designated as a major consequence in accordance with §380.9503 of this title;

(2) placing a youth in the moderate or intensive level of the intervention program [~~Redirect program~~] in accordance with §380.9510 [~~§380.9517~~] of this title;

(3) transferring a parole-status youth from a home or home substitute to a medium-restriction facility for non-disciplinary reasons;

(4) transferring an institutional-status [a] youth who was initially assigned to a medium-restriction facility in accordance with §380.8521 of this title to a high-restriction facility for non-disciplinary reasons;

(5) transferring a conditionally placed youth to a higher-restriction facility pursuant to §380.8545 of this title;

(6) with a few exceptions in procedure as identified in §380.9571 of this title:

(A) admitting a youth to a Texas Juvenile Justice Department (TJJD)-operated crisis stabilization unit; and

(B) extending the time to treat a psychiatric disorder in connection with a crisis stabilization unit placement (as appropriate); or

(7) depositing into the student benefit fund money possessed by a youth in a residential program in violation of §380.9503 of this title.

(d) Criteria.

(1) In order for a youth to receive [~~To impose~~] a major consequence, in accordance with §380.9503 of this title, [~~place a youth in the Redirect program,~~] or have [~~place~~] contraband money seized and placed in the student benefit fund, the hearing manager shall [~~must~~] find:

(A) the youth committed an eligible rule violation; and

(B) there are no extenuating circumstances, as defined by §380.9550 of this title.

(2) In order for the youth to be placed in the moderate or intensive level of the intervention program, the hearing manager must find the youth committed an eligible rule violation.

(3) ~~[(2)]~~ In order for a youth to be transferred [To transfer a youth] to a higher-restriction placement for non-disciplinary reasons, the hearing manager must find that there are no less restrictive placements appropriate and available for the youth.

(4) ~~[(3)]~~ In order for [To transfer] a conditionally placed youth to be transferred to a higher-restriction placement, the hearing manager must find one or more of the criteria required in §380.8545 of this title.

(5) ~~[(4)]~~ For criteria for admission to or extension in a crisis stabilization unit, see §380.8767 of this title.

(c) ~~[Investigating Alleged Violations and]~~ Requesting the Hearing.

~~[(1)]~~ When a youth in a residential facility is alleged to have committed a major rule violation or a minor rule violation requiring a security referral, an investigation into the alleged violation(s) must be started within 24 hours after the alleged offense(s) and completed within 24 hours after the time started. The investigation must be conducted by a staff member other than the one who reported the alleged violation.]

(1) ~~[(2)]~~ [A decision on whether or not to pursue a Level II hearing must be made within 24 hours after the completion of the investigation.] The appropriate staff person, as specified by TJJJD procedural manuals, must request permission to schedule a hearing from the facility administrator, parole supervisor, contract case management supervisor, or their designees. The hearing must be requested and scheduled as soon as practical but no later than seven days, excluding weekends and holidays, after the alleged violation or discovery of the alleged violation.

~~[(3)]~~ For hearings involving rule violations or contraband money, the hearing must be conducted as soon as practical but not later than seven days, excluding weekends and holidays, after the alleged violation was committed or the money was found.]

(2) ~~[(4)]~~ For hearings involving a non-disciplinary transfer or transfer from a conditional placement, the youth may waive the hearing and agree to the transfer. The waiver must be in writing. If the youth does not waive the hearing, the hearing must be held before the transfer. However, if good cause compels a pre-hearing transfer, the hearing must be held no later than three calendar days after the transfer.

~~[(5)]~~ If the youth is being held in a security unit due to potential interference with a pending Level II hearing, the hearing must be conducted as soon as possible but no later than five working days after the date of admission to the security unit.]

(3) ~~[(6)]~~ Failure to meet any timeline in this subsection must be justified with documentation of circumstances that made it impossible, impractical, or inappropriate to meet the deadline. Failure to document these justifications may result in a dismissal of the allegations or a reversal of the decision(s) of the hearing manager.

(f) Hearing Manager.

(1) The hearing manager must be a TJJJD employee trained to function as a hearing manager. The hearing manager must be impartial and may not be a person who:

(A) witnessed any part of the alleged violation(s);

(B) made any prior decisions regarding the youth based on the alleged violation; or

(C) is directly responsible for supervising the youth.

(2) If the youth is currently assigned to a halfway house, the hearing manager may not be a member of the halfway house staff.

(3) If the youth is currently assigned to a contract program, the hearing manager may not be the TJJJD case management specialist assigned to that youth.

(4) If the youth is currently assigned to his/her home, the hearing manager may not be the parole officer or parole supervisor assigned to the youth's case.

(g) Staff Representative.

(1) The staff representative shall ~~[must]~~ be a TJJJD employee trained to function as a staff representative.

(2) The staff representative is responsible for assembling all evidence, giving all required notices, and presenting evidence at the hearing.

(h) Advocate.

(1) A TJJJD employee, contract employee, or volunteer who has been trained to serve as an advocate shall ~~[must]~~ assist the youth. If a youth hires his or her own counsel, then no advocate will be appointed.

(2) The youth is given the opportunity to choose an advocate from among those trained. The youth's choice shall ~~[must]~~ be honored unless there is a showing of unavailability of the requested advocate. If the youth does not choose an advocate or the requested advocate is unavailable, an advocate will be appointed.

(3) The advocate may not be a person who was a witness to the alleged violation.

(4) If the youth is not proficient in the English language, the advocate must be proficient in English and in the youth's primary language or an interpreter shall ~~[must]~~ be used.

(i) Notice.

(1) Not later than 24 hours before the hearing, the youth and the youth's advocate shall ~~[must]~~ be given:

(A) written notice of the reasons for calling the hearing;

(B) written notice of the proposed action to be taken;

(C) written notice and copies of the evidence to be relied upon; and

(D) written notice of the following rights of the youth:

(i) the right to remain silent;

(ii) the right to be assisted by an advocate in the hearing process;

(iii) the right to confront and cross-examine adverse witnesses who testify at the hearing;

(iv) the right to contest adverse evidence admitted at the hearing;

(v) the right to call readily available witnesses and present readily available evidence on his/her own behalf at the hearing; and

(vi) the right to appeal the results of the hearing. The right to appeal cannot be waived.

(2) Staff currently employed at and youth currently residing at the location of the hearing are considered to be "readily available" and shall ~~[must]~~ be called to testify at the youth's request. If there are unusual circumstances that would prevent the witness from attending in person or by phone or videoconference, the hearing may be postponed or continued to allow a witness's testimony. If the witness's testimony cannot be secured within a reasonable time, the hearing may proceed without the witness. The reasons for proceeding without requested witnesses shall ~~[must]~~ be documented and placed in the hearing record.

(3) Evidence is considered "readily available" if it is within the control of any TJJD staff member at the location of the hearing or is otherwise easily attainable. Video created by TJJD, such as body-worn-camera video and surveillance video, is generally considered "readily available" and shall be shown to the youth if used as evidence during the hearing. The reasons for excluding requested evidence must be documented and placed in the hearing record.

(4) All youth in TJJD facilities and ~~[secure]~~ contract placements shall ~~[must]~~ be given the hearing packet (all written materials relied upon and a list of witnesses) at least 24 hours before the hearing. The paperwork may be taken away from the youth if the youth is misusing the papers in any way.

(5) After receipt of the written notice and consultation with the advocate, the youth may waive the 24-hour-notice period by agreeing, in writing, to an earlier hearing time.

(6) If the youth is younger than 18 years of age, reasonable efforts shall ~~[must]~~ be made to inform the youth's parent/guardian [parent(s) or guardian] of the time and place of the hearing at least 24 hours before the hearing. If the youth is 18 years of age or older, such notice may be provided only with the youth's authorization to release the information.

(j) Location of Hearing, Youth's Presence at Hearing, and Official Record of Hearing.

(1) The hearing shall ~~[must]~~ be held where the youth resides unless the hearing manager determines another site is more appropriate.

(2) The hearing shall ~~[must]~~ be recorded. The recording and the hearing packet shall ~~[must]~~ be preserved for six months after the hearing.

(3) The youth shall ~~[must]~~ be present during the hearing unless the youth waives his/her presence, ~~[or]~~ his/her behavior prevents the hearing from proceeding in an orderly and expeditious fashion, or his/her temporary removal from the hearing room is necessary to secure the testimony of a witness.

(A) A voluntary waiver of the youth's presence must be in writing and signed by the youth and his/her advocate. If the youth does not sign the waiver for any reason, his/her presence is not waived.

~~[(B) If the youth waives his/her presence, the hearing may be conducted by teleconference.]~~

~~(B)~~ ~~[(C)]~~ If a youth is excluded from the hearing for behavioral reasons or to secure the testimony of a witness, the reason(s) for the exclusion shall ~~[must]~~ be documented in the hearing record. The advocate shall ~~[must]~~ be present during the testimony and must have the opportunity to question the witness.

~~(C)~~ ~~[(D)]~~ A true plea cannot be entered on behalf of a youth who has waived his/her presence at the hearing.

(4) A victim who appears as a witness shall ~~[should]~~ be provided a waiting area where he/she is not likely to come in contact with the youth or the youth's parent/guardian except during the hearing.

(5) To protect the confidential nature of the hearing, persons other than the youth, the youth's advocate, the staff representative, and the youth's parent/guardian [parent(s)] may be excluded from the hearing room at the discretion of the hearing manager; however, any person except the staff representative or the youth's advocate may be excluded from the hearing room if his/her presence causes undue disruption or delay of the hearing. The reason(s) for the exclusion(s) shall ~~[must]~~ be stated on the record.

(6) The hearing may be held by conference call or videoconference [if the hearing manager determines doing so will not deprive the youth of his/her due process rights]. If the hearing is held by conference call or videoconference, all required participants must be able to simultaneously hear one another.

(k) Hearing Process.

(1) Except as provided by paragraphs (2) and (3) of this subsection, hearings consist of two parts: fact finding and disposition. During the fact-finding portion of the hearing, only evidence concerning the alleged violation(s) may be considered. The youth's prior behavior may not be discussed or considered unless disposition is reached. In the disposition phase, the youth will be given the opportunity to present evidence of extenuating circumstances.

(2) The following types of hearings consist only of fact finding to determine if the criteria for transfer are met:

(A) non-disciplinary transfer hearings; and

(B) conditional placement transfer hearings requested because the conditional placement is no longer a viable option.

(3) A mental health status review hearing consists only of fact finding to determine if the criteria for admission or extension in a crisis stabilization unit are met.

(4) The youth shall ~~[must]~~ be given the opportunity to plead "true" or "not true" to each allegation. If the youth pleads "true," the hearing manager shall ~~[must]~~ ask questions of the youth to ensure he/she did so voluntarily and that he/she did commit the violation.

(5) If the youth pleads "not true," the staff representative has the burden of proving by a preponderance of evidence that the youth did commit the alleged violation(s).

(6) Witnesses shall ~~[must]~~ take an oath before testifying. Witnesses may testify by phone or videoconference if in-person testimony is impractical or unfeasible. If testimony is provided by phone, persons required to be present at the hearing must be able to simultaneously hear the testimony.

(7) The hearing manager, staff representative, and advocate may question each witness in turn.

(8) With the exception of the youth or staff representative, any person designated as a witness may be excluded from the hearing room during the testimony of other witnesses and may be instructed to refrain from discussing his/her testimony with anyone until all the witnesses have been dismissed.

(9) The hearing manager may permit a witness to testify outside the presence of the youth if doing so appears reasonable and necessary to secure the testimony of the witness. If the youth is excluded from the hearing room during testimony, the advocate for the youth must be present during the testimony and must have the oppor-

tunity to review the testimony with the youth before questioning the witness.

(10) The youth may not be called as a witness unless, after consulting with the advocate, he/she waives on the record his/her right to remain silent. Neither the hearing manager nor the staff representative may question the youth unless he/she waives the right to remain silent.

(A) The youth's failure to testify shall ~~[must]~~ not create a presumption or inference against him/her.

(B) A youth who waives the right to remain silent may ~~[only]~~ be questioned concerning only those issues addressed by his/her testimony.

(11) All credible evidence may be considered, irrespective of its form.

(12) The standard of proof for all disputed issues is a preponderance of evidence.

(13) The hearing manager may recess or continue the hearing for such period(s) of time as may be necessary to ensure an informed and accurate fact finding or to secure evidence the hearing manager determines may be relevant.

(14) After all evidence has been presented, the staff representative and advocate may offer summation statements.

(15) The hearing manager shall ~~[must]~~ announce his/her findings of fact.

(16) If there is a finding of true, the hearing manager shall ~~[must]~~ proceed to disposition, unless the hearing consists only of fact finding as described in paragraphs (2) and (3) of this subsection. During disposition, the hearing manager shall ~~[must]~~ provide the youth an opportunity to present evidence of extenuating circumstances. If no extenuating circumstances are found, the hearing manager shall make ~~[must order]~~ the disposition finding of which the youth was given notice ~~[recommended by the staff representative].~~

~~[(A) A hearing manager's decision to transfer a youth is final subject to approval by the appropriate administrator.]~~

~~[(B) A hearing manager's decision to demote a youth's stage in the agency's rehabilitation program is final subject to approval by the facility administrator or assistant facility administrator.]~~

~~[(C) If extenuating circumstances are found incident to the rule violation(s) proved at the hearing, the youth may not be assigned the requested disciplinary dispositions or any other major consequences. However, the true finding will remain in the youth's record and may be considered by the youth's treatment team or parole officer in determining appropriate actions to address the youth's behavior. If extenuating circumstances are found incident to a youth's possession of prohibited money, the hearing manager determines the appropriate way to dispose of the money.]~~

(17) If the hearing manager finds extenuating circumstances incident to the rule violation(s) proved at the hearing, the youth may not be assigned any consequence designated as a major consequence in accordance with §380.9503 of this title. However, the true finding will remain in the youth's disciplinary record and may be considered by the youth's treatment team or parole officer in determining appropriate actions to address the youth's behavior. If extenuating circumstances are found incident to a youth's possession of prohibited money, the hearing manager determines the appropriate way to dispose of the money. A finding of extenuating circumstances does not prohibit placement of a youth in the intervention program

under §380.9510 of this title, but the admission review shall take the finding into account.

(18) A hearing manager's decision to impose a disciplinary consequence is final, subject to appeal. However, the youth's treatment team may reduce or suspend the imposition of the consequence if warranted.

(19) ~~[(17)]~~ The hearing manager shall ~~[must]~~ prepare a report of his/her findings, which includes the grounds for the hearing, the evidence relied upon, and the decision.

(20) ~~[(18)]~~ After the hearing manager announces his/her decision, he/she shall ~~[must]~~ inform the youth of the youth's right to appeal to the executive director or ~~[his/her]~~ designee. The hearing manager's decision is implemented even if the youth appeals and the response is pending.

(21) ~~[(19)]~~ A copy of the hearing report shall ~~[must]~~ be given to the youth immediately after the hearing is closed.

(22) ~~[(20)]~~ The hearing manager's report shall ~~[must]~~ be reviewed by the appropriate supervisor, institutional superintendent, halfway house superintendent, or parole supervisor, as are all disciplinary reports, to ensure consistency in the application of policy.

§380.9557. *Level III Hearing Procedure.*

(a) Purpose. This rule establishes the procedure to be followed to ensure youth are afforded appropriate due process before certain actions are taken. ~~[This rule establishes a hearing procedure that provides the appropriate due process in certain situations.]~~

(b) Applicability. The Level III hearing procedure is appropriate due process in the following instances:

(1) to determine admission or extension in the security program ~~[Security Program]~~ in accordance with §380.9740 of this title;

(2) to impose ~~[determine minor]~~ disciplinary consequences for youth in medium-restriction facilities other than those requiring a Level II hearing in accordance with §380.9503 of this title; and

(3) to impose ~~[determine minor]~~ disciplinary consequences other than parole revocation for youth on parole in accordance with §380.9504 of this title.

(c) Procedure When Determining Admission to or Extension in the Security Program ~~[Procedures]~~.

(1) To initiate a Level III hearing, the youth shall ~~[must]~~ be notified orally of the time and date of the hearing, the alleged misconduct, and the recommended action(s) to be taken.

(2) The youth has the right and shall ~~[must]~~ be given the opportunity to speak on his/her own behalf regarding the alleged misconduct or the appropriateness of admission to or extension in the security program ~~[the recommended action]~~.

(3) If the Level III hearing involves a decision for an extension in the security program ~~[Security Program]~~ beyond the initial 24 hours, the youth shall ~~[must]~~ be appointed an advocate to assist the youth in presenting his/her position during the extension hearing.

(4) The hearing administrator may consider any reasonably reliable information in deciding whether the youth committed the alleged misconduct and whether the requested admission to or extension in the security program ~~[action]~~ is appropriate.

~~[(5) If the hearing administrator finds a rule violation was committed, the youth will be given the opportunity to present evidence of extenuating circumstances.]~~

~~[(6) If the hearing administrator finds reasonable grounds to believe a youth on parole or in a medium-restriction facility has committed a violation and does not find that extenuating circumstance exist, the hearing administrator must indicate which violation was committed and the appropriate disciplinary consequence(s) may be imposed.]~~

~~(5) [(7)] If the hearing administrator finds there are reasonable grounds to believe the criteria in §380.9740 of this title are met to admit or extend a youth in the security program [Security Program], the hearing administrator shall [must] indicate which rule violation was committed and which admission criterion was proven.~~

~~(6) The youth will be given the opportunity to present evidence of extenuating circumstances, as defined by §380.9550 of this title. If there is a finding of extenuating circumstances, the youth may still be admitted to the security program if the criteria in §380.9740 are met.~~

~~[(8) If there is a finding of extenuating circumstances:]~~

~~[(A) no disciplinary consequence may be imposed; and]~~

~~[(B) the youth may be admitted to the Security Program if criteria in §380.9740 of this title are met.]~~

~~(d) Procedure When Imposing Disciplinary Consequences.~~

~~(1) This procedure applies only to youth in medium-restriction facilities or on parole.~~

~~(2) To initiate a Level III hearing, the youth shall be notified orally of the time and date of the hearing, the alleged misconduct, and the recommended disciplinary consequence(s).~~

~~(3) The youth has the right and shall be given the opportunity to speak on his/her own behalf regarding the alleged misconduct or the appropriateness of the recommended disciplinary consequence.~~

~~(4) The hearing administrator may consider any reasonably reliable information in deciding whether the youth committed the alleged misconduct and whether the recommended disciplinary consequence is appropriate.~~

~~(5) If the hearing administrator does not find reasonable grounds to believe the youth committed the alleged misconduct, no disciplinary consequences may be imposed.~~

~~(6) If the hearing administrator finds reasonable grounds to believe the youth committed the alleged misconduct, the youth shall be given the opportunity to present evidence of extenuating circumstances. If the hearing administrator finds there are extenuating circumstances, no disciplinary consequences may be imposed.~~

~~(7) If the hearing administrator finds reasonable grounds to believe the youth committed the alleged misconduct and does not find extenuating circumstances exist, the recommended disciplinary consequence(s) shall be imposed.~~

~~(c) [(d)] Appeals.~~

~~(1) The youth may appeal the decision to admit or extend the youth in the security program to the facility administrator or designee [or parole supervisor or their designees, as appropriate,] on grounds that the youth did not commit a rule violation or that any other criteria for admission or extension in the security program as set out in §380.9740 of this title were not proven.[:]~~

~~(A) If it is determined there were not reasonable grounds to believe the youth committed a violation, the fact that the violation was overturned will be documented appropriately and the youth will be released from the security program. [he/she did not commit the violation that was found true;]~~

~~(B) If it is determined there were reasonable grounds to believe the youth committed a violation but no criteria for admission to or extension in the security program were proven, the youth will be released from the security program. [the disciplinary measure imposed was inappropriate;]~~

~~[(C) the criteria for admission or extension in the Security Program was not proven; or]~~

~~[(D) there were extenuating circumstances to the commission of the violation.]~~

~~(2) The youth may appeal the decision to impose a disciplinary consequence to the facility administrator or parole supervisor or their designees, as appropriate, on the grounds that the youth did not commit the rule violation found proven at the hearing, extenuating circumstances should have been found, or the imposed disciplinary measure was inappropriate.~~

~~(A) [(2)] If it is determined there were not reasonable grounds to believe the youth committed [did not commit] the violation, the fact that the violation was overturned will be documented appropriately [found true at the hearing or there were extenuating circumstances, the youth's behavioral record must be updated to reflect that determination]. The appeal authority shall [must] determine some form of equitable relief if the youth has completed a disciplinary measure or has otherwise been adversely affected by the finding.~~

~~(B) If it is determined there were extenuating circumstances that should have been found, that fact will be documented appropriately. The appeal authority shall determine some form of equitable relief if the youth has completed a disciplinary measure or otherwise has been adversely affected by the finding.~~

~~(C) [(3)] If it is determined that the youth did commit the violation [found true at the hearing] but the imposed disciplinary measure was [decision is determined to be] inappropriate, that fact will be documented appropriately. The [the violation will remain on the youth's behavioral record but the] appeal authority shall [must] determine some form of equitable relief if the [for a] youth [who] has already completed or started serving the [a] disciplinary measure. If the youth has not yet started serving the disciplinary measure, the appeal authority may impose a different, appropriate disciplinary measure. [and/or has been adversely affected.]~~

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 July 15, 2022.

TRD-202202697

Christian von Wupperfeld

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: August 28, 2022

For further information, please call: (512) 490-7278



SUBCHAPTER F. SECURITY AND CONTROL

37 TAC §380.9729

STATUTORY AUTHORITY

The amended section is proposed under Section 242.003, Human Resources Code, which requires TJJJ to adopt rules appropriate to the proper accomplishment of TJJJ's functions and to adopt rules for governing TJJJ schools, facilities, and programs.

No other statute, code, or article is affected by this proposal.

§380.9729. *Directives to Apprehend.*

(a) Purpose. This rule acknowledges a relationship between the Texas Juvenile Justice Department (TJJD), law enforcement, and the Texas/National Crime Information Center (TCIC/NCIC) with regard to reporting and apprehending youth in TJJD jurisdiction who escape, are absent without authorization, or violate [who have broken] the conditions of release under supervision. This rule also establishes criteria for the issuance of a directive to apprehend.

(b) Applicability. This rule applies to all youth under TJJD jurisdiction, whether supervised by TJJD staff or contract staff.

(c) Issuance of a Directive to Apprehend.

(1) TJJD may issue a directive to apprehend pursuant to the authority granted under Texas Human Resources Code §243.051 if a youth in TJJD custody [has]:

(A) has escaped or has an unauthorized absence, as defined by §380.9503 of this chapter [title]; or

(B) has failed to comply with the written conditions of release under supervision (i.e., conditions of parole or conditions of placement).

(2) Directives to apprehend are [must be] entered by the Office of Inspector General Incident Reporting Center according to TCIC/NCIC procedures and the Department of Public Safety/Federal Bureau of Investigation [(DPS/FBI)] guidelines.

(3) Upon issuance of a directive to apprehend, TJJD may notify the Texas Missing Persons Clearinghouse and the National Center for Missing and Exploited Children. The notifications shall be made if it is determined the youth is at a high risk of victimization due to human trafficking, sexual assault, exploitation, abuse, or neglectful supervision.

(d) Cancellation of a Directive to Apprehend. A directive to apprehend is cancelled when:

(1) a youth is arrested or apprehended;

(2) a youth is discharged from commitment to TJJD; or

(3) TJJD staff determines the directive to apprehend is no longer needed.

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 July 15, 2022.

TRD-202202698

Christian von Wupperfeld

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: August 28, 2022

For further information, please call: (512) 490-7278



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 17. STATE PENSION REVIEW BOARD

CHAPTER 610. FUNDING SOUNDNESS RESTORATION PLANS SUBCHAPTER

40 TAC §§610.11, 610.13 - 610.15, 610.20 - 610.22, 610.30 - 610.32

Introduction

The State Pension Review Board (PRB) proposes new 40 TAC Chapter 610, concerning Funding Soundness Restoration Plans (FSRPs).

BACKGROUND AND PURPOSE

The PRB proposes new rules to implement the new statutory requirements for FSRPs following the changes made during the 87th Legislative Session in 2021. The PRB has been approaching the rule drafting process with three primary goals:

To provide guidance and clarify reporting requirements for FSRPs after the changes took effect.

To preserve the work of public retirement systems and their sponsors that have previously submitted effective FSRPs and are committed to following their plans to achieve full funding.

To support retirement systems in unusual situations due to when they became subject to the new FSRP requirement and provide guidance as they navigate the new statutory requirements.

The original FSRP requirement was put in place during the 2015 Legislative Session to bring Texas public retirement systems in line with the PRB's *Guidelines for Actuarial Soundness* and improve the funding conditions of retirement systems with amortization periods exceeding 40 years. As systems submitted their FSRPs and began the 10-year process of completing their plans, it became clear that several aspects of the requirement needed refinement to ensure effectiveness. Additionally, the PRB revised the *Guidelines for Actuarial Soundness*, now *Pension Funding Guidelines*, in 2017 to ensure they were more consistent with current actuarial standards and best practices.

For these reasons, the PRB's 2020 Recommendations to the 87th Legislature included several potential changes to FSRP statute, most of which were eventually incorporated into House Bill 3898 (87R), which took effect on September 1, 2021. These recommendations were developed over the course of a year based on stakeholder feedback at board and committee meetings and other opportunities for public input. Many of the areas of improvement were identified based on recommendations from systems that were preparing FSRPs and research on best practices from other states. Additionally, the PRB has implemented the new law through educational materials and presentations about the new law, further engagement with stakeholders, and several calls for public comment and participation throughout development of the proposed rule language.

While preparing these recommendations to the legislature, the PRB frequently stated the desire to balance ensuring the FSRP requirements were effective in improving the funding conditions of Texas public retirement systems while with preserving the work of systems and associated governmental entities that implemented effective FSRPs under the previous statute. The PRB wished to ensure that systems adhering to their existing FSRPs were able to finish the term of their existing plans without having to start over due to the updated requirements. This intent

applies to the current rulemaking process as one of the goals established to guide the development of the proposed rules.

Additionally, because the new statutory requirements are different from the previous statute in a variety of ways, the proposed rules are intended to clarify different aspects of the documentation and reporting requirements while still maintaining the flexibility needed for systems and sponsors to create an effective FSRP based on their unique situation. This approach allows for the centralized oversight and local accountability the statute while acknowledging the variety of statutes and plan provisions governing retirement systems in Texas.

The proposed rules also clarify an existing statutory requirement that a public retirement system notify its members if the system's financing arrangement is inadequate. The existing disclosure requirement under Texas Government Code §802.106(d) was established in Texas law in 1981 during the 67th Legislative Session, first called session. Since then, some systems have submitted actuarial valuations to the PRB with a note from their actuary that the system's funding arrangement is considered inadequate. However, since the FSRP requirement requires a system to make a plan sufficient to amortize the unfunded actuarial accrued liability within 30 years, it follows that triggering the FSRP requirement is an indication that a system's funding arrangement is inadequate. Further, transparency and membership education are important to the health of a system, and many systems will require participation from their members through elections to modify benefits or contributions to successfully create an effective FSRP. Therefore, this rule is necessary to clarify existing statutory requirements for communication with system members in the context of the laws that now include the FSRP process.

SECTION-BY-SECTION SUMMARY

Proposed new §610.11 outlines the purpose of these rules and the PRB's authority to make rules under Texas statute.

Proposed new §610.13 includes definitions for important terms in the chapter and related statutes.

Proposed new §610.14 specifies the entities that are subject to the proposed rules.

Proposed new §610.15 clarifies that an actuarial valuation that triggers an FSRP or put a system at risk of triggering an FSRP prompts the existing statutory disclosure to retirement system members that the financing of the system is inadequate under Texas Government Code §802.106(d). Subsection (b) makes clear that once a system triggers an FSRP, that information must be included as part of the disclosure.

Proposed new §610.20 outlines the method the PRB will use to determine if a system with a legacy FSRP is adhering to that plan, including the method of creating and following compliance corridors specifically for legacy FSRPs.

Proposed new §610.21 specifies that a system with a legacy FSRP can continue following that plan until the earlier of either the legacy FSRP target date, which is the end of the 10-year period a system was allotted to reach the funding period maximum after an FSRP was adopted based on the previous statutory language, or the date of an actuarial valuation indicating that the system has reached the new funding period maximum of 30 years. Subsection (b) specifies that actuarial valuations for a system adhering to a legacy FSRP will not be counted towards triggering an FSRP under the new requirements while the legacy FSRP is still active. This section was included as one way to support the PRB's stated goal to allow systems adhering to effective

legacy FSRPs to continue following their existing plans as long as possible rather than becoming subject to the updated FSRP requirements before completing their existing plans.

Proposed new §610.22 clarifies the date the revised FSRP exemption takes effect. Since the first FSRPs prepared under the new statute are not due until September 1, 2025, and a system cannot trigger a revised FSRP until after first being subject to a standard FSRP, the provision exempting a system from the revised FSRP requirement would not take effect before a system can become subject to that requirement. Therefore, the revised FSRP exemption would not take effect until September 1, 2025. Finally, subsection (b) specifies that a system with a legacy FSRP would not qualify for the revised FSRP exemption before the legacy FSRP has ended.

Proposed new §610.30 clarifies the process for a system to prepare, submit, and fulfill the FSRP requirements. Subsection (b) would allow systems more flexibility when submitting the analysis needed to support their FSRPs, which should help minimize any potential costs incurred when fulfilling the statutory requirements. Subsection (c) includes a definition to clarify what is needed to fulfill the revised FSRP requirement. Subsection (d) specifies conditions under which a system would be considered compliant or noncompliant with the requirements.

Proposed new §610.31 clarifies the process for a system to prepare, submit, and fulfill the periodic progress updates required by statute while preparing an FSRP. Subsection (a) clarifies that a system adhering to a legacy FSRP will continue the progress update schedule established under the previous version of statute. Some systems were subject to the FSRP requirement when statute changed and became subject to the new requirements. Generally, the actuarial valuation that triggered their FSRPs was several years in the past, so the standard timeline for these progress updates would not be appropriate. Therefore, Subsection (d) establishes an alternate date when their progress updates begin. Subsection (e) specifies that the schedule in statute would still apply for systems that trigger an FSRP after the law changed. Subsection (f) clarifies that a system preparing a voluntary FSRP does not need to submit progress updates, since they are not subject to the FSRP requirement.

Proposed new §610.32 establishes how the PRB will determine that a system is adhering to an FSRP prepared under the current statute for the purpose of establishing if the system qualifies for the revised FSRP exemption. This includes the process for creating and applying the compliance corridors for FSRPs prepared under current statute. Subsection (d) establishes the conditions under which a system can voluntarily prepare and submit an FSRP and have it recognized by the PRB. This provision was created to allow a greater number of systems to potentially qualify for the revised FSRP exemption without needing to establish an actuarially determined contribution structure and to provide an incentive for systems to address funding weaknesses before they get worse. In the past, some systems have voluntarily prepared reports or conducted studies, such as an Investment Practices and Performance Report or experience study, as a matter of best practice even if they were not subject to the specific requirements in PRB statute. Some systems may choose to do the same for the FSRP.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENTS

Westley Allen, Director of Business Operations, has determined that for the first five-year period the rule is in effect,

there will be no foreseeable implications relating to cost or revenues of state or local governments, under Government Code §2001.024(a)(4), as a result of enforcing or administering these rules. The fiscal note prepared by the Legislative Budget Board in response to H.B. 3898, which established the reporting requirements that these rules address, concludes there would be no significant fiscal implication for systems. It said that a system and the associated governmental entity may incur administrative costs to provide a separate analysis of the combined impact of changes under an adopted FSRP, but the bill allowed the associated governmental entity to pay all or part of the costs of these analyses, and systems have the option to provide this analysis within an actuarial valuation, which systems must already prepare under §802.101(a), Texas Government Code. (LBB Fiscal Note, 87th Legislative Regular Session, HB 3898, As Passed 2nd House, <https://capitol.texas.gov/tlodocs/87R/fiscalnotes/pdf/HB03898F.pdf#navpanes=0>).

PUBLIC BENEFIT/COST NOTE

Mr. Allen has determined, under Government Code §2001.024(a)(5), that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the amended section will be a positive actuarial effect on retirement systems to the extent the systems and associated governmental entities adopt and enact benefit, contribution, or other changes to improve retirement plan funding status. Also, the proposed rules will facilitate a clearer and more consistent implementation of Texas Government Code §§802.2015 - 802.2016.

GOVERNMENTAL GROWTH IMPACT STATEMENT

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

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of PRB employee positions;
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to the PRB;
- (5) the proposed rules may create new regulation to the extent that it implements a statutorily imposed reporting requirement (HB 3898);
- (6) the proposed rules will not expand, limit, or repeal existing regulations;
- (7) the proposed rules will not change the number of individuals subject to the rules; and
- (8) the proposed rules will not positively or adversely affect the state's economy.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES

Mr. Allen has determined there will be no impact on rural communities, small businesses, or microbusinesses as a result of implementing the proposed rules because the rules do not apply to those entities as these rules concern administrative reporting requirements for public retirement systems. Therefore, no regulatory flexibility analysis, as specified in §2006.002, Texas Government Code, is required.

IMPACT ON LOCAL EMPLOYMENT OR ECONOMY

Mr. Allen has determined there is no anticipated effect on local economy for the first five years that the proposed rules are in effect because the rules do not involve factors of local economy. Therefore, no economic impact statement, local employment impact statement, nor regulatory flexibility analysis is required under Texas Government Code §§2001.022 or 2001.024(a)(6).

COST TO REGULATED PERSONS (COST IN/COST OUT)

This rule proposal is not subject to §2001.0045, Texas Government Code, concerning increasing costs to regulated persons, because, as described in the Public Benefit/Cost Note, the proposed rules do not impose a cost on regulated persons under Texas Government Code §2001.024, including another state agency, a special district, or a local government.

TAKINGS IMPACT ASSESSMENT

The PRB has determined that no private real property interests are affected by this proposal, nor does the proposal restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action. Therefore, the proposed rule does not constitute taking under §2007.043, Texas Government Code.

ENVIRONMENTAL RULE ANALYSIS

The proposed rules are not a "major environmental rule" as defined by §2001.0225, Texas Government Code. The proposed rules are not specifically intended to protect the environment or to reduce risks to human health from environmental exposure. Therefore, a regulatory environmental analysis is not required.

Public Comment

Comments on the proposal may be submitted in writing to Madilyn Jarman, Policy Analyst, P.O. Box 13498, Austin, Texas 78711-3498, (512) 463-1736. Comments may also be submitted electronically to prb@prb.texas.gov or faxed to (512) 463-1882. Commenters are encouraged to include "rule comments" in the subject line of the electronic mail. Comments will be accepted until 5:00 p.m. on August 29, 2022, which is 31 days after publication in the *Texas Register*.

Statutory Authority

The proposed rules are authorized by the Texas Government Code §802.201(a), which grants specific authority to the board to adopt rules for the conduct of its business; and §§802.2015(h) and 802.2016(h), which allow the PRB to adopt rules necessary to implement requirements related to funding soundness restoration plans.

Cross Reference Statutes and Codes Affected

The proposed rules affect and implement Texas Government Code, Chapter 802, including §§802.106, 802.2011, 802.2015, and 802.2016.

§610.11. Authority and Purpose.

These rules implement and are authorized by Texas Government Code §§801.201, 802.2011, 802.2015, and 802.2016.

§610.13. Definitions.

When used in this chapter, the terms listed below shall have the following meanings:

(1) "Board" means State Pension Review Board.

(2) "Compliance corridor" means the acceptable range of variation from a system's baseline for the system's funding period or

funded ratio, as further described in board rules that concern a system's adherence to a funding soundness restoration plan, and related figures.

(3) "Formulated" means finalized and approved by the appropriate decision-making bodies.

(4) "Funded ratio" has the meaning assigned by Texas Government Code §802.2011.

(5) "Funding period" means the length of time it would take to fully fund the unfunded actuarial accrued liability under the current actuarial assumption based on the greater of the actuarial value of assets or the market value of assets.

(6) "Governmental entity" has the meaning assigned by §802.1012, Texas Government Code.

(7) "Legacy funding soundness restoration plan" or "L-FSRP" means a funding soundness restoration plan formulated prior to September 1, 2021, accepted by the board, and governed by the law as it existed immediately before that date.

(8) "Public retirement system" has a meaning as defined by §801.001(2) and §802.001(3), Texas Government Code but shall not include defined contribution plans as defined by §802.001(1-a), Texas Government Code or retirement systems consisting exclusively of volunteers organized under the Texas Local Fire Fighters' Retirement Act as defined by §802.002(d), Texas Government Code.

(9) "Revised funding soundness restoration plan" or "R-FSRP" means a funding soundness restoration plan prepared under §802.2015(e-1) or §802.2016(e-1), Texas Government Code, which includes additional components compared to a funding soundness restoration plan prepared under §802.2015(e) or §802.2016(e), Texas Government Code.

(10) "Revised funding soundness restoration plan exemption" or "revision exemption" means the applicable section of either Texas Government Code §§802.2015(d-1) or 802.2016(d-1) under which qualifying systems prepare a funding soundness restoration plan under Texas Government Code §§802.2015(e) or 802.2016(e) rather than a revised funding soundness restoration plan.

(11) "Target date" means the 10th anniversary of the date on which the final version of a legacy funding soundness restoration plan was agreed to as required by law as it existed immediately before September 1, 2021.

(12) "Valuation date" means the date as of which the actuarial accrued liability and the actuarial value of assets are determined, often the first or last day of the plan year as specified in the valuation.

(13) "Voluntary funding soundness restoration plan" or "V-FSRP" means a funding soundness restoration plan formulated submitted, and completed under either Texas Government Code §802.2015 or §802.2016 as it stands after September 1, 2021, without the system or associated governmental entity first becoming subject to the requirement.

§610.14. Applicability.

This chapter applies to every public retirement system and its associated governmental entity that is subject to Texas Government Code §802.2015 or §802.2016 and to a system or associated governmental entity that choose to submit a voluntary funding soundness restoration plan.

§610.15. Required disclosure of inadequate financing arrangement to plan members.

(a) A notification to the associated governmental entity under Texas Government Code §802.2015(c) or §802.2016(c) regarding an

actuarial valuation that indicates the public retirement system's actual contributions are not sufficient to amortize the unfunded liability within 30 years, means that the financing of the system is inadequate for the purposes of §802.106(d), Texas Government Code.

(b) The disclosure to members of an actuarial determination of an inadequate financing arrangement required under Texas Government Code §802.106(d) shall be accompanied by a notice that the system is subject to the funding soundness restoration plan requirement under Texas Government Code §802.2015(c) or §802.2016(c) when a system becomes subject to the requirement.

§610.20. Criteria for Determining Adherence to a Legacy Funding Soundness Restoration Plan.

(a) A public retirement system is adhering to a legacy funding soundness restoration plan if the system's actuarial valuation shows:

(1) the funding period is expected to fall within 40 years by the target date and so long as the system's funding period continues to shorten while the system's funding period is above 40 years and does not increase to a length of time greater than 40 years after falling below 40 years; or

(2) an increase in funding period compared to the previous valuation, and the system's actuarial valuation shows that, between the valuation date and the system's target date, the system's funding period or funded ratio remains within the compliance corridor adopted in board rule. If the system's funding period is infinite, only the funded ratio will be evaluated to determine compliance for the purposes of this paragraph.

(b) A public retirement system with a legacy funding soundness restoration plan may submit a projection to serve as the baseline for the purpose of this subsection. This projection must show the projected funded ratio and funding period for each year beginning with the current date until the target date. For any years the system's funding period is projected to be above 40 years, the corridor will be based on the baseline. For any years the system's funding period is projected to be below 40 years, the compliance corridor will be based on a minimum of 40 years. If the system does not submit such a projection to the board for this purpose, the board will determine adherence to the legacy funding soundness restoration plan using a baseline in which a system's funding period must decrease by one year every consecutive year as measured on the anniversary of the date on which the final version of the funding soundness restoration plan was agreed to as required by law.

(c) The allowable degree of variation from the baseline will begin at five percent for a funded ratio corridor or ten years for a funding period corridor and will decrease over period between the current date and the target date as described by Figure: 40 TAC §610.20(c). A system would be considered compliant if plan experience exceeds a corridor in a favorable way. The board will use each system's baseline to provide a compliance corridor unique to that system based on their funding period and funded ratio, using the corridor sizes specified in these rules.

Figure: 40 TAC §610.20(c)

§610.21. Completion of a Legacy Funding Soundness Restoration Plan.

(a) A public retirement system adhering to a legacy funding soundness restoration plan may continue following that plan until the earlier of:

(1) the target date; or,

(2) the date of an actuarial valuation that indicates the system's funding period is at or below 30 years.

(b) actuarial valuations with valuation dates during a time that a system is adhering to a legacy funding soundness restoration plan shall not be counted towards triggering a funding soundness restoration plan under Texas Government Code §802.2015(c) or §802.2016(c) as it stands after September 1, 2021, until after the applicable date described in subsection (a) of this section when the system completes the legacy funding soundness restoration plan.

§610.22. Application of Revised Funding Soundness Restoration Plan Exemption.

(a) A public retirement system's actuarial valuation must be dated after September 1, 2025, to qualify for the revision exemption under Texas Government Code §802.2015(d-1)(1) or §802.2016(d-1)(1).

(b) The revision exemption does not apply to a system adhering to a legacy funding soundness restoration plan before the date prescribed by §610.21 of this chapter (relating to Completion of a Legacy Funding Soundness Restoration Plan).

§610.30 Submission and Completion Criteria for the Funding Soundness Restoration Plan Requirement

(a) The board will consider a retirement system to have submitted a funding soundness restoration plan when the board receives:

(1) a completed form approved by the board for this purpose;

(2) any supplementary or explanatory documents necessary to illustrate how the system's funding period will be within the maximum by the prescribed date, including a revised funding policy; and

(3) documentation of the date the plan was adopted by both the governing body of the system and of the governmental entity. Documentation may include the minutes or other record of an open meeting when each adoption occurred.

(b) The board will consider a retirement system to have completed the funding soundness restoration plan requirement when the board receives an actuarial valuation or separate analysis under Texas Government Code §§802.2015(e-2) or 802.2016(e-2) and the staff actuary or board actuary determines the actuarial valuation or separate analysis complies with actuarial standards of practice. An actuarial valuation and separate analysis are equivalent for the purposes of Texas Government Code §§802.2015(e-2) or 802.2016(e-2) and either may be submitted in lieu of the other during the respective submission periods, provided it includes the components required by the applicable subsection.

(c) For a system submitting a revised funding soundness restoration plan with specific changes required by statute, "automatic risk-sharing mechanisms" means changes to plan provisions, including adjustments to benefit levels or contribution amounts, upon meeting or exceeding certain criteria established beforehand without needing additional approval at the time of the change. The plan shall specify how the changes to the contribution amounts are split between the employer and members. At least one of the automatic risk-sharing mechanisms included in the plan must be an adjustable benefit or contribution mechanism.

(d) A system or associated governmental entity shall submit to the board the materials related to a funding soundness restoration plan that adequately fulfill the analysis and documentation requirements in statute and rules to be considered compliant. If the board determines the materials are inadequate, the board will notify the system of the determination with an explanation of the reason and may request additional information. The system shall submit additional materials consistent with the board's instructions. The board would consider a system noncompliant if the board does not receive the system's funding

soundness restoration plan; if the system fails to comply with an approved funding soundness restoration plan, revised funding soundness restoration plan, or other type of funding soundness restoration plan; or if the system fails to submit to the board the funding soundness restoration plan materials that adequately satisfy the requirements in statute and board rules within the appropriate time periods for those materials.

§610.31. Compliance with Progress Updates.

(a) A system adhering to a legacy funding soundness restoration plan shall continue providing progress updates every two years rather than submitting progress updates in accordance with this section.

(b) The first draft of a plan submitted as a part of a progress update under Texas Government Code §§802.2015(f) or 802.2016(f) must, at minimum, include a projected timeline for enactment of the plan, and identify the action that various entities must take to approve or enact the plan, such as votes that may be necessary in accordance with the system's governing statute. Each subsequent progress update should include a draft plan that contains updated information and that demonstrates movement toward a complete and finalized plan.

(c) A description of changes submitted as part of a progress update to fulfill the requirements of Texas Government Code §§802.2015(f) or 802.2016(f) must include the projected actuarial impact of each change under consideration on the retirement system's funding period and funded ratio.

(d) A system must submit updates consistent with subsections (b) and (c) of this section to the board starting September 1, 2023, and every six months thereafter until the system submits a funding soundness restoration plan to the board and the board determines it is compliant if the system:

(1) received an actuarial valuation dated prior to September 1, 2021, that triggered a funding soundness restoration plan requirement; and

(2) does not have a board-approved legacy funding soundness restoration plan.

(e) A system or associated governmental entity that receives an actuarial valuation dated after September 1, 2021, that triggers a funding soundness restoration plan, including a revised funding soundness restoration plan, must submit updates to the board beginning not later than the first anniversary of the valuation date of the actuarial valuation that required formulation of the plan and every subsequent six-month period until the plan is submitted as described in Texas Government Code §§802.2015(f) or 802.2016(f).

(f) A system or associated governmental entity preparing a voluntary funding soundness restoration plan is not required to submit progress updates to the board.

§610.32. Revised Funding Soundness Restoration Plan Exemption.

(a) A public retirement system is adhering to a funding soundness restoration plan formulated between September 1, 2021, and September 1, 2025, if, during the period between the date the funding soundness restoration plan is adopted by the system and governmental entity and the 10th anniversary of the applicable date for the funding soundness restoration plan to be formulated and the system to be within the maximum funding period prescribed by Texas Government Code §§802.2015(e)(2) or 802.2016(e)(2), the system's actuarial valuation shows the system's funding period or funded ratio remain within the applicable compliance corridors established in this section. If the system's funding period is infinite, only the funded ratio will be evaluated to determine compliance for the purposes of this subsection.

(b) The baseline for a system's funding period compliance corridor will be 30 years, and the baseline for the funded ratio corridor will be the actuarial projection of the system's expected future actuarial value of assets and liabilities submitted as part of an actuarial valuation or separate analysis in accordance with either Texas Government Code §§802.2015(e-2)(1) or 802.2016(e-2)(1).

(c) The allowable degree of variation from the baseline will begin at five percent for a funded ratio corridor or ten years for a funding period corridor and will decrease over the 10-year period as described by Figure: 40 TAC §610.32(c). A system would be considered compliant if plan experience exceeds the corridor in a favorable way. The board will use each system's baseline to provide a compliance corridor unique to that system based on their amortization period and funded ratio, using the corridor sizes specified in these rules. Figure: 40 TAC §610.32(c)

(d) A system may submit a voluntary funding soundness restoration plan without first becoming subject to the requirement, for the purposes of qualifying for the revision exemption, provided the V-FSRP is consistent with all applicable submission requirements in statute and rules.

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

Filed with the Office of the Secretary of State on July 18, 2022.

TRD-202202705

Amy Cardona

Executive Director

State Pension Review Board

Earliest possible date of adoption: August 28, 2022

For further information, please call: (512) 463-1736



PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 807. CAREER SCHOOLS AND COLLEGES

The Texas Workforce Commission (TWC) proposes amendments to the following sections of Chapter 807, relating to Career Schools and Colleges:

Subchapter A. General Provisions, §§807.1 - 807.3 and 807.6 - 807.8

Subchapter B. Certificates of Approval, §§807.11 - 807.17

Subchapter C. Financial Requirements, §§807.31 - 807.35 and 807.37

Subchapter D. Representatives, §§807.51, 807.53, and 807.54

Subchapter E. School Director and Administrative Staff, §§807.62 - 807.64 and 807.66

Subchapter F. Instructors, §§807.81 - 807.84

Subchapter G. Staff Education Requirements, §807.101 and §807.102

Subchapter H. Courses of Instruction, §§807.121 - 807.123 and 807.129 - 807.134

Subchapter I. Application Fees and Other Charges, §§807.151 - 807.153

Subchapter J. Advertising, §§807.171 - 807.173 and 807.175

Subchapter K. Admission, §§807.191 - 807.194, 806.196, and 807.197

Subchapter L. Progress Standards, §§807.221, 807.223, and 807.224

Subchapter M. Attendance Standards, §§807.241 - 807.245

Subchapter N. Cancellation and Refund Policy, §807.261 and §807.263

Subchapter O. Records, §§807.281 - 807.284

Subchapter P. Complaints, §807.301 and §807.302

Subchapter Q. Truck Driver Training Programs, §§807.321, 807.322, 807.324, and 807.325

Subchapter R. Closed Schools, §807.341 and §807.342

Subchapter S. Sanctions, §§807.351 - 807.353

Subchapter T. Cease and Desist Orders, §§807.362, 807.365, and 807.366

Subchapter U. Career Schools Hearings, §§807.385 - 807.387 and 807.395

TWC proposes the following new section to Chapter 807, relating to Career Schools and Colleges:

Subchapter A. General Provisions, §807.5

TWC proposes the repeal of the following sections of Chapter 807, relating to Career Schools and Colleges:

Subchapter H. Courses of Instruction, §§807.124 - 807.127

Subchapter J. Advertising, §807.176

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

Texas Education Code, Chapter 132, Career Schools and Colleges (the Act) charges TWC with oversight of career schools and colleges operating in Texas. By TWC's authority under the Act and TWC's Chapter 807 Career School and Colleges rules, the Career Schools and Colleges (CSC) Program licenses and regulates private postsecondary schools that offer vocational training to Texas residents. In this capacity, TWC currently regulates more than 600 schools, consisting of approximately 4,000 courses of instruction that provide vocational training to more than 146,000 students annually.

The purpose for the proposed amendments to Chapter 807 is based on a thorough review of existing Chapter 807 rules, the Act, policy implementation, and application processing. The amendments provide clarity and remove unnecessary regulation for CSC; ensure that students seeking to further their education are provided clear information, receive timely refunds, as appropriate, and have timely access to school outcome data; and streamline CSC Program processes.

The amendments also implement House Bill (HB) 33, passed by the 87th Texas Legislature, Regular Session (2021). HB 33 amended Texas Education Code, Chapter 132, relating to measures facilitating the award of postsecondary course credit leading to workforce credentialing based on military experience, education, and training.

Throughout Chapter 807, where appropriate, the term "Commission" is replaced with "Agency." The Commission is the body of governance of the three Commissioners appointed by the governor. The Agency is the unit of state government presided over by the Commission and administered by the executive director.

The definitions for class, course, course of instruction, program, and program of instruction, are proposed for amendment, and, therefore, where appropriate, the terms were changed to ensure consistency of usage throughout Chapter 807.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

TWC proposes the following amendments to Subchapter A:

§807.2. Definitions

Section 807.2(12) is amended to include "course of instruction" and modify the definition to include an identifiable unit of organized instruction to avoid confusion with a subject, which is an element of a program or seminar.

Current §807.2(15) is removed because "course of instruction" is defined in amended §807.2(12). The subsequent paragraphs are renumbered accordingly.

Renumbered §807.2(15) is amended to revise the definition term of "course time" to include "course time hour." Also, "externship" is utilized in all CSC materials and replaces "internship" in the definition to avoid confusion.

Renumbered §807.2(18) is amended to revise the definition of "distance education course" to align with the definition of "distance education" in the statute. Additionally, the current definition relates specifically to asynchronous education and is amended to include synchronous education.

Renumbered §807.2(21) is amended to revise the definition of "good reputation" to restate with potential disqualifiers instead of inversely worded with qualifiers.

Section 807.2(26) is added to define "hybrid program or blended program."

Section 807.2(27) is amended to revise the definition of "job placement" to provide clarity of what constitutes placement.

Section 807.2(29) is added to define "military service."

Section 807.2(30) and (31) are added to define "owner" and "owner designee." The subsequent paragraphs are renumbered accordingly.

Renumbered §807.2(33) is amended to remove the word "program" from the definition.

Section 807.2(39) is added to define "school authorized official" to reduce confusion of who is authorized to sign official documents.

Renumbered §807.2(40) is amended to clarify the definition of "school." The addition of "educational institution" and "training program" as synonyms for school is necessary to provide definition to these terms used in statute without definition or clarification provided.

Renumbered §807.2(41) is amended to revise the definition of "secondary education" to further define what constitutes that level of education.

Renumbered §807.2(42) is amended to clarify that "workshop" is a synonymous term for "seminar."

Section 807.2(47) is added to define a "subject" to delineate its use from "class" for clarification.

§807.3. Memorandum of Understanding for Regulation of Schools

Section 807.3 is amended to revise the current name of "Texas Guaranteed Student Loan Corporation" to "Trellis Company."

§807.5. Suspensions

New §807.5 is added to state the executive director's authority to suspend the operation of provisions within Chapter 807 under certain circumstances.

§807.6. Processing Periods

Section 807.6 is amended to include "Application" in the section title and allow the program the ability to modify processing times that are not required to be publicly identified by Texas Government Code, §2005.003.

§807.7. Exemptions

Section 807.7(a) is amended to include program authority to approve, deny, or revoke exemptions.

Section 807.7 is amended to remove subsections (b) and (c) as the language is redundant.

Relettered §807.7(b) is amended to reference the Act, as opposed to the vague reference to the Texas Education Code.

New §807.7(c) is amended to remove extraneous language. Exemption criteria is addressed in the Act.

SUBCHAPTER B. CERTIFICATES OF APPROVAL

TWC proposes the following amendments to Subchapter B:

§807.11. Original Approvals

Section 807.11(d)(1) is amended to revise the conditions of reapplication. To reapply, the applicant must currently submit fees again and the section is amended to clarify that all fees are due again.

§807.12. Renewal

Section 807.12(a)(2) and (b)(3) are amended to remove the reference to the fee for the tuition trust account. The renewal fee paid by career schools and colleges is seamless in its application.

§807.14. Locations

Section 807.14(b)(2) is removed, because the itinerate program typically meet the criteria outlined for seminars or short-term programs. The subsequent paragraphs are renumbered accordingly.

§807.15. Notification of Actions

Section 807.15(c) is added to include the requirement for schools to notify TWC of mortgage and/or lease lateness or defaults. This can be used by TWC as an indicator of possible closures. The subsequent subsections are relettered accordingly.

Relettered §807.15(d) is amended to add the copy of the legal notice to the documents that need to be included by the school with the notice.

§807.16. Degrees

Section 807.16(b) is amended to remove the reference that approval from the accreditor may be required. Accreditor approval is a necessary element for review.

§807.17. Unlicensed Schools

Section 807.17 is amended to revise verbiage to clarify that TWC may take one or more of the listed actions against schools that operate without a certificate of approval from TWC.

SUBCHAPTER C. FINANCIAL REQUIREMENTS

TWC proposes the following amendments to Subchapter C:

§807.31. Definitions Relating to Financial Requirements

Section 807.31(1) is added to define attest services. Attest services require specific licensure per the Texas Public Accountancy Act. The subsequent paragraphs are renumbered accordingly.

Renumbered §807.31(5) is amended to remove the unnecessary element of the projection of tuition and fees for the upcoming fiscal year from the definition of unearned tuition affidavit.

§807.32. Financial Standards

Section 807.32(a)(2) is removed because the requirement for a school to report unearned tuition on its balance sheet is no longer needed. All school financial submissions will require a CSC-048, which identifies unearned tuition. The subsequent paragraphs are renumbered accordingly.

Section 807.32(b) is amended to require both an unearned tuition affidavit and sworn statement with any submission. Currently these are not required with audited or reviewed financials.

Section 807.32(c) is amended to modify the statement regarding preparation. The information for the preparer is not needed, only for the certified public accountant (CPA) firm performing the attest engagement.

Section 807.32(d) is added to include attest services to indicate legal requirements and address the CPA being in jurisdictions other than Texas. The subsequent subsection is relettered accordingly.

§807.33. Financial Requirements for Original Approvals

Section 807.33(a)(2) is amended to remove redundant language. Audits must be completed by a CPA and in Texas, a firm license holder. Generally Accepted Accounting Principles or Generally Accepted Auditing Standards require a CPA to complete a financial review.

Section 807.33(b) is amended to clarify that the intent is three full calendar months, not partial, and to remove references to contract basis, as an evaluation of financial stability is necessary to issue a Certificate of Approval (per §807.4(a)(3) and Texas Education Code, §132.055(b)(9)).

Section 807.33(b)(1) and (2) are amended to remove unnecessary details associated with projected expenses. Expenses for the categories of salaries and lease payments for equipment are sufficient to perform a review.

§807.35. Financial Requirements for Renewal

Section 807.35 is amended to revise the section title from "Financial Requirements for Renewal" to "Financial Requirements for Annual Reporting" to clarify the requirement and to allow the addition of language specific to revocations.

Section 807.35(a) and (b) are amended to clarify that the financial statements submitted must be true and correct and to remove extraneous language as the standards have been identified in §807.32.

Section 807.35(c) is amended to add language to clarify the requirement of federal tax return documents to avoid confusion of schools submitting their Texas Franchise Tax reports.

Section 807.35(e) is added to clarify the outcome of not providing compliant financial statements within 60 days of notice of deficiency. This will allow TWC to take administrative action without delay.

§807.37. Commission Ordered Audits

Section 807.37(a)(1) and (2) is amended to clarify audit standards and language is added to §807.37 regarding failure to provide TWC with Commission-ordered item(s).

SUBCHAPTER D. REPRESENTATIVES

TWC proposes the following amendments to Subchapter D:

§807.51. Representative Requirements

New §807.51(a) is added to include clarifications regarding individuals not required to register as representatives given the nature of their ownership structure. The subsequent subsections are relettered accordingly.

§807.53. Representative Limitations

Section 807.53(c)(1) is deleted to reduce the restriction on locations a representative is authorized to solicit students. The subsequent paragraphs are renumbered accordingly.

Section 807.53(c) is amended to include courses in addition to programs.

Section 807.53(c)(11) is added to require students be advised of the policies and procedures related to granting credit.

§807.54. Representative Compliance

Section 807.54 is amended to modify the matrix to align with the proposed changes in §807.53.

SUBCHAPTER E. SCHOOL DIRECTOR AND ADMINISTRATIVE STAFF

TWC proposes the following amendments to Subchapter E:

§807.62. School Director Qualifications and Duties

Section 807.62 is amended to add new subsection (a) to consolidate and clarify requirements for small, and other than small, schools.

Current §807.62(a) and (b) are deleted based on consolidation under §807.62(a). The subsequent subsections are relettered accordingly.

§807.64. Director of Education Requirements

Section 807.64(b)(2) is amended to modify "employment as a supervisor" to "supervisory employment experience," which aligns with the expectations of an individual who is appointed to a director position.

§807.66. Director of Admissions Requirements

Section 807.66(a) is amended to remove obsolete references. This provision was adopted in 2006, so any individual in this position in 2006 would have the necessary qualifications in 2020.

Section 807.66(b)(1) is amended to change "administrative experience" to "administration experience" to align with intent.

SUBCHAPTER F. INSTRUCTORS

TWC proposes the following amendments to Subchapter F:

§807.81. Instructor Qualifications

Section 807.81(b) is amended to modify the requirement to indicate three full calendar months as opposed to allowing partial months.

Section 807.81(b)(1)(A) - (D) and (2)(B) - (C), (d), and (e) are amended to indicate "subject" instead of "class," and "subjects" instead of "classes," to reflect the correct element of a program.

Additional amendments are proposed throughout to clarify subject, in lieu of course.

§807.82. Temporary Instructors

Section 807.82(a) is amended to indicate the maximum term of a temporary instructor is 90 days, to match current practice.

Section 807.82(b)(1) is amended to change "class" to "subject(s)."

Section 807.82(b)(2) is deleted, removing the requirement to list the instructor. This information is redundant. The subsequent paragraphs are renumbered accordingly.

Section 807.82(b)(4) is added to include any other information required by TWC.

Section 807.82(c) is deleted to remove notice of possible sanctions for using an unapproved instructor since this is stated as part of the instructor application process. The subsequent subsections are relettered.

Relettered §807.82(c) is amended to clarify subject, in lieu of course.

Relettered §807.82(d) is amended to clarify the period as an "academic term" and "subject" as the appropriate element.

§807.84. School Responsibilities Regarding Instructors

Section 807.84(e) is added to stress refunds and administrative actions to be taken against a school for utilizing an unapproved instructor.

SUBCHAPTER G. STAFF EDUCATION REQUIREMENTS

TWC proposes the following amendments to Subchapter G:

§807.101. Initial Training

Section 807.101(a) is amended to remove references to the Director's Resource Guide, as it is obsolete.

Section 807.101(b) is amended to use three full calendar months instead of three months for practicality.

§807.102. Continuing Education

Section 807.102(a) is amended to remove language relating to TWC approving the continuing education providers, as this is not the practice. TWC's Career Schools and Colleges program will continue to vet training (as per Texas Education Code, §132.0551(e)) and ensure that it is relevant to the practice of

higher education instruction and administration or the subject(s) being taught, but TWC does not maintain a published list.

Section 807.102(b) is deleted since the language is redundant to what is stated in §807.102(a). The subsequent subsections are relettered accordingly.

Section 807.102(c) is amended to remove "full-time instructor" because the continuing education requirement for full-time instructors is different from the requirement for school directors and directors of admission

SUBCHAPTER H. COURSES OF INSTRUCTION

TWC proposes the following amendments to Subchapter H:

§807.121. Definitions Relating to Courses of Instruction

Section 807.121(1) is amended to add language to clarify the role that externship plays in classifying a program type.

Section 807.121(2) is amended to clarify that "lab" is a synonym for "laboratory experience."

Section 807.121(6) is amended to clarify terminology.

Section 807.121(7) is added to define "military service course credit directory."

§807.122. General Information for Courses of Instruction

Section 807.122(a) and (b) are amended to move language from §807.127(a) and (c) for better alignment.

Section 807.122(c) is amended to move language from §807.124(a) for better alignment.

Section 807.122(d) is amended to move language from §807.125(a) for better alignment and provide requirement to conform to legal standard.

Section 807.122(e) is amended to move language from §807.126(a) for better alignment.

Section 807.122(e)(7) is added to require the addition of criteria evaluating military service experience, education, or training, for any course listed in the military service course credit directory.

Section 807.122(f) is added to ensure TWC reviews course time and balances it against the industry standard for each state occupation. The subsequent subsections are relettered accordingly.

Relettered §807.122(n) is amended to modify the language to clarify that only a simple majority of members can have no ownership or employment interest regarding the school.

§807.123. Applications for Additional Courses of Instruction

Section 807.123(b)(1) and (4) are deleted to remove abbreviated program application requirements for duplicate programs and continuing professional education issues. The subsequent paragraphs are renumbered accordingly.

§807.124. Stated Occupation

Section 807.124 is repealed. The requirements in §807.124 are outside the scope of program capability. Elements of §807.124(a) have been moved to §807.122 in an effort to ensure students are trained for a stated occupation.

§807.125. Curriculum Content

Section 807.125 is repealed to reduce duplicated language and unnecessary items. The language in §807.125(a) is moved to §807.122 for better alignment.

§807.126. Curriculum Length

Section 807.126 is repealed and language in §807.126(a) is moved to §807.122 for better alignment.

§807.127. Program Title

Section 807.127 is repealed and language in §807.127(a) and (c) is moved to §807.122 for better alignment.

§807.129. Facilities

Section 807.129(b) is amended to clarify that the enrollment capacity is related to seats, as well as workstations, in a lecture capacity.

§807.131. School Responsibilities Relating to Courses of Instruction

Section 807.131(b)(1) is amended to establish TWC determines what constitutes "reasonable."

Section 807.131(i) is amended to reflect basic recommendations and reduce language complexity. There are not statutory guidelines on class size; rule language provides recommendations based on training experiences.

§807.132. Course of Instruction Revisions

Section 807.132(c) is deleted. This is not something the program reviews or enforces and is just extraneous language. Ultimately employment will be indicative of the alignment.

SUBCHAPTER I. APPLICATION FEES AND OTHER CHARGES

TWC proposes the following amendments to Subchapter I:

§807.151. Fee Schedule

Section 807.151(5), (9), (10), (11), and (13) are amended to modify language for clarity.

Section 807.151(8) is deleted. These changes do not require the reissuance of approval. The subsequent paragraphs are renumbered accordingly.

Renumbered §807.151(10) is amended to remove the application fee for an administrative staff member.

§807.152. Renewal Fees

Section 807.152(c) is amended to correct the terminology of the late renewal fee as identified in statute.

§807.153. Installment Payments

Section 807.153(b)(3) is amended to specify that failure to meet an installment agreement may result in revocation of the school's certificate of approval.

Section 807.153(c) is added to provide rule authority to take administrative action against a school that has received a multi-year certificate for not submitting required renewal payments.

SUBCHAPTER J. ADVERTISING

TWC proposes the following amendments to Subchapter J:

§807.171. General Information for Advertising

Section 807.171(a) is amended to clarify that the intent is not limited only to deceptive statements, but also misleading statements, concerning enrollment.

§807.173. Advertisement Content

Section 807.173 is amended to include "and Monitoring" in the section title to reflect TWC's authority to monitor schools' advertising content.

Section 807.173(d) is amended to allow the use of the student's abbreviated name in endorsements and to review schools to maintain records of the student endorsement.

Section 807.173(g) is added to allow TWC to order steps countering advertisement violations.

§807.175. Catalog

Section 807.175(a)(14), (b), (c), and (d) are amended to adjust language to align with other changes in Chapter 807.

§807.176. Advertisement Monitoring

Section 807.176 is repealed to eliminate extraneous language. The language in §807.176(a) and (b) are moved to §807.173 for better alignment.

SUBCHAPTER K. ADMISSION

TWC proposes the following amendments to Subchapter K:

§807.191. General Information for Admission

Section 807.191(a) and (b) are amended to clarify that specific admission requirements apply to all schools.

§807.192. Admission Requirements

Section 807.192(a)(3) is amended to replace "certificate" with "nondegree" to encompass all courses of instruction.

§807.193. Receipt of Enrollment Policies

Section 807.193(a) is amended to require all schools meeting criteria to use TWC-approved document.

Section 807.193(b) is amended to update administrative requirements.

§807.194. Enrollment Agreement

Section 807.194(a) is deleted, which excludes seminar schools from being required to complete enrollment agreements. The subsequent subsections are relettered accordingly.

Section 807.194(h) is deleted because it allows schools to submit abbreviated enrollment agreements. Schools are required to submit all enrollment agreements to TWC for approval prior to use.

§807.196. Tuition and Fees

Section 807.196(a) is amended to clarify the element to which the charge is related.

§807.197. Admission Requirements for Degree Granting Schools

Section 807.197(a) is amended to clarify that this restriction does not apply to TWC-approved teach-outs.

SUBCHAPTER M. ATTENDANCE STANDARDS

TWC proposes the following amendments to Subchapter M:

§807.243. Termination of Enrollment

Section 807.243(b) is amended to clarify the amount of time associated with the academic term and §807.243(c) is removed because it is no longer needed. The subsequent subsection is relettered accordingly.

§807.244. Make-up Work

Section 807.244(a) is amended to clarify that work may be made up, the appropriate increments, and note that the time itself cannot be made up.

§807.245. Leaves of Absence

Section 807.245(a) is amended to clarify that this is specific to the program length and not just applicable to small schools.

Section 807.245(c) is amended to clarify the time period.

SUBCHAPTER N. CANCELLATION AND REFUND POLICY

TWC proposes the following amendments to Subchapter N:

§807.261. Requirement for Tour

Section 807.261(b) is amended to remove the exclusion for hybrid or blended programs.

Section 807.261(c) is amended to add the tour conditions for hybrid or blended programs.

§807.263. Refund Requirements

Section 807.263(a) is amended to clarify that refunds to students are contingent upon the outcome of TWC's review of facts associated with the school's conduct and that TWC may order full or partial refunds.

SUBCHAPTER O. RECORDS

TWC proposes the following amendments to Subchapter O:

§807.282. Student Records

Section 807.282(b) is added to require schools to maintain records electronically. The subsequent subsections are relettered accordingly.

New §807.282(g) is added to address possible need for translation.

§807.283. Attendance Record Keeping

Current §807.283(a)(1) is deleted so that schools must maintain attendance records for all programs. The subsequent paragraphs are renumbered accordingly.

Renumbered §807.283(a)(1) is amended to specify what information must be on school master record of attendance.

Renumbered §807.283(a)(2) requiring attendance records is amended to include instructor name, course name, date, class hours scheduled for each day and absence(s).

Section 807.283(b) is deleted to remove the attendance record keeping requirements for Title IV schools. Verifiable academically related activity is already addressed in refunds. The subsequent subsection is relettered accordingly.

§807.284. Reporting

Section 807.284(d) is amended to remove redundant language.

SUBCHAPTER P. COMPLAINTS

TWC proposes the following amendments to Subchapter P:

§807.301. School Policy Regarding Complaints

Section 807.301(a)(5)(C) is deleted to remove redundant guidance for addressing complaints. The subsequent subparagraphs are relettered accordingly.

§807.302. Complaints and Investigations

Section 807.302(d) is amended to substitute course of instruction for program to clarify that seminars are included and indicate that the investigation for a complaint not filed timely may be declined.

SUBCHAPTER Q. TRUCK DRIVER TRAINING PROGRAMS

TWC proposes the following amendments to Subchapter Q:

§807.321. General Information Regarding Truck Driver Training

Section 807.321(b) is added to require all truck driver training programs to comply with applicable requirements outlined in 49 Code of Federal Regulations Part 380.

SUBCHAPTER R. CLOSED SCHOOLS

TWC proposes the following amendments to Subchapter R:

§807.341. School Closures

Section 807.341(a) is added to establish the requirement for owners to notify TWC of pending closure as soon as possible.

Section 807.341(b) is added to list information that a school must provide TWC upon notification of closure.

Section 807.341(c) is added to grant TWC the ability to impose sanctions for schools failing to comply with §807.341. The subsequent subsections are relettered accordingly.

§807.342. Tuition Trust Account

Section 807.342(e) is deleted, because it is part of the renewal amounts and not a line item fee.

SUBCHAPTER S. SANCTIONS

TWC proposes the following amendments to Subchapter S:

§807.352. Sanctions

Section 807.352 is amended to change references of program to course, which is inclusive of programs and seminars.

Section 807.352(a)(2) is deleted because it is not a form of sanction, but a required element of renewal, if applicable, per the Act. The subsequent paragraphs are renumbered accordingly.

Renumbered §807.352(a)(8) and (9) are amended to align with language from the Act and other sections of Chapter 807.

§807.353. Administrative Penalties

The penalty matrix in §807.353 is amended to reflect addition of failure of notice as required per §807.15; reduce the penalty, in conjunction with redefining an instance, for unlicensed instructors as a deterrent; and include a penalty for failure to grant credit, when required.

SUBCHAPTER U. CAREER SCHOOLS HEARINGS

TWC proposes the following amendments to Subchapter U:

§807.387. Hearing Procedures

Section 807.387(a) is amended to change the default hearing format from in person to telephonically.

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 and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and 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 United States 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 support TWC's ability to effectively and efficiently protect students, regulate career schools and colleges, meet employer needs, and improve consumer disclosures that allow informed choices. TWC proposes amendments in several key areas. The amendments enumerate TWC's expectations and use of its regulatory authority in areas in which recent violations and possible abuses have been identified. Additionally, the amendments are intended to increase transparency of the regulatory requirements and the overall performance of career schools and colleges.

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 United States 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 rules will be in effect, they will not:

- create or eliminate a government program;
- require the creation or elimination of employee positions;

--require an increase or decrease in future legislative appropriations to TWC;

--require an increase or decrease in fees paid to TWC;

--create a new regulation;

--expand, limit, or eliminate an existing regulation;

--change the number of individuals subject to the rules; and

--positively or adversely 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 gain further efficiencies in the investigation of complaints, review of policies and procedural systems of state agencies, and reporting of data to elected state leadership and the public.

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 Local Workforce Development Boards (Boards). TWC provided the policy concept regarding these rule amendments to the Boards for consideration and review on February 8, 2022. TWC also conducted a conference call with Board executive directors and Board staff on February 11, 2022, 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 July 11, 2022.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §§807.1 - 807.3, 807.5 - 807.8

STATUTORY AUTHORITY

The rules are proposed under Texas Education Code, Chapter 132, which provides 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 proposed rules affect Title 3, Texas Education Code, particularly Chapter 132.

§807.1. *Title and Purpose.*

(a) This chapter [These rules] may be cited as the Career Schools and Colleges rules.

(b) The purpose of this chapter [these rules] is to implement and interpret the provisions of the Texas Education Code, Chapter 132,

Career Schools and Colleges (the Act). The Agency [Commission] shall evaluate each school according to the standards of practice set forth in the Act and this chapter. The Agency [Commission] will provide assistance, whenever possible, in complying with this chapter.

§807.2. *Definitions.*

In addition to the definitions contained in §800.2 of this title, the following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

(1) Academic quarter--A period of instruction that includes at least ten weeks of instruction, unless otherwise approved by the Agency.

(2) Academic semester--A period of instruction that includes at least 15 weeks of instruction, unless otherwise approved by the Agency.

(3) Academic term--An academic quarter, academic semester, or other progress evaluation period.

(4) Academically related activity--An exam, tutorial, computer-assisted instruction, academic counseling, academic advisement, turning in a class assignment, or attending a study group that is assigned by the institution, or other activity as determined by the Agency.

(5) Accountant--An independent certified public accountant properly registered with the appropriate state board of accountancy.

(6) Act--Texas Education Code, Chapter 132, Career Schools and Colleges.

(7) Address of record--In addition to the mailing address contained in the application for a certificate of approval, each career school or college shall establish an email [e-mail] address of record for a distribution list that consistently maintains a minimum of two current subscribers, with the format of the address to be "School#Director@xdomain," for example [e.g.], S1111Director@gmail.com.

(8) Advertising--Any affirmative act designed to call attention to a school or program for the purpose of encouraging enrollment.

(9) Agency--The unit of state government established under Texas Labor Code, Chapter 301, that is presided over by the Commission and administered by the executive director to operate the integrated workforce development system and administer the unemployment compensation insurance program in this state as established under the Texas Unemployment Compensation Act, Texas Labor Code Annotated, Title 4, Subtitle A, as amended. The definition of Agency applies [shall apply] to all uses of the term [in rules contained] in this chapter.

(10) Appellant--The party or the party's authorized hearing representative who files an appeal from an appealable determination or decision.

(11) Asynchronous distance education--Distance education training that the Agency determines is not synchronous.

(12) Class, course, or course of instruction--An identifiable unit of organized instruction that is part of a program of instruction.

(13) Commission--The body of governance of the Texas Workforce Commission composed of three members appointed by the governor as established under Texas Labor Code, §301.002 that includes one representative of labor, one representative of employers, and one representative of the public. The definition of Commission applies [shall apply] to all uses of the term [in rules contained] in this chapter [subchapter].

(14) Coordinating Board--The Texas Higher Education Coordinating Board.

~~[(15) Course of instruction--A program or seminar.]~~

~~[(15) [(16)] Course time or course time hour--A [course or] class period that is:~~

~~(A) a 50-minute to 60-minute lecture, recitation, or class, including a laboratory class or shop training, in a 60-minute period;~~

~~(B) a 50-minute to 60-minute externship [internship] in a 60-minute period; or~~

~~(C) 60 minutes of preparation in asynchronous distance education.~~

~~[(16) [(17)] Date of notice--The date the notice is mailed, unless good cause exists for the hearing officer to determine otherwise.~~

~~[(17) [(18)] Date of request of hearing--The date on which the appellant or the hearing representative filed a written notice of appeal with the Agency by hand delivery, facsimile, or mail. If an appeal is mailed to the Agency, then the appeal is perfected as of the postmark date on the envelope containing the appeal request unless good cause exists for the hearing officer to determine otherwise. If an appeal is delivered by hand or facsimile after 5:00 p.m., the date of request shall be the next day.~~

~~[(18) [(19)] Distance education course--Either a seminar or a program that is offered to nonresidence [non-residence] school students delivered either synchronously or asynchronously to the student [via correspondence or other media from a remote site on a self-paced schedule, excluding programs using interactive instruction].~~

~~[(19) [(20)] Distance education school--A school that offers only distance education courses.~~

~~[(20) [(21)] Employment--A graduating or graduate student's employment in the same or substantially similar occupation for which the student was trained.~~

~~[(21) [(22)] Good reputation--The possession of honesty and truthfulness, trustworthiness and reliability, and a professional commitment to the educational process and the training or preparing of a person for a field of endeavor in a business, trade, technical, or industrial occupation, as well as the condition of being regarded as possessing such qualities. In determining whether a person is of good reputation, the Agency is not limited to the following acts or omissions. The Agency may consider similar acts or omissions and rehabilitation efforts in response to prior convictions in making its determination. A person may be [is] considered to lack [be of] good reputation if the person:~~

~~(A) has [never] been convicted of a felony or any other crime that would constitute risk of harm to the school or students as determined by the Agency;~~

~~(B) has [not] been successfully sued for fraud or deceptive trade practices, or breach of contract, within the last 10 years;~~

~~(C) owns [does not own] or administers [administer] a school currently in violation of legal requirements, has [never] owned or administered a school with repeated violations, or [and] has [never] owned or administered a school that closed with violations including, but not limited to, unpaid refunds or administrative penalties; or~~

~~(D) has [not knowingly] falsified or withheld information from the Agency.~~

~~[(22) [(23)] Hearing--An informal, orderly, and readily available proceeding held before an impartial hearing officer. A party or hearing representative may present evidence to show that the Agency's determination should be reversed, affirmed, or modified.~~

(23) [(24)] Hearing officer--An Agency employee designated to conduct impartial hearings and issue final administrative decisions.

(24) [(25)] Hearing representative--Any individual authorized by a party to assist the party in presenting the party's appeal. A hearing representative may be legal counsel or another individual. Each party may have a hearing representative to assist in presenting the party's appeal.

(25) [(26)] Human trafficking [Trafficking]--The action or practice of illegally transporting people for the purposes of forced labor or commercial sexual exploitation, including all offenses referred to in Texas Penal Code, Chapter 20A [of the Texas Penal Code].

(26) Hybrid program or blended program--A program that has any combination of residence and synchronous distance education offerings.

(27) Job placement--An active [affirmative] effort by the school to assist the student in obtaining employment in the same or substantially similar stated occupation for which the student was trained. Active efforts include, but are not limited to, the school:

(A) arranging an interview;

(B) contacting potential employers; and/or

(C) bringing potential employers to the school to assist the student.

(28) Master Student Registration List (MSRL) [student registration list]--A comprehensive list with an entry made for any person who signs an enrollment agreement, makes a payment to attend the school, or attends a class. The entry shall be made on the date the first of these events occurs.

(29) Military service--Service as a member of the armed forces of the United States, including service in the National Guard or Reserves.

(30) Owner--

(A) In the case of a career school or college owned by an individual or married couple, that individual or married couple;

(B) In the case of a career school or college owned by a partnership, all full, silent, and limited partners;

(C) In the case of a limited liability company, all members and managers;

(D) In the case of professional associations, the members and governing persons;

(E) In the case of a career school or college owned by a corporation, the corporation, its directors, officers, and each shareholder owning shares of issued and outstanding stock aggregating at least 10 percent of the total of the issued and outstanding shares;

(F) In the case of a career school or college in which the ownership interest is held in trust, the beneficiary of that trust;

(G) In the case of a career school or college owned by another legal entity, a person who owns at least 10 percent ownership interest in the entity; or

(H) In all instances, for any entity owned by a parent or holding entity, whether in whole or part, the definition of an owner shall extend to those entities and corresponding person.

(31) Owner designee--A person designated in writing by an owner to act on behalf of the ownership, including having signatory authority.

(32) [(29)] Party--The person or entity with the right to participate in a hearing authorized in applicable statute or rule.

(33) [(30)] Program or program of instruction--A postsecondary sequence [program] of organized instruction or study that may lead to an academic, professional, or vocational degree, certificate, or other recognized educational credential.

(34) [(31)] Refund--The completed payment of a refund such that the refund instrument has been negotiated or credited into the proper account(s).

(35) [(32)] Reimbursement contract basis--A school operating, or proposing to operate, under a contract with a state or federal entity in which the school receives payment upon completion of the training.

(36) [(33)] Residence school--A school that offers at least one program that includes classroom instruction or synchronous distance education.

(37) [(34)] Response deadline--Deadlines that fall on a weekend, an official state holiday, a state holiday for which minimal staffing is required, or a federal holiday are extended one working day.

(38) [(35)] Sanctions--Administrative or civil actions, including, but not limited to, penalties, revocation of approvals, or cease and desist orders taken by the Agency against an entity in response to violations of the Act or this chapter.

(39) School authorized official--Any identified owner, director, or owner designee of a school.

(40) [(36)] School, educational institution, or training program--A "career school or career college," as defined in the Act, that includes each location where courses of instruction shall be offered.

(41) [(37)] Secondary education--Successful completion of public, private, or home schooling at the high school level or obtainment of a recognized high school equivalency credential, recognized by an institution of higher education or a private or independent institution of higher education, as defined by Texas Education Code, §61.003.

(42) [(38)] Seminar or workshop--A type of program [course of instruction] that enhances a student's career, as opposed to a program that teaches the skills and fundamental knowledge required for a stated occupation. A seminar may include a workshop, an introduction to an occupation or cluster of occupations, a short course that teaches part of the skills and knowledge for a particular occupation, language training, continuing professional education, and review for postsecondary examination.

(43) [(39)] Seminar school--A school that offers only seminars.

(44) [(40)] Small school--A "small career school or college" as defined in the Act.

(45) [(41)] Stated occupation--An occupation for which a program is offered that:

(A) is recognized by a state or federal law or by a state or federal agency as existing or emerging;

(B) is in demand; and

(C) requires training to achieve entry-level proficiencies.

(46) [(42)] Student--Any individual solicited, enrolled, or trained in Texas by a school.

(47) Subject--An identifiable unit of instruction or study that imparts specific knowledge or skills, which is a subpart of a program or seminar.

(48) [(43)] Suspension of enrollments--A sanction that requires the school to suspend enrollments, re-enrollments, advertising, and solicitation, and to cease, in any way, advising prospective students, either directly or indirectly, of the available courses of instruction.

(49) [(44)] Synchronous distance education--The Agency may determine distance education to be synchronous under the following conditions:

(A) the training is conducted simultaneously in real time, or the training is conducted so that the manner of delivery ensures that even if the instructor and student are separated by time, the course time of instruction that the student experiences can be determined; and

(B) there is consistent interaction between the student(s) and the instructor on a schedule that includes a definite time for completion of the program and periodic verifiable student completion/performance measures that allow the application of the progress standards of Subchapter L of this chapter and attendance standards of Subchapter M of this chapter.

(50) [(45)] Title IV school--A career school or college that participates in student financial aid programs under Title IV, Higher Education Act of 1965 (20 United States Code [U.S.C.] Section 1070 et seq.).

(51) [(46)] Tour--A required, in-person inspection of the facilities and equipment pertaining to a course of instruction.

(52) [(47)] Week--Seven consecutive calendar days.

§807.3. *Memorandum of Understanding for Regulation of Schools.*

The Act requires the Agency [~~Commission~~] to execute a memorandum of understanding with Trellis Company, formerly known as the Texas Guaranteed Student Loan Corporation, and each state agency regulating schools to reduce default rates at the regulated schools and to improve the overall quality of the programs. Copies of the required memoranda of understanding shall be maintained and made [are] available upon request [at the Texas Workforce Commission, 101 East 15th Street, Austin, Texas 78778].

§807.5. *Suspensions.*

The executive director may suspend the operation of one or more of the provisions in this chapter, not statutorily imposed, if he or she finds that a public emergency or imperative public necessity exists, and that the suspension will best serve the public health, safety, or welfare.

§807.6. *Application Processing Periods.*

(a) The time periods for processing applications from schools, including small businesses, for certificates of approval[, as well as approvals for representatives, school directors, and instructors,] shall be in accordance with the following time periods:[-]

(1) Initial notification of acceptance or return of original application, to include the reason for the return is 10 days;[The first period is the time from the receipt of an application to the date of the issuance of a written notice approving the application or outlining the reasons why the application is unacceptable. The time periods for each application are:]

(2) [(A)] original certificate of approval--90 [40] days;

(3) [(B)] renewed certificate of approval--45 days from the expiration of the current certificate [40 days];

[(C) change in ownership certificate of approval--40 days;]

[(D) original representatives--21 days;]

[(E) renewed representatives--21 days;]

[(F) school directors and instructors (approval contingent on issuance of school's approval)--40 days; and]

[(G) school directors and instructors (approval not contingent on issuance of school's approval)--55 days.]

[(2) The second period is the time from receipt of the last item necessary to complete the application to the date of issuance of written notice approving or denying approval of the application. The time periods for each application are:]

[(A) original certificate of approval--40 days;]

[(B) renewed certificate of approval--40 days;]

[(C) change in ownership certificate of approval--40 days;]

[(D) original representative (approval contingent upon issuance of school's approval)--21 days;]

[(E) original representative (approval not contingent upon issuance of school's approval)--21 days;]

[(F) renewed representative (approval contingent upon issuance of school's approval)--21 days;]

[(G) school directors and instructors (approval contingent on issuance of school's approval)--40 days; and]

[(H) school directors and instructors (approval not contingent on issuance of school's approval)--55 days.]

(b) In the event the application is not processed in the time periods as stated in this section, the applicant has the right to request of the Commission full reimbursement of all filing fees paid in that particular application process. If the Commission does not agree that the established time periods have been violated or finds that good cause existed for exceeding the established periods, the request will be denied. [Good cause for exceeding the period established is considered to exist if:]

[(1) the number of applications for certificates of approval, representatives, school directors, or instructors as appropriate to be processed exceeds by 15% or more the number processed in the same calendar quarter of the preceding year;]

[(2) another public or private entity utilized in the application process caused the delay; or]

[(3) other conditions exist that give good cause for exceeding the established periods.]

[(c) If the request for full reimbursement authorized in this section is denied, the applicant may then request a hearing by appealing to the Commission for a resolution of the dispute. The appeal will be processed in the same manner as other appeals involving schools pursuant to the Act.]

§807.7. *Exemptions.*

(a) A school seeking an exemption must [may] apply for approval to the Agency [~~Commission for an exemption~~] under §132.002 or §132.003 of the Act [Texas Education Code].

[(b) The Commission shall grant the requested exemption if the Commission determines that the school meets the requirements

for an exemption under §132.002 or §132.003 of the Texas Education Code.]

[(e) The Commission may deny or revoke an exemption in the same manner as a denial or revocation of a certificate of approval, if the Commission determines that the school does not meet the requirements for the exemption under §132.002 or §132.003 of the Texas Education Code.]

(b) [(4)] A school may appeal the denial or revocation of an exemption in accordance with the provisions of Subchapter D of the Act [Texas Education Code].

(c) Schools shall be required to provide documentation and additional information, as requested by the Agency, to facilitate the determination of whether a school meets the requirements of an exemption set out in the Act. All requests for exemption must provide:

(1) the school's legal name, physical address, telephone number, and website, if applicable, along with the name and phone number of the ownership and owner partners; and

(2) the name, objective, length, and cost of the course(s) offered.

[(e) A school applying for an exemption from the provisions of Texas Education Code §132.002(a)(6) must provide evidence that:]

[(1) the school has a certificate of authorization from the Coordinating Board to grant baccalaureate or higher-level degrees or a letter from the Coordinating Board indicating that Coordinating Board approval is not required;]

[(2) the school is accredited by a Coordinating Board-recognized accrediting body;]

[(3) the school is in good standing with the designated accrediting body and not subject to:]

[(A) probation;]

[(B) a directive to show cause as to why accreditation should not be revoked; or]

[(C) any other action that, as defined by the accrediting agency, will prevent the school from seeking approval of its degree programs; and]

[(4) at least a simple majority (51 percent) of credits earned in the educational programs of the school are transferable to educational programs that are:]

[(A) at an equivalent or higher academic level (e.g., baccalaureate to baccalaureate or higher);]

[(B) at a junior college, college, or university supported entirely or partly by taxation from a local or state source; and]

[(C) within the same local/regional service area as the offered program, as determined by the Agency.]

§807.8. Confidentiality of Information.

All student-specific information obtained from or about any school by the Agency, including, but not limited to, data submitted under §807.284(a) of this chapter, is confidential information and not releasable, and is not public information under Texas Government Code, Chapter 552, but may be compiled and reported to the public at a summary level of information that does not include the personally identifiable information of any student or allow for the identification of any student through combination with other publicly [publicly] available information.

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 July 13, 2022.

TRD-202202636

Les Trobman

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: August 28, 2022

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



SUBCHAPTER B. CERTIFICATES OF APPROVAL

40 TAC §§807.11 - 807.17

The rules are proposed under Texas Education Code, Chapter 132, which provides 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 proposed rules affect Title 3, Texas Education Code, particularly Chapter 132.

§807.11. Original Approvals.

(a) A complete application for an original certificate of approval shall consist of the following:

(1) a completed application form provided by the Agency [Commission];

(2) complete and correct financial statements, as specified in this chapter, demonstrating the school is financially stable and capable of fulfilling its commitments for training;

(3) the application fee as specified in this chapter; and

(4) any other revisions or evidence necessary to bring the school's application for approval to a current and accurate status as requested by the Agency [Commission].

(b) Schools shall fully satisfy the Agency application requirements within 90 days of receipt of the original application, or else the application may be considered withdrawn.

(c) If a school fails to respond to a request for additional information within 21 days [21 days], the Agency [Commission] may withdraw the application.

(d) To reapply, a school shall submit:

(1) a complete application as required in subsection (a) of this section, including applicable fees; and

(2) an affidavit stating that the school will not reopen until it has been issued a Certificate of Approval.

§807.12. Renewal.

(a) For small schools holding a multiyear certificate, the certificate of approval shall be renewed at least every three years, or more frequently as determined by the Agency [Commission]. A complete application for renewal of a certificate of approval shall consist of the following:

(1) complete and correct annual financial statements, as specified in this chapter, demonstrating the school is financially stable and capable of fulfilling its commitments for training;

(2) the renewal fee [and the fee for the tuition trust account, if applicable,] specified in this chapter; and

(3) any other revisions or evidence necessary to bring the school's application for approval to a current and accurate status as requested by the Agency [Commission].

(b) For all other schools, the certificate of approval shall be renewed annually. A complete application for renewal of a certificate of approval shall consist of the following:

(1) a completed application for renewal form provided by the Agency [Commission];

(2) complete and correct annual financial statements for the most recent fiscal year demonstrating the school is financially stable and capable of fulfilling its commitments for training;

(3) the renewal fee [and the fee for the tuition trust account, if applicable,] specified by this chapter; and

(4) any other revisions or evidence necessary to bring the school's application for approval to a current and accurate status as requested by the Agency [Commission].

(c) The effective, expiration, and issuance dates are indicated on the certificate of approval. The Agency [Commission] may reflect the date of renewal as the date following the date of expiration of the prior certificate of approval, if the school submitted a timely request for renewal and met all of the requirements contained in this chapter for renewal.

(d) The complete renewal application shall be postmarked on or before the due date as indicated in the Act.

§807.13. *Change in Ownership.*

(a) The Agency [Commission] may consider the addition or deletion of any person defined as an owner under the Act as a change in school ownership. The school may notify the Agency [Commission] of the change in ownership a minimum of 45 days before the change in ownership to request that the Agency [Commission] in lieu of a full application accept a partial application.

(b) The Agency [Commission] may require submission of a full application for approval for a change in ownership if:

(1) the Agency [Commission] has a reasonable basis to believe the change in ownership of the school may significantly affect the school's continued ability to meet the criteria for approval; or

(2) the school fails to file notice of the change of ownership at least 45 days prior to the ownership transfer.

(c) The Agency [Commission] may require a partial application for approval for a change in ownership if the Agency [Commission] reasonably believes the change in ownership will not significantly affect the school's continued ability to meet the criteria for approval.

(d) The purchaser of a school shall accept responsibility for all refund liabilities.

(e) Management Agreements must be disclosed to the Agency [Commission]. Parties to a management agreement shall be of good reputation and character.

§807.14. *Locations.*

(a) A school shall obtain a certificate of approval for each location where courses of instruction will be offered, unless the school has a certificate of approval and meets one of the exceptions in this section.

(b) The Agency [Commission] may approve the following as exempt from applying for approval for a new or additional location, if requested at least 30 days in advance:

(1) seminars, including preparation for licensing examinations, educational institution entrance examinations, and reading improvement;

~~{(2) classes in no more than one location at a time as an itinerant school;}~~

~~(2) [(3)]~~ classes at facilities used for additional classrooms for instructional services only, which are within a one-mile radius of the main campus and are dependent on the main campus for administration, supervision, fiscal control, and student services; or

~~(3) [(4)]~~ short-term programs. Short term programs:

(A) include course time of 200 hours or less of instruction; and

(B) are conducted with at least a 90-day interval between cessation of one program and the beginning of the next.

(c) The school shall file an application for a certificate of approval to reflect a new or additional location, including all documents deemed necessary by the Agency [Commission], and the appropriate fee. The Agency [Commission] may issue the certificate of approval after inspection of the new facilities.

(d) If the Agency [Commission] determines that a move of the school presents an unreasonable transportation hardship which would prevent a student from completing the training at the new location, the school shall provide a full refund of all monies paid and a release from all obligations to the student.

§807.15. *Notification of Actions.*

(a) Unless otherwise instructed by the Agency [Commission], a school shall notify the Agency [Commission] in writing of any legal action to which the school, any of its owners, representatives, or management employees is a party.

(b) A school shall notify the Agency [Commission] in writing of any legal action described in this section no later than five business days after the action is known to be filed or the school, owner, representative, or management employee is served.

(c) An owner shall notify the Agency in writing no later than five business days of each instance of:

(1) lease or mortgage default; or

(2) lease or mortgage payment(s) being past due greater than 30 days.

~~(d) [(e)]~~ A school shall include, with the notice required in this section, a file-marked copy of the legal notice, petition, complaint, or other legal instrument, including copies of any judgments.

~~(e) [(f)]~~ A school shall notify the Agency [Commission] in writing no later than five business days after receiving notice of any change in accreditation status or Title IV status, including but not limited to, Heightened Cash Monitoring 1 or 2, loss of eligibility, composite score, 90/10 ratio or default rate problems, or other similar changes.

§807.16. *Degrees.*

(a) For approval to grant degrees, the school shall make application to the Coordinating Board.

(b) The Agency [Commission] may recognize the approval to grant degrees upon receipt of notice issued by the Coordinating Board and~~[Additional notice by]~~ the school's accreditor ~~[also may be required]~~.

§807.17. *Unlicensed Schools.*

If a career school or college, as defined in the Act, operates, solicits, or enrolls students, or conducts any course of instruction before receiving a certificate of approval or an exemption from the Agency, the Agency may take one or more of the following actions:

- (1) assess a penalty;
- (2) require full refunds to all students; or
- (3) issue a cease and desist order.

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

Filed with the Office of the Secretary of State on July 13, 2022.

TRD-202202637

Les Trobman

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: August 28, 2022

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



SUBCHAPTER C. FINANCIAL REQUIREMENTS

40 TAC §§807.31 - 807.35, 807.37

The rules are proposed under Texas Education Code, Chapter 132, which provides 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 proposed rules affect Title 3, Texas Education Code, particularly Chapter 132.

§807.31. *Definitions Relating to Financial Requirements.*

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

(1) Attest services--An audit, review, compilation, or other assurance engagement that must be performed in accordance with standards promulgated by the American Institute of Certified Public Accountants or other Commission-recognized accountancy organization.

(2) [(4)] GAAP--Generally Accepted Accounting Principles.

(3) [(2)] GAAS--Generally Accepted Auditing Standards.

(4) [(3)] Sworn statement--A notarized statement including the following language: "I swear or affirm that the information in these statements is true and correct to the best of my knowledge."

(5) [(4)] Unearned tuition affidavit--A statement of the highest amount of unearned tuition at any time during the most recent fiscal year[; the projected highest unearned tuition at any time during the next fiscal year;] and the gross amount minus refunds of student tuition and fees earned during the fiscal year in all courses [programs] approved under the Act.

§807.32. *Financial Standards.*

(a) The balance sheet required in this subchapter shall, at a minimum, reflect the following:

(1) positive equity or net worth balance;

[(2) unearned tuition as a current liability;]

(2) [(3)] a current ratio of at least one-to-one; and

(3) [(4)] stockholder's equity or net worth exceeding the amount shown for goodwill, if applicable, under assets in the balance sheet.

(b) All financial statements [Compilations] shall be accompanied by the unearned tuition affidavit and owner's sworn statement certifying that the unearned tuition affidavit and financial statements are true and correct.

(c) All financial statements shall [identify the name, license number, and licensing state of the accountant associated with the statements and] be prepared in accordance with GAAP.

(d) All financial statement attest services shall be completed in accordance with GAAS, or other standards promulgated by the American Institute of Certified Public Accountants, as applicable, and comply with jurisdictional laws.

(e) [(d)] A school that maintains a financial responsibility composite score that meets the general standards established in federal regulations by the United States [U.S.] Department of Education for postsecondary institutions participating in student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended, shall be considered to have met the financial standards of this subchapter. A school that qualifies under an alternative standard but not the general standard of these federal regulations will not be considered to have met the financial standards of this subchapter unless the school meets the other requirements stated in this subchapter.

§807.33. *Financial Requirements for Original Approvals.*

(a) The prospective owner shall furnish the Agency [Commission] with the following:

(1) for a school owned by a sole proprietor, a reviewed personal balance sheet with notes that disclose the amount of payments for the next five years to meet debt agreements as required by GAAP; or

(2) for all other ownership structures, an audited balance sheet consistent with GAAP and GAAS [and certified by an accountant].

(b) The school shall submit a balance sheet, a list of the expected school-related expenses for the first three full calendar months of operation of the school, and a sworn statement signed by the owner affirming the availability of sufficient cash to cover projected expenses at the date of licensure. [A school currently operating, or proposing to operate, on a reimbursement contract basis may request a waiver of this section from the Commission.] Projected expenses may include the following:

(1) employee salaries, [listed by position title,] including withholding, unemployment taxes, and any other related expenses;

(2) lease payments for equipment [listed by the name of the equipment];

(3) lease payments for facilities;

(4) accounting, legal, and other specifically identified professional fees; and

(5) an estimate of other expenses such as advertising, travel, textbooks, office supplies, classroom supplies, printing, telephone, utilities, taxes, and sales commissions.

(c) The school shall submit a projection of the gross amount of tuition and fees to be collected during each of the first two years of operation.

(d) The prospective owner shall also furnish such other evidence as may be deemed appropriate by the Agency [~~Commission~~] to establish financial stability.

§807.34. Financial Requirements for Changes in Ownership.

Prior to a change in ownership of a school, the purchaser shall furnish the Agency [~~Commission~~] a balance sheet meeting the requirements outlined in this subchapter for original approvals, excluding the sufficient cash requirement for initial expenses. The purchaser shall furnish any other evidence deemed appropriate by the Agency [~~Commission~~] to establish financial stability.

§807.35. Financial Requirements for Annual Reporting [~~Renewal~~].

(a) A school shall submit annual financial statements as set forth in this section that shall be:

- (1) audited [~~by an accountant and consistent with GAAP~~];
- (2) reviewed [~~by an accountant and consistent with GAAP~~] (except for the first renewal, which must be audited or compiled); or
- (3) compiled [~~by an accountant~~], containing [~~an unearned tuition affidavit and~~] at least one note disclosing the current and long-term liabilities. This note shall be similar to that required by GAAP for reviewed and audited statements. Compiled statements are acceptable under the following conditions:

(A) the gross annual revenue from student tuition and fees, less refunds, is less than or equal to \$100,000; [~~;~~] or [~~;~~]

(B) the programs [~~courses of instruction~~] are less than 30 consecutive calendar days [~~one month~~] in length.

(b) Each school shall furnish true and correct financial statements [~~in association with an accountant~~] annually and not later than 180 days from the close of the school's fiscal year. These statements shall include the following:

- (1) balance sheet;
- (2) statement of results of operation, which includes a statement of income and retained earnings;
- (3) statement of cash flows; and
- (4) the gross amount minus refunds of annual student tuition and fees for each school, separated from other revenues unrelated to training.

(c) A school with a gross annual revenue from student tuition and fees, less refunds, less than or equal to \$100,000 may submit all of the following in lieu of the financial statements required in this section:

- (1) an unearned tuition affidavit;
- (2) a copy of the annual federal income tax form(s) [~~form~~] filed specifically for the business; and
- (3) an owner's sworn statement certifying that the unearned tuition affidavit and the copy of the annual federal income tax form(s) [~~form~~] are true and correct.

(d) A school that is a subsidiary of a corporation may submit, in lieu of the statements required in this section, the annual audited financial statements of the parent corporation provided that:

(1) said statements are accompanied by an audited list of any student tuition refunds payable by the subsidiary school at the close of its fiscal year. The statements shall also be accompanied by an owner's sworn statement reflecting the gross amount minus refunds

of student tuition and fees earned during the fiscal year on all programs approved under the Act; and

(2) the parent corporation ensures that each student enrolled in the subsidiary school receives either the training agreed upon or a refund as provided in the Act; and submits either a certified resolution of its board of directors to this effect or any other evidence as deemed appropriate by the Agency [~~Commission~~] to establish financial responsibility by the parent corporation.

(e) A school or college that fails to provide financial statements that comply with the requirements in this section and the standards identified in §807.32 of this subchapter, within 60 days of the date that they receive notice of any deficiencies, may have their certificate of approval revoked.

§807.37. Agency-Ordered [~~Commission-Ordered~~] Audits.

If the Agency [~~Commission~~] determines that reasonable cause exists to question the validity of any financial information submitted, or the financial stability of the school, the Agency [~~Commission~~] may order [~~require~~] at the school's expense:

(1) an audit of a school's financial statements in accordance with this subchapter; and [~~school that has been certified by an accountant; or~~]

(2) the owner to furnish any other evidence deemed appropriate by the Agency [~~Commission~~] to establish financial stability. Failure of a career school or college to provide compliant financial statements or other evidence required by the Agency, by the date noted in such order, may result in revocation of its certificate of approval.

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

Filed with the Office of the Secretary of State on July 13, 2022.

TRD-202202638

Les Trobman

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: August 28, 2022

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



SUBCHAPTER D. REPRESENTATIVES

40 TAC §§807.51, 807.53, 807.54

The rules are proposed under Texas Education Code, Chapter 132, which provides 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 proposed rules affect Title 3, Texas Education Code, particularly Chapter 132.

§807.51. Representative Requirements.

(a) All school personnel soliciting or enrolling students must be registered as a representative. This registration requirement does not apply to individuals owning and operating a school in the capacity as a sole proprietor, joint venturer, or general partner, due to their direct nature of ownership.

(b) [(a)] The school shall apply annually to register representatives on forms provided by the Agency and with the appropriate fee.

(c) [(b)] A representative shall be of good reputation and under the control of the school and is deemed to be the agent of the school.

The school is responsible for any representations or misrepresentations, expressed or implied, made by a representative.

(d) [(e)] Any student solicited or enrolled by an unregistered representative is entitled to a refund of all monies paid and a release from all obligations to the school. Any contract signed by a prospective student as a result of solicitation or enrollment by an unregistered representative is null and void and unenforceable.

(e) [(d)] Representatives shall participate in training approved by the Agency that covers the Act and Commission rules relative to representatives, admissions, advertising, and any other topics as required by the Agency to support the legal and ethical solicitation and enrollment of students.

§807.53. *Representative Limitations.*

(a) The representative shall not begin solicitation of students until the school receives notice of approval for the school and registration of the representative from the Agency [~~Commission~~].

(b) Employees and other agents of recruiting firms shall not serve as representatives.

(c) A representative shall not:

[(1) solicit in public places other than educational settings, job fairs, or organized meetings;]

(1) [(2)] offer as an inducement or enticement any material consideration to a prospective student prior to enrollment, such as cash, food, housing, or gifts;

(2) [(3)] administer the entrance test;

(3) [(4)] advise students about financial aid, other than informing the students of the general availability of financial aid;

(4) [(5)] give false, misleading, or deceptive information about any aspect of the school's operation, courses, programs, completion or employment rates, examination success rates, job placement, or salary potential;

(5) [(6)] concurrently solicit for or represent more than one school, unless the owner of each school being represented is informed that the representative is also soliciting for or representing other schools;

(6) [(7)] engage in acts or practices that have a tendency to intimidate, coerce, or mislead a prospective student into accepting an enrollment;

(7) [(8)] represent that a school, course, or program has sponsorship, credentials, approval, characteristics, credit transferability, uses, benefits, or qualities that it does not have;

(8) [(9)] discredit another school or its courses or programs by false or misleading representation of facts;

(9) [(10)] solicit enrollments in a course or program that has not been approved by the Agency [~~Commission~~];

(10) [(11)] solicit students for a school through an employment agency; [~~or~~]

(11) omit advising students on the school's policies and procedures regarding granting of credit; or

(12) violate any legal requirement or prohibition contained in the Act or this chapter.

§807.54. *Representative Compliance.*

The Agency may hold representatives liable for violations of statute, Commission rules, policies, and procedures notwithstanding

§807.51(c) [~~§807.51(b)~~] of this subchapter. Violations may result in sanctions up to and including revocation of approval to serve as a representative in Texas, in accordance with the matrix in this section. [~~below:~~]

Figure: 40 TAC §807.54

[Figure: 40 TAC §807.54]

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 July 13, 2022.

TRD-202202639

Les Trobman

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: August 28, 2022

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



SUBCHAPTER E. SCHOOL DIRECTOR AND ADMINISTRATIVE STAFF

40 TAC §§807.62 - 807.64, 807.66

The rules are proposed under Texas Education Code, Chapter 132, which provides 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 proposed rules affect Title 3, Texas Education Code, particularly Chapter 132.

§807.62. *School Director Qualifications and Duties.*

(a) A school director shall be of good reputation. A school director of a small school must have at minimum one year of administration or management experience. A school director of other than a small school must have at minimum five years of administration or management experience or at least two years of experience as a director of a career school or college. An equivalent duration of higher education, college or university, may be substituted, year for year, for administration or management experience.

[(a) A school director of a small school shall have administrative or management experience and shall be of good reputation.]

[(b) A school director of other than a small school shall be of good reputation and have a total of five years of administrative or management experience. An equivalent duration of higher education, college or university, may be substituted for each year of experience.]

(b) [(c)] The school shall obtain Agency [~~Commission~~] approval for the school director before employment of the school director.

(c) [(d)] The school director is responsible for the courses of instruction, organization of classes, designation of a liaison for Agency [~~Commission~~] compliance visits, maintenance of the school facilities and proper administrative records, and all other matters related to the administration of the school, as determined by the Agency [~~Commission~~].

(d) [(e)] The Agency [~~Commission~~] may require the school director to attend additional training to continue approved director status if a school has more than one substantiated complaint from students during a one-year period. If the school has repeat violations from a previous year under the same director, the Agency [~~Commission~~] may revoke the approval of the school director.

(c) [(f)] The school director shall:

(1) ensure that all facilities, including housing endorsed by the school, comply with local, city, county, municipal, state, and federal regulations such as, but not limited to, fire, building, and sanitation codes; and

(2) inspect facilities, including housing, before endorsement.

§807.63. *Acting School Director.*

(a) The Agency [~~Commission~~] may allow a school to designate an acting school director for a period not to exceed 90 days or as otherwise approved by the Agency [~~Commission~~], who is:

(1) a currently approved school director at another location with the same owner to facilitate the approval process at a new location;

(2) a new school director pending approval by the Agency [~~Commission~~]; or

(3) required by an emergency as determined by the Agency [~~Commission~~].

(b) The school shall provide written notice to the Agency [~~Commission~~], delivered by the end of the first day following the appointment of the acting school director.

§807.64. *Director of Education Requirements.*

(a) A school may have a director of education.

(b) If the school employs a director of education, the director shall meet the same qualifications as an instructor and, in addition, shall have:

(1) one year of employment as a postsecondary instructor;

(2) one year of supervisory employment experience [as a supervisor]; and

(3) a bachelor's degree, appropriate for the skills required, as determined by the Agency [~~Commission~~].

§807.66. *Director of Admissions Requirements.*

(a) A school may have a director of admissions. [An individual employed by a school as a director of admissions prior to the effective date of this section is not subject to §807.66(b)(1) and §807.66(b)(2).]

(b) If the school employs a director of admissions, the director shall be of good reputation and, in addition, shall have:

(1) one year of management or administration [~~administrative~~] experience; and

(2) one year of admissions experience.

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 July 13, 2022.

TRD-202202640

Les Trobman

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: August 28, 2022

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



SUBCHAPTER F. INSTRUCTORS

40 TAC §§807.81 - 807.84

The rules are proposed under Texas Education Code, Chapter 132, which provides 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 proposed rules affect Title 3, Texas Education Code, particularly Chapter 132.

§807.81. *Instructor Qualifications.*

(a) The instructor shall be of good reputation and shall not be a current student in the same or similar course of instruction, as determined by the Agency, in which the instructor teaches.

(b) Instructors shall possess and affirm on forms provided by the Agency that the instructor has one of the following qualifications that applies to the subject [~~course~~] area to be taught. In such cases where the practical experience is gained on a seasonal basis as an industry standard, the season of at least three full calendar months of experience shall be considered as one year of experience.

(1) The instructor has a master's degree or higher that:

(A) includes satisfactory completion of six semester credit hours or eight quarter credit hours in the subject [~~class~~] to be taught;

(B) includes satisfactory completion of three semester credit hours or four quarter credit hours in the subject [~~course~~] area and one year of related practical experience within the ten years immediately preceding employment by the school, if the subject [~~class~~] to be taught is in a technical field;

(C) includes satisfactory completion of three semester credit hours, or four quarter credit hours in the subject [~~course~~] area to be taught, if the subject [~~class~~] to be taught is in a nontechnical [~~non-technical~~] field; or

(D) is supplemented by one year of related practical experience in the subject [~~class~~] to be taught within the ten years immediately preceding employment by the school, if the subject [~~class~~] to be taught is in a nontechnical [~~non-technical~~] field.

(2) The instructor has a bachelor's degree that:

(A) includes satisfactory completion of nine semester hours or 12 quarter hours related to the subject [~~course~~] area to be taught;

(B) includes satisfactory completion of six semester credit hours or eight quarter credit hours in the subject [~~course~~] area to be taught and one year of related practical experience within the ten years immediately preceding employment by the school, if the subject [~~class~~] to be taught is in a technical field;

(C) includes satisfactory completion of three semester credit hours or four quarter credit hours in the subject [~~course~~] area and one year of related practical experience within the ten years immediately preceding employment by the school, if the subject [~~class~~] to be taught is in a nontechnical [~~non-technical~~] field; or

(D) is supplemented by two years of related practical experience within the ten years immediately preceding employment by the school.

(3) The instructor has an associate [~~associate's~~] degree that:

(A) includes satisfactory completion of nine semester credit hours or 12 quarter hours in the subject [~~course~~] area to be taught and two years of related practical experience within the ten years immediately preceding employment by the school; or

(B) is supplemented by three years of related practical experience within the ten years immediately preceding employment by the school.

(4) The instructor has a secondary education that includes a certificate of completion from a recognized postsecondary school for a program with course time of at least 900 hours in a relevant course area and four years of related practical experience within the ten years immediately preceding employment by the school; or

(5) The instructor has proof of satisfactory completion of secondary education and five years of related practical experience within the ten years immediately preceding employment by the school.

(c) In addition to the other applicable requirements for instructors, including the good reputation requirement, the following qualifications apply to the specific instructors listed in this subsection.

(1) The Agency [Commission] requires that a court reporting instructor of only machine shorthand theory and speedbuilding shall have:

(A) an associate [associate's] degree or higher and certificate of completion of machine shorthand theory requirements in an accredited court reporting program;

(B) an associate [associate's] degree in court reporting from any state-recognized school;

(C) a Registered Professional Reporter or Certified Shorthand Reporter certification from any state; or

(D) a certificate of completion of a court reporting program from a state-certified school.

(2) The Agency [Commission] requires that a court procedures and technology instructor shall have:

(A) a Registered Professional Reporter or Certified Shorthand Reporter certification; and

(B) one year of court reporting experience.

(3) The Agency [Commission] requires that a modeling instructor shall have, at a minimum:

(A) a secondary education and certificate of completion from a modeling program of at least 45 hours of course time from a state recognized school and at least five verifiable paid modeling jobs completed within the past five years; or

(B) a secondary education and at least ten verifiable paid modeling jobs completed within the past five years.

(4) The Agency [Commission] requires that a truck driving instructor shall have, at a minimum:

(A) a secondary education;

(B) certified proof of successful completion of course time of 40 hours in safety education and driver training as required by this chapter; and

(C) three years of full-time tractor trailer driving experience within the ten years immediately preceding employment by the school.

(5) The Agency [Commission] requires that a bartending instructor shall be certified by the Texas Alcoholic Beverage Commission as having completed the required seller training program.

(d) The director shall ensure that an instructor applicant demonstrates sufficient language proficiency to teach the class for which the instructor is applying to teach.

(e) For those instructors who return to the school prior to one full year of absence, and who will be teaching the same subjects [lasses] as previously approved, the school shall document the leave and reinstatement dates in the instructor's personnel file. When an instructor begins teaching new subjects [lasses] or the absence was more than one year, the school shall submit a new application to the Agency [Commission].

§807.82. *Temporary Instructors.*

(a) The Agency may allow a school to use a previously unapproved instructor to teach temporarily for a period not to exceed 90 days [reasonable amount of time in the case of an emergency, as determined by the Agency].

(b) In such circumstances, the school shall provide written notice to the Agency delivered no later than the first day the temporary instructor begins teaching. The notice shall include:

(1) the subject(s) [class] to be taught;

~~(2) the name of the approved instructor;~~

~~(2) [(3)] the name of the temporary instructor; [and]~~

~~(3) [(4)] the reason for the temporary instructor; and~~

~~(4) any other information as required by the Agency.~~

~~[(e) Failure to properly notify the Agency shall result in sanctions for the use of an unapproved instructor.]~~

~~(c) [(d)] The temporary instructor shall have sufficient practical experience or education in the subject [course] area to be taught[;] and shall not have been previously disapproved to teach the class.~~

~~(d) [(e)] There shall be no more than one temporary instructor per academic term [grading period] in an individual subject [class], unless specifically approved in advance by the Agency.~~

~~(e) [(f)] Failure to comply with this section may [shall] result in sanctions, a full refund to all students attending such classes, or both.~~

§807.83. *Instructor Application.*

(a) A school that has been licensed for at least one year and is accredited by an agency recognized by the United States [U. S.] Secretary of Education is not required to submit instructor applications to the Agency [Commission] for approval. Documentation that the instructor meets the requirements of this chapter must be kept on file at the school and available for review immediately upon request.

(b) The school shall file an application for approval of an instructor on forms provided by the Agency [Commission] in accordance with the following criteria and ensure that the instructor is of good reputation.

(1) The application shall be postmarked within five calendar days of employment as an instructor subject to the conditions outlined in this subchapter. A school may employ an instructor pending approval by the Agency [Commission].

(2) Depending upon the qualifications indicated on the application, the application shall include one or more of the following:

(A) a legible copy of the postsecondary certificate or degree, or a transcript indicating appropriate coursework completed, as applicable;

(B) proof of a current occupational license; and

(C) proof of secondary education.

(c) A school with degree programs shall ensure that instructors are of good reputation and meet all the qualifications required by the Coordinating Board.

(d) The Agency [~~Commission~~] may approve a variance from the specific qualifications contained in §807.81 of this subchapter with sufficient justification and an assurance that the program quality will not be lessened.

(e) The Agency [~~Commission~~] may consider current approvals of instructors by other Texas state agencies responsible for approval and regulation of the program, or any professional certifications held by the instructor when submitted with the Agency's [~~Commission's~~] instructor application. The Agency [~~Commission~~] will accept notification, in lieu of a new instructor application, for any instructor that has a current approval by the Agency [~~Commission~~] to teach the same classes at other schools that have the same owners.

(f) The Agency [~~Commission~~] may require the school director of an accredited school to file applications for instructors if there have been two substantiated complaints regarding instructors in the previous year, or if the school is unable to produce, when requested, documentation that all instructors meet the requirements of this subchapter.

(g) The Agency [~~Commission~~] may require a school director to submit and receive approvals for instructor applications in advance of employing the instructors for a period of one year if the school has had three instructor applications finally disapproved within the previous two years.

§807.84. *School Responsibilities Regarding Instructors.*

(a) The school shall ensure that an appropriate number of instructors, as determined by the Agency [~~Commission~~], have proper licensure or certificates required for the stated occupation's objective. The holder of the license or certificate shall actively participate in course [~~program~~] development and revisions.

(b) The school shall ensure continuity of instruction through reasonable retention of instructors to provide students with a quality education.

(c) The school director or director of education shall formally evaluate each instructor in writing at least annually, subject to review by the Agency [~~Commission~~].

(d) The school director or director of education shall ensure that students are allowed the opportunity to formally evaluate each instructor, including temporary instructors, in writing at least annually and incorporate said evaluation in the instructor's overall evaluation. These student evaluations are subject to review by the Agency [~~Commission~~].

(e) The school shall ensure that classes are taught only by approved instructors. Failure to meet this requirement may entitle students to a refund and may subject the school to sanctions.

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 July 13, 2022.

TRD-202202641

Les Trobman

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: August 28, 2022

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



SUBCHAPTER G. STAFF EDUCATION
REQUIREMENTS

40 TAC §807.101, §807.102

The rules are proposed under Texas Education Code, Chapter 132, which provides 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 proposed rules affect Title 3, Texas Education Code, particularly Chapter 132.

§807.101. *Initial Training.*

(a) A school director shall [~~complete the online training contained in the Director's Resource Guide or attend a Commission-sponsored workshop and~~] demonstrate a proficiency of the knowledge required to operate a school before final Agency [~~Commission~~] approval may be granted. [~~The Commission may require a school director to retrain in order to maintain skills and continue as an approved school director.~~]

(b) The school shall provide in-service training within the first three full calendar months of teaching to those instructors hired lacking teaching experience. In-service training includes planned professional development opportunities that enable inexperienced instructors to learn and develop effective teaching strategies and skills. Topics shall include competency-based training, instructional methods, adult learning styles, and student learning and skills assessment. Competency-based training specifies the skills and skill levels required to complete a training program, develops and organizes teaching and learning methods to enable students to achieve the identified skills and levels of proficiency, and uses criterion-referenced evaluation to measure achievement.

§807.102. *Continuing Education.*

(a) [~~Except for exempt providers as defined in the Act, providers shall submit an application for approval of continuing education training.~~] In selecting [~~approving~~] continuing education training, the school [~~Commission~~] shall consider the factors set out in §132.0551 of the Act. A school's selection of a continuing education provider is subject to approval by the Agency.

[(b) If a continuing education training provider submits an application for approval prior to September 1, 2006, and the application and courses are approved, all training conducted on or after January 1, 2006, will be considered as approved continuing education if the training is determined by the Commission to be substantially similar to the application.]

(b) [(e)] The school shall implement, maintain, and update annually a written plan for staff development, which includes at a minimum, continuing education, staff meetings, attendance at trade and professional conferences, and observation of, or participation in, on-the-job activities.

(c) [(d)] Each school director[; full-time instructor,] and director of admissions shall complete a minimum of six hours of course time of continuing education applicable to the position within 12 months of employment in the position and each calendar year thereafter.

(d) [(e)] The school shall provide and document in-service training that provides updates on skills, knowledge, and technology required by business and industry for those instructors who have taught for two years[;] but have not gained relevant work experience during the two-year period.

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 July 13, 2022.



SUBCHAPTER H. COURSES OF INSTRUCTION

40 TAC §§807.121 - 807.123, 807.129 - 807.134

The rules are proposed under Texas Education Code, Chapter 132, which provides 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 proposed rules affect Title 3, Texas Education Code, particularly Chapter 132.

§807.121. Definitions Relating to Programs [Courses] of Instruction. The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

(1) Externship--Practical, program-related, off-campus training under direct or indirect instructor supervision, with a pre-planned outline of experiences and competencies. For purposes of determining whether a program is residence, distance education, or a hybrid combination, the externship component will not be a determining factor.

(2) Laboratory experience or lab--A specific experience of observation, experimentation, practice, study, technical investigation, analysis, and practical application of theory or verbal instruction involving hands-on supervised study in a selected vocation or course [e]lass.

(3) Lecture--A presentation of theories, concepts, procedures, or information about a particular subject [e]lass.

(4) New program--A program:

- (A) not previously offered;
- (B) previously offered and then discontinued;

(C) with a revised objective such that the program provides preparation for different jobs than those for which the program was originally approved (examples: legal secretary to paralegal; dental technician to medical technician; computer operator to computer programmer); or

(D) with a 25 percent or more change within a 12-month period to the total number of hours, content, or lessons (examples: course time from 1,000 hours to 750, 600 hours to 900, 20 lessons to 30, 60 semester credit hours to 80).

(5) New seminar--A seminar:

- (A) not previously offered;
- (B) previously offered and then discontinued;
- (C) with a revised objective; or

(D) with a 25 percent or more change in a 12-month period to the total number of hours of the approved seminar.

(6) Revised program or seminar--Revisions include changes in admission requirements, title, class title, objective descrip-

tion (but not the detailed objective), [e]lass course time hours or credit hours, or class hours of lecture, laboratory, or externship. School calendars, class schedules, [Scheduling] and price changes are catalog changes, not revisions.

(7) Military service course credit directory--The Agency-published list of any course types, with Classification for Instructional Program Codes (CIP codes), that are identified by the Agency and the relevant military experience, education, or training that may align with those programs or courses.

§807.122. General Information for Programs [Courses] of Instruction.

(a) Each program of instruction submitted for approval shall be identified by a title.

(b) The Agency will not approve false, misleading, or deceptive titles.

(c) The school shall ensure that each program prepares the student for the stated occupation.

(d) The school shall identify a demonstrable occupational demand for the stated occupation. The Agency may consider the following in evaluating the school's statement of occupational demand:

(1) publications of established relevant occupational associations;

(2) targeted occupation lists of Local Workforce Development Boards, if approved by the Agency, or other local or state entities;

(3) references to advertisements in media for employment;

(4) occupation employment rate of students;

(5) percentage of graduating students who have previously completed the same or a substantially similar program and who have obtained employment in the same or substantially similar stated occupation for which they have been trained;

(6) relative supply and demand for the stated occupation, including letters from potential employers that describe their need for trained employees; or

(7) reports or publications relating to the specific occupational demand.

(e) The school shall:

(1) ensure the program and stated occupation comply with statutory and regulatory requirements of the State of Texas, as well as codes adopted by the local municipality or other authority having jurisdiction where the school is located, and statutory and regulatory requirements of the location of the school, if it is located out of state.

(2) provide competency-based programs;

(3) assess skills using primarily performance-based methods;

(4) use instructional media, methods, and materials appropriate for the program content and students' knowledge and abilities;

(5) offer programs in a logical sequence of knowledge and skills;

(6) if deemed appropriate by the Agency, provide an externship or a simulation of the workplace for the program; and

(7) for any course listed in the military service course credit directory, provide credit to a student toward any course time required for the program of study or course for skills obtained by the student through military experience, education, or training, unless the school or

college can demonstrate that those skills are not appropriately aligned with the program of study or course. This requirement prevails regardless of a course requiring Agency approval or having obtained accreditor approval.

(f) Each program submitted for approval shall identify the courses and course time hours allocated to that program. A program of a disproportionate length reasonable to prepare the student for the stated occupation, as determined by the Agency, shall not be approved.

(g) [(a)] A school shall not apply for approval of a program that is substantially similar to a discontinued or revoked program, unless the application for approval is submitted at least one year after the date of discontinuation or revocation, and:

(1) the school's approved programs are all meeting the employment rate as referenced in §807.131(b) of this subchapter, at the time of application; and

(2) the school submits a reimplementation plan to the Agency.

(h) [(b)] A school is not required to submit applications for additional courses of instruction or for course revisions to the Agency [Commission] for approval, if the school:

(1) has been licensed for at least one year under the current ownership;

(2) is accredited by an agency recognized by the United States [U.S.] Secretary of Education; and

(3) is in good standing with its designated accrediting agency and not subject to:

(A) probation;

(B) a directive to show cause as to why accreditation should not be revoked; or

(C) any other action, as defined by the accrediting agency, that would otherwise prevent the school from seeking approval to add or revise a course of instruction.

(i) [(c)] Upon receipt of the approval of the course of instruction from the accrediting agency, the school shall provide a copy to the Agency [Commission].

(j) [(d)] The Agency [Commission] may require the school director of an accredited school to file applications for nondegree programs if there have been two substantiated complaints regarding courses [programs] in the previous year.

(k) [(e)] A school submitting applications for approval of seminars shall use abbreviated forms provided by the Agency [Commission].

(l) [(f)] No [class or] program shall be approved by the Agency [Commission] unless the school demonstrates that the program's quality, content, and length reasonably and adequately imparts the job skills and knowledge necessary for the student to obtain employment in the stated occupation.

(m) [(g)] A school may not solicit students, otherwise advertise, or conduct classes for a course of instruction prior to the Agency's [Commission's] approval of the course of instruction. Any such activity by the school, prior to the Agency's [Commission's] approval of the course of instruction, shall constitute a misrepresentation by the school and shall entitle each student in the course of instruction to a full refund of all tuition and fees paid by the student and release from all obligations.

(n) [(h)] The school shall establish and maintain a formal advisory committee of at least five members, unless the Agency [Commission] approves a lesser number of persons in advance, for each type of program with course time in excess of 200 hours in length. A simple majority of the members of the advisory committee shall not have an ownership or financial interest in the school, nor shall they be employees of the school. At least annually, the committee shall evaluate the curriculum, instructional materials and media, equipment, and facilities to ensure they meet the needs of the job market. The school shall have written documentation of the evaluation available for review by the Agency [Commission]. If the school does not follow an advisory committee recommendation, the school shall maintain written documentation of the justification for not following the recommendation.

(o) [(i)] If the applicant requests approval to measure courses of instruction in credit hours, the following conversion table shall be used.

(1) One academic quarter credit hour equals a minimum course time of:

(A) 10 hours of classroom lecture;

(B) 20 hours of laboratory experience; or

(C) 30 hours of externship.

(2) One academic semester credit hour equals [is equal to] a minimum course time of:

(A) 15 hours of classroom lecture;

(B) 30 hours of laboratory experience; or

(C) 45 hours of externship.

(3) The school shall calculate lecture, laboratory, and externship credit hour conversions individually for each course [class], rounding down to the nearest half credit hour. The school shall add the total for the credit hours for lecture, laboratory, and externship to determine the total credit hours for a class.

§807.123. *Applications for Additional Programs [Courses] of Instruction.*

(a) A school applying for approval of an additional program [course] of instruction, after receiving an original certificate of approval, shall submit a complete application that includes:

(1) the appropriate fee;

(2) a completed application for approval on forms provided by the Agency [Commission]; and

(3) any other revisions or evidence as requested by the Agency [Commission].

(b) The Agency [Commission] may require an abbreviated program application if:

[(1) the school has the exact program approved at another location;]

(1) [(2)] the program objective changes; or

(2) [(3)] the program length changes 25 percent [25%] or more. [; or]

[(4) the school's completion and employment rates are exemplary, as determined by the Commission.]

(c) The Agency [Commission] may deny an application for approval of an additional program [course] of instruction if the school is not in full compliance with the Act or this chapter.

§807.129. *Facilities.*

(a) In determining adequate space for lecture and laboratory experiences, the Agency [~~Commission~~] shall consider that the amount of lecture and laboratory space meets the use requirements of the maximum number of current students in class with appropriate seating facilities and/or workstations, as needed by the activity patterns of the program.

(b) Enrollment shall not exceed the design characteristics of the available seating and/or workstations.

§807.130. *Admission Requirements Relating to Programs [~~Courses~~] of Instruction.*

(a) The school shall submit, for approval by the Agency [~~Commission~~], its admission requirements for each program [~~course~~] of instruction with justification for the requirements.

(b) The school shall ensure that the student demonstrates to the school sufficient proficiency in the language of instruction to successfully complete the program [~~training course~~] of instruction.

§807.131. *School Responsibilities Relating to Programs [~~Courses~~] of Instruction.*

(a) As a condition of program approval or renewal, the school shall identify any portion of instruction that is self-paced, conducted by distance education, or not conducted in English.

(b) To maintain program approval, the school shall demonstrate the following:

(1) a reasonable student completion rate, as determined by the Agency, for each program; and

(2) a minimum employment rate, as established by the Commission, for program graduates in jobs related to the stated occupation.

(c) When a school is approved to offer a program, the school shall maintain sufficient instructors to teach all subjects for completing the program during the length of time stipulated in the school catalog, regardless of the size of the class.

(d) The school shall schedule classes so that students will be able to complete the program during the length of time stipulated in the school catalog.

(e) The school shall ensure that students receive the lecture and laboratory experience hours with sufficient instructors and scheduling. An instructor may not be simultaneously supervising a laboratory experience and a lecture even if they are in the same room.

(f) A school shall provide course outlines to students at the beginning of each subject which lists students' performance objectives, references and resources, and a general content outline for the subject.

(g) A school shall have and use lesson plans for all subjects.

(h) A school may not use classes from one or more approved programs to create a new program and award a certificate of completion without prior approval.

(i) The student-to-instructor ratio shall be sufficient for students to learn, practice, and demonstrate the necessary knowledge and skills. These ratios may be varied at the discretion of the Agency [~~Commission~~] to conform to conditions in an individual school. The recommended [~~following~~] student-instructor ratio per class does not exceed [~~ratios may be acceptable for single classes~~]:

(1) lectures [~~business lecture or laboratory~~]-30 to one;

{(2) ~~technical, vocational, or allied health lecture~~-30 to one;}

(2) [(3)] labs[~~technical lab (examples: computer programming, data processing, electronics)~~]-20 to one; and

{(4) ~~vocational lab (examples: auto mechanics, air conditioning and refrigeration, drafting)~~-20 to one; and}

(3) [(5)] intensive language instruction (beginning)-15 to one; (intermediate to advanced)-20 to one.

§807.132. *Program [~~Course~~] of Instruction Revisions.*

(a) The school shall submit a revised program [~~course~~] of instruction application for any proposed changes in the program [~~course~~] of instruction that shall be reflected in the school catalog's course of instruction information.

(b) The school shall receive approval of proposed program [~~course~~] of instruction revisions in writing from the Agency [~~Commission~~] before implementing the revisions.

{(e) ~~The school shall work closely with employers in its job market to ensure that the course of instruction meets employers' needs.~~}

§807.133. *Program Requirements for Degree Granting Schools.*

A school shall provide evidence to the Agency [~~Commission~~] that they are authorized by the Coordinating Board to offer degree programs.

§807.134. *Sanctions Relating to Programs [~~Courses~~] of Instruction.*

(a) If an approved program [~~course~~] of instruction is discontinued for any reason, the school shall notify the Agency [~~shall be notified~~] within 72 hours of discontinuance and furnished with the names and addresses of any students who were prevented from completion of the program [~~course~~] of instruction due to discontinuance. Should the school fail to make arrangements satisfactory to the students and the Agency for the completion of the program [~~course~~] of instruction, the full amount of all tuition and fees paid by the students are then due and refundable. Any program [~~course~~] of instruction discontinued will be removed from the list of approved programs [~~courses~~] of instruction.

(b) The Agency may suspend enrollments in a particular program [~~course~~] of instruction at any time the Agency [~~Commission~~] finds cause. For purposes of this subsection, cause includes, but is not limited to:

- (1) inadequate instruction;
- (2) unapproved or inadequate curriculum;
- (3) inadequate equipment; or
- (4) inadequate facilities.

(c) If a school begins teaching a program [~~course~~] of instruction or revised program [~~course~~] of instruction that has not been approved by the Agency, the Agency may require the school to refund to the enrolled students all or a portion of the tuition fees.

(d) If upon review and consideration of an original, renewal, or revised application for program [~~course~~] of instruction approval, the Agency determines that the applicant fails to meet the requirements in the Act or this chapter, the Agency will [~~shall~~] notify the school, setting forth in writing the reasons for the denial. This may include summaries of peer evaluations from both educators and employers offering similar programs [~~courses~~] of instruction.

(e) The Agency may revoke approval of a school's program [~~course~~] of instruction at any time the Agency finds cause. For purposes of this subsection, cause includes, but is not limited to:

(1) any statement contained in the application for the program [~~course~~] of instruction approval which is untrue;

(2) the school's failure to maintain the instructors, facilities, equipment, or programs [eourses] of instruction, or program [eourse] of instruction outcomes on the basis of which approval was issued;

(3) advertising made on behalf of the school which is false, misleading, or deceptive, including those that use the words commonly associated with a degree other than those approved by the Coordinating Board;

(4) programs [eourses] of instruction without clearly stated limited transferability if there are no articulation agreements with other postsecondary institutions in the same geographic area;

(5) programs [eourses] of instruction for which financial aid is advertised but is not available;

(6) repeated violations by the school that negatively impact the quality of a particular program [eourse] of instruction; or

(7) violations by the school of any applicable provision of the Act or this chapter.

(f) A school whose program [eourse] of instruction approval is denied or revoked shall have the right to appeal. The Agency will conduct hearings in accordance with Agency policies and procedures applicable to the appeal.

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 July 13, 2022.

TRD-202202643

Les Trobman

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: August 28, 2022

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



SUBCHAPTER H. COURSES OF INSTRUCTION

40 TAC §§807.124 - 807.127

The rules are repealed under Texas Education Code, Chapter 132, which provides 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 proposed repeals affect Title 3, Texas Education Code, particularly Chapter 132.

§807.124. *Stated Occupation.*

§807.125. *Curriculum Content.*

§807.126. *Curriculum Length.*

§807.127. *Program Title.*

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

Filed with the Office of the Secretary of State on July 13, 2022.

TRD-202202644

Les Trobman

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: August 28, 2022

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



SUBCHAPTER I. APPLICATION FEES AND OTHER CHARGES

40 TAC §§807.151 - 807.153

The rules are proposed under Texas Education Code, Chapter 132, which provides 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 proposed rules affect Title 3, Texas Education Code, particularly Chapter 132.

§807.151. *Fee Schedule.*

The Agency [Commission] shall collect fees according to the following schedule.

(1) The initial fee for a certificate of approval for a small school is \$1,001.

(2) The initial fee for any other school is \$3,000.

(3) In the event of a change in ownership of the school, the new owner shall pay the same fee as that charged for an initial fee for a school.

(4) The initial registration fee for a representative is \$90.

(5) The annual registration renewal fee for a representative is \$45.

(6) The fee for a change of name of the school or owner is \$150.

(7) The fee for a change of address of a school is \$270.

~~[(8) The fee for a change in the name or address of a representative or a change of the name or address of a school that causes the reissuance of the notice of permitted representative is \$15.]~~

~~[(9)]~~ [(9)] The application fee for [a course of instruction that is] an additional program is \$225.

~~[(10)]~~ [(10)] The application fee for an additional [a course of instruction that is] seminar [program] is \$35.

~~[(11)]~~ [(11)] The application fee for a school director[, administrative staff member,] or instructor is \$20.

(11) [(12)] The fee for an inspection of classroom facilities that are separate from the main campus is \$375.

(12) [(13)] The fee for an on-site investigation of a complaint against a school is \$600, if assessed.

§807.152. *Renewal Fees.*

(a) For small schools, if a certificate of approval is issued for three years [more than one year], the renewal fee is \$1,001, which may be paid with \$501 the first year and \$250 on the anniversary date of the certificate for each subsequent year.

(b) For all other schools, the renewal fee is based on the gross amount minus refunds of annual student tuition and fees. The Commission will establish the renewal fee on an annual basis, based upon the cost of administration of the chapter. The renewal fee will be set in

accordance with the provisions of §132.201 of the Act [Texas Education Code].

(c) For all schools, the Agency [Commission] shall assess a late renewal fee [penalty] of 10 percent [10%] of the renewal fee, not less than \$200 [or more than \$1,000], if the school fails to file a complete application for renewal at least 30 days before the expiration date of the certificate of approval.

§807.153. *Installment Payments.*

(a) With the exception of the renewal installment schedule for small schools, a school may elect to pay any single fee in excess of \$1,000 by quarterly installment. A service charge of 10 percent [10%] of the fee shall be added, and the total divided into equal quarterly installment payments. The first payment shall be due on the date the fee is due. The successive payments shall be due in 90-day increments.

(b) Failure to pay any installment by the due date may result in one or more of the following:

(1) a penalty being assessed in the amount of 50 percent [50%] of the total amount of the fee;

(2) full payment of the penalty and outstanding balance due within 30 days; or

(3) revocation of the school's certificate of approval [suspension of participation in the installment payment plan for the next renewal period].

(c) For a small school that has a multiyear term, if the appropriate payment is not received by the anniversary date of the certificate of approval, the school shall, in addition to the required fee, pay a penalty of \$200 within 20 days or the school's certificate of approval may be revoked.

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 July 13, 2022.

TRD-202202645

Les Trobman

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: August 28, 2022

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



SUBCHAPTER J. ADVERTISING

40 TAC §§807.171 - 807.173, 807.175

The rules are proposed under Texas Education Code, Chapter 132, which provides 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 proposed rules affect Title 3, Texas Education Code, particularly Chapter 132.

§807.171. *General Information for Advertising.*

(a) A school shall not make deceptive or misleading statements in attempting to enroll students.

(b) The Agency [Commission] may require a school to furnish proof to the Agency [Commission] of any of its advertising claims, when requested.

§807.172. *Advertisement Method.*

(a) A school may advertise for prospective students under "instruction," "education," "training," or a similarly titled classification.

(b) A school shall not be advertised under any "help wanted," "employment," or similar classification.

(c) No school advertisements shall use the word "wanted," "help wanted," or "trainee," either in the headline or the body of the advertisement, nor shall any advertisement indicate, in any manner, that the school has or knows of employment of any nature available to prospective students; only "placement assistance," if offered, may be advertised.

(d) A school shall not use terms to describe the significance of the approval that specify or connote greater approval. Terms that schools may not use to connote greater approval by the Agency [Commission] include, but are not limited to, "accredited," "supervised," "endorsed," and "recommended." A school shall not use the words "guarantee," "guaranteed," or "free" unless approved in writing by the Agency [Commission].

(e) Any advertisement that includes a reference to awarding of credit hours shall include the statement, "limited transferability." Where a school has an arrangement with a college or university to accept transfer hours, such information may be advertised, but any limitations shall be included in the advertisement.

§807.173. *Advertisement Content and Monitoring.*

(a) Advertisement content shall include, and clearly indicate, the full and correct name of the school and its address, including city, as they appear on the certificate of approval.

(b) Advertisements shall not include:

(1) statements that the school or its programs are accredited unless the accreditation is that of an agency recognized by the United States Department of Education;

(2) statements that the school or its courses of instruction have been approved unless the approval can be substantiated by an appropriate certificate of approval issued by an agency of the state or federal government; or

(3) representation of the school as an employment agency under the same name, or a confusingly similar name, or at the same location of the school.

(c) A school holding a franchise to offer specialized programs or classes not available to other schools shall not advertise such programs in such a manner as to diminish the value and scope of programs offered by other schools not holding such a franchise. Advertising of special classes or programs offered under a franchise shall be limited to the classes or programs offered.

(d) A school shall not use endorsements, commendations, or recommendations by students in favor of a school except with the consent of the student and without any offer of financial or other material compensation. Endorsements shall bear the student's legal or professional name [of the student]. A school may abbreviate the student's name if requested by the student. The school shall maintain a written record of the endorsement, including the full legal name and contact information for the student, associated with any advertisements referenced in this section.

(e) A school shall not use a photograph, cut, engraving, illustration or graphic in advertising in such a manner as to:

(1) convey a false impression of size, importance, or location of the school, equipment, or facilities associated with the school, or

(2) circumvent any of the requirements of this chapter regarding written or oral statements.

(f) Every advertisement must clearly indicate that training is being offered, and shall not, either by actual statement, omission, or intimation, imply that prospective employees are being sought.

(g) The Agency may order corrective action to counteract the effect of advertising in violation of the Act or this chapter, including:

(1) retraction by the school of such advertising claims published in the same manner as the claims themselves;

(2) a prohibition against the use of an automatic forwarding message; and

(3) submission of all advertisements to the Agency for pre-approval at least 30 days before proposed submission of the advertisements to the advertising medium.

§807.175. *Catalog.*

(a) The catalog shall include the following:

- (1) table of contents or index;
- (2) name and complete street address of the school;
- (3) volume number, date of publication, and effective dates;

(4) history of any accreditations or approvals, including statement of approval and regulation by the Agency [~~Commission~~];

(5) description of space, facilities, and equipment;

(6) list of all trustees, directors, officers of the corporation, and owners;

(7) list of management staff and faculty, including education relating to the areas of instruction;

(8) tuition, fees, other charges, and applicable scholarship terms;

(9) school calendar;

(10) school hours of operation and class schedule, including the amount of time allocated for breaks and mealtimes;

(11) policies regarding enrollment, including entrance requirements, previous education credit, cancellation and refund, progress, attendance, leave of absence, and conduct;

(12) [~~veterans administration~~] refund policy as required by the United States Department of Veterans Affairs, if applicable;

(13) description of programs [~~courses of instruction~~], including the number of [~~hours of~~] course time hours of a seminar, class or course [~~seminar topic~~], lecture, lab, and externship, as well as credit hours in each class or course, if applicable;

(14) description of each subject [~~class~~];

(15) description of the grading policy, including requirements for graduation;

(16) description of placement assistance, if available;

(17) statement of policies regarding grievances; and

(18) a statement signed by the owner or director indicating that all of the information contained in the catalog is true and correct.

(b) Any courses [~~classes~~] defined as self-paced shall be noted as such in the catalog.

(c) In addition to the information contained in subsections (a) and (b) of this section [~~above~~], the catalog for a school that charges tuition and fees for a residence program or a synchronous distance education course based on more than one academic term [~~period~~] shall also include a complete description of the following:

(1) the number of periods of time and the course time scheduled in each term [~~period~~];

(2) the amount of tuition charged for each term [~~period~~];

(3) the type and amount of fees charged for each term [~~period~~]; and

(4) any other charges for each term [~~period~~].

(d) All changes to the catalog shall be disclosed to the Agency, using forms provided by the Agency. Failure to disclose changes may result in [~~penalties and~~] sanctions[, including refunds].

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 July 13, 2022.

TRD-202202646

Les Trobman

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: August 28, 2022

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



SUBCHAPTER J. ADVERTISING

40 TAC §807.176

The repeal is proposed under Texas Education Code, Chapter 132, which provides 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 proposed repeal affects Title 3, Texas Education Code, particularly Chapter 132.

§807.176. *Advertisement Monitoring.*

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 July 13, 2022.

TRD-202202647

Les Trobman

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: August 28, 2022

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



SUBCHAPTER K. ADMISSION

40 TAC §§807.191 - 807.194, 807.196, 807.197

The rules are proposed under Texas Education Code, Chapter 132, which provides 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 proposed rules affect Title 3, Texas Education Code, particularly Chapter 132.

§807.191. *General Information for Admission.*

(a) The Agency [~~Commission~~] may approve specific admission requirements for seminars and small schools.

(b) Programs [~~Small schools with programs~~] with course time of 40 hours or less, individual class offerings, and seminars are not required to grant credit for previous education and training, unless the course type is listed in the military service course credit directory.

(c) The school shall make appropriate adjustments to the program length and price based upon credit granted for previous education and training, where warranted.

(d) For a school having specific term-beginning dates, a school may not start students after the third day of classes during any given term, except in those cases where appropriate credit for previous education and training has been given according to the Act and this chapter.

(e) A continuously enrolled student has the right to graduate under the academic requirements stated in the catalog in effect at the time of the student's enrollment.

§807.192. *Admission Requirements.*

(a) The school shall require for admission into its programs proof of one of the following:

- (1) secondary education;
- (2) successful completion or the equivalent of one full-time academic semester (12 academic semester hours) or academic quarter (18 academic quarter hours) at an accredited college, university, or other postsecondary school; or

(3) for nondegree [~~certificate~~] programs only, proven ability-to-benefit by obtaining a satisfactory score on the approved entrance test.

(b) Entrance test requirements shall be in accordance with the following provisions.

(1) Any entrance test shall be a nationally recognized standardized test or a nonstandardized test developed by the appropriate industry and approved by the Agency [~~Commission~~]. A nonstandardized test shall be validated by a qualified third party, such as an expert in tests and measurements, for both appropriateness and the specific score level required for admission into the program. The name of the test and its publisher, any time limitations, a minimum acceptable score, and an explanation of score meanings, as referenced in the test material, shall be provided to the student prior to taking [~~with a copy of~~] the test[, if the test is not already on file with the Commission].

(2) If multiple opportunities are allowed for retaking the same entrance test, such students shall wait a minimum of five calendar days prior to retaking the test. A student may take a second entrance test on the same day provided a substantially different test is administered. This shall be stated in the admissions policy published in the school catalog.

(3) A representative is not allowed to administer the test, nor is anyone allowed to assist the student in answering the questions.

(4) If the entrance test reveals the student to be ineligible as an ability-to-benefit student, the student may be enrolled as a remedial student. The school shall have an evaluation procedure approved by the Agency [~~Commission~~] to determine remedial needs and to determine when the required level of remediation has been reached. The school shall also have a remediation plan for such students consisting

of classes approved by the Agency [~~Commission~~] as a part of the program. The students may be charged for the remedial portion of the program on an hourly pro rata basis, but the student is not obligated for the tuition and fees of the program until the entrance requirements are met.

(c) Evidence shall be maintained in each student's file to show the admissions requirements have been met. A full refund of all monies paid and a full release from all obligations may [~~shall~~] be due, as determined by the Agency [~~Commission~~], to any student for whom the school cannot establish that the admission requirements were met.

§807.193. *Receipt of Enrollment Policies.*

(a) For all enrollments [~~other than for seminars, individual classes, and small schools with programs of course time of 40 hours or less~~], each school shall use the form provided by the Agency [~~Commission~~] to verify the prospective student's receipt of the information required in this section.

(b) Unless otherwise required in this chapter, prior to enrollment the school shall furnish the following to each prospective student:

- (1) a school catalog [~~and program outline~~], unless the prospective student enrolls in a seminar;
- (2) a schedule of tuition, fees, and other charges;
- (3) the cancellation and refund policy;
- (4) the progress and grievance policies and, for non-Title IV schools, attendance policies;
- (5) the rules of operation and conduct;
- (6) if available, the average starting salary per pay period and annually for the prospective student's stated occupation, and information regarding the number of job openings in the program objective field in a specified area within the last calendar year [~~12 months~~], including the name of the information source;
- (7) the regulations pertaining to incomplete grades;
- (8) written and verbal information regarding loans and grants and their differences, if the school participates in a loan or grant program;
- (9) the requirements, if any, for any state or national licensing, certifications, or registrations;
- (10) the exam passage rates for programs that prepare students for state licensing, certification, or registration exams;
- (11) the job placement and employment data for the stated occupation as required in this chapter; and
- (12) notice of all policies related to program interruption prior to completion and written information informing the student that if the student withdraws, it is the student's responsibility to inform the school or college.

(c) Any school that refers to the awarding of credit hours shall explain to each student during the enrollment process that transferability of such hours may be limited. Each student shall sign a statement indicating such an explanation has been provided.

(d) Should a school have an articulation agreement with an accredited college or university, or other postsecondary school, such information shall be provided to the student, including any known agreement limitations. Such schools shall also provide a list of known Texas postsecondary schools that accept any or all of the credit hours so earned.

(e) Students shall acknowledge receipt of each piece of information or documentation as set forth in this section by initialing each page and providing a complete signature at the end of the receipt of the enrollment policy form.

(f) A copy of the receipt of the enrollment policies form shall be given to the student and a copy maintained as a part of the student's files.

§807.194. *Enrollment Agreement.*

~~(a) A school does not need an enrollment agreement to enroll a student in a seminar that will be completed within three consecutive calendar days.~~

~~(a) [(b)]~~ For distance education schools, the enrollment agreement shall specify the amount of time allotted to the student to complete the program.

~~(b) [(e)]~~ A school shall submit an enrollment agreement to the Agency [~~Commission~~] for approval.

~~(c) [(d)]~~ A school shall use only an approved enrollment agreement to enroll students.

~~(d) [(e)]~~ The executed enrollment agreement shall include, but is not limited to, the following:

- (1) full and correct name and location of the school;
- (2) program title, tuition, fees, reasonable estimate cost of books and supplies, any other expenses, total cost of the program, items subject to cost change, method of payment and payment schedule, disclosure statement if interest is charged on more than three payments, and detachable buyer's right to cancel if enrollment is procured off campus;
- (3) date training is to begin and program length;
- (4) name, address, and signature of the student;
- (5) student's email [~~e-mail~~] address if any part of the instruction or academically related activity is web based [~~Web based~~];
- (6) statement by the school that the student will receive a copy of the school enrollment agreement and catalog at the time of signing by the student;
- (7) cancellation and refund policy; and
- (8) a Federal Trade Commission statement for holder in due course, unless no loans, grants, or installment payments are involved.

~~(e) [(f)]~~ The school shall provide a notice of cancellation, attached to the enrollment agreement, for any student enrolled off the school premises. The notice shall:

- (1) include at least two copies [~~be in duplicate~~];
- (2) be easily detachable;
- (3) be printed in boldface type, with a minimum font of 10 point;
- (4) contain the date of the enrollment agreement, name and address of school, the date on which the statutory 72-hour cancellation privilege will expire, and any other provisions as determined by the Agency [~~Commission~~];
- (5) be printed in the same language as used in the enrollment agreement; and
- (6) be in such a form that can be used by the student to notify the school of the student's desire to cancel by dating, signing,

and mailing or otherwise delivering the form to the school's address shown.

~~(f) [(g)]~~ A copy of the enrollment agreement form shall be given to the student and a copy maintained as a part of the student's file.

~~[(h) The Commission may permit a school to submit an abbreviated enrollment agreement for students enrolled on a reimbursement contract basis.]~~

§807.196. *Tuition and Fees.*

(a) A school shall disclose to potential students all tuition, fees, and other charges, and state such information in the school's application for a certificate of approval. The school may not use an estimated tuition amount, nor may the school increase the student's tuition if the student remains continuously enrolled and completes the training as approved at the time of admission. If the school charges to repeat courses [~~classes~~], the amount of the charges must be disclosed to the student.

(b) A school shall make available for review by the Agency [~~Commission~~] upon request:

- (1) a description of the methods of payment that are available to enrolling students;
- (2) the names and addresses of lending institutions used by the school for student tuition loans; and
- (3) the true annual percentage rate and any other fees or charges associated with student tuition loans.

(c) A school shall refund or forfeit any tuition, fees, or other charges not previously disclosed to the Agency [~~Commission~~].

(d) A school may offer scholarships providing the terms of scholarships are disclosed to the Agency [~~Commission~~].

(e) The school shall maintain, in a permanent format that is acceptable and readily accessible to the Agency [~~Commission~~], a record of any funds received from, or on behalf of, the student. A school shall clearly identify the payor, the type of funding, and the reason for the charges. These records shall be posted and kept current.

(f) A school shall issue written receipts of any charges or payments to the student and maintain such records for review upon request by the Agency [~~Commission~~]. Each separately charged item shall be clearly itemized on a student-signed receipt.

§807.197. *Admission Requirements for Degree Granting Schools.*

(a) Students who transfer from other postsecondary schools shall complete at least 20 academic semester hours or 30 academic quarter hours in residency at the school that will grant the degree. This does not apply to transfers within the same school system or teach-outs approved by the Agency.

(b) A school shall allow students attending at the time a school becomes a degree granting school to earn a degree, providing the student:

- (1) meets all the prerequisites for acceptance into the degree program; and
- (2) satisfactorily completes all courses or equivalent courses of the degree program.

(c) Former students shall meet all the prerequisites for acceptance into the degree program and shall satisfactorily complete all courses or equivalent courses in the approved degree program to qualify for a degree.

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 July 13, 2022.

TRD-202202648

Les Trobman

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: August 28, 2022

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



SUBCHAPTER L. PROGRESS STANDARDS

40 TAC §§807.221, 807.223, 807.224

The rules are proposed under Texas Education Code, Chapter 132, which provides 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 proposed rules affect Title 3, Texas Education Code, particularly Chapter 132.

§807.221. General Requirements for Progress Standards.

(a) The Agency [~~Commission~~] may approve specific progress standards for self-paced, competency-based programs.

(b) Seminars, because of their nature and duration, are not required to have progress standards.

(c) The progress evaluation records shall be of the type and nature to reflect whether the student is making satisfactory progress to the point of being able to complete all subject matter within the allotted time provided in the course curriculum.

(d) The school shall submit its policies pertaining to incomplete grades to the Agency [~~Commission~~] for approval and publish those policies in the school's catalog. The policies shall address the possibility of the classes being discontinued when the student returns and clarify options available to that student pursuant to the Act.

(e) Approved court reporting program students may receive one grade of "IP" (in progress) in any speedbuilding class if they have not achieved the required speed at the end of the grading period.

§807.223. Progress Requirements for Asynchronous Distance Education Schools.

(a) Asynchronous distance education schools shall evaluate progress as the school receives each lesson assignment. The school shall maintain the record of progress on forms approved by the Agency [~~Commission~~]. Forms shall include:

- (1) the date course materials are mailed to the student;
 - (2) the date the lesson assignment is received from the student;
 - (3) the grade on a per-lesson basis;
 - (4) the instructor's name;
 - (5) the date graded assignments are returned to the student;
- and
- (6) the final grade for the program with completion date indicated.

(b) If at the end of the time period specified in the enrollment agreement, the student has not completed the program, the student's enrollment shall be terminated.

§807.224. Progress Requirements for Degree Granting Schools.

For a school offering degree programs, the progress standards shall include the following:

(1) a student progress evaluation every academic semester, academic quarter, or at least every eight weeks in other academic term [~~block-time~~] programs;

(2) a minimum grade point average for graduation from all degree programs of 2.0 based on a 4.0 scale, and that a student achieves [~~achieve~~] a passing grade in all required courses [~~classes~~];

(3) a probationary period of one academic semester, academic quarter, or approved grading period following the end of the academic semester, academic quarter, or approved grading period in which the student's grades become unsatisfactory; and

(4) provisions for termination at the end of not more than two consecutive probationary periods if the student's cumulative grade point average does not improve to the level required for graduation.

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 July 13, 2022.

TRD-202202649

Les Trobman

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: August 28, 2022

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



SUBCHAPTER M. ATTENDANCE STANDARDS

40 TAC §§807.241 - 807.245

The rules are proposed under Texas Education Code, Chapter 132, which provides 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 proposed rules affect Title 3, Texas Education Code, particularly Chapter 132.

§807.241. General Requirements for Attendance.

(a) Seminar programs that begin and end on the same [~~during one~~] day are not required to maintain an attendance policy.

(b) Title IV schools are not required to take attendance.

(c) The Agency [~~Commission~~] may approve specific attendance requirements for self-paced, competency-based programs.

(d) No provision in this subchapter shall require a school to terminate the enrollment of a student for lack of attendance at a point at which a refund would not be due.

(e) A school shall charge for a full day of absence when the student fails to attend all of the scheduled classes on that day. The school shall charge for a partial day of absence for any period of absence during the day.

(f) A school shall not consider school holidays, such as summer vacation and Christmas holidays, and so forth [ete.], as days of absence.

§807.242. *Attendance Requirements for Degree Granting Schools.*

(a) The following requirements are for non-Title IV schools and Title IV schools that voluntarily take attendance.

(b) For a school offering degree programs, the attendance standards shall include the following:

(1) provisions for termination or probation during the next academic quarter, academic semester, or approved term when a student is absent for more than 20 percent [20%] of the scheduled course time hours during an academic quarter, academic semester, or approved term;

(2) provisions for termination when a student is absent for more than 20 percent [20%] of the scheduled course time hours during the probationary academic quarter, academic semester, or approved term; and

(3) provisions for termination prior to the last quarter, when a student is absent in excess of 10 consecutive school days or 20 percent [20%] of the total course time hours in the course, whichever occurs first.

§807.243. *Termination of Enrollment.*

(a) A school shall terminate the enrollment of a student who accumulates the lesser of the following amounts of absences:

(1) more than 10 consecutive school days;

(2) more than 20 percent [20%] of the total course time hours in a program with course time of more than 200 hours;

(3) more than 25 percent [25%] of the total course time hours in a program or individual course [class] with course time of 41 to 200 hours;

(4) more than 25 percent [25%] of the total course time hours for seminars, individual courses [classes], or programs with course time of 40 hours or less; or

(5) any number of days if the student fails to return as scheduled from an approved leave of absence.

(b) A Title IV school that does not voluntarily take attendance shall terminate the enrollment of a student if the student's participation in an academically related activity cannot be documented:

(1) at the end of the first calendar week of the academic term;

(2) at the end of the first four calendar weeks [month] of the academic term;

(3) at the midpoint of each academic term; and

(4) at the end of each academic term.

[(e) For purposes of this section, "month" is defined as four weeks.]

(c) [(d)] Students whose enrollments are terminated for violation of the attendance policy may not reenroll before the start of the next progress evaluation period. This provision does not circumvent the approved refund policy.

§807.244. *Make-up Work.*

(a) No more than 5 percent [5%] of the total course time hours for a program, rounded down to the closest one-half hour increment, may be made up. Attendance course time hours, for purposes of Sub-chapters M - O of this chapter, may not be made up.

(b) The school shall submit make-up work policies to the Agency [Commission] for approval.

(c) Make-up work shall:

(1) be supervised by an instructor approved for the class being made up;

(2) require the student to demonstrate substantially the same level of knowledge or competence expected of a student who attended the scheduled class session;

(3) be completed within two weeks of the end of the grading period during which the absence occurred;

(4) be documented by the school as being completed, recording the date, time, duration of the make-up session, and the name of the supervising instructor; and

(5) be signed and dated by the student to acknowledge the make-up session.

§807.245. *Leaves of Absence.*

(a) Seminars, [and small schools with] programs, and individual subjects with course times [time] of 40 hours or fewer [less] shall not grant leaves of absence.

(b) A school director may grant a leave of absence after determining that good cause is shown.

(c) Except as provided in subsection (d) of this section, in a 12-month [calendar] period, a student may have no more than two leaves of absence. For a program with course time of 200 hours or less, a student may be on leave of absence for a total of 30 calendar days. For programs with course time of more than 200 hours, a student may be on leave of absence for a total of 60 calendar days.

(d) Programs with a course time of more than 600 hours, and that are eligible for Title IV funding, may have a leave of absence policy consistent with the United States [U.S.] Department of Education policy at 34 Code of Federal Regulations [C.F.R.] §668.22(d).

(e) School attendance records shall clearly define the dates of the leave of absence. A written statement as to why the leave of absence was granted, signed by both the student and the school director indicating approval, shall be placed in the student's permanent file.

(f) In addition to the requirements concerning leaves of absence in this subchapter, a school offering degree programs that schedules their courses on an academic quarter or academic semester basis may include in their attendance policies provisions for summer leaves of absence. These leaves of absence shall not exceed the lesser of 120 days or the interval between the end of the spring academic quarter or academic semester and the start of the fall academic quarter or academic semester.

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 July 13, 2022.

TRD-202202650

Les Trobman

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: August 28, 2022

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



SUBCHAPTER N. CANCELLATION AND REFUND POLICY

40 TAC §807.261, §807.263

The rules are proposed under Texas Education Code, Chapter 132, which provides 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 proposed rules affect Title 3, Texas Education Code, particularly Chapter 132.

§807.261. Requirement for Tour.

(a) ~~Schools [Notwithstanding subsection (b) of this section, schools]~~ are required to provide a tour on or before the first scheduled class day.

(b) ~~Notwithstanding subsection (a) of this section, distance [Distance] education programs[; combination distance education-residence,] and seminars are not required to provide the student a tour.~~

(c) ~~Students enrolled in a hybrid or blended program are required to be provided a tour on or before the first scheduled class day.~~

(d) ~~[(e)]~~ The student shall sign and date an acknowledgement form certifying the completion of the tour.

§807.263. Refund Requirements.

(a) ~~The Agency, after considering the specific facts associated with a school's conduct, may order [Students are entitled to] a full or partial refund to affected students [for classes attended] if the school:~~

(1) does not provide a class with:

(A) an approved instructor;

(B) an instructor for whom an application has been properly submitted to the Agency; or

(C) a temporary instructor for whom the school submitted notice to the Agency;

(2) fails to maintain the instructors, facilities, equipment, or courses of instruction on the basis of which Agency approval was issued or student enrollment was obtained, or to submit timely requests for approval of substantive changes thereto;

(3) violates any provision of this chapter in the process of soliciting and enrolling the student;

(4) fails to adhere to applicable academic, attendance, and refund policies that meet state requirements and apply to the course enrolled in, as published at the time of the student's enrollment in the course;

(5) fails to undertake a good faith effort to furnish the student, upon satisfactory completion of the program, with a certificate of completion. A school may withhold the transcript or certificate until the student has paid outstanding financial obligations to the school. Evidence of a good faith effort shall be maintained in the student's file in one of the following forms:

(A) An acknowledgement of receipt of certificate signed and dated by the student;

(B) Proof of a certified mailing to the student's last known address;

(C) Proof of a certified mailing to the student's permanent address, if different from the student's last known address; or

(D) Proof of a certified mailing to the address of the student's parent or legal guardian, if known and different from the student's last known or permanent addresses; or

(6) does not have course approval or the required certificate of approval from the Agency.

(b) To be considered a violation subject to refund under subsection (a)(1) - (6) of this section, a school's action shall be determined to be more than a technical error or a nonsubstantive change in operations.

(c) If any of the violations in subsection (a)(1) - (6) of this section apply to more than one class period, students are entitled to a full refund for each such class attended.

(d) The length of a program, for purposes of calculating refunds owed, is the shortest scheduled time period in which the program may be completed by continuous attendance of a full-time student.

(e) A non-Title IV school, or a Title IV school voluntarily taking attendance, shall calculate refunds for students based upon scheduled hours of classes through the last date of attendance. A Title IV school shall calculate refunds for students based upon scheduled hours of classes through the last documented day of an academically related activity. Neither type of school shall count leaves of absence, suspensions, school holidays, days when classes are not offered, and summer vacations for purposes of calculating a student's refund.

(f) For all programs [schools] other than seminars, a student may cancel enrollment, request a full refund, and request a release from any obligations to the school within the first three scheduled class days.

(g) A school may withhold from the [full] refund required by subsections (a) - (c) and (f) of this section any amount [provided for in statute] as retainable by the school pursuant to [Texas Education Code] §132.061 of the Act. More specifically, the school may withhold items of extra expense to the student referenced in §132.061(b)(6) of the Act, as long as they are necessary for the portion of the program attended and are separately stated in the enrollment agreement. Any items of extra expense not required for the portion of the program attended must be included in the refund.

(h) Students are entitled to a refund paid in accordance with the school's policy, which must provide for refunds at least equivalent to the provisions in §132.061 and §132.0611 of the Act, if students withdraw or are discontinued from a program prior to completion.

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 July 13, 2022.

TRD-202202651

Les Trobman

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: August 28, 2022

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



SUBCHAPTER O. RECORDS

40 TAC §§807.281 - 807.284

The rules are proposed under Texas Education Code, Chapter 132, which provides 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 proposed rules affect Title 3, Texas Education Code, particularly Chapter 132.

§807.281. *General Information for Records.*

(a) A school shall permanently maintain a master student registration list (MSRL). If the school maintains the MSRL in electronic form, the school must be able to produce a printed copy immediately upon request. The MSRL must contain at least the following information:

- (1) date of applicable entry;
- (2) name of student;
- (3) address of student including city, state, and zip code;
- (4) telephone number;
- (5) social security number;
- (6) date of birth; and
- (7) name of program.

(b) A school shall maintain current records and necessary data (physical or electronic) for each student required to be on the master student registration list to show compliance with the Act and this chapter. These records shall be:

- (1) maintained on-site;
- (2) protected against damage, loss (for example [e.g.], fire, water, theft, tampering), or misuse; and
- (3) made available to the Agency [~~Commission~~] for inspection upon request.

(c) If applicable, the school shall maintain and ensure that copies of the accreditation authorization and letter of eligibility from the United States Department of Education are available for Agency [~~Commission~~] review.

(d) Degree granting schools shall maintain a copy of the certificate of authorization from the Coordinating Board for each authorized degree program.

(e) The Agency [~~Commission~~] may conduct unannounced compliance inspections.

(f) A school shall maintain complete records of all advertising, sales, and enrollment materials used by or on behalf of the school for a five-year period. Materials maintained shall include, but not be limited to, direct mail pieces, brochures, printed literature, films, leaflets, handbills, fliers, video and audiotapes disseminated through the broadcast media, materials disseminated through the print media or Internet, and sales and recruitment manuals used to instruct sales personnel.

§807.282. *Student Information and Records.*

(a) A school shall permanently maintain student transcripts of academic records. A school shall provide such transcripts to students and prospective employers at a reasonable charge if the student has fulfilled the financial obligation to the school and is neither in default nor owes a refund to any federal or state student financial aid program.

(b) Transcripts of academic records, student payment ledgers, and enrollment agreements must be maintained in electronic format or converted to electronic format within 12 months of their creation or revision. A scanned copy of original paper transcripts is an acceptable electronic format for transcripts of academic records.

(c) [(b)] A school shall retain financial records in accordance with federal retention requirements.

(d) [(e)] A school shall retain all student records for at least a five-year period and these records shall include:

- (1) a written record of previous education and training on a form provided by the Agency [~~Commission~~]; and
- (2) official transcripts from all previous postsecondary schools attended by the student.

(e) [(d)] The school director shall implement and maintain reasonable procedures, including taking any appropriate corrective action, to protect from improper use or disclosure of any sensitive personal information collected or maintained by the school.

(f) [(e)] A school shall destroy or arrange for the destruction of sensitive personal information within the school's custody or control, after any required retention periods, by:

- (1) shredding;
 - (2) permanently removing or deleting electronic records;
- or

(3) otherwise modifying the sensitive personal information in the records to make the information unreadable or indecipherable through any means; or

(4) destroying the information in accordance with any other more restrictive law or regulation the school is required to follow.

(g) All records created and maintained in languages other than English are subject to translation by the Agency.

§807.283. *Attendance Record Keeping.*

(a) The following requirements are for non-Title IV schools:

[(1) A school offering seminars or other programs where students do not change instructors during the school day is not required to maintain a separate master record of attendance.]

(1) [(2)] A school shall maintain a master record of attendance on each student that clearly indicates the name of the program, program begin and end dates, dates of attendance, and the scheduled hours each day [number of scheduled hours each day and the hours of absence].

(2) [(3)] Each instructor shall maintain a record of attendance, which shall [indicate a positive] record the instructor's name, program name, subject name, date, number of scheduled hours for that date, and the hours of absence [of each student's attendance]. Entries in the record of attendance shall be made in ink or other permanent medium, including other permanent computer records, and shall not be changed [in a manner that precludes reading the original entry].

[(b) The following requirements are for Title IV schools:]

[(1) The school shall maintain a form signed and dated by the student to document the student's participation in an academically related activity. An e-mail sent from the student's e-mail account listed on the enrollment agreement fulfills this requirement.]

[(2) The school shall maintain a master record for each student that clearly indicates the student's class schedule as well as the number of scheduled hours for each class day. For synchronous distance education students, the record shall indicate the number of scheduled hours for each week.]

(b) [(e)] Nothing in this chapter prevents a Title IV school from voluntarily using attendance as a manner of fulfilling the requirements of this chapter.

§807.284. Reporting.

(a) Schools shall report to the Agency, as directed, the facts and information about their programs and operations deemed necessary for the proper administration of the Act and any rules adopted under the Act.

(1) The data to be reported by a school shall include:

- (A) student enrollment information for all programs;
- (B) completion, employment, and job placement information for all programs approved for an occupational objective; and
- (C) any other required information.

(2) The school shall submit the required data to the Agency on or before the specified date.

(3) The school shall provide the data in an electronic format prescribed by the Agency unless a different format is approved in writing by the Agency.

(4) When good cause is shown, the Agency may extend the deadline for submission of the data required under this section; however, the extension shall be effective only if authorized in writing.

(5) The Agency may require schools to maintain on file the verifiable documentation supporting the data reported and make it available to the Agency upon request.

(b) The Agency ~~will~~ ~~[shall]~~ develop and apply data monitoring and audit protocols for the data reported under subsection (a) of this section, in a manner sufficient to reasonably determine the accuracy of the reported information.

(c) The Agency may impose penalties or sanctions, or both, for failure to submit data under subsection (a) of this section by the due dates required, or for submission of data that is shown to contain inaccuracies.

(d) For any programs not meeting a minimum employment rate ~~[for program graduates in jobs related to the stated occupation, as referenced in §807.131(b)]~~, the following graduated corrective actions will be taken:

(1) For a program not meeting the minimum employment rate for the first year, the school will be required to develop and submit a performance improvement plan acceptable to the Agency;

(2) For a program not meeting the minimum employment rate for the second consecutive year, but showing improvement of at least 50 percent [50%] of the difference between the reported rate and the minimum employment rate of the previous year, the school will be required to reexamine and submit modifications to the performance improvement plan acceptable to the Agency;

(3) For a program not meeting the minimum employment rate for the second consecutive year and not showing improvement of at least 50 percent [50%] of the difference between the reported rate and the minimum employment rate of the previous year, conditions will be placed on the school's certificate, which include:

- (A) modification of the performance improvement plan; and
- (B) suspension of new enrollment of students funded with Local Workforce Development Board-allocated funds in the program; and

(4) For a program not meeting the minimum employment rate for the third consecutive year, the Agency will revoke approval of the program.

(e) The Agency will ~~[shall]~~ publish on its website information compiled from:

- (1) data reported under subsection (a) of this section; and
- (2) any other information collected about schools and programs deemed appropriate and useful to the public, which:

(A) assists a person in deciding whether to enroll in a school or in identifying or choosing which postsecondary institution, school, or college to attend; and

(B) addresses regulatory compliance and performance of schools.

(3) The Agency, to the extent practical, shall present the published information in a manner that is consistent among institutions, schools, and colleges; easy to understand; and accessible to the public.

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 July 13, 2022.

TRD-202202652

Les Trobman

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: August 28, 2022

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



SUBCHAPTER P. COMPLAINTS

40 TAC §807.301, §807.302

The rules are proposed under Texas Education Code, Chapter 132, which provides 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 proposed rules affect Title 3, Texas Education Code, particularly Chapter 132.

§807.301. School Policy Regarding Complaints.

The school shall:

(1) submit a written grievance procedure designed to resolve disputes between current and former students and the school for Agency [~~Commission~~] approval;

(2) provide a copy of the grievance procedure to each student and maintain proof of such delivery;

(3) maintain records regarding grievance filings and resolutions;

(4) diligently work to resolve all complaints at the local school level; and

(5) post a visible notice on the school's website [~~Web site~~] and centrally located at or near the school's main entrance; in at least one of the student common areas (for example [e.g.], the student cafeteria and/or breakroom); in places where student solicitation, financial aid assistance, and enrollment activities take place; and other locations as necessary to respond to problems with career school rule compliance, which states that:

(A) the school has a certificate of approval from the Agency, and provides the Agency-assigned school number;

(B) the school's programs are approved by the Agency and may also be approved by other state agencies or accrediting bodies, and provides the name of any accrediting body and state agency, as applicable;

~~[(C) students must address their concerns about an educational program by following the school's grievance process outlined in the school catalog;]~~

(C) ~~[(D)]~~ students who are dissatisfied with the school's response to their complaints can file a formal complaint with the Agency, as well as with the school's accrediting body, if applicable; and

(D) ~~[(E)]~~ additional information on complaint procedures is located on the Agency's Career Schools and Colleges website [Web site].

§807.302. *Complaints and Investigations.*

(a) The Agency may ~~[shall]~~ investigate or refer to other authorities with jurisdiction to investigate, as appropriate, all complaints received about a school, whether licensed or unlicensed.

(b) The Agency may determine the extent of investigation needed by considering various factors, such as:

- (1) the seriousness of the alleged violation;
- (2) the source of the complaint;
- (3) the school's history of compliance and complaints;
- (4) the timeliness of the complaint;
- (5) the feasibility of investigations; and
- (6) any other reasonable matter deemed appropriate.

(c) The Agency may require adequate documentation or other evidence of the violation before initiating a complaint investigation. Notwithstanding subsection (a) of this section, anonymous complaints will not be investigated but will be reviewed to identify any action needed.

(d) Unless good cause is shown, a complaint is timely only if it is filed with the Agency while the student who files the complaint is enrolled or within two years of the date the student withdraws, terminates, or graduates from the course ~~[program]~~ that is the subject of the complaint. Good cause includes, but is not limited to, fraud. If a complaint is not timely, the Agency may decline to investigate it.

(e) The investigation fee authorized by the Act is based on a per site visit. The school director shall be notified that an on-site visit was conducted when the investigation results in assessment of a fee.

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 July 13, 2022.

TRD-202202653

Les Trobman

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: August 28, 2022

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



SUBCHAPTER Q. TRUCK DRIVER TRAINING PROGRAMS

40 TAC §§807.321, 807.322, 807.324, 807.325

The rules are proposed under Texas Education Code, Chapter 132, which provides 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 proposed rules affect Title 3, Texas Education Code, particularly Chapter 132.

§807.321. *General Information Regarding Truck Driver Training.*

(a) A school providing truck driver training shall ensure that the truck driver instructors complete a truck driver instructor development course with at least 40 hours of course time.

(b) All truck driver training programs shall comply with applicable requirements outlined in 49 Code of Federal Regulations Part 380, its successors, and any other applicable legal requirements, and must be listed on the Federal Motor Carrier Safety Administration registry, called the Training Provider Registry.

§807.322. *Truck Driver Instructor Development Course.*

(a) A school shall apply to the Agency ~~[Commission]~~ for approval to provide a truck driver instructor development course.

(b) The instructor development course shall consist of 40 hours of course time, which includes at least the following topics.

(1) Five hours shall cover techniques of instruction including: qualities of a competent instructor, the learning process, methods of teaching, development of efficient teaching habits, demonstration teaching, the use of instruction material and training aids, course preparation, lesson plans, testing and evaluation, and the duration and frequency of lessons.

(2) Two hours shall cover personality factors affecting the driver and pedestrian including: natural abilities; senses; mind and nerves; bones and muscles; knowledge of vehicle, road, traffic, and self; attitudes and emotions; reaction time; and reactions to alcohol, carbon monoxide, over-the-counter drugs, prescription drugs, illegal drugs, heart ailments, epilepsy, diabetes, insanity, exhaustion, tension, and monotony.

(3) Six hours shall cover state laws as located in the Texas Motor Vehicle Law book relating to the operation of motor vehicles including: driver's license, vehicle registration, certificate of title, operation of vehicles, uniform act, miscellaneous offenses, and safety responsibility.

(4) Eight hours shall cover driving procedures including: handling--city, rural, night, mountain, and freeway driving; fog, rain, sandstorms, and other hazardous weather conditions; road hazards and recovery procedures for slick roads; blowout hazards and running off the road; traffic signs, markings, and signals; use of rearview mirrors; vehicle braking and stopping distances; following distances; right-of-way, when and how to yield it; vehicle acceleration and deceleration; yielding right-of-way to emergency vehicles; driver signals; proper passing procedures; procedures and problems for passing on two and three-lane roadways; and super-size motorized equipment.

(5) Three hours shall cover physical forces affecting the motor vehicle in motion including: forces of gravity; friction; acceleration, mass, and force; inertia and centrifugal force; kinetic energy and momentum; kinetic energy and braking; and horsepower and acceleration.

(6) Two hours shall cover highway characteristics including: primary, secondary, expressway, freeway, farm or ranch road, two-way two-lane, two-way three-lane, two-way multilane, two-way

multilane divided, one-way multilane, parking, and traffic controls. Traffic control topics consist of the following:

(A) sign topics including shape, color, location and importance;

(B) traffic marking topics including center and lane lines, no passing zone, transition markings, turn lane marking, stop lines, crosswalk lines, and so forth [ete.]; and

(C) signal topics including classification, location, type, timing.

(7) Two hours shall cover automobile systems and maintenance including: electrical system--generator, alternator, battery, lighting, and electric-powered equipment; cooling system--lubrication and fuel systems; power train--engine, transmission, and differential; brake system--wheels and tires, caster, camber, toe-in, balance, inflation, tire condition, and care; exhaust system; instruments and gauges; compartment adjustments--seat, ventilation, mirrors, headrests, seat belts, and shoulder harness; starting the engine and warm-up procedures; safety devices--door locks, headrests; and miscellaneous features--windshield wipers, heater, and defroster.

(8) Two hours shall cover behind-the-wheel elementary lessons with demonstration in an appropriate vehicle and practice to be performed in the presence of the instructor including: starting; steering; stopping; shifting gears; backing; turning--right and left; and parking and starting on grade.

(9) Six hours shall cover behind-the-wheel driving safety lessons with demonstration in an appropriate vehicle and practice to be performed in the presence of the instructor including: developing good seeing habits; speed control; safe following; lane driving and lane changing; intersections and right-of-way; proper signaling; correct turn procedures; detecting of and handling problems--vehicle, cycle, pedestrian; freeway driving--ramp use, entering, exiting, lane use, emergency stopping; parking procedures; entering traffic from parked position; and night driving.

(10) Two hours shall cover school and instructor approval requirements including the following: school approval requirements, instructor approval requirements, classroom and automotive equipment requirements, required student records, contract requirements, and department of instructors.

(11) Two hours shall cover specialized training regarding the following: students with physical, mental, or emotional handicaps; illiterate students; non-English-speaking students; and habitual violators and problem drivers.

§807.324. Motor Vehicle Insurance.

A school providing truck driver training shall ensure that:

(1) a current list of vehicles used in truck driver training is filed with the Agency [Commission] on a form provided by the Agency [Commission];

(2) an insurance certificate accompanies each motor vehicle used in training and is filed with the Agency [Commission] on or before the date the school files an original or renewal application for approval of the program with the Agency [Commission];

(3) an insuring company or carrier issues an insurance certificate on a form furnished by the Agency [Commission] directly to the Agency [Commission], which states the insurance company or carrier has issued a policy or policies of insurance, and the amounts of insurance for each vehicle listed on the list of vehicles used in truck driver training;

(4) a written notice is provided to the Agency [Commission] by registered or certified mail at least 10 days prior to the expiration date of insurance coverage of a listed vehicle; and

(5) a copy of the written notice of cancellation of insurance on any listed vehicle is provided to the Agency [Commission] by registered or certified mail immediately upon receipt of notice by the school.

§807.325. Prohibited Activities Regarding Truck Driver Training.

(a) A school, a trainer of truck driver instructors, or a truck driver instructor shall not:

(1) allow an instructor to give instruction or allow a student to secure instruction in the classroom or in a motor vehicle if that instructor or student is using or exhibits any evidence or effect of an alcoholic beverage, controlled substance, or other such impairment;

(2) permit a student to operate a motor vehicle without a valid driver's license or instruction permit in the student's possession during behind-the-wheel instruction;

(3) permit more than a ratio of four students per vehicle and three vehicles per instructor on truck driving ranges;

(4) permit more than four students per vehicle per instructor during street instruction for truck driver training; or

(5) advertise or otherwise state or imply that a driver's license or permit is guaranteed or assured to any student or individual who may take or complete any instruction or course of instruction, enroll, or otherwise receive instruction in any truck driver training school.

(b) The Agency [Commission] may suspend, revoke, or refuse to renew approval of a truck driver instructor or a trainer of truck driver instructors, upon determining that the applicant or instructor has been:

(1) convicted under the laws of this state, another state, or the United States of any felony; of an offense of criminally negligent homicide committed as a result of the person's operation of a motor vehicle; of an offense involving driving while intoxicated or under the influence; or of an offense involving tampering with a governmental record; or

(2) found incompetent or is incompetent to:

(A) safely operate a motor vehicle; or

(B) properly conduct classroom or behind-the-wheel instruction.

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 July 13, 2022.

TRD-202202654

Les Trobman

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: August 28, 2022

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



SUBCHAPTER R. CLOSED SCHOOLS

40 TAC §807.341, §807.342

The rules are proposed under Texas Education Code, Chapter 132, which provides 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 proposed rules affect Title 3, Texas Education Code, particularly Chapter 132.

§807.341. School Closures.

(a) Owners with knowledge of a school's impending closure shall notify the Agency as soon as possible or practical.

(b) Prior to closure a school must:

(1) contact the Agency regarding a school survey visit and the process required to close out the school records;

(2) complete any closure documents required by the Agency;

(3) provide information on any teach out plans or arrangements; and

(4) complete any other requirements deemed necessary by the Agency for an orderly closure.

(c) The Agency may impose penalties, sanctions, or both on an owner, as defined by §807.2(30) of this chapter, or on a person associated with a school closure for a school's failure to comply with proper closure procedures.

(d) ~~[(a)]~~ The Agency [Commission] may declare a school to be closed when:

(1) written notification is received by the Agency [Commission] from the school owner stating the school will close;

(2) Agency [Commission] determines that the school facility has been vacated without prior notification of a change of address given to the Agency [Commission];

(3) an owner with multiple school locations transfers all students from one school location to another school location;

(4) the school dismisses all students, contrary to the school's class schedule as printed in the school catalog; or

(5) the school fails to maintain the faculty, facilities, equipment, or courses of instruction on the basis for which approval was issued.

(e) ~~[(b)]~~ After the Agency [Commission] determines that a school will close or is closed, the Agency [Commission] will attempt to notify students concerning their options to accept a teach-out or to receive a proportional tuition refund based on available funds. Notification to students may include constructive notice in news media, student meetings, or mailings to students.

(f) ~~[(e)]~~ Each teach-out requires approval of the Agency [Commission] to determine whether the course of instruction is available, reasonable, and comparable with the course of instruction of the closed school. The teach-out is subject to the following conditions:

(1) Transfers of students from a closed school to another school under the same ownership shall not constitute a teach-out.

(2) In order to be eligible for a teach-out, students shall submit a signed statement of acceptance to the teach-out school by the deadline as established by the Agency [Commission].

(3) The school offering the teach-out shall give credit for all comparable training received at the closed school, as determined by the Agency [Commission].

§807.342. Tuition Trust Account.

(a) In a year in which the Agency [Commission] determines it is necessary to charge a fee under §132.2415(b) of the Act, each school shall make a payment to the tuition trust account at the time the school renewal fee is paid.

(b) The amount in the tuition trust account, as provided in the Act, is an accrued balance. The accrued balance is the cash balance of the tuition trust account less the sum of the accrued liabilities from unpaid student refunds and teach-out claims.

(c) Disbursements shall be made from the tuition trust account for student refunds and reimbursable teach-out expenses incurred during each 12-month period ending August 31, and shall be:

(1) made first for student refunds in accordance with §132.2415(d) of the Act and §807.262 of this chapter;

(2) calculated after refunds or discharges from other funding sources have been determined;

(3) disbursed to other funding sources from any amount remaining under the limitation of §132.242(e) of the Act; and

(4) disbursed for reimbursable teach-out expenses based upon remaining funds in the account.

(d) Following the graduation or termination of the students from the teach-out school, the teach-out school shall determine actual expenses and submit a claim for reimbursement to the Agency [Commission] on or before the date provided in the application packet. The teach-out school shall:

(1) not claim expenses for facilities, equipment, utilities, or other items which were owned, rented, used, or otherwise obligated by the school prior to the Agency's [Commission's] approval of the teach-out program, even though such items may be used for the teach-out program;

(2) be limited to expenses for tuition and fees that are ~~nonrecoverable [non-recoverable]~~ from all financial resources, including grants and loans; and

(3) ensure that the sum of the tuition and fees paid to the student's account at the closed school and the teach-out school is the lesser amount the student would have been charged for the complete program at the closed school or the teach-out school.

~~[(e) For schools in their first two years of operation that have not been required to furnish financial statements to comply with §807.35(b), the payment to the tuition trust account shall be calculated at the rate determined by the Commission using the projected gross amount of tuition and fees, as required in §807.33(e), to be charged by the school for the year in which the payment is collected. Once the school has submitted the actual amount of tuition and fees collected by the school in compliance with §807.35(b), the Commission shall reconcile the projected and actual amounts of tuition and fees collected. Upon reconciliation, the Commission shall determine if the school is entitled to a refund or must pay an additional amount to the tuition trust account.]~~

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 July 13, 2022.
TRD-202202655



SUBCHAPTER S. SANCTIONS

40 TAC §§807.351 - 807.353

The rules are proposed under Texas Education Code, Chapter 132, which provides 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 proposed rules affect Title 3, Texas Education Code, particularly Chapter 132.

§807.351. *Notice and Administration of Sanctions.*

(a) Pursuant to its authority under §132.152 of the Act, the Agency may impose administrative penalties or other sanctions on an entity for violations of §132.151 of the Act or this chapter.

(b) The Agency will ~~shall~~ serve notice of a sanction, with determination of the violation on which it is based, by both email [~~U.S. mail~~] and certified mail, return receipt requested, mailed to the owner's address of record as listed on the application for certificate of approval. Unless there is other evidence of receipt, notice is presumed received five days from the date it is mailed by the Agency.

(c) In imposing administrative penalties or other sanctions, the Agency may ~~shall~~ consider all the factors that it deems relevant, including, but not limited to, the following:

(1) The amount of administrative penalty or level of sanction necessary to ensure immediate and continued compliance with statutes and regulations;

(2) The conduct of the entity in taking all reasonable steps or procedures necessary and appropriate to comply with statutes and regulations and to correct the violation; and

(3) The entity's prior violations of statutes, regulations, or orders administered, adopted, or issued by the ~~Agency~~ [~~Commission~~].

(d) Notwithstanding subsections (a) - (c) of this section, the Agency may ~~shall~~ order refunds pursuant to applicable statute and rules.

§807.352. *Sanctions.*

(a) Sanctions may include:

(1) administrative penalties outlined in §807.353 of this subchapter;

~~(2) collecting a late renewal fee from the school;~~

~~(2) [(3)] denying the school's application for a certificate of approval;~~

~~(3) [(4)] revoking the school's certificate of approval;~~

~~(4) [(5)] placing conditions on the school's certificate of approval;~~

~~(5) [(6)] suspending the admission of students to the school or a program;~~

~~(6) [(7)] denying a program approval;~~

~~(7) [(8)] revoking a program approval;~~

~~(8) [(9)] disapproving [denying] or revoking approval of an owner, school director, instructor, or other staff member whose approval may be required;~~

~~(9) [(10)] denying, suspending, placing conditions on, or revoking the registration of the school's representatives;~~

~~(10) [(11)] assessing a late refund penalty;~~

~~(11) [(12)] charging the school an investigation fee to resolve a complaint against the school;~~

~~(12) [(13)] charging the school interest and penalties on late payments of fee installments;~~

~~(13) [(14)] applying for an injunction against the school;~~

~~(14) [(15)] asking the attorney general to collect a civil penalty from any person who violates the Act or this chapter;~~

~~(15) [(16)] ordering a peer review of the school; and~~

~~(16) [(17)] issuing a cease and desist order to an unlicensed school.~~

(b) Notwithstanding subsection (a)(1) - (16) [~~subsection (a)(1) - (17)~~] of this section, the Agency may ~~shall~~ order refunds pursuant to violations of the Act and this chapter [~~applicable statutes and rules~~].

§807.353. *Administrative Penalties.*

(a) An administrative penalty shall not exceed the amount specified in [~~Texas Education Code~~] §132.152 of the Act for each instance of a violation and shall be assessed in accordance with that section.

(b) The administrative penalty is calculated based on a penalty dollar amount and the number of instances of violation.

(c) A violation is considered a repeat violation only where notice of a violation or an administrative penalty has been issued previously for that same violation.

(d) The assessment of an administrative penalty shall not preclude the Agency from administering other sanctions, up to and including revocation of a school's certificate of approval.

(e) The following penalty matrix is for determining and assessing an administrative penalty. The absence of a particular violation from the matrix shall not preclude the Agency from assessing an administrative penalty.

Figure: 40 TAC §807.353(e)

~~Figure: 40 TAC §807.353(e)~~

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 July 13, 2022.

TRD-202202656

Les Trobman

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: August 28, 2022

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



SUBCHAPTER T. CEASE AND DESIST ORDERS

40 TAC §§807.362, 807.365, 807.366

The rules are proposed under Texas Education Code, Chapter 132, which provides 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 proposed rules affect Title 3, Texas Education Code, particularly Chapter 132.

§807.362. *Contents of Statement of Charges and Notice of Hearing.*

The statement of charges and notice of hearing issued by the Agency will [shall] contain the following information:

(1) The name and last known address of the person against whom the order may be entered;

(2) A short and plain statement of the reasons the Agency believes the person is operating a career school or college without a certificate of approval; and

(3) The date, time, and location of the hearing.

§807.365. *Hearing Decision and Final Review by the Agency [Commission].*

(a) Within 10 days after the hearing is held, the hearing officer shall issue a written decision granting or denying the request for the issuance of a cease and desist order that includes findings of fact and conclusions of law. The hearing decision shall be mailed by certified mail, return receipt requested, and is presumed received five days from the date it is mailed. The hearing officer's decision becomes final the 15th day after receipt of the hearing decision unless an appeal is filed under subsection (b) of this section.

(b) A party that is not satisfied with the decision of the hearing officer may file a written appeal of the decision to the Agency [Commission] for a final review no later than the 15th day after receipt of the hearing decision. The written appeal shall contain the party's arguments as to why the decision of the hearing officer should be reversed.

(c) Upon receipt of the written appeal of the hearing officer's decision, the Agency [Commission] shall consider the appeal and issue a decision promptly. The Agency [Commission] shall consider the appeal on the basis of the record made before the hearing officer. The decision of the Agency [Commission] shall be mailed by certified mail, return receipt requested, and is presumed received five days from the date it is mailed.

§807.366. *Cease and Desist Order.*

(a) If the request for the issuance of a cease and desist order becomes final under the provisions of §807.365(a) of this subchapter or, if after an appeal the decision under §807.365(c) of this subchapter upholds the issuance of a cease and desist order by the Agency [Commission], the hearing officer shall issue a cease and desist order against the person who is found operating a career school or college without a certificate of approval in violation of §132.151 of the Act.

(b) The cease and desist order shall be delivered by certified mail, return receipt requested, and is presumed received five days from the date it is mailed.

(c) From the date of receipt of the issuance of the cease and desist order, the person must completely cease and desist operating the career school or college.

(d) The cease and desist order shall remain in effect until the person comes into complete compliance with the Act as determined by the Agency [Commission], or unless otherwise provided by the order of the Agency [Commission].

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

Filed with the Office of the Secretary of State on July 13, 2022.

TRD-202202657

Les Trobman

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: August 28, 2022

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



SUBCHAPTER U. CAREER SCHOOLS HEARINGS

40 TAC §§807.385 - 807.387, 807.395

The rules are proposed under Texas Education Code, Chapter 132, which provides 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 proposed rules affect Title 3, Texas Education Code, particularly Chapter 132.

§807.385. *Setting of Hearing.*

(a) Upon receipt of request for a hearing, the Agency will [shall] promptly mail a notice of hearing that sets the hearing for a reasonable time and place within 30 days from receipt of the request for a hearing.

(b) The notice of hearing shall be in writing and include a:

(1) statement of the date, time, place, and nature of the hearing;

(2) statement of the legal authority under which the hearing is to be held; and

(3) short and plain statement of the issues to be considered during the hearing.

(c) The notice of hearing shall be issued at least 10 days before the date of the hearing unless a shorter period is permitted by statute.

(d) The hearing notice shall state whether the hearing shall be conducted by telephone or in-person. The hearing notice shall also include the location of an in-person hearing.

(e) Parties needing special accommodations, including a bilingual or sign language interpreter, may request such before the setting of the hearing, if possible, or as soon as practical.

§807.386. *Hearing Officer Independence and Impartiality.*

(a) A hearing officer presiding over a hearing shall have all powers necessary and appropriate to conduct a full, fair, and impartial hearing. Hearing officers shall remain independent and impartial in all matters regarding the handling of any issues during the pendency of a case and in issuing their written decisions.

(b) A hearing officer shall be disqualified if the hearing officer has a personal interest in the outcome of the appeal or if the hearing officer directly or indirectly participated in the determination on appeal. Any party may present facts to the Agency in support of a request to disqualify a hearing officer.

(c) The hearing officer may withdraw from a hearing to avoid the appearance of impropriety or partiality.

(d) Following any disqualification or withdrawal of a hearing officer, the Agency will ~~shall~~ assign an alternate hearing officer to the case. The alternate hearing officer shall not be bound by any findings or conclusions made by the disqualified or withdrawn hearing officer.

§807.387. Hearing Procedures.

(a) The hearing shall be conducted telephonically ~~[in person in Austin, Texas]~~, unless an in-person hearing is requested and the hearing officer deems an in-person hearing appropriate or the hearing officer determines that another method of conducting the hearing is appropriate ~~[the parties agree to a telephonic hearing or request a different location]~~.

(b) The hearing shall be conducted informally and in such a manner as to ascertain the substantive rights of the parties. All issues relevant to the appeal shall be considered and addressed, and may include:

(1) Presentation of Evidence. The parties to an appeal may present evidence that is material and relevant, as determined by the hearing officer. In conducting a hearing, the hearing officer shall actively develop the record on the relevant circumstances and facts to resolve all issues. To be considered as evidence in a decision, any document or physical evidence must be entered as an exhibit at the hearing. A party has the right to object to evidence offered at the hearing by the hearing officer or other parties.

(2) Examination of Parties and Witnesses. After placing the witnesses under oath, the hearing officer shall examine parties and any witnesses and shall allow cross-examination to the extent the hearing officer deems necessary to afford the parties due process.

(3) Additional Evidence. The hearing officer, with or without notice to any of the parties, may take additional evidence as deemed necessary, provided that a party shall be given an opportunity to rebut the evidence if it is to be used against the party's interest.

(4) Appropriate Hearing Behavior. All parties shall conduct themselves in an appropriate manner. The hearing officer may expel any individual or party who fails to correct behavior the hearing officer identifies as disruptive. After expulsion, the hearing officer may proceed with the hearing and render a decision.

(c) Records.

(1) The hearing record shall include the audio recording of the proceeding and any other relevant evidence relied on by the hearing officer, including documents and other physical evidence entered as exhibits.

(2) The hearing record shall be maintained in accordance with federal and state law.

(3) Confidentiality of information contained in the hearing record shall be maintained in accordance with federal and state law.

(4) Upon request, a party has the right to obtain a copy of the hearing record at no charge. However, a party requesting a transcript of the hearing record shall pay the costs of the transcription.

§807.395. Finality of Decision.

(a) The decision of the hearing officer is the final decision of the Agency after the expiration of 30 calendar days from the mailing date of the decision unless within that time:

- (1) a request for reopening is filed with the Agency;
- (2) a request for rehearing is filed with the Agency; or
- (3) the Agency assumes continuing jurisdiction to modify or correct the decision.

(b) Any decision issued in response to a request for reopening or rehearing or a modification or correction issued by the Agency becomes ~~shall be~~ final on the expiration of 30 calendar days from the mailing date of the decision, modification, or correction.

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 July 13, 2022.

TRD-202202658

Les Trobman

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: August 28, 2022

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



TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 11. DESIGN

SUBCHAPTER G. TRANSPORTATION ALTERNATIVES SET-AISDE PROGRAM

43 TAC §§11.401, 11.404 - 11.406, 11.408

The Texas Department of Transportation (department) proposes amendments to §§11.401, 11.404 - 11.406, and 11.408 concerning Transportation Alternatives Set-Aside Program.

EXPLANATION OF PROPOSED AMENDMENTS

Due to substantial increases to Transportation Alternatives Set-Aside Program (TASA) funding and new program requirements associated with the Infrastructure Investment and Jobs Act (IIJA), the department is amending its current TASA rules to optimize the use of TASA funds within the program's 4-year obligation window.

The amendments eliminate population limitations on preliminary engineering, local match assistance, and cost overruns. Additional proposed changes include adding project sponsor types and eligibilities for boulevard improvements in the right-of-way of divided highways, planning document development, Safe Routes to School (SRTS) non-infrastructure programs, and expanding eligible reimbursable activities to include purchase of right of way in certain circumstances.

Amendments to §11.401, Definitions, clarify that, in accordance with federal guidance, a project sponsor may be any eligible entity defined by 23 U.S.C. §133(h).

Amendments to §11.404, Eligible Activities, add construction of boulevards and other roadways largely in the right of way of former interstate system routes or other divided highways, implementation of non-infrastructure activities designed to encourage walking and biking to school, and furtherance of vulnerable roadway user safety assessments as activities eligible for TASA funds. These revisions are recommended to optimize funding for large active transportation projects expanding the type of projects eligible for TASA funds and allowing any size community to use TASA funds for planning and design activities. These

additions are consistent with SRTS eligibilities and new federal emphasis areas related to vulnerable road users. Existing subsection (a)(4) is re-designated as subsection (a)(5) accordingly. Subsection (b) is amended to remove population limitations on planning and design activities to allow more communities the ability to request reimbursement for these activities.

Amendments to §11.405, Allowable Costs, allow for reimbursement of costs related to non-construction projects or programs and planning and design activities for communities of any population size. The addition of Subsection (d) allows for reimbursement of the cost of right-of-way acquisition that is incidental to construction activities as specified in the program call materials or as otherwise approved by the department. In certain circumstances, funding for acquisition of right of way may be necessary to deliver projects within the program's 4-year obligation window. Existing Subsections (d) - (g) are re-designated accordingly.

Amendments to §11.406, Local Funding Match, remove population limitations to allow local match assistance for communities of any size that meet criteria for assistance. This amendment is recommended to extend local match assistance to larger economically disadvantaged communities where significant local match requirements for large active transportation projects may be a barrier.

Amendments to §11.408, Nomination Package, clarify that a project sponsor's commitment to provide local match can include local match assistance allowed under §11.406, if the project sponsor meets criteria for assistance.

FISCAL NOTE

Stephen Stewart, Chief Financial Officer, has determined, in accordance with Government Code, §2001.024(a)(4), that as a result of enforcing or administering the rules for each of the first five years in which the proposed rules are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

Eric Gleason, Director of Public Transportation, has determined that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed rules and therefore, a local employment impact statement is not required under Government Code, §2001.022.

PUBLIC BENEFIT

Eric Gleason has determined, as required by Government Code, §2001.024(a)(5), that for each year of the first five years in which the proposed rules are in effect, the public benefit anticipated as a result of enforcing or administering the rules will be more efficient administration of the TASA program and maximization of the use of TASA funding to implement active transportation infrastructure projects throughout the state, high-impact infrastructure projects that substantively improve mobility options, and non-construction projects that help develop active transportation networks and support SRTS activities.

COSTS ON REGULATED PERSONS

Eric Gleason has also determined, as required by Government Code, §2001.024(a)(5), that for each year of that period there are no anticipated economic costs for persons, including a state agency, special district, or local government, required to comply with the proposed rules and therefore, Government Code, §2001.0045, does not apply to this rulemaking.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities, as defined by Government Code, §2006.001, and therefore, an economic impact statement and regulatory flexibility analysis are not required under Government Code, §2006.002.

GOVERNMENT GROWTH IMPACT STATEMENT

Eric Gleason has considered the requirements of Government Code, §2001.0221 and anticipates that the proposed rules will have no effect on government growth. He expects that during the first five years that the rule would be in effect:

- (1) it would not create or eliminate a government program;
- (2) its implementation would not require the creation of new employee positions or the elimination of existing employee positions;
- (3) its implementation would not require an increase or decrease in future legislative appropriations to the agency;
- (4) it would not require an increase or decrease in fees paid to the agency;
- (5) it would not create a new regulation;
- (6) it would not expand, limit, or repeal an existing regulation;
- (7) it would not increase or decrease the number of individuals subject to its applicability; and
- (8) it would not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

Eric Gleason has determined that a written takings impact assessment is not required under Government Code, §2007.043.

PUBLIC HEARING

Pursuant to the Administrative Procedure Act, Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed rules. The public hearing will be held at 9:00 a.m. on August 12, 2022, in the Ric Williamson Hearing Room, First Floor, Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin, Texas and will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 8:30 a.m. Any interested persons may appear and offer comments, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views and identical or similar comments through a representative member when possible. Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc. for proper reference. Any suggestions or requests for alternative language or other revisions to the proposed text should be submitted in written form. Presentations must remain pertinent to the issues being discussed. A person may not assign a portion of his or her time to another speaker. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons

who are deaf or hearing impaired, readers, large print or Braille, are requested to contact the General Counsel Division, 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-8630 at least five working days before the date of the hearing so that appropriate services can be provided.

SUBMITTAL OF COMMENTS

Written comments on the amendments to §§11.401, 11.404 - 11.406, and 11.408, may be submitted to Rule Comments, General Counsel Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "*Transportation Alternatives Set-Aside Program Rules*." The deadline for receipt of comments is 5:00 p.m. on August 29, 2022. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Title 23, United States Code, §133(h).

§11.401. Definitions.

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

- (1) Commission--Texas Transportation Commission.
- (2) Department--Texas Department of Transportation.
- (3) Executive director--The executive director of the Texas Department of Transportation or the executive director's designee.
- (4) FHWA--Federal Highway Administration.
- (5) Local agreement--An agreement between the project sponsor and the department which includes a commitment for the required local funding, describes the total scope and course of project activities, and outlines the responsibilities and duties of the participants.
- (6) Metropolitan planning organization (MPO)--The organization or policy board of an organization created and designated under 23 U.S.C. §134, and 49 U.S.C. §5303, to make transportation planning decisions for the metropolitan planning area and carry out the metropolitan planning process.
- (7) Project--An undertaking to implement or construct an eligible activity at a specific location or locations, or, if the context so implies, the particular activity so implemented or constructed.
- (8) Project sponsor--An eligible entity, as defined [described] by 23 U.S.C. §133(h), that nominates a particular project for consideration[; exercises jurisdiction over the geographic area in which that project is located,] and commits to the project's development, implementation, [construction, maintenance,] management, and financing.
- (9) State--The State of Texas or any of its political subdivisions.

(10) Statewide Transportation Improvement Program (STIP)--A four year short-range program developed by the department as a compilation of all metropolitan transportation improvement programs, together with rural transportation improvement programs, that include recommendations from rural planning organizations and department districts for the areas of the state that are outside of the boundaries of a metropolitan planning organization, including transportation between cities.

(11) Surface transportation system--An interconnected surface transportation network for moving people and goods using various combinations of transportation modes.

(12) Transportation Improvement Program (TIP)--A short-range program developed by each metropolitan planning organization in cooperation with the department and public transportation operators that covers a four-year period and contains a prioritized listing of all projects proposed for federal funding and regionally significant projects proposed for state, federal, and local funding in a metropolitan area.

§11.404. Eligible Activities.

(a) During a program call administered by the department, TA Set-Aside funds may be awarded for any of the following activities:

(1) construction of on-road and off-road trail facilities for pedestrians, bicyclists, and other non-motorized forms of transportation, including sidewalks, bicycle infrastructure, pedestrian and bicycle signals, traffic calming techniques, lighting and other safety-related infrastructure, and transportation projects to achieve compliance with the Americans with Disabilities Act of 1990;

(2) construction of infrastructure-related projects and systems that will provide safe routes for non-drivers, including children, older adults, and individuals with disabilities to access daily needs;

(3) conversion and use of abandoned railroad corridors for trails for pedestrians, bicyclists, or other non-motorized transportation users; [and]

(4) construction of boulevards and other roadways that are located primarily in the right of way of former interstate system highways or other divided highways and that improve access for bicyclists, pedestrians, and transit users but do not reduce on-system roadway capacity unless such a reduction has the prior approval of the department;

(5) [(4)] construction of infrastructure-related projects to improve the ability of students to walk and bicycle to school, including sidewalk improvements, traffic calming and speed reduction improvements, pedestrian and bicycle crossing improvements, on-street bicycle facilities, off-street bicycle and pedestrian facilities, secure bicycle parking facilities, and traffic diversion improvements in the vicinity of schools;

(6) implementation of non-infrastructure activities that are designed to encourage walking and bicycling to school, including public awareness campaigns and outreach to the news media and community leaders, traffic education and enforcement in the vicinity of schools, student education on bicycle and pedestrian safety, health, and environment, and funding for training volunteers for and managers of safe routes to school programs; and

(7) activities in furtherance of a vulnerable road user safety assessment, as defined in 23 U.S.C. §148.

(b) Planning and design activities related to any of the activities described in subsection (a) of this section are eligible for TA Set-Aside Program funds [for the construction of bicycle and pedestrian facilities are eligible only for projects located in communities with a population of 50,000 or less].

(c) A project that will require the acquisition of real property through the exercise of eminent domain or condemnation is not eligible for participation in the TA Set-Aside Program.

(d) Whether proposed as an independent project or as an element of a larger transportation project, the project must be limited to a logical unit of work and be constructible as an independent project.

§11.405. Allowable Costs.

(a) Costs are allowable only if they are necessary expenditures for an activity for which TA Set-Aside Program funds may be used under §11.404 of this subchapter (relating to Eligible Activities) [~~a construction related project~~] and are eligible for reimbursement under applicable statutes and regulations.

(b) Costs incurred before the execution of the local agreement or before federal and state approval and authorization to proceed are not eligible for reimbursement.

(c) The costs of preliminary engineering, including environmental studies and documentation, design, and plans, specifications, and estimates are allowable costs [~~only for projects located in communities with a population of 50,000 or less~~].

(d) The costs of right-of-way acquisition incidental to construction activities, as specified in the program call materials or otherwise approved by the department, are allowable costs.

(e) [~~(d)~~] Eligible pre-construction costs incurred by the department are reimbursable.

(f) [~~(e)~~] All pre-construction costs are the responsibility of the project sponsor except as provided by this section.

(g) [~~(f)~~] Expenditures for routine operation and maintenance are not allowable costs unless specifically allowed under the individual federal category for which the project qualifies.

§11.406. Local Funding Match.

(a) Except as provided by this section, the local funding match must be cash provided by or through the project sponsor.

(b) Transportation [~~For a community with a population of 50,000 or less, transportation~~] development credits, state funds, or both may be available to apply to all or part of the local funding match if the community:

(1) is in an economically disadvantaged county, as defined in the Transportation Code, §222.053(a) or described by Transportation Code, §222.053(a-1); or

(2) satisfies economic need criteria specified in the program call materials.

(c) Funds from other federal programs may be used as a local funding match only when specifically authorized by federal law.

(d) Donated services may not be accepted as a local funding match but may be used to reduce the overall cost of the project.

(e) If a project selected by the commission is implemented by the department, the project sponsor must provide the local funding match prior to the commencement of project activities for each phase of work.

(f) Projects selected by the commission will include the department's direct state costs for oversight of preliminary engineering and construction in TA Set-Aside project awards.

§11.408. Nomination Package.

(a) To nominate a project during a program call administered by the department, the project sponsor must submit its nomination in the form prescribed by the department.

(b) The nomination package must present persuasive evidence of support for the proposed project from the communities in which it would be implemented and include a commitment to provide a local funding match of at least 20% of the allowable costs of the project, subject to §11.406 of this subchapter (relating to Local Funding Match).

(c) If the project is located in a county that has been certified by the commission as an economically disadvantaged county, the nomination package may include a request for adjustment to the minimum local funding match requirement. For those projects in which the commission is authorized by law to provide state cost participation, the department may adjust the amount required by Subsection (b) of this section. If an adjustment is granted, the adjustment percentage in effect for the county at the time the program call is initiated will be used. The county must remain eligible for the adjustment until the date the project sponsor enters into the local agreement.

(d) A complete nomination package must be received by the department not later than the specified deadline published in the *Texas Register*. A nomination package that fails to include any of the items specified in this section or the respective program call is considered to be incomplete and will not be considered for funding. The department may request supplemental information as needed to conduct project screening and evaluation.

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 July 12, 2022.

TRD-202202629

Becky Blewett

Deputy General Counsel

Texas Department of Transportation

Earliest possible date of adoption: August 28, 2022

For further information, please call: (512) 463-3164



CHAPTER 31. PUBLIC TRANSPORTATION SUBCHAPTER C. FEDERAL PROGRAMS

43 TAC §31.36

The Texas Department of Transportation (department) proposes amendments to §31.36, concerning the Section 5311 Grant Program.

EXPLANATION OF PROPOSED AMENDMENTS

Amendments to §31.36, Section 5311 Grant Program, address an increase in Section 5311 Grant Program funding at the federal level from the Infrastructure Investment and Jobs Act, address census impacts on funding allocations, and provide flexibility in distributing federal emergency relief funding.

Amendments throughout §31.36 revise references to subsection and other division designations to accurately reflect the changes of designations made by this rulemaking.

Section 31.36(e) is amended to specify that eligible §5311 program expenses are those found in FTA Circular 9040.1G, or its successor, and to delete references to individual eligible expense categories.

The amendments delete existing subsection (f) and redesignate subsection (g) as subsection (f). Amendments to redesignated subsection (f) establish the process for the department to allo-

cate funds after the receipt of annual §5311 program apportionment totals. New §31.36(f)(1) provides that the department may use up to 10 percent of the annual federal apportionment to defray administrative expenses.

The amendments delete current §31.36(f)(2), removing the need and performance allocation and funding stability provisions.

The amendments redesignate current §31.36(f)(1) as §31.36(f)(2), and delete subparagraph (C) of that paragraph, which requires the department to consult with other state agencies regarding intercity bus regulation and service adequacy. Amendments to existing subparagraph (D) of paragraph (2) clarify that the governor or the governor's authorized designee may certify the adequacy of intercity bus service and redesignate subparagraph (D) as subparagraph (C).

Section 31.36(f)(3) is amended to provide that up to 10 percent of §5311 program funds may be used for discretionary allocation at any time during the fiscal year on a pro rata basis, competitively, a combination of both, or as a one-time award. The paragraph clarifies that funds may be used to address rural transit district service and capital development needs, changes in transit district boundaries, unforeseen funding anomalies, emergency services response and recovery needs, changes in economic conditions or availability of assets significantly impacting current year operational expenses, or other needs as determined by the commission.

New §31.36(f)(4) describes how the balance of annual §5311 federal apportionment and any program funds that were available for award in the previous fiscal year will be allocated to rural transit districts. Section 31.36(f)(4)(A) adds a baseline allocation for subrecipients to receive an amount equal to that received in federal Fiscal Year 2021 and clarifies the baseline allocation will not be reduced by a performance adjustment. Section 31.36(f)(4)(B) adds a subrecipient growth allocation based on proportional share using population of the district, land area of the district, total vehicle miles in the district, and low-income individuals residing in the district. Section 31.36(f)(4)(C) specifies how the population of a district is determined.

New §31.36(f)(5) provides an adjustment of the total allocation for a rural transit district for the performance measures of ridership and operating cost per vehicle hour. For each performance measure not achieved, a rural transit district's total allocation will be reduced by 5 percent but will not fall below the baseline allocation. A rural transit district that achieves both performance measures will receive an additional allocation amount. The director may waive the application of the performance adjustment in any year, based on unique conditions that negatively impact the performance of the district or a group of districts.

Current §31.36(f)(4) is deleted, removing the total vehicle mile allocation.

Current §31.36(f)(5) is amended to clarify that population and land area factors are used to negotiate an appropriate census adjustment and is redesignated as §31.36(f)(6).

Current §31.36(f)(6) is redesignated as §31.36(f)(7).

New §31.36(f)(8) provides that the department will review the effects of the changes made by this rulemaking on the allocation of §5311 program funds to determine if adjustments are necessary for allocations made beginning with FY 2028.

Current §31.36(h) and (i) are redesignated as §31.36(g) and (h), respectively. Redesignated §31.36(h) deletes the requirement

that an intercity bus program request for proposals must be issued annually.

New §31.36(i) allows the department to distribute federal emergency relief funds apportioned to the department through the §5311 program in a manner consistent with relief funding objectives.

FISCAL NOTE

Stephen Stewart, Chief Financial Officer, has determined, in accordance with Government Code, §2001.024(a)(4), that as a result of enforcing or administering the rules for each of the first five years in which the proposed rules are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

Eric Gleason, Director, Public Transportation Division, has determined that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed rules and therefore, a local employment impact statement is not required under Government Code, §2001.022.

PUBLIC BENEFIT

Eric Gleason, Director, Public Transportation Division, has determined, as required by Government Code, §2001.024(a)(5), that for each year of the first five years in which the proposed rules are in effect, the public benefit anticipated as a result of enforcing or administering the rules will be increased statewide access to public transportation funds for rural transit districts.

COSTS ON REGULATED PERSONS

Eric Gleason, Director, Public Transportation Division, has also determined, as required by Government Code, §2001.024(a)(5), that for each year of that period there are no anticipated economic costs for persons, including a state agency, special district, or local government, required to comply with the proposed rules and therefore, Government Code, §2001.0045, does not apply to this rulemaking.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities, as defined by Government Code, §2006.001, and therefore, an economic impact statement and regulatory flexibility analysis are not required under Government Code, §2006.002.

GOVERNMENT GROWTH IMPACT STATEMENT

Eric Gleason, Director, Public Transportation Division, has considered the requirements of Government Code, §2001.0221 and anticipates that the proposed rules will have no effect on government growth. He expects that during the first five years that the rule would be in effect:

- (1) it would not create or eliminate a government program;
- (2) its implementation would not require the creation of new employee positions or the elimination of existing employee positions;
- (3) its implementation would not require an increase or decrease in future legislative appropriations to the agency;
- (4) it would not require an increase or decrease in fees paid to the agency;

- (5) it would not create a new regulation;
- (6) it would not expand, limit, or repeal an existing regulation;
- (7) it would not increase or decrease the number of individuals subject to its applicability; and
- (8) it would not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

Eric Gleason, Director, Public Transportation Division, has determined that a written takings impact assessment is not required under Government Code, §2007.043.

PUBLIC HEARING

Pursuant to the Administrative Procedure Act, Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed rules. The public hearing will be held at 10:30 a.m. on August 12, 2022, in the Ric Williamson Hearing Room, First Floor, Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin, Texas and will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 10:00 a.m. Any interested persons may appear and offer comments, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views and identical or similar comments through a representative member when possible. Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc. for proper reference. Any suggestions or requests for alternative language or other revisions to the proposed text should be submitted in written form. Presentations must remain pertinent to the issues being discussed. A person may not assign a portion of his or her time to another speaker. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact the General Counsel Division, 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-8630 at least five working days before the date of the hearing so that appropriate services can be provided.

SUBMITTAL OF COMMENTS

Written comments on the amendments to §31.36, may be submitted to Rule Comments, General Counsel Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "Public Transportation Rules." The deadline for receipt of comments is 5:00 p.m. on August 29, 2022. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the

conduct of the work of the department, and more specifically, Transportation Code, §456.022, which requires the commission to adopt rules establishing a formula allocating funds among eligible public transportation providers.

CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

49 U.S.C. §5311 and Transportation Code, Chapters 455 and 456.

§31.36. Section 5311 Grant Program.

(a) Purpose. Section 5311, Federal Transit Act (49 U.S.C. §5311), authorizes the Secretary of the U.S. DOT to make grants for public transportation projects in rural areas. The department has been designated by the governor to administer the §5311 program.

(b) Goal and objectives. The department's goal in administering the §5311 program is to promote the availability of cost-effective, efficient, and coordinated passenger transportation services to the general public in rural areas using the most efficient combination of financial and other resources. To achieve this goal, the objectives of the department are to:

- (1) promote the development and maintenance of a network of general public transportation services, including intercity services, in rural areas throughout the state, in partnership with local officials;
- (2) fully integrate the §5311 program with other federal, state, and local resources that are designed to serve rural populations;
- (3) improve the efficiency, effectiveness, and safety of §5311 systems through the provision of technical assistance;
- (4) include private sector operators in the overall plan to provide public transportation services; and
- (5) minimize negative impacts from changes in public transportation district boundaries.

(c) Department role. The department acts as the designated recipient for all §5311 funds apportioned to the state and has an oversight responsibility for all rural transit services within the state. The department, however, recognizes the subrecipients as partners who shall retain control of daily operations. As the administering agency, the department will:

- (1) develop application materials and disseminate information to prospective applicants and other interested parties;
- (2) allocate the available program funds in a fair and equitable manner as described in subsection (f) [(g)] of this section (the department will not provide §5311 funds to more than one transit system in a geographical area);
- (3) develop evaluation criteria and select projects for funding;
- (4) prepare the state's annual program of projects and funding application and submit that material to the FTA for approval;
- (5) negotiate and execute contracts with local §5311 subrecipients;
- (6) prepare requests for federal reimbursement, and process payment requests from §5311 subrecipients;
- (7) monitor and evaluate the progress of ongoing transportation operations, including compliance with federal regulations; and

(8) provide technical assistance to §5311 subrecipients to aid them in improving transit services.

(d) Eligible subrecipients. State agencies, local public entities, private nonprofit organizations, Native American tribes and organizations, and operators of public transportation services are eligible to receive §5311 funds through the department. Private for-profit operators of public transportation services may participate in the program through contracts with eligible subrecipients. An entity must be a rural transit district to receive §5311 funds except that private for-profit operators of public transportation services and entities that are not rural transit districts are eligible to receive §5311 funds through the department under the intercity bus program, as set forth in subsections (f)(2) [(g)(1)] and (h) [(i)] of this section.

(c) Eligible expenses [assistance categories]. The department will follow FTA Circular 9040.1G, or its latest version, to determine eligible §5311 program expenses. [The following categories of expenses are eligible for federal reimbursement under the §5311 program.]

[(1) State administrative expenses. The department may use up to 10 percent of the annual federal apportionment to defray its expenses incurred for the administration of the §5311 program. These funds may also be used to provide technical assistance to subrecipients. Technical assistance may include project planning, program development, management development, coordination of public transportation projects, and related research. Projects are solicited from subrecipients and other interested parties. State administrative and technical assistance expenses do not require a non-federal match.]

[(2) Capital expenses.]

[(A) Eligible items include:]

- [(i) buses;]
- [(ii) vans or smaller accessible vehicles;]
- [(iii) radios and communications equipment;]
- [(iv) passenger shelters, bus stop signs, and similar passenger amenities;]
- [(v) wheelchair lifts and restraints;]
- [(vi) vehicle rehabilitation, remanufacture, or overhaul;]
- [(vii) preventive maintenance, including all maintenance costs;]
- [(viii) extended warranties that do not exceed the industry standard;]
- [(ix) the public transportation portion of ferry boats and terminals;]
- [(x) operational support such as computer hardware or software;]
- [(xi) installation costs and vehicle procurement, testing, inspection, and acceptance costs;]
- [(xii) construction or rehabilitation of transit facilities, including design, engineering, and land acquisition;]
- [(xiii) facilities to provide access for bicycles to transit facilities and equipment for transporting bicycles on transit vehicles;]
- [(xiv) the lease of equipment or facilities, provided that the local subrecipient, with the concurrence of the department, determines that a lease is more cost effective than the purchase of equipment or facilities after considering management efficiency, availability

of equipment, staffing capabilities and guidelines on capital leases as contained in 49 C.F.R. Part 639;]

[(xv) the capital portions of costs for service under contract;]

[(xvi) joint development projects (FTA Circular 9300.1B; or its latest version; provides guidelines for joint development projects);]

[(xvii) the introduction of new technology, through innovative and improved products, into mass transportation;]

[(xviii) transit-related intelligent transportation systems;]

[(xix) the provision of ADA paratransit service, which shall not exceed 10 percent of the state's annual apportionment of §5311 funds and shall be used only by subrecipients that are in compliance with ADA requirements for both fixed route and demand responsive service;]

[(xx) mobility management consisting of short-range planning, management activities and projects for improving coordination among public transportation, and other transportation service providers carried out through an agreement entered into with a person, including a governmental authority, but excluding operating expenses; and]

[(xxi) crime prevention and security.]

[(B) The capital cost of contracting includes depreciation, interest on facilities and equipment, and those allowable capital costs that would otherwise be incurred directly, including maintenance. No capital assets (vehicle, equipment, or facility) that have any remaining federal interest in them and no items purchased with state or local government funds may be capitalized under the grant agreement.]

[(C) For reimbursement:]

[(i) federal funds may be used to reimburse up to 80 percent of eligible capital expenditures;]

[(ii) the federal share may increase up to 85 percent of the net project cost for a project that involves acquiring vehicles for the purpose of complying with the Americans with Disabilities Act or the Clean Air Act;]

[(iii) the federal share may increase to up to 90 percent for bicycle equipment or facilities projects or for incremental costs related to compliance with the Clean Air Act or with the Americans with Disabilities Act of 1990; and]

[(iv) the federal share may also increase in accordance with 23 U.S.C. §120(b)(2) as determined by FTA regarding the area of nontaxable Native American lands; individual and tribal, public domain lands (reserved and unreserved), national forest, and national parks and monuments; with eligibility standards for the higher federal share being defined in FTA Circular 9040.1G, or its latest version.]

[(3) Project administrative expenses. Costs not directly tied, but essential, to the operations of passenger transportation systems may be reimbursed at up to 80 percent with federal funds. The federal share may also increase in accordance with 23 U.S.C. §120(b)(2) as determined by FTA regarding the area of nontaxable Native American lands; individual and tribal, public domain lands (reserved and unreserved), national forest, and national parks and monuments. Eligibility standards for the higher federal share are defined in FTA Circular 9040.1G, or its latest version.]

[(4) Operating expenses. Costs directly tied to systems operations, such as costs for fuel, oil, and replacement parts, and driver,

mechanic, and dispatcher salaries, may be reimbursed at 50 percent of net operating costs. The federal share may also increase in accordance with 23 U.S.C. §120(b)(2) as determined by FTA regarding the area of nontaxable Native American lands, individual and tribal, public domain lands (reserved and unreserved), national forest, and national parks and monuments. Eligibility standards for the higher federal share are defined in FTA Circular 9040.1G, or its latest version. The local subrecipient must provide a match, either in cash or with in-kind donations.]

[(5) Planning expenses may be reimbursed at up to 80 percent with federal funds. FTA Circular 8100.1C or its latest version has a complete list of eligible activities, which include:]

[(A) studies relating to management, planning, operations, capital requirements, and economic feasibility;]

[(B) evaluation of previous planning projects;]

[(C) work elements and related activities preliminary to and in preparation for constructing, acquiring, or improving the operations of facilities and equipment;]

[(D) safety, security, and emergency transportation and evacuation planning; and]

[(E) coordinated public transit-human service transportation planning.]

[(f) Local share requirements.]

[(1) FTA program funds cannot be used as the local share required for §5311 grants.]

[(2) Cash from local or state programs, donations, or unrestricted federal funds is allowed.]

[(3) In-kind contributions, volunteer services, and donations are eligible as local share if the value is documented.]

[(4) For an intercity bus project that includes both feeder service and an unsubsidized segment of intercity bus service to which the feeder service connects, in-kind match may be derived from the costs of a private operator for the unsubsidized segment of intercity bus services for the operating costs of connecting rural intercity bus feeder services. The private operator must agree in writing to the use of the costs of the unsubsidized segment of intercity bus services as in-kind match.]

[(5) Subrecipients may request transportation development credits be used for all or part of the local match.]

[(f) [(g)] Allocation of funds. As part of its administration of the §5311 program, the department is charged with ensuring that there is a fair and equitable distribution of funds within the state (FTA Circular 9040.1G or its latest version). After receipt of annual §5311 program apportionment totals [subtracting funds for state administrative expenses in accordance with subsection (e)(1) of this section], the department will allocate §5311 funds [to local subrecipients] in the following manner and order.

(1) State Administration. The department will use not more than 10 percent of the annual federal apportionment to defray its expenses incurred for the administration of the §5311 program.

(2) [(4)] Intercity bus allocation. Unless the chief executive officer of the state or the executive officer's authorized designee certifies to the Secretary of the U.S. DOT that the intercity bus service needs of the state are being adequately met, the department will allocate not less than 15 percent of the annual §5311 federal apportionment for the development and support of intercity bus transportation facilities and services providing access and connections to rural areas. If it is

determined that all or a portion of the set-aside monies is not required for intercity bus service, those funds will be applied to the formula apportionment process described in paragraph (4) [(2)] of this subsection. Procedures for determining if a certification of adequacy is warranted are as follows.

(A) The department will review all data on intercity bus service availability, including outstanding requests from intercity operators and rural transit districts, and levels of service.

(B) The department will consult with affected intercity bus service providers and rural transit districts.

[(C) The department will consult with other state agencies that have jurisdiction with respect to intercity bus regulation and seek their recommendations as to the adequacy of current service.]

(C) [(D)] Based on the findings of subparagraphs (A) and (B) [(A), and (B), and (C)] of this paragraph, the commission, the governor [chief executive officer of the state] or the governor's [chief executive officer's] authorized designee may certify to the adequacy of intercity bus service.

[(2) Need and performance allocation. Excluding the amounts allocated under paragraph (1) of this subsection, the balance of the annual §5311 federal apportionment, plus the remaining balance of previous §5311 federal apportionments, not to exceed \$20,104,352, will be allocated to transit providers as described in subparagraphs (A) and (B) of this paragraph.]

[(A) The need based allocation is 65 percent giving consideration to population weighted at 75 percent and on land area weighted at 25 percent by using the latest census data available from, and as defined by, the U.S. Census Bureau for each rural area relative to the sum of all rural areas.]

[(B) The performance based allocation is 35 percent. The subrecipient is eligible for funding under this subparagraph if it is in good standing with the department and has no deficiencies and no findings of noncompliance. The commission will award the funding by giving equal consideration to local funds per operating expense, ridership per vehicle revenue mile, and vehicle revenue miles per operating expense. These criteria may be calculated using the subrecipient's annual audit for the previously completed fiscal year, data from other sources, or from the department's records.]

[(C) Funding stability.]

[(i) Subject to the available apportionment, no award to a transit district under this paragraph will be less than 90 percent of the award to that transit district for the previous fiscal year. All allocations under subparagraphs (A) and (B) of this paragraph are subject to revision to comply with this standard.]

[(ii) If a rural transit district experiences a negative impact in its performance factor calculations due to the acquisition or loss of service area, a natural disaster, such as wind, fire, or flood, or unforeseen anomaly, the department may mitigate that impact with an alternate calculation addressing the specific situation. This calculation may be repeated in subsequent years at the discretion of the department.]

(3) Discretionary allocation. After the allocation of funds under paragraphs (1) and (2) of this subsection, up to 10 percent of the remaining funds will be available to the commission for award at any time during the fiscal year on a pro rata basis, competitively, a combination of both pro rata basis and competitively, or as a one-time award. Funds may be used to address rural transit district service and capital development needs, changes in transit district boundaries, unforeseen funding anomalies, emergency services response and recovery needs,

changes in economic conditions or availability of assets significantly impacting current year operational expenses, or other needs as determined by the commission. [If the amount of the §5311 federal apportionments exceeds the maximum amount that may be allocated under paragraph (2) of this subsection, a part of that excess, not to exceed 10 percent of the amount computed by subtracting, from the annual §5311 federal apportionment, the funds for state administrative expenses under subsection (e)(1) of this section and funds allocated for intercity bus transportation under paragraph (1) of this subsection, will be available to the commission for award at any time during the fiscal year on a pro rata basis, competitively, a combination of both pro rata and competitive, or as a one-time award to address changes in transit district boundaries. Consideration for the award of these additional funds may include, but is not limited to, coordination and technical support activities, compensation for unforeseen funding anomalies, assistance with eliminating waste and ensuring efficiency, maximum coverage in the provision of public transportation services, adjustment for reductions in purchasing power, furtherance of the department's goals, and reductions in air pollution. An award under this subparagraph will not be considered for the purpose of applying the funding stability allocation process under paragraph (2)(C) of this subsection in succeeding fiscal years.]

(4) Rural Transit District Total Allocation. Excluding the amounts allocated under paragraphs (1), (2), and (3) of this subsection, the commission will allocate to rural transit districts in accordance with this paragraph the balance of the annual §5311 federal apportionment and any program funds that were available for award in the previous fiscal year under paragraph (3) of this subsection but not awarded.

(A) Subrecipients will receive a baseline allocation. The amount of a subrecipient's baseline allocation is the amount of §5311 funds that the subrecipient received for federal Fiscal Year 2021 and will not be reduced by the performance adjustment under paragraph (5) of this subsection.

(B) Each rural transit district will receive a subrecipient growth allocation amount based on proportional share using the following criteria:

- (i) population of the district - 50 percent;
- (ii) land area of the district - 25 percent;
- (iii) total vehicle miles in the district - 15 percent;

and

(iv) number of low-income individuals residing in the district - 10 percent.

(C) For the purposes of subparagraph (B)(i) of this paragraph, population is determined using the most recent federal decennial census except that beginning September 1, 2027, the director may choose to use population information from the Texas Demographic Center for periods between the publication of federal decennial census information.

~~(4) Total vehicle mile allocation. Any amount of the annual §5311 federal apportionment that is not otherwise allocated under this subsection will be allocated to rural areas, with the amount allocated to a rural area based on the proportion of total vehicle miles for that rural area to the total of total vehicle miles for all rural areas.]~~

(5) Performance Adjustment. The total allocation computed for a rural transit district under paragraph (4) of this subsection is subject to adjustment for performance in accordance with this paragraph, except as provided by subparagraph (A) of this paragraph.

(A) The performance measures used for performance adjustments under this paragraph are:

(i) the rural transit district's ridership increasing by two percent or more; and

(ii) the district's operating costs per total vehicle hours not exceeding the annual average of those costs for the district, plus one standard deviation, computed over a 10-year period but excluding any year in which a federal major disaster declaration was applicable to the district.

(B) For each performance measure not achieved, a rural transit district's total allocation will be reduced by five percent.

(C) A rural transit district that achieves both performance measures will receive an additional allocation amount computed by dividing the total amount of reductions for all under subparagraph (B) of this paragraph by the total number of rural transit districts that achieve both performance measures.

(D) The director, in any year, may waive the application of the performance adjustment under this paragraph to a rural transit district or a group of rural transit districts based on unique conditions that negatively affect the performance of the district or group, including natural disaster, pandemic, or another event that specifically affects the service level of the district or group.

(6) ~~[(5)]~~ Census Adjustment [Adjustments to allocation].

(A) If part of a transit district's service area is changed due to declaration by the United States Census Bureau or the service area is otherwise altered, the department and that subrecipient shall negotiate an appropriate adjustment in the funding year or any subsequent year, using population and land area factors. [as appropriate. This negotiated adjustment is not subject to the minimum and maximum standards set forth in paragraph (2)(C) of this subsection.]

(B) If a previously designated urbanized area is declared rural by the United States Census Bureau, a public transportation subrecipient serving that area must apply for funds in accordance with paragraph (7) [(6)] of this subsection.

(7) ~~[(6)]~~ Application and contract. Prior to receiving funds a subrecipient must complete and comply with all application requirements, rules, and regulations applicable to the §5311 program. A completed application must be submitted, in a form prescribed by the department, and document the need and demand for general public passenger transportation services. A contract shall be for no less than 12 months unless authorized by the department.

(8) Review of Allocation Provisions. Prior to allocating §5311 funds for FY 2028, the department will review the allocations of §5311 funds for the preceding five fiscal years to determine whether paragraphs (1) - (5) of this subsection need to be adjusted for the fair and equitable distribution of those funds for FY 2028.

(g) ~~[(h)]~~ Program of projects. All projects for a fiscal year will be identified in accordance with the allocation rules included in subsection (f) [(g)] of this section. After commission approval of the allocation, these projects will be submitted to the FTA as the annual program of projects for the fiscal year.

(h) ~~[(i)]~~ Intercity bus program solicitations. For funding from allocations made under subsection (f)(2) [(g)(1)] of this section, [an annual] request for proposals will be issued for projects complying with FTA definitions of intercity bus transportation. To ensure a balanced investment in access and connectivity to intercity bus travel, the department may establish investment targets among eligible applicant groups or project types prior to solicitation of project proposals.

(i) Federal emergency relief funds. If federal emergency relief funds are apportioned to the department through the §5311 program,

the commission will distribute those funds in a manner consistent with relief funding objectives.

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 July 12, 2022.

TRD-202202630

Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: August 28, 2022
For further information, please call: (512) 463-3164



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 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 74. CURRICULUM REQUIREMENTS

SUBCHAPTER A. REQUIRED CURRICULUM

19 TAC §74.3

The State Board of Education (SBOE) adopts an amendment to §74.3, concerning the required secondary curriculum. The amendment is adopted without changes to the proposed text as published in the May 6, 2022 issue of the *Texas Register* (47 TexReg 2649) and will not be republished. The adopted amendment updates the list of high school courses for social studies and physical education that are required to be offered to students.

REASONED JUSTIFICATION: The 87th Texas Legislature, Regular Session, 2021, passed Senate Bill (SB) 1063, amending Texas Education Code (TEC), §28.025, to add a one-half credit course in personal financial literacy and economics as an option to meet the one-half credit graduation requirement for economics under the Foundation High School Program. SB 1063 requires that the SBOE adopt Texas Essential Knowledge and Skills (TEKS) for a combined personal financial literacy and economics course to be offered beginning with the 2022-2023 school year. To ensure that students have the option of satisfying the economics graduation requirement with the new Personal Financial Literacy and Economics course, the SBOE added the new course to the list of social studies courses that districts are required to offer.

Additionally, in 2020 the SBOE adopted new Kindergarten-Grade 12 physical education TEKS, which will be implemented beginning with the 2022-2023 school year. The new TEKS replaced the existing high school physical education courses with three new courses.

The adopted amendment adds a requirement in subsection (b)(2)(D) that districts offer the new Personal Financial Literacy and Economics course and provides an exception for districts with an enrollment of less than 500 students.

The adopted amendment also aligns the required secondary curriculum in subsection (b)(2)(E) with the changes to the high school physical education course offerings.

The SBOE approved the amendment for first reading and filing authorization at its April 8, 2022 meeting and for second reading and final adoption at its June 17, 2022 meeting.

In accordance with TEC, §7.102(f), the SBOE approved the amendment for adoption by a vote of two-thirds of its members

to specify an effective date earlier than the beginning of the 2023-2024 school year. The earlier effective date will update the rule to address new physical education and social studies courses as soon as possible. The effective date is 20 days after filing as adopted with the Texas Register.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began May 6, 2022, and ended at 5:00 p.m. on June 10, 2022. The SBOE also provided an opportunity for registered oral and written comments at its June 2022 meeting in accordance with the SBOE board operating policies and procedures. Following is a summary of the public comments received and corresponding responses.

Comment. One teacher stated that one computer science course should be required for all high school students to fulfill their high school graduation requirements.

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

Comment. One teacher stated that more professional development should be made available to educators who teach computer science.

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

Comment. One administrator expressed opposition to the requirement in §74.3(b)(2)(B) to offer Mathematical Models with Applications as part of the secondary curriculum and stated that small schools struggle to offer it. The commenter recommended either removing Mathematical Models with Applications from the required curriculum or adding a provision to allow for schools to offer either Mathematical Models with Applications or the career and technical education course Financial Mathematics.

Response. The SBOE disagrees and has determined that the current requirements in §74.3(b)(2)(B) for mathematics courses that districts are required to offer is appropriate.

Comment. One administrator expressed concern regarding the requirement to offer the new Personal Financial Literacy and Economics course in the upcoming school year because there has not been an opportunity to purchase instructional materials for this course.

Response. The SBOE disagrees and has determined that the timeline for implementation reflects a requirement from Senate Bill 1063, 87th Texas Legislature, Regular Session, 2021.

Comment. One administrator requested delaying implementation of the proposed new Personal Financial Literacy and Economics course so districts have more time to locate instructional materials and prepare and train teachers.

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

Comment. One administrator expressed concern with the proposed new social studies framework for Kindergarten-Grade 8.

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

Comment. One administrator asked for clarification about the language in proposed §74.3(b)(2)(D) and whether districts would be able to request a waiver to submit to the commissioner of education for the proposed requirement to offer the Personal Financial Literacy and Economics course if a high school has fewer than 500 students.

Response. The SBOE provides the following clarification. The rule as adopted requires districts to offer both Economics with Emphasis on the Free Enterprise System and its Benefits and Personal Financial Literacy and Economics. A district with a total high school enrollment of less than 500 students may apply to the commissioner of education for approval to offer only one of the two courses.

STATUTORY AUTHORITY. The amendment is adopted 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; TEC, §28.025(b-1), as amended by Senate Bill (SB) 1063, 87th Texas Legislature, 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-22), as added by SB 1063, 87th Texas Legislature, Regular Session, 2021, which requires that, in adopting Texas Essential Knowledge and Skills for a personal financial literacy and economics course, the SBOE must ensure that the required curriculum allocates two-thirds of instruction time to instruction in personal financial literacy one-third of instruction time to instruction in economics.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§7.102(c)(4); 28.002(a) and (c); and 28.025(b-1) and (b-22), as amended and added by Senate Bill 1063, 87th Texas Legislature, Regular Session, 2021.

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 July 12, 2022.

TRD-202202615

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: August 1, 2022

Proposal publication date: May 6, 2022

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



SUBCHAPTER B. GRADUATION REQUIREMENTS

19 TAC §§74.11 - 74.14

The State Board of Education (SBOE) adopts amendments to §§74.11-74.14, concerning graduation requirements. The amendment to §74.11 is adopted without changes to the proposed text as published in the February 25, 2022 issue of the *Texas Register* (47 TexReg 849) and will not be republished. The amendments to §§74.12-74.14 are adopted with changes to the proposed text as published in the February 25, 2022 issue of the *Texas Register* (47 TexReg 849) and will be republished. The adopted amendments 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; and make technical edits.

REASONED 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 has been 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 has been 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 has been 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, and the rule became effective November 30, 2021. The board also amended the title of the Earth and Space Science course to Earth Systems Science. Section 74.12 and §74.13 have been updated to add the new course and update the course title to satisfy specific graduation requirements.

At the November 2021 SBOE meeting, the board approved for second reading and final adoption revised career and technical education (CTE) TEKS, which have historically been codified in 19 TAC Chapter 130. To accommodate the addition of these new courses and future courses, the SBOE took action to move the CTE TEKS in Chapter 130 to existing 19 TAC Chapter 127, Texas Essential Knowledge and Skills for Career Development, and to rename the chapter "Texas Essential Knowledge and Skills for Career Development and Career and Technical Education." The move of all CTE subchapters from Chapter 130 to Chapter 127 will take place over time as the TEKS in each subchapter are revised. In November 2021 the board gave final approval to new 19 TAC Chapter 127, Subchapters G, I, J, M, and O. At the January 2022 SBOE meeting, the board took action to

repeal the associated subchapters from Chapter 130 and move the sections to Chapter 127. Section 74.11 and §74.13 have been updated to reflect the move of CTE TEKS from Chapter 130 to Chapter 127 as well as the new title for Chapter 127.

The adopted amendment to §74.14 updates references to the College Board's student commendation programs, adds a new college preparation assessment instrument, and adjusts scores on all college preparation assessment instruments to ensure the scores on the different assessments are comparable. 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 has been amended to update references to two College Board programs and to adjust scores that would qualify for a performance acknowledgement to ensure all scores reflect outstanding performance.

The following changes were made to the rules since approved for first reading and filing authorization.

In §74.12(b)(2)(A), a reference to Robotics Programming and Design was eliminated since the course was repealed in 2020.

Section 74.13(f)(3)(A)(ii), which included an obsolete cross reference, was deleted.

The term *English learner* was changed to *emergent bilingual student* in §74.14(b)(2) to align with recent changes in statute.

Section 74.14(d)(2) was amended to replace the ACT Aspire™ composite score of 41 with the composite score of 442.

The SBOE approved the proposed amendments for first reading and filing authorization at its January 28, 2022 meeting and for second reading and final adoption at its April 8, 2022 meeting.

In accordance with Texas Education Code, §7.102(f), the SBOE approved the amendments for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2022-2023 school year. The earlier effective date will allow districts of innovation that begin school prior to the statutorily required start date to implement the proposed rulemaking when they begin their school year. The effective date is August 1, 2022.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began February 25, 2022, and ended at 5:00 p.m. on April 1, 2022. The SBOE also provided an opportunity for registered oral and written comments at its April 2022 meeting in accordance with the SBOE board operating policies and procedures. Following is a summary of the public comments received and responses.

Comment. Two teachers and four administrators expressed support for the addition of new §74.11(k), which would allow districts to exempt students from specific CTE prerequisites for CTE courses that satisfy a mathematics or science graduation requirement if the district determines the student is not using the course to complete a program of study.

Response. The SBOE agrees. The SBOE also took action to approve additional changes to respond to other comments.

Comment. Three administrators requested that the SBOE add Integrated Physics and Chemistry (IPC) to the list of courses that

can satisfy curriculum requirements to earn the science, technology, engineering, and mathematics (STEM) endorsement. The commenters expressed concern that excluding IPC from the list precludes students who develop an interest in STEM in IPC from seeking the endorsement because the course doesn't count toward the requirement.

Response. The SBOE disagrees and has determined that the content of the current IPC course does not merit inclusion on the list of courses that may satisfy the third science credit and a STEM endorsement.

Comment. Two administrators recommended adding IPC to the list of courses that satisfy the curriculum requirements for the STEM endorsement because the new TEKS for the course adopted in 2020 are substantially more rigorous.

Response. The SBOE disagrees and has determined that the content of the current IPC course does not merit inclusion on the current list of courses that may satisfy the third science credit. The SBOE may consider including the IPC in the future when the revised course is implemented in 2024-2025.

Comment. One administrator requested that the SBOE move IPC to the list of advanced science courses in §74.12(b)(3)(B).

Response. The SBOE disagrees and has determined that the content of the current IPC course does not merit inclusion on the current list of courses that may satisfy the third science credit.

Comment. One administrator asked when the new rules for performance acknowledgements outlined in §74.14(d)(3) would be implemented. The commenter asked whether a student would be eligible to earn a performance acknowledgement if the student earns a score of 28 prior to the effective date of the new rule.

Response. The SBOE provides the following clarification. Amended §74.14 will be implemented beginning in the 2022-2023 school year. Students who satisfied requirements for the performance acknowledgments that were in place prior to the effective date of the amendments will be considered to have already met the requirements that were in place at the time.

Comment. A representative from ACT, Inc., recommended revising the proposed composite score required to earn a performance acknowledgment for ACT Aspire® to 442, which is comparable to the proposed composite score of 29 for ACT® or Pre-ACT®.

Response. The SBOE agrees and took action to amend §74.14(d)(2) at adoption to read "earning a composite score of 442 on the ACT Aspire™ examination."

Comment. The president of the Texas Association for Bilingual Education (TABE) expressed the organization's support for the proposed amendment to §74.14(b) to align with language in recent legislation from the 87th Texas Legislature, 2021.

Response. The SBOE agrees. The SBOE also took action to approve additional changes to respond to other comments.

Comment. The president of TABE stated that the organization recommends deleting §74.14(b)(2) related to earning a performance acknowledgement in bilingualism and biliteracy because it requires an emergent bilingual student to meet the exit criteria for a bilingual or English as a second language program and to score at the advanced high level on the Texas English Language Proficiency Assessment System. The commenter stated the current language is not only outdated but also not equitable

because it requires additional criteria for an emergent bilingual student that is not required for an English speaker.

Response. The SBOE disagrees that the criteria in §74.14(b)(2) is inequitable and has determined that both emergent bilingual students and students whose first language is English must demonstrate their proficiency in two or more languages. The SBOE agrees that the language is outdated and took action to change the term "English language learner" to "emergent bilingual student."

Comment. One administrator asked that districts be given flexibility in the requirements to offer Economics with Emphasis on the Free Enterprise System, Personal Financial Literacy, and the proposed new Personal Financial Literacy and Economics course so that districts can best accommodate student interest and staffing shortages.

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

Comment. One administrator asked that the SBOE delay implementation of the proposed new Personal Financial Literacy and Economics course until the 2023-2024 school year as it is highly unlikely that any district would be able to write the necessary curriculum and enroll students in time for the 2022-2023 school year.

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

STATUTORY AUTHORITY. The amendments are adopted 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 Legislature, 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 ad-

vanced 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.

§74.12. *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) Financial Mathematics;
- (v) Applied Mathematics for Technical Professionals;
- (vi) Accounting II;
- (vii) Manufacturing Engineering Technology II; and
- (viii) 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 Science;
- (vi) Environmental Systems;

- (vii) Specialized Topics in Science;
- (viii) a comparable AP science course that does not count toward another credit required for graduation;
- (ix) Advanced Animal Science;
- (x) Advanced Plant and Soil Science;
- (xi) Anatomy and Physiology;
- (xii) Medical Microbiology;
- (xiii) Pathophysiology;
- (xiv) Food Science;
- (xv) Forensic Science;
- (xvi) Biotechnology I;
- (xvii) Biotechnology II;
- (xviii) Principles of Technology;
- (xix) Scientific Research and Design;
- (xx) Engineering Design and Problem Solving;
- (xxi) Engineering Science;
- (xxii) 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) 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) 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.

(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) World History Studies;

(ii) World Geography Studies; or

(iii) 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 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 Min-

imum 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;
- (ii) Lifetime Recreation and Outdoor Pursuits; and
- (iii) Skill-Based Lifetime Activities.

(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 industry-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 Science;

(F) Environmental Systems;

(G) Specialized Topics in Science;

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

(I) Advanced Animal Science;

(J) Advanced Plant and Soil Science;

(K) Anatomy and Physiology;

(L) Medical Microbiology;

(M) Pathophysiology;

(N) Food Science;

(O) Forensic Science;

(P) Biotechnology I;

(Q) Biotechnology II;

(R) Principles of Technology;

- (S) Scientific Research and Design;
- (T) Engineering Design and Problem Solving;
- (U) Engineering Science;

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

(Z) 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, 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
- (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
- (ii) Chapter 127, Subchapter I, of this title (relating to Health Science); or
- (iii) Chapter 130, Subchapter J, of this title (relating to Human Services); or
- (iv) Chapter 127, Subchapter M, of this title (relating to Law and Public Service); or
- (v) 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 emergent bilingual student 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 National Merit Scholarship Corporation or as an awardee of the National Recognition Programs of the College Board;

(2) earning a composite score of 442 on the ACT Aspire™ examination;

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

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

(5) earning a composite score on the ACT® examination of 29 (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 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 July 12, 2022.

TRD-202202614

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: August 1, 2022

Proposal publication date: February 25, 2022

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



CHAPTER 113. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR SOCIAL STUDIES

SUBCHAPTER C. HIGH SCHOOL

19 TAC §113.76

The State Board of Education (SBOE) adopts new §113.76, concerning personal financial literacy and economics. The new section is adopted with changes to the proposed text as published in the May 6, 2022 issue of the *Texas Register* (47 TexReg 2653)

and will be republished. The adopted new rule adds Texas Essential Knowledge and Skills (TEKS) for a new social studies course to comply with the requirements of Senate Bill (SB) 1063, 87th Texas Legislature, Regular Session, 2021.

REASONED JUSTIFICATION: The 83rd Texas Legislature passed House Bill 2662, amending Texas Education Code (TEC), §28.0021, to require school districts and open-enrollment charter schools offering a high school program to provide a one-half credit elective course in personal financial literacy. In 2016, the SBOE adopted the proposed new personal financial literacy course. The course, 19 TAC §113.49, Personal Financial Literacy (One-Half Credit), Adopted 2016, was implemented beginning with the 2016-2017 school year.

In 2021, the 87th Texas Legislature passed SB 1063, amending TEC, §28.025, to add a one-half credit course in personal financial literacy and economics as an option to meet the one-half credit graduation requirement for economics under the Foundation High School Program. SB 1063 requires that the SBOE adopt TEKS for the personal financial literacy and economics course and that the required curriculum for the course allocate two-thirds of the instructional time to personal financial literacy and one-third of instructional time to economics.

A personal financial literacy and economics TEKS review work group convened twice in January 2022 and once in February 2022 to draft recommendations for the new course. The work group's charge included developing recommendations for revisions to §113.49, Personal Financial Literacy (One-Half Credit), Adopted 2016; §113.31, Economics with Emphasis on the Free Enterprise System and Its Benefits, High School (One-Half Credit), Adopted 2018; and §113.61, Economics Advanced Studies (One-Half Credit), which will be presented to the SBOE for discussion at a future meeting.

The following changes were made since published as proposed.

The general requirements in §113.76(b) were amended to state that students may not be awarded credit for both §113.76 and the personal financial literacy course adopted under Chapter 113, Subchapter C.

The student expectation in §113.76(d)(3)(F) was amended by inserting the word "personal" before the phrase "interests and skills."

The student expectation in §113.76(d)(5)(C) was amended by deleting the word "and" before the phrase "additional benefits" and replacing the phrase "with total compensation" with the word "and."

The student expectation in §113.76(d)(5)(F) was amended by replacing the word "organization" with the word "organizations."

The student expectation in §113.76(d)(7)(D) was amended by deleting the word "the" from the phrase "the ability to obtain credit."

The student expectation in §113.76(d)(7)(E) was amended by inserting the phrase "a credit report and score" after the word "access."

The student expectation in §113.76(d)(7)(G) was amended by inserting the word "personal" before the word "factors."

The student expectation in §113.76(d)(9)(I) was amended by inserting the word "financial" before the phrase "schemes and scams."

The student expectation in §113.76(d)(10)(C) was amended by inserting the word "assets" after the phrase "protecting and insuring."

The SBOE approved the new section for first reading and filing authorization at its April 8, 2022 meeting and for second reading and final adoption at its June 17, 2022 meeting.

In accordance with TEC, §7.102(f), the SBOE approved the new section for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2023-2024 school year. The earlier effective date will enable districts to begin offering the new course in the 2022-2023 school year in accordance with statute. The effective date is 20 days after filing as adopted with the Texas Register.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began May 6, 2022, and ended at 5:00 p.m. on June 10, 2022. The SBOE also provided an opportunity for registered oral and written comments at its June 2022 meeting in accordance with the SBOE board operating policies and procedures. Following is a summary of the public comments received and corresponding responses.

Comment. One teacher recommended adding a new student expectation under the knowledge and skills statement in §113.76(c)(7) to read, "compare and contrast ways to establish first time credit."

Response. The SBOE disagrees and has determined that the addition of the suggested student expectation is unnecessary.

Comment. One teacher requested adding the phrase "and credit score" to §113.76(c)(9)(G).

Response. The SBOE disagrees and has determined that the content of §113.76(c)(9)(G) is appropriate and the addition is unnecessary.

Comment. One administrator expressed concern regarding the requirement to implement proposed new §113.76 in the upcoming school year because there has not been an opportunity to purchase instructional materials for this course. The commenter requested delaying implementation of the proposed new course so districts would have more time to locate instructional materials and prepare and train teachers.

Response. The SBOE disagrees and has determined that the timeline for implementation reflects a requirement from Senate Bill 1063, 87th Texas Legislature, Regular Session, 2021.

Comment. One teacher requested adding the phrase "and exchange-traded fund" to §113.76(c)(8)(C).

Response. The SBOE disagrees and has determined that exchange-traded funds are sufficiently addressed in §113.76(c)(8)(D).

Comment. One teacher recommended adding a new student expectation under the knowledge and skills statement in §113.76(c)(8) to read, "compare and contrast historical data of active versus passive managed investment strategies, including stock market and index funds."

Response. The SBOE disagrees and has determined that the addition of the suggested student expectation is unnecessary.

Comment. One administrator asked for clarification about the language in proposed §74.3(b)(2)(D) and whether districts would be able to request a waiver to submit to the commissioner of education for the proposed requirement to offer the Personal Finan-

cial Literacy and Economics course if a high school has fewer than 500 students.

Response. This comment is outside the scope of the proposed rulemaking for §113.76. However, the SBOE provides the following clarification related to the proposed amendment to §74.3. Section 74.3 requires districts to offer both Economics with Emphasis on the Free Enterprise System and its Benefits and Personal Financial Literacy and Economics. A district with a total high school enrollment of less than 500 students may apply to the commissioner for approval to offer only one of the two courses.

Comment. One community member suggested that the SBOE amend §113.76(d)(5) to add a new student expectation to read, "explore the role of entrepreneurs from a wide range of backgrounds in creating businesses."

Response. The SBOE disagrees and has determined that the content of §113.76(d)(5) is appropriate and the suggested student expectation is not necessary.

Comment. One community member suggested that the SBOE amend §113.76(d)(5) to add a new student expectation to read, "recognize the importance of personal and family savings, private financing, and community-based lending in establishing businesses."

Response. The SBOE disagrees and has determined that the content of §113.76(d)(5) is appropriate and the suggested student expectation is not necessary.

Comment. One community member suggested that the SBOE amend §113.76(d)(5)(C) to read, "compare total compensation and additional benefits and obligations as a self-employed or independent contractor with total compensation as an employee in the private sector and total compensation as an employee in the public sector; analyze how these differences shape people's strategies for wealth-building over their life cycle."

Response. The SBOE disagrees and has determined that the content of §113.76(d)(5)(C) is appropriate and the suggested addition is not necessary. However, the SBOE did take action to amend the student expectation to better clarify the comparison expected of students.

Comment. One community member recommended that the SBOE revise the student expectation in §113.76(d)(9)(A) to be clearer and more specific and avoid jargon. The commenter suggested that the student expectation be amended to read, "list financial losses that individuals, families, and businesses commonly encounter, and judge how the risk of these losses can be avoided, reduced, retained, or transferred."

Response. The SBOE disagrees and has determined that the student expectation was sufficiently clear and that the suggested revision is not necessary.

Comment. One community member suggested that the TEKS Guide point to historic examples and major economic innovations as well as government decisions that have shaped the contemporary U.S. economy.

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

STATUTORY AUTHORITY. The new section is adopted 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 re-

quires 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; TEC, 28.025(b-1), as amended by Senate Bill (SB) 1063, 87th Texas Legislature, 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-22), as added by SB 1063, 87th Texas Legislature, Regular Session, 2021, which requires that in adopting TEKS for a personal financial literacy and economics course, the SBOE must ensure that the required curriculum allocates two-thirds of instruction time to instruction in personal financial literacy and one-third of instruction time to instruction in economics.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §§7.102(c)(4); 28.002(a) and (c); and 28.025(b-1) and (b-22), as amended and added by Senate Bill 1063, 87th Texas Legislature, Regular Session, 2021.

§113.76. Personal Financial Literacy and Economics (One-Half Credit).

(a) Implementation. The provisions of this section shall be implemented by school districts beginning with the 2022-2023 school year.

(b) General requirements. This course is recommended for students in Grades 11 and 12. Students shall be awarded one-half credit for successful completion of this course. Students may not be awarded credit for both this course and the personal financial literacy course adopted under this subchapter.

(c) Introduction.

(1) The Personal Financial Literacy and Economics Course emphasizes the economic way of thinking, which serves as a framework for the personal financial decision-making opportunities introduced in the course. Students will demonstrate the ability to anticipate and address financial challenges as these challenges occur over their lifetime. In addition, students are introduced to common economic and personal financial planning terms and concepts. As a result of learning objective concepts and integrating subjective information, students gain the ability to lead productive and financially self-sufficient lives.

(2) Personal Financial Literacy and Economics builds on and extends the economic content and concepts studied in Kindergarten-Grade 12 social studies in Texas. The course provides a foundation in both microeconomics and macroeconomics. Students will survey the impact of demand, supply, various industry structures, and government policies on the market for goods, services, and wages for workers. Macroeconomic study involves economic systems with an emphasis on free enterprise market systems, goals of full employment, price stability, and growth while examining problems such as unemployment and inflation and the policies enacted to address them. The course also builds on and extends the personal finance content and concepts studied in Kindergarten-Grade 8 in mathematics in Texas. It is an integrative course that applies the same economic way of thinking developed to making choices about how to allocate scarce resources in an economy to how to make them at the personal level. The course requires that students demonstrate critical thinking by exploring how to invest in themselves with education and skill development, earn income, and budget for spending, saving, investing, and protecting. Students will examine their individual responsibility for managing their personal finances and understand the impact on standard of living and long-term financial well-being. Further, students will connect how their financial decision making impacts the greater economy.

(3) This course was created in response to Texas Education Code (TEC), §28.025(b-22), satisfies the high school requirement, and meets the two-thirds of instructional time in personal financial literacy and one-third of instructional time in economics. In addition, the course addresses new financial challenges of modern economy.

(4) State and federal laws mandate a variety of celebrations and observances, including Celebrate Freedom Week.

(A) Each social studies class shall include, during Celebrate Freedom Week as provided under TEC, §29.907, or during another full school week as determined by the board of trustees of a school district, appropriate instruction concerning the intent, meaning, and importance of the Declaration of Independence and the U.S. Constitution, including the Bill of Rights, in their historical contexts. The study of the Declaration of Independence must include the study of the relationship of the ideas expressed in that document to subsequent American history, including the relationship of its ideas to the rich diversity of our people as a nation of immigrants, the American Revolution, the formulation of the U.S. Constitution, and the abolitionist movement, which led to the Emancipation Proclamation and the women's suffrage movement.

(B) Each school district shall require that, during Celebrate Freedom Week or other week of instruction prescribed under subparagraph (A) of this paragraph, students in Grades 3-12 study and recite the following text: "We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness--That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed."

(5) Students identify and discuss how the actions of U.S. citizens and the local, state, and federal governments have either met or failed to meet the ideals espoused in the founding documents.

(6) Students understand that a constitutional republic is a representative form of government whose representatives derive their authority from the consent of the governed, serve for an established tenure, and are sworn to uphold the constitution.

(7) 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) Economics. The student understands the fundamental concepts of economics. The student is expected to:

(A) analyze how the concepts of scarcity, choice, and opportunity costs apply to decision making;

(B) interpret a production-possibilities curve and apply the concepts of scarcity, choice, and opportunity costs;

(C) explain how the production-possibilities curve represents cost-benefit decision making;

(D) use the circular flow model to identify how households, firms, and governments interact in both resource markets and product markets;

(E) evaluate how prices and quantities are determined through supply and demand;

(F) interpret a supply-and-demand graph, including equilibrium point, surpluses, and shortages;

(G) analyze how non-price determinants of supply and demand affect equilibrium price and equilibrium quantity; and

(H) explain how supply and demand exist in both resource and product markets.

(2) Economics. The student understands that macroeconomic issues and policies have an impact on personal finance. The student is expected to:

(A) identify types of progressive and regressive taxes at the local, state, and national levels and explain the economic importance of each;

(B) examine and evaluate the reasons for federal income taxation, Social Security taxation, Medicaid taxation, and Medicare taxation, including earnings limitations as applicable;

(C) explain how all economic systems are mixed and exist on a spectrum between pure market and pure command systems;

(D) explain the benefits of the U.S. free enterprise system, including private property and incentives;

(E) discuss the importance of full employment, price stability, and economic growth in achieving the macroeconomic goals of the United States;

(F) explain the impact of fiscal policies enacted by government decisions on interest rates, inflation, and unemployment; and

(G) explain the impact of monetary policies enacted by the Federal Reserve System on interest rates, inflation, and unemployment.

(3) Personal financial literacy--investing in education and skills. The student recognizes the costs and benefits of various types of postsecondary education and training throughout the student's lifetime. The student is expected to:

(A) analyze the relationship between education and training and earnings throughout the student's lifetime;

(B) investigate and evaluate the costs and benefits of various postsecondary education and training institutions;

(C) describe the process for completing grant and scholarship applications, including the Free Application for Federal Student Aid (FAFSA®) provided by the U.S. Department of Education or the Texas Application for State Financial Aid (TASFA);

(D) analyze and compare various student grant and loan options, including private and federal loans;

(E) interpret data from a student aid report; and

(F) research and align personal interests and skills with potential careers and postsecondary education to assure a life strategy that will produce employment the student enjoys with a desired standard of living.

(4) Personal financial literacy--earning. The student recognizes that a variety of factors influence income. The student is expected to:

(A) identify sources of income, including wages and salaries, profits, interest, rent, dividends, and capital gains;

(B) compare common employee benefits such as health insurance, sick leave, retirement plans, and other tax-favored health and dependent care plans;

(C) differentiate among and calculate gross, net, and taxable income; and

(D) identify factors such as educational attainment and market demand for careers that can influence the labor market and affect income.

(5) Personal financial literacy--entrepreneurship. The student discusses the opportunities available for entrepreneurship. The student is expected to:

(A) describe the role of the entrepreneur in creating businesses;

(B) explain how an entrepreneur earns income, including through profits from the creation or ownership of businesses;

(C) compare total compensation, additional benefits, and obligations as a self-employed or independent contractor and as an employee;

(D) discuss the resources available for entrepreneurship and the federal, state, and local agencies available to assist with or provide grants for the creation of a small business;

(E) analyze the risks and rewards of entrepreneurship, including those associated with starting a new business, owning a small business, and purchasing a franchise; and

(F) explain the characteristics of business organizations such as sole proprietorships, partnerships, and corporations.

(6) Personal financial literacy--spending. The student understands how to set personal spending goals. The student is expected to:

(A) develop financial goals for the short, medium, and long term that are specific, measurable, attainable, realistic, and time based;

(B) analyze the opportunity costs of spending and saving in recognizing short-, medium-, and long-term goals;

(C) identify and prioritize types of purchases and charitable giving;

(D) evaluate various forms of financial exchange such as cash, checks, credit cards, debit cards, mobile payment applications, and electronic transfers;

(E) discuss the importance of tracking income and expenses to reconcile financial records;

(F) evaluate the impact of unplanned spending;

(G) analyze costs and benefits of owning versus renting housing; and

(H) analyze costs and benefits of owning versus leasing a vehicle.

(7) Personal financial literacy--credit and debt. The student understands the costs and benefits of borrowing. The student is expected to:

(A) compare and contrast sources of credit such as banks, merchants, peer-to-peer, payday loans, and title loans;

(B) identify the characteristics and dangers of predatory lending practices;

(C) compare and contrast types of credit, including revolving and installment credit, and collateralized loans versus unsecured credit;

(D) discuss how character, capacity, and collateral can adversely or positively impact an individual's credit rating and ability to obtain credit;

(E) explain how to access a credit report and score and interpret a sample credit report and score;

(F) describe the importance of monitoring credit reports regularly and addressing errors;

(G) discuss how personal factors such as medical expenses, job loss, divorce, or a failed business could lead to bankruptcy; and

(H) determine and discuss if and when to use credit by considering the truth in lending disclosures.

(8) Personal financial literacy--saving and investing. The student understands the importance of saving and investing in creating wealth and building assets. The student is expected to:

(A) determine the exponential growth benefits of starting early to invest with continuous contributions;

(B) determine the number of years it will take for savings to double in value by using the rule of 72;

(C) evaluate the costs and benefits of various savings options such as bank savings accounts, certificates of deposit, and money market mutual funds;

(D) evaluate risk and return of various investment options, including stocks, bonds, mutual funds, and exchange-traded funds (ETFs);

(E) evaluate the relative benefits of pre-tax and post-tax investing;

(F) develop a short-term saving strategy to achieve a goal such as establishing and maintaining an emergency fund;

(G) develop an intermediate-term saving and investing strategy to achieve a goal such as accumulating a down payment on a home or vehicle; and

(H) develop a long-term investing strategy to achieve a goal such as a financially secure retirement.

(9) Personal financial literacy--protecting and insuring. The student recognizes financial risks faced by individuals and families and identifies strategies for handling these risks to avoid potential loss of assets and earning potential. The student is expected to:

(A) apply risk management strategies, including avoiding, reducing, retaining, and transferring risk;

(B) define insurance terminology, including premiums, deductibles, co-pays, and policy limits;

(C) explain the costs and benefits of different types and sources of health insurance;

(D) explain the costs and benefits of disability and long-term care insurance;

(E) explain the costs and benefits of life insurance, including term insurance and whole life insurance;

(F) explain the costs and benefits of property insurance, including homeowner's and renter's insurance;

(G) explain the costs and benefits of automobile insurance and factors that impact the price of insurance, including the type of vehicle, age and sex of driver, driving record, deductible, and geographic location;

(H) identify ways to reduce risk of identity theft and protect personal information;

(I) describe and identify examples of common financial schemes and scams such as Ponzi schemes and pyramid, phishing, check cashing, and home renovation scams;

(J) explain how consumer protection agencies protect consumers against fraud; and

(K) explain the importance of estate planning, including guardianship of minor children, wills, beneficiary designation, power of attorney, living will, and medical directives.

(10) Personal financial literacy skills. The student understands how to set personal financial goals. The student is expected to:

(A) use problem-solving and decision-making processes to identify a problem, gather information, list and consider options, consider advantages and disadvantages, choose and implement a solution, and evaluate the effectiveness of the solution;

(B) develop a budget that addresses short-, medium-, and long-term financial goals; and

(C) explain why earning income, spending, credit, debt, saving and investing, and protecting and insuring assets are important parts of a comprehensive financial plan and develop a plan that incorporates these components.

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 July 12, 2022.

TRD-202202620

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: August 1, 2022

Proposal publication date: May 6, 2022

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



CHAPTER 115. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR HEALTH EDUCATION

The State Board of Education (SBOE) adopts the repeal of §§115.1-115.7, 115.21-115.23, and 115.31-115.33, concerning Texas Essential Knowledge and Skills (TEKS) for health education. The repeals are adopted without changes to the proposed text as published in the May 6, 2022 issue of the *Texas Register* (47 TexReg 2656) and will not be republished. The adopted repeals remove the TEKS for Kindergarten-Grade 12 health education and related implementation language that will be superseded by 19 TAC §§115.11-115.17, 115.25-115.28, and 115.37-115.40 beginning with the 2022-2023 school year.

REASONED JUSTIFICATION: In accordance with statutory requirements that the SBOE by rule identify 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 November 2020 SBOE meeting, the board approved for second reading and final adoption proposed new §§115.11-115.17, 115.25-115.28, and 115.37-115.40 to be implemented beginning in the 2022-2023 school year.

The adopted repeals remove sections that will be superseded by §§115.11-115.17, 115.25-115.28, and 115.37-115.40 effective August 1, 2022.

The SBOE approved the repeals for first reading and filing authorization at its April 8, 2022 meeting and for second reading and final adoption at its June 17, 2022 meeting.

In accordance with Texas Education Code, §7.102(f), the SBOE approved the repeals for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2023-2024 school year. The earlier effective date will repeal superseded TEKS to avoid confusion with new TEKS that are being implemented at the beginning of the 2022-2023 school year. The effective date is August 1, 2022.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began May 6, 2022, and ended at 5:00 p.m. on June 10, 2022. The SBOE also provided an opportunity for registered oral and written comments at its June 2022 meeting in accordance with the SBOE board operating policies and procedures. No public comments were received.

SUBCHAPTER A. ELEMENTARY

19 TAC §§115.1 - 115.7

STATUTORY AUTHORITY. The repeals are adopted 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; and 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.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code, §7.102(c)(4) and §28.002(a) and (c).

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 July 12, 2022.

TRD-202202621

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: August 1, 2022

Proposal publication date: May 6, 2022

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



SUBCHAPTER B. MIDDLE SCHOOL

19 TAC §§115.21 - 115.23

STATUTORY AUTHORITY. The repeals are adopted 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; and 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.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code, §7.102(c)(4) and §28.002(a) and (c).

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 July 12, 2022.

TRD-202202622

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: August 1, 2022

Proposal publication date: May 6, 2022

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



SUBCHAPTER C. HIGH SCHOOL

19 TAC §§115.31 - 115.33

STATUTORY AUTHORITY. The repeals are adopted 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; and 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.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code, §7.102(c)(4) and §28.002(a) and (c).

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 July 12, 2022.

TRD-202202623

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: August 1, 2022

Proposal publication date: May 6, 2022

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



CHAPTER 116. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR PHYSICAL EDUCATION

The State Board of Education (SBOE) adopts the repeal of §§116.1-116.7, 116.21-116.24, and 116.51-116.56, concerning Texas Essential Knowledge and Skills (TEKS) for physical education. The repeals are adopted without changes to the proposed text as published in the May 6, 2022 issue of the *Texas Register* (47 TexReg 2658) and will not be republished. The adopted repeal removes the TEKS for Kindergarten-Grade 12 physical education and related implementation language that

will be superseded by 19 TAC §§116.11-116.17, 116.25-116.28, and 116.61-116.64 beginning with the 2022-2023 school year.

REASONED JUSTIFICATION: In accordance with statutory requirements that the SBOE by rule identify 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 November 2020 SBOE meeting, the board approved for second reading and final adoption proposed new §§116.11-116.17, 116.25-116.28, and 116.61-116.64 to be implemented beginning in the 2022-2023 school year.

The adopted repeals remove sections that will be superseded by §§116.11-116.17, 116.25-116.28, and 116.61-116.64 effective August 1, 2022.

The SBOE approved the repeals for first reading and filing authorization at its April 8, 2022 meeting and for second reading and final adoption at its June 17, 2022 meeting.

In accordance with Texas Education Code, §7.102(f), the SBOE approved the repeals for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2023-2024 school year. The earlier effective date will repeal superseded TEKS to avoid confusion with new TEKS that are being implemented at the beginning of the 2022-2023 school year. The effective date is August 1, 2022.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began May 6, 2022, and ended at 5:00 p.m. on June 10, 2022. The SBOE also provided an opportunity for registered oral and written comments at its June 2022 meeting in accordance with the SBOE board operating policies and procedures. No public comments were received.

SUBCHAPTER A. ELEMENTARY

19 TAC §§116.1 - 116.7

STATUTORY AUTHORITY. The repeals are adopted 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; and 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.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code, §7.102(c)(4) and §28.002(a) and (c).

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 July 12, 2022.

TRD-202202624

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: August 1, 2022

Proposal publication date: May 6, 2022

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



SUBCHAPTER B. MIDDLE SCHOOL

19 TAC §§116.21 - 116.24

STATUTORY AUTHORITY. The repeals are adopted 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; and 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.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code, §7.102(c)(4) and §28.002(a) and (c).

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 July 12, 2022.

TRD-202202625

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: August 1, 2022

Proposal publication date: May 6, 2022

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



SUBCHAPTER C. HIGH SCHOOL

19 TAC §§116.51 - 116.56

STATUTORY AUTHORITY. The repeals are adopted 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; and 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.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code, §7.102(c)(4) and §28.002(a) and (c).

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 July 12, 2022.

TRD-202202626

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: August 1, 2022

Proposal publication date: May 6, 2022

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



CHAPTER 126. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR TECHNOLOGY APPLICATIONS

The State Board of Education (SBOE) adopts new §§126.1-126.3, 126.8-126.10, and 126.17-126.19, concerning Texas Essential Knowledge and Skills (TEKS) for technology applications. The new sections are adopted without changes to the proposed text as published in the May 6, 2022 issue of the *Texas Register* (47 TexReg 2660) and will not be republished. The adopted new sections update the technology applications standards to ensure the standards remain current.

REASONED 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. Technology applications is part of the required curriculum for Kindergarten-Grade 8 only. In 2020, the SBOE approved the consolidation of the high school technology applications courses into the career and technical education TEKS.

At the January 2021 meeting, SBOE members were asked to designate content advisors for the review and revision of the technology applications TEKS. Applications to serve on the TEKS review work groups were posted on the Texas Education Agency (TEA) website in March 2021. In April 2021, TEA distributed a survey to collect information from educators regarding the review and revision of the technology applications TEKS. TEA staff provided applications for the technology applications review work groups to SBOE members on a monthly basis from May-September 2021.

Technology applications TEKS review content advisor and work group meetings convened in 2021 were conducted virtually. In July 2021, technology applications TEKS review content advisors met virtually to develop consensus recommendations regarding revisions to the technology applications TEKS and met with representatives from Work Group A to discuss their recommendations. Also in July 2021, Work Group A convened to discuss the consensus recommendations, review survey results, and develop recommendations for how subsequent technology applications TEKS review work groups could address the feedback received. Work Group B was convened in September 2021 and was charged with developing recommendations for a new strand framework. The work group recommended six new strands and reorganized the current technology applications TEKS into the proposed new strands. Work Group C was convened in October 2021 to draft recommendations for student expectations for two of the strands in the proposed new strand framework. Work Group D was convened at the end of October 2021 to draft recommendations for the remaining four proposed new strands. The work group recommended eliminating one of the strands, which would reduce the original proposed strand framework to a total of five strands. Work Group E was convened for a virtual meeting in December 2021 to review the vertical alignment of the strands across all grade levels and to ensure the proposed new standards could be reasonably taught in an academic year. In December 2021, content advisors were sent the draft recommendations for review. A discussion item on the draft recommendations was presented to the board at the January 2022 SBOE meeting. At the April 2022 SBOE meeting, the board approved for first reading and filing authorization proposed new §§126.1-126.3, 126.8-126.10, and 126.17-126.19.

The new sections adopt updated technology applications standards to ensure the standards remain current.

The SBOE approved the new sections for first reading and filing authorization at its April 8, 2022 meeting and for second reading and final adoption at its June 17, 2022 meeting.

In accordance with Texas Education Code (TEC), §7.102(f), the SBOE approved the new sections for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2023-2024 school year. The earlier effective date will enable districts to begin preparing for implementation of the revised elementary and middle school technology applications TEKS. The effective date is 20 days after filing as adopted with the Texas Register.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began May 6, 2022, and ended at 5:00 p.m. on June 10, 2022. The SBOE also provided an opportunity for registered oral and written comments at its June 2022 meeting in accordance with the SBOE board operating policies and procedures. Following is a summary of the public comments received and corresponding responses.

Comment. One university/college representative suggested the addition of student expectations on the creation of accessible media, websites, and documents to provide equitable access to information and services.

Response. The SBOE disagrees and has determined that the content of the standards is appropriate as proposed.

Comment. One community member stated that the proposed new strands align well with the International Society for Technology in Education standards and are written in a way that allows them to be relevant to technology changes.

Response. The SBOE agrees and took action to approve the standards as proposed.

Comment. One parent stated that, even with the health and safety guidelines related to digital devices that TEA is required to develop under TEC, §38.0231, students will be better protected by removing requirements to create or post digital communications.

Response. The SBOE disagrees and has determined that creating and safely posting digital communications is an integral part of technology applications.

Comment. One parent recommended that the SBOE include in the proposed technology applications TEKS the application of higher-order critical thinking skills when engaging with any kind of digital content in a variety of forms as well as knowing where and how to access digital content that is relevant for specific purposes.

Response. The SBOE agrees and has determined that the TEKS as proposed appropriately require students to apply critical-thinking skills.

Comment. One teacher recommended that essential skills related to digital literacy include the ability to access, critically interpret, and evaluate online media and information in addition to using, remixing, and creating.

Response. The SBOE disagrees and has determined that the content of the standards is appropriate as proposed.

Comment. One teacher expressed concern that there is no inclusion of media, information, or news literacy skills in relation to

the application of technology in the proposed technology applications TEKS.

Response. The SBOE disagrees and has determined that media literacy skills are already addressed in other subject areas.

Comment. One teacher stated that the proposed new technology applications TEKS should include clear descriptors related to essential skills that are woven into the use and application of technology both inside and outside of the classroom.

Response. The SBOE agrees and has determined that the TEKS as proposed provide clear descriptors related to the application of technology.

Comment. One parent expressed concerns about the proposed new Kindergarten-Grade 8 technology applications TEKS in regard to health, safety, and cultural issues. The commenter cited articles related to cyber safety, screen time, and mental health in support of the recommendation that children's needs should be based on academic research instead of educational companies' marketing claims.

Response. The SBOE disagrees and has determined that the TEKS as proposed appropriately address health, safety, and cultural concerns.

Comment. One teacher asked if the proposed new TEKS for technology applications will be finalized by the 2022-2023 school year.

Response. The SBOE provides the following clarification. The revised technology applications TEKS will become effective 20 days after filing with the Texas Register and will be implemented in classrooms beginning with the 2024-2025 school year.

Comment. One administrator expressed appreciation for the five strands, how each strand is divided into substrands, and the specificity of skills given to each grade level.

Response. The SBOE agrees and took action to approve the standards as proposed.

Comment. One administrator stated that there should be a continuous review and application of content in the technology applications TEKS throughout the school year.

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

Comment. One community member and one university/college representative expressed concern for the need for professional learning and specialized teachers who can teach these grade levels.

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

Comment. One university/college representative stated that the proposed technology applications TEKS for Kindergarten-Grade 2 are well written and appropriately address the areas of computational thinking, coding, programming, and personal cybersecurity that are absolutely necessary for digital competency in the 21st century.

Response. The SBOE agrees and took action to approve the standards as proposed.

Comment. One administrator and one community member stated that the standards are vertically aligned.

Response. The SBOE agrees and took action to approve the standards as proposed.

Comment. One administrator recommended adding a student expectation from the Computer Science Teacher Association standards to the proposed new data literacy, management, and representation strand in Kindergarten-Grade 2 to read, "model the way programs store and manipulate data by using numbers or other symbols to represent information."

Response. The SBOE disagrees and has determined that the content of the standards is appropriate as proposed and the suggested language is not necessary.

Comment. One administrator recommended adding a student expectation to the applications substrand in the computational thinking strand for Kindergarten-Grade 2 to read, "debug (identify and fix) errors in an algorithm or program that includes sequences and simple loops."

Response. The SBOE disagrees and has determined that the content of the standards is appropriate as proposed and the suggested language is not necessary.

Comment. One parent expressed concern with proposed student expectations in §126.1(c)(5) and (7)(A) in Kindergarten, §126.3(c)(7) in Grade 2, and §126.8(c)(9)(A) in Grade 3 regarding communicating and sharing or interacting online. The commenter stated that digital environments are hunting grounds for predators.

Response. The SBOE disagrees that the student expectations require students to engage in unsecure digital environments. Additionally, the proposed TEKS require students to comply with local acceptable use policies, which are designed to keep students safe.

Comment. One parent expressed concern that student expectations related to ergonomically correct keyboarding are impossible with school devices like Chromebooks or iPads.

Response. The SBOE disagrees and has determined that ergonomically correct keyboarding applies to all types of devices.

Comment. One parent expressed concern regarding the appropriateness of the student expectation in §126.2(c)(7)(A), which requires students in Grade 1 to demonstrate the importance of acceptable use of digital resources as outlined in local policies or acceptable use policies, since students are just learning how to read.

Response. The SBOE disagrees and has determined that students are not required to read the policies but to understand and comply with them.

Comment. One parent expressed concern with requiring students in Grade 4 and higher to advocate for self and others with regard to cyberbullying when the proposed new TEKS would put students into the very digital environment where cyberbullying takes place.

Response. The SBOE disagrees and has determined that the proposed TEKS emphasize safe online learning and do not require students to participate in unsafe digital environments. Additionally, the proposed TEKS require students to comply with local acceptable use policies, which are designed to keep students safe.

Comment. One administrator recommended adding a student expectation to the applications substrand in the computational thinking strand for Grades 3-5 to read, "test and debug (identify and fix errors) a program or algorithm to ensure it runs as intended."

Response. The SBOE disagrees and has determined that the content of the standards is appropriate as proposed and the suggested language is not necessary.

Comment. One parent expressed concern with the proposed student expectation in §126.9(c)(8)(B) in Grade 4 and §126.10(c)(8)(C) in Grade 5 regarding digital etiquette communication with peers, teachers, and other adults. The commenter stated that requiring students to interact with adults endangers children.

Response. The SBOE disagrees and has determined that the TEKS emphasize safe online learning and do not require students to engage in unsafe digital communication. Additionally, the proposed TEKS require students to comply with local acceptable use policies, which are designed to keep students safe.

Comment. One parent expressed concern with the proposed student expectations in §126.17(c)(8)(C) in Grade 6 and §126.19(c)(8)(B) and (C) in Grade 8 regarding video conference presentations and files. The commenter stated that creating and uploading videos to share on the internet is unsafe and these unnecessary skills do not prepare students for 21st century jobs.

Response. The SBOE disagrees that creating and publishing videos are unnecessary and unsafe skills. Additionally, the proposed TEKS require students to comply with local acceptable use policies, which are designed to keep students safe.

Comment. One parent expressed concern that the proposed TEKS will require students to spend more time on electronic devices. The commenter cited research that indicates the use of electronic devices has a negative effect on students' health.

Response. The SBOE disagrees and has determined that the proposed TEKS do not require additional time on electronic devices.

Comment. One parent expressed concern that the use of technology in schools does not prevent students from accessing inappropriate websites. The commenter asked that the proposed technology applications TEKS be modified or rejected.

Response. The SBOE disagrees and has determined that a key aspect of the proposed technology applications TEKS is to teach students appropriate and safe use of technology.

Comment. One parent expressed concern that spending time with technology negatively affects students' ability to read and write.

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

Comment. One parent expressed concern that the proposed technology applications TEKS are not measurable and asked for better alignment.

Response. The SBOE disagrees and has determined that the proposed TEKS are measurable and vertically and horizontally aligned.

Comment. One parent expressed concern about possible data mining of students' personal information.

Response. The SBOE disagrees and has determined that a key aspect of the proposed technology applications TEKS is to teach students how to safeguard personal information online.

Comment. One parent suggested that time would be better spent teaching students to read and write and to communicate in person with their teacher instead of trading emails.

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

Comment. One parent expressed concern about the increase in screen time in the classroom and urged the SBOE to reject the proposed changes.

Response. The SBOE disagrees and has determined that the proposed technology applications TEKS do not create an increase in screen time for students.

SUBCHAPTER A. ELEMENTARY

19 TAC §§126.1 - 126.3, 126.8 - 126.10

STATUTORY AUTHORITY. The new sections are adopted 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; TEC, §28.002(c-3), which requires the SBOE to include coding, computer programming, computational thinking, and cybersecurity in the Texas Essential Knowledge and Skills (TEKS) for technology applications for Kindergarten-Grade 8. The statute also requires that, as needed, the SBOE review and revise the technology applications TEKS every five years to ensure that the standards are relevant to student education and align current or emerging professions; and TEC, §28.002(z), which requires the SBOE to adopt rules to require school districts to incorporate instruction in digital citizenship, including information regarding the potential criminal consequences of cyberbullying, into the district's curriculum.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §7.102(c)(4) and §28.002(a), (c), (c-3), and (z).

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 July 18, 2022.

TRD-202202702

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: August 7, 2022

Proposal publication date: May 6, 2022

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



SUBCHAPTER B. MIDDLE SCHOOL

19 TAC §§126.17 - 126.19

STATUTORY AUTHORITY. The new sections are adopted 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 evaluat-

ing instructional materials and addressed on the state assessment instruments; TEC, §28.002(c-3), which requires the SBOE to include coding, computer programming, computational thinking, and cybersecurity in the Texas Essential Knowledge and Skills (TEKS) for technology applications for Kindergarten-Grade 8. The statute also requires that, as needed, the SBOE review and revise the technology applications TEKS every five years to ensure that the standards are relevant to student education and align current or emerging professions; and TEC, §28.002(z), which requires the SBOE to adopt rules to require school districts to incorporate instruction in digital citizenship, including information regarding the potential criminal consequences of cyberbullying, into the district's curriculum.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §7.102(c)(4) and §28.002(a), (c), (c-3), and (z).

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 July 18, 2022.

TRD-202202703

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: August 7, 2022

Proposal publication date: May 6, 2022

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



CHAPTER 127. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR CAREER DEVELOPMENT AND CAREER AND TECHNICAL EDUCATION

The State Board of Education (SBOE) adopts the repeal of §§127.310, 127.312, 127.313, 127.409, 127.753, and 127.755, concerning Texas Essential Knowledge and Skills (TEKS) for career development and career and technical education. The repeals are adopted without changes to the proposed text as published in the May 6, 2022 issue of the *Texas Register* (47 TexReg 2675) and will not be republished. The adopted repeals remove the TEKS for six career and technical education (CTE) courses that will be superseded by 19 TAC §§127.316, 127.325, 127.326, 127.418, 127.782, and 127.785 beginning with the 2022-2023 school year.

REASONED JUSTIFICATION: The TEKS for courses associated with 17 CTE career clusters are codified by subchapter in 19 TAC Chapters 127 and 130. In December 2020, the SBOE began initial steps to prepare for the review and revision of CTE courses in programs of study for the education and training, health science, and science, technology, engineering, and mathematics career clusters. Two additional courses eligible to satisfy a graduation requirement in science were also part of the review. At the November 2021 SBOE meeting, the board approved for second reading and final adoption proposed new TEKS for these courses.

Due to the structure of Chapter 130, there were not enough sections to add the new CTE courses under consideration in their original subchapters. To accommodate the addition of new and

future courses, the CTE TEKS in Chapter 130 are being moved to existing 19 TAC Chapter 127, which has been renamed "Texas Essential Knowledge and Skills for Career Development and Career and Technical Education."

The adopted repeals remove the TEKS for CTE courses that will be superseded by 19 TAC §§127.316, 127.325, 127.326, 127.418, 127.782, and 127.785 beginning with the 2022-2023 school year.

The SBOE approved the repeals for first reading and filing authorization at its April 8, 2022 meeting and for second reading and final adoption at its June 17, 2022 meeting.

In accordance with Texas Education Code, §7.102(f), the SBOE approved the repeals for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2023-2024 school year. The earlier effective date will repeal superseded TEKS to avoid confusion with new TEKS that are being implemented at the beginning of the 2022-2023 school year. The effective date is August 1, 2022.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began May 6, 2022, and ended at 5:00 p.m. on June 10, 2022. The SBOE also provided an opportunity for registered oral and written comments at its June 2022 meeting in accordance with the SBOE board operating policies and procedures. No public comments were received.

SUBCHAPTER G. EDUCATION AND TRAINING

19 TAC §§127.310, 127.312, 127.313

STATUTORY AUTHORITY. The repeals are adopted 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; and 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.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code, §7.102(c)(4) and §28.002(a) and (c).

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 July 12, 2022.

TRD-202202617

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: August 1, 2022

Proposal publication date: May 6, 2022

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



SUBCHAPTER I. HEALTH SCIENCE

19 TAC §127.409

STATUTORY AUTHORITY. The repeal is adopted 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; and 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.

CROSS REFERENCE TO STATUTE. The repeal implements Texas Education Code, §7.102(c)(4) and §28.002(a) and (c).

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 July 12, 2022.

TRD-202202618

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: August 1, 2022

Proposal publication date: May 6, 2022

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



SUBCHAPTER O. SCIENCE, TECHNOLOGY, ENGINEERING, AND MATHEMATICS

19 TAC §127.753, §127.755

STATUTORY AUTHORITY. The repeals are adopted 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; and 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.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code, §7.102(c)(4) and §28.002(a) and (c).

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 July 12, 2022.

TRD-202202619

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: August 1, 2022

Proposal publication date: May 6, 2022

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



CHAPTER 127. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR CAREER

DEVELOPMENT AND CAREER AND
TECHNICAL EDUCATION
SUBCHAPTER O. SCIENCE, TECHNOLOGY,
ENGINEERING, AND MATHEMATICS

19 TAC §§127.788 - 127.794

The State Board of Education (SBOE) adopts new §§127.788-127.794, concerning Texas Essential Knowledge and Skills (TEKS) for science, technology, engineering, and mathematics (STEM). Sections 127.788-127.791 and 127.793 are adopted with changes to the proposed text as published in the May 6, 2022 issue of the *Texas Register* (47 TexReg 2677) and will be republished. Section 127.792 and §127.794 are adopted without changes to the proposed text as published in the May 6, 2022 issue of the *Texas Register* (47 TexReg 2677) and will not be republished. The new sections update the TEKS for the high school cybersecurity and computer science courses to ensure the standards remain current.

REASONED JUSTIFICATION: In accordance with statutory requirements that the SBOE by rule identify 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 career and technical (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 committee provided invited testimony to the 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, including §127.783, Engineering Design and Presentation I, and §127.784, Engineering Design and Presentation II, to allow additional time to review and finalize recommendations. The programming and software development work group met in February and March 2022 to finalize their recommendations and to align the standards for the computer science courses with the Kindergarten-Grade 8 Technology Applications TEKS.

The 85th Texas Legislature, Regular Session, 2017, passed House Bill 3593, requiring that the SBOE approve courses in cy-

bersecurity for credit for high school graduation. The legislation also added cybersecurity and computer coding to the courses to be included in a STEM endorsement and required that the SBOE adopt or select five technology applications courses on cybersecurity to be included in a cybersecurity pathway for the STEM endorsement.

In August 2018, a committee of secondary and postsecondary educators and business and industry representatives was selected to develop recommended TEKS for new cybersecurity courses for the required pathway. In April 2019, the SBOE approved for second reading and final adoption TEKS for two new cybersecurity courses: Foundations of Cybersecurity and Cybersecurity Capstone. At the June 2019 meeting, the board approved revisions to the TEKS for the existing Digital Forensics course so that it would better align with the new pathway. In 2020, the SBOE approved the consolidation of the high school technology applications courses into the CTE TEKS. A discussion item was presented to the board at the January 2022 SBOE meeting.

The new sections update the TEKS for the high school cybersecurity and computer science courses to ensure the standards remain current.

The SBOE approved implementation of the TEKS for Fundamentals of Computer Science and Computer Science III beginning with the 2022-2023 school year. The TEKS for Foundations of Cybersecurity, Cybersecurity Capstone, Digital Forensics, Computer Science I, and Computer Science II were approved for implementation in the 2024-2025 school year.

The following changes were made to the rules since published as proposed.

The student expectation in §127.788(d)(1)(A) was amended by inserting the words "and internship" before the word "opportunities" and adding "and contact one or more companies or organizations to explore career opportunities" after the phrase "duties and tasks."

The student expectation in §127.789(d)(1)(A) was amended by inserting the words "and internship" before the word "opportunities" and adding "and contact one or more companies or organizations to explore career opportunities" after the phrase "duties and tasks."

The student expectation in §127.790(d)(1)(A) was amended by inserting the words "and internship" before the word "opportunities" and adding "and contact one or more companies or organizations to explore career opportunities" after the phrase "duties and tasks."

The student expectation in §127.791(d)(1)(A) was amended by inserting the words "and internship" before the word "opportunities" and adding "and contact one or more companies or organizations to explore career opportunities" after the phrase "duties and tasks."

The student expectation in §127.793(d)(1)(C) was amended by adding "and contact one or more companies or organizations to explore career opportunities" after the phrase "duties and tasks."

The SBOE approved the new sections for first reading and filing authorization at its April 8, 2022 meeting and for second reading and final adoption at its June 17, 2022 meeting.

In accordance with TEC, §7.102(f), the SBOE approved the new sections for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2023-

2024 school year. The earlier effective date will enable districts to begin preparing for implementation of the revised CTE TEKS. The effective date is 20 days after filing as adopted with the *Texas Register*.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began May 6, 2022, and ended at 5:00 p.m. on June 10, 2022. The SBOE also provided an opportunity for registered oral and written comments at its June 2022 meeting in accordance with the SBOE board operating policies and procedures. Following is a summary of the public comments received and corresponding responses.

Comment. One teacher stated that proposed student expectation in subsection (d)(1)(H) in §§127.789-127.791, Computer Science I-III, is unclear and requires additional guidance. The commenter stated that it is unclear whether the student expectation is referring to program development, task completion, or applying for jobs.

Response. The SBOE disagrees and has determined that the student expectation is sufficiently clear as proposed.

Comment. The Computer Science Teachers Association expressed support for the proposal to add Algebra I as a corequisite for Computer Science I.

Response. The SBOE agrees. The SBOE also took action to approve additional changes to respond to other comments.

Comment. One teacher commended the addition of content in the proposed new Computer Science III course as it is necessary for students in Texas.

Response. The SBOE agrees. The SBOE also took action to approve additional changes to respond to other comments.

Comment. One teacher expressed support for the differentiation between the proposed new Computer Science I-III courses. The commenter agreed with the branching and spiraling of concept understanding over the courses.

Response. The SBOE agrees. The SBOE also took action to approve additional changes to respond to other comments.

Comment. One teacher recommended the inclusion of employability skills in the proposed new TEKS for Computer Science I and II.

Response. The SBOE agrees and has determined that employability skills are addressed in the student expectations in subsection (d)(1)(A)-(I) in §127.789 and §127.790.

Comment. One teacher requested teacher training for the proposed new computer science and cybersecurity courses.

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

Comment. One teacher suggested adding the DevOps and Agile methodologies to the proposed TEKS for Computer Science II and III.

Response. The SBOE disagrees and has determined that it was not necessary to add the suggested methodologies to the TEKS for Computer Science I and II.

Comment. One teacher recommended adding examples such as manuals, diagrams, and algorithmic flowcharts to the proposed student expectation in subsection (d)(1)(C) in Computer Science I, II, and III.

Response. The SBOE disagrees and has determined that the student expectation in subsection (d)(1)(C) in §§127.789-127.791 was sufficiently clear and the suggested change was not necessary.

STATUTORY AUTHORITY. The new sections are adopted 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; TEC, §28.002(c-3), which requires the SBOE to adopt rules for technology applications in Kindergarten-Grade 8 that include coding, computer programming, computational thinking, and cybersecurity; TEC, §28.002(f)(2), which requires the SBOE to approve courses in cybersecurity for credit for high school graduation; 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, and to designate the specific courses in the foundation curriculum that are required under the foundation high school program; TEC, §28.025(c-1)(1), which establishes that an endorsement may be earned in science, technology, engineering, and mathematics (STEM), which includes courses related to science, including environmental science; technology, including computer science, cybersecurity, and computer coding; engineering; and advanced mathematics; and TEC, §28.025(c-10), which requires the SBOE to adopt or select five technology applications courses on cybersecurity to be included in a cybersecurity pathway for the STEM endorsement.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §§7.102(c)(4); 28.002(a), (c), (c-3), and (f)(2); and 28.025(a), (c-1)(1) and (c-10).

§127.788. *Fundamentals of Computer Science (One Credit), Adopted 2022.*

(a) Implementation. The provisions of this section shall be implemented by school districts beginning with the 2023-2024 school year.

(1) No later than August 1, 2023, 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 2023-2024 school year and apply to the 2023-2024 and subsequent school years.

(3) If the commissioner does not make the determination that instructional materials funding has been made available under subsection (a) of this section, the commissioner shall determine no later than August 1 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 9-12. 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 such as laboratory and testing services and research and development services.

(3) Fundamentals of Computer Science is intended as a first course for those students just beginning the study of computer science. Students will learn about the computing tools that are used every day. Students will foster their creativity and innovation through opportunities to design, implement, and present solutions to real-world problems. Students will collaborate and use computer science concepts to access, analyze, and evaluate information needed to solve problems. Students will learn computational thinking, problem-solving, and reasoning skills that are the foundation of computer science. By using computer science knowledge and skills that support the work of individuals and groups in solving problems, students will select the technology appropriate for the task, synthesize knowledge, create solutions, and evaluate the results. Students will learn digital citizenship by researching current laws, regulations, and best practices and by practicing integrity and respect. Students will gain an understanding of the principles of computer science through the study of technology operations and concepts.

(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) Employability. The student identifies various employment opportunities in the computer science field. The student is expected to:

(A) identify job and internship opportunities and accompanying job duties and tasks and contact one or more companies or organizations to explore career opportunities;

(B) examine the role of certifications, resumes, and portfolios in the computer science profession;

(C) employ effective technical reading and writing skills;

(D) employ effective verbal and non-verbal communication skills;

(E) solve problems and think critically;

(F) demonstrate leadership skills and function effectively as a team member;

(G) demonstrate an understanding of legal and ethical responsibilities in relation to the field of computer science;

(H) demonstrate planning and time-management skills; and

(I) compare university computer science programs.

(2) Creativity and innovation. The student develops products and generates new knowledge, understanding, and skills. The student is expected to:

(A) investigate and explore various career opportunities within the computer science field and report findings through various media;

(B) create algorithms for the solution of various problems;

(C) discuss methods and create and publish web pages using a web-based language such as HTML, Java Script, or XML; and

(D) use generally accepted design standards for spacing, fonts, and color schemes to create functional user interfaces, including static and interactive screens.

(3) Communication and collaboration. The student communicates and collaborates with peers to contribute to his or her own learning and the learning of others. The student is expected to:

(A) seek and respond to advice or feedback from peers, educators, or professionals when evaluating problem solutions;

(B) debug and solve problems using reference materials and effective strategies; and

(C) publish information in a variety of ways such as print, monitor display, web pages, or video.

(4) Critical thinking, problem solving, and decision making. The student uses appropriate strategies to analyze problems and design algorithms. The student is expected to:

(A) demonstrate the ability to insert external standalone objects such as scripts or widgets into web pages;

(B) communicate an understanding of binary representation of data in computer systems, perform conversions between decimal and binary number systems, and count in binary number systems;

(C) identify a problem's description, purpose, and goals;

(D) demonstrate coding proficiency in a programming language by developing solutions that create stories, games, and animations;

(E) identify and use the appropriate data type to properly represent the data in a program problem solution;

(F) communicate an understanding of and use variables within a programmed story, game, or animation;

(G) use arithmetic operators to create mathematical expressions, including addition, subtraction, multiplication, real division, integer division, and modulus division;

(H) communicate an understanding of and use sequence within a programmed story, game, or animation;

(I) communicate an understanding of and use conditional statements within a programmed story, game, or animation;

(J) communicate an understanding of and use iteration within a programmed story, game, or animation;

(K) use random numbers within a programmed story, game, or animation; and

(L) test program solutions by investigating intended outcomes.

(5) Digital citizenship. The student explores and understands safety, legal, cultural, and societal issues relating to the use of technology and information. The student is expected to:

(A) discuss privacy and copyright laws and model ethical acquisition of digital information by citing sources using established methods;

(B) compare various non-copyright asset sharing options such as open source, freeware, and public domain;

(C) demonstrate proper digital etiquette and knowledge of acceptable use policies when using networks;

(D) explain the value of strong passwords and virus detection and prevention for privacy and security;

(E) discuss and give examples of the impact of computing and computing-related advancements on society; and

(F) analyze how electronic media can affect reliability of information.

(6) Technology operations and concepts. The student understands technology concepts, systems, and operations as they apply to computer science. The student is expected to:

(A) identify and explain the function of basic computer components, including a central processing unit (CPU), storage, and peripheral devices;

(B) use system tools, including appropriate file management;

(C) compare different operating systems;

(D) describe the differences between an application and an operating system; and

(E) use various input, processing, output, and primary/secondary storage devices.

§127.789. *Computer Science 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 1, 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 subsection (a) of this section, the commissioner shall determine no later than August 1 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 9-12. Prerequisite or corequisite: Algebra I. 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 such as laboratory and testing services and research and development services.

(3) Computer Science I will foster students' creativity and innovation by presenting opportunities to design, implement, and present meaningful programs through a variety of media. Students will collaborate with one another, their instructor, and various electronic communities to solve the problems presented throughout the course. Through computational thinking and data analysis, students will identify task requirements, plan search strategies, and use computer science concepts to access, analyze, and evaluate information needed to solve problems. By using computer science knowledge and skills that support the work of individuals and groups in solving problems, students will select the technology appropriate for the task, synthesize knowledge, create solutions, and evaluate the results. Students will learn digital citizenship by researching current laws, regulations, and best practices and by practicing integrity and respect. Students will gain an understanding of the principles of computer science through the study of technology operations, systems, and concepts.

(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) Employability. The student identifies various employment opportunities in the computer science field. The student is expected to:

(A) identify job and internship opportunities and accompanying job duties and tasks and contact one or more companies or organizations to explore career opportunities;

(B) examine the role of certifications, resumes, and portfolios in the computer science profession;

(C) employ effective technical reading and writing skills;

(D) employ effective verbal and non-verbal communication skills;

(E) solve problems and think critically;

(F) demonstrate leadership skills and function effectively as a team member;

(G) communicate an understanding of legal and ethical responsibilities in relation to the field of computer science;

(H) demonstrate planning and time-management skills; and

(I) compare university computer science programs.

(2) Communication and collaboration. The student communicates and collaborates with peers to contribute to his or her own learning and the learning of others. The student is expected to:

(A) participate in learning communities as a learner, initiator, contributor, and teacher/mentor; and

(B) seek and respond to advice from peers, educators, or professionals when evaluating quality and accuracy of the student's product.

(3) Programming style and presentation. The student utilizes proper programming style and develops appropriate visual presentation of data, input, and output. The student is expected to:

(A) create and properly label and display output;

(B) create interactive input interfaces, with relevant user prompts, to acquire data from a user such as console displays or Graphical User Interfaces (GUIs);

(C) write programs with proper programming style to enhance the readability and functionality of a code by using descriptive identifiers, internal comments, white space, spacing, indentation, and a standardized program style;

(D) format data displays using standard formatting styles; and

(E) display simple vector graphics using lines, circles, and rectangles.

(4) Critical thinking, problem solving, and decision making. The student uses appropriate strategies to analyze problems and design algorithms. The student is expected to:

(A) use program design problem-solving strategies such as flowchart or pseudocode to create program solutions;

(B) create a high-level program plan using a visual tool such as a flowchart or graphic organizer;

(C) identify the tasks and subtasks needed to solve a problem;

(D) identify the data types and objects needed to solve a problem;

(E) identify reusable components from existing code;

(F) design a solution to a problem;

(G) code a solution from a program design;

(H) identify error types, including syntax, lexical, run time, and logic;

(I) test program solutions with valid and invalid test data and analyze resulting behavior;

(J) debug and solve problems using error messages, reference materials, language documentation, and effective strategies;

(K) create and implement common algorithms such as finding greatest common divisor, finding the biggest number out of three, finding primes, making change, and finding the average;

(L) create program solutions that address basic error handling such as preventing division by zero and type mismatch;

(M) select the most appropriate construct for a defined problem;

(N) create program solutions by using the arithmetic operators to create mathematical expressions, including addition, subtraction, multiplication, real division, integer division, and modulus division;

(O) create program solutions to problems using available mathematics library functions or operators, including absolute value, round, power, square, and square root;

(P) develop program solutions that use assignment;

(Q) develop sequential algorithms to solve non-branching and non-iterative problems;

(R) develop algorithms to decision-making problems using branching control statements;

(S) develop iterative algorithms and code programs to solve practical problems;

(T) demonstrate the appropriate use of the relational operators;

(U) demonstrate the appropriate use of the logical operators; and

(V) generate and use random numbers.

(5) Digital citizenship. The student explores and understands safety, legal, cultural, and societal issues relating to the use of technology and information. The student is expected to:

(A) discuss and explain intellectual property, privacy, sharing of information, copyright laws, and software licensing agreements;

(B) practice ethical acquisition and use of digital information;

(C) demonstrate proper digital etiquette, responsible use of software, and knowledge of acceptable use policies;

(D) investigate privacy and security measures, including strong passwords, pass phrases, and other methods of authentication and virus detection and prevention; and

(E) investigate computing and computing-related advancements and the social and ethical ramifications of computer usage.

(6) Technology operations, systems, and concepts. The student understands technology concepts, systems, and operations as they apply to computer science. The student is expected to:

(A) identify and describe the function of major hardware components, including primary and secondary memory, a central processing unit (CPU), and peripherals;

(B) differentiate between current programming languages, discuss the general purpose for each language, and demonstrate knowledge of specific programming terminology and concepts and types of software development applications;

(C) differentiate between a high-level compiled language and an interpreted language;

(D) identify and use concepts of object-oriented design;

(E) differentiate between local and global scope access variable declarations;

(F) encapsulate data and associated subroutines into an abstract data type;

(G) create subroutines that do not return values with and without the use of arguments and parameters;

(H) create subroutines that return typed values with and without the use of arguments and parameters;

(I) create calls to processes passing arguments that match parameters by number, type, and position;

(J) compare data elements using logical and relational operators;

(K) identify and convert binary representation of numeric and nonnumeric data in computer systems using American Standard Code for Information Interchange (ASCII) or Unicode;

(L) identify finite limits of numeric data such as integer wrap around and floating point precision;

(M) perform numerical conversions between the decimal and binary number systems and count in the binary number system;

(N) choose, identify, and use the appropriate data types for integer, real, and Boolean data when writing program solutions;

(O) analyze the concept of a variable, including primitives and objects;

(P) represent and manipulate text data, including concatenation and other string functions;

(Q) identify and use the structured data type of one-dimensional arrays to traverse, search, and modify data;

(R) choose, identify, and use the appropriate data type or structure to properly represent the data in a program problem solution; and

(S) compare strongly typed and un-typed programming languages.

§127.790. *Computer Science II (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 1, 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 subsection (a) of this section, the commissioner shall determine no later than August 1 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. Prerequisites: Algebra I and Computer Science I or AP Computer Science Principles. 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 such as laboratory and testing services and research and development services.

(3) Computer Science II will foster students' creativity and innovation by presenting opportunities to design, implement, and present meaningful programs through a variety of media. Students will collaborate with one another, their instructor, and various electronic communities to solve the problems presented throughout the course. Through computational thinking and data analysis, students will identify task requirements, plan search strategies, and use computer science concepts to access, analyze, and evaluate information needed to solve problems. By using computer science knowledge and skills that support the work of individuals and groups in solving problems, students will select the technology appropriate for the task, synthesize knowledge, create solutions, and evaluate the results. Students will gain an understanding of computer science through the study of technology operations, systems, and concepts.

(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) Employability. The student identifies various employment opportunities in the computer science field. The student is expected to:

(A) identify job and internship opportunities and accompanying job duties and tasks and contact one or more companies or organizations to explore career opportunities;

(B) examine the role of certifications, resumes, and portfolios in the computer science profession;

(C) employ effective technical reading and writing skills;

(D) employ effective verbal and non-verbal communication skills;

(E) solve problems and think critically;

(F) demonstrate leadership skills and function effectively as a team member;

(G) identify legal and ethical responsibilities in relation to the field of computer science;

(H) demonstrate planning and time-management skills;

and
(I) compare university computer science programs.

(2) Creativity and innovation. The student develops products and generates new understandings by extending existing knowledge. The student is expected to:

(A) use program design problem-solving strategies to create program solutions;

(B) read, analyze, and modify programs and their accompanying documentation such as an application programming interface (API), internal code comments, external documentation, or readme files;

(C) follow a systematic problem-solving process that identifies the purpose and goals, the data types and objects needed, and the subtasks to be performed;

(D) compare design methodologies and implementation techniques such as top-down, bottom-up, and black box;

(E) trace a program, including inheritance and black box programming;

(F) choose, identify, and use the appropriate abstract data type, advanced data structure, and supporting algorithms to properly represent the data in a program problem solution; and

(G) use object-oriented programming development methodology, including data abstraction, encapsulation with information hiding, inheritance, and procedural abstraction in program development.

(3) Communication and collaboration. The student communicates and collaborates with peers to contribute to his or her own learning and the learning of others. The student is expected to:

(A) use the principles of software development to work in software design teams;

(B) break a problem statement into specific solution requirements;

(C) create a program development plan;

(D) code part of a solution from a program development plan while a partner codes the remaining part;

(E) collaborate with a team to test a solution, including boundary and standard cases; and

(F) develop presentations to report the solution findings.

(4) Data literacy and management. The student locates, analyzes, processes, and organizes data. The student is expected to:

(A) use programming file structure and file access for required resources;

(B) acquire and process information from text files, including files of known and unknown sizes;

(C) manipulate data using string processing;

(D) manipulate data values by casting between data types;

(E) use the structured data type of one-dimensional arrays to traverse, search, modify, insert, and delete data;

(F) identify and use the structured data type of two-dimensional arrays to traverse, search, modify, insert, and delete data;

(G) identify and use a list object data structure to traverse, search, insert, and delete data; and

(H) differentiate between categories of programming languages, including machine, assembly, high-level compiled, high-level interpreted, and scripted.

(5) Critical thinking, problem solving, and decision making. The student uses appropriate strategies to analyze problems and design algorithms. The student is expected to:

(A) develop sequential algorithms using branching control statements, including nested structures, to create solutions to decision-making problems;

(B) develop choice algorithms using selection control statements based on ordinal values;

(C) demonstrate the appropriate use of short-circuit evaluation in certain situations;

(D) use Boolean algebra, including De Morgan's Law, to evaluate and simplify logical expressions;

(E) develop iterative algorithms using nested loops;

(F) identify, trace, and appropriately use recursion in programming solutions, including algebraic computations;

(G) trace, construct, evaluate, and compare search algorithms, including linear searching and binary searching;

(H) identify, describe, trace, evaluate, and compare standard sorting algorithms, including selection sort, bubble sort, insertion sort, and merge sort;

(I) measure time and space efficiency of various sorting algorithms, including analyzing algorithms using "big-O" notation for best, average, and worst-case data patterns;

(J) develop algorithms to solve various problems such as factoring, summing a series, finding the roots of a quadratic equation, and generating Fibonacci numbers;

(K) test program solutions by investigating boundary conditions; testing classes, methods, and libraries in isolation; and performing stepwise refinement;

(L) identify and debug compile, syntax, runtime, and logic errors;

(M) compare efficiency of search and sort algorithms by using informal runtime comparisons, exact calculation of statement execution counts, and theoretical efficiency values using "big-O" notation, including worst-case, best-case, and average-case time/space analysis;

(N) count, convert, and perform mathematical operations in the decimal, binary, octal, and hexadecimal number systems;

(O) identify maximum integer boundary, minimum integer boundary, imprecision of real number representations, and round-off errors;

(P) create program solutions to problems using a mathematics library;

(Q) use random number generator algorithms to create simulations;

(R) use composition and inheritance relationships to identify and create class definitions and relationships;

(S) explain and use object relationships between defined classes, abstract classes, and interfaces;

(T) create object-oriented class definitions and declarations using variables, constants, methods, parameters, and interface implementations;

(U) create adaptive behaviors using polymorphism;

(V) use reference variables for object and string data types;

(W) use value and reference parameters appropriately in method definitions and method calls;

(X) implement access scope modifiers;

(Y) use object comparison for content quality;

(Z) duplicate objects using the appropriate deep or shallow copy;

(AA) apply functional decomposition to a program solution;

(BB) create objects from class definitions through instantiation; and

(CC) examine and mutate the properties of an object using accessors and modifiers.

§127.791. *Computer Science III (One Credit), Adopted 2022.*

(a) Implementation. The provisions of this section shall be implemented by school districts beginning with the 2023-2024 school year.

(1) No later than August 1, 2023, 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 2023-2024 school year and apply to the 2023-2024 and subsequent school years.

(3) If the commissioner does not make the determination that instructional materials funding has been made available under subsection (a) of this section, the commissioner shall determine no later than August 1 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: Computer Science II, Advanced Placement (AP) Computer Science A, or International Baccalaureate (IB) Computer Science Standard Level or IB Computer Science Higher Level. 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 such as laboratory and testing services and research and development services.

(3) Computer Science III will foster students' creativity and innovation by presenting opportunities to design, implement, and present meaningful programs through a variety of media. Students will collaborate with one another, their instructor, and various electronic communities to solve the problems presented throughout the course. Through computational thinking and data analysis, students will identify task requirements, plan search strategies, and use computer science concepts to access, analyze, and evaluate information needed to solve problems. By using computer science knowledge and skills that support the work of individuals and groups in solving problems, students will select the technology appropriate for the task, synthesize knowledge, create solutions, and evaluate the results. Students will

gain an understanding of advanced computer science data structures through the study of technology operations, systems, and concepts.

(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.

(6) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(d) Knowledge and skills.

(1) Employability. The student identifies various employment opportunities in the computer science field. The student is expected to:

(A) identify job and internship opportunities and accompanying job duties and tasks and contact one or more companies or organizations to explore career opportunities;

(B) examine the role of certifications, resumes, and portfolios in the computer science profession;

(C) employ effective technical reading and writing skills;

(D) employ effective verbal and non-verbal communication skills;

(E) solve problems and think critically;

(F) demonstrate leadership skills and function effectively as a team member;

(G) demonstrate an understanding of legal and ethical responsibilities in relation to the field of computer science;

(H) demonstrate planning and time-management skills; and

(I) compare university computer science programs.

(2) Creativity and innovation. The student develops products and generates new understandings by extending existing knowledge. The student is expected to:

(A) apply object-oriented programming, including data abstraction, encapsulation, inheritance, and polymorphism, to manage the complexity of a project;

(B) design and implement a class hierarchy;

(C) read and write class specifications using visual organizers, including Unified Modeling Language;

(D) identify, describe, evaluate, compare, and implement standard sorting algorithms that perform sorting operations on data structures, including quick sort and heap sort; and

(E) identify and use the appropriate abstract data type, advanced data structure, and supporting algorithms to properly represent the data in a program problem solution.

(3) Communication and collaboration. The student communicates and collaborates with peers to contribute to his or her own learning and the learning of others. The student is expected to:

(A) use networked tools for file management and collaboration; and

(B) work in software design teams.

(4) Data literacy and management. The student locates, analyzes, processes, and organizes data. The student is expected to:

(A) identify and use two-dimensional ragged arrays to traverse, search, modify, insert, and delete data;

(B) describe and demonstrate proper linked list management, including maintaining the head and safe addition and deletion of linked objects;

(C) create or trace program solutions using a linked-list data structure, including unordered single, ordered single, double, and circular linked;

(D) describe composite data structures, including a linked list of linked lists;

(E) create or trace program solutions using stacks, queues, trees, heaps, priority queues, graph theory, and enumerated data types;

(F) create or trace program solutions using sets, including hash and tree-based data structures;

(G) create or trace program solutions using map style data structures; and

(H) write and modify text file data.

(5) Critical thinking, problem solving, and decision making. The student uses appropriate strategies to analyze problems and design algorithms. The student is expected to:

(A) evaluate expressions using bitwise operators;

(B) evaluate expressions using the ternary operator;

(C) identify, trace, and appropriately use recursion in programming solutions, including processing binary trees;

(D) create or trace program solutions using hashing;

(E) explore common algorithms such as matrix addition and multiplication, fractals, Towers of Hanoi, and magic square; and

(F) create program solutions that exhibit robust behavior by recognizing and avoiding runtime errors and handling anticipated errors.

(6) Testing and documentation. The student demonstrates appropriate documentation and testing practices. The student is expected to:

(A) use appropriate formatting and write documentation to support code maintenance, including pre- and post-condition statements;

(B) write program assumptions in the form of assertions;

(C) write a Boolean expression to test a program assertion; and

(D) construct assertions to make explicit program invariants.

(7) Practical application of technology. The student utilizes technology concepts, systems, and operations as they apply to computer science. The student is expected to:

(A) analyze and create computer program workflow charts and basic system diagrams, documenting system functions, features, and operations;

(B) gather requirements, design, and implement a process by which programs can interact with each other such as using interfaces;

(C) create simple programs using a low-level language such as assembly;

(D) create discovery programs in a high-level language;

(E) create scripts for an operating system;

(F) explore industry best practices for secure programming; and

(G) explore emerging industry or technology trends.

§127.793. *Digital Forensics (One Credit), Adopted 2022.*

(a) Implementation. The provisions of this section shall be implemented by school districts beginning with the 2023-2024 school year.

(1) No later than August 1, 2023, 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 2023-2024 school year and apply to the 2023-2024 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 1 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 9-12. Prerequisite: Foundations of Cybersecurity. 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, such as laboratory and testing services and research and development services.

(3) Digital forensics is a critical discipline concerned with analyzing anomalous activity on computers, networks, programs, and data. As a discipline, it has grown with the expansion of a globally connected digital society. As computing has become more sophisticated, so too have the abilities to access systems and sensitive information. Digital forensics professionals investigate and craft appropriate responses to disruptions to governments, organizations, and individuals. Whereas cybersecurity takes a proactive approach to information assurance to minimize harm, digital forensics takes a reactive approach to incident response.

(4) Digital Forensics introduces students to the knowledge and skills of digital forensics. The course provides a survey of the field of digital forensics and incident response.

(5) Students are encouraged to participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(6) 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) Employability skills. The student identifies necessary skills for career development and employment opportunities. The student is expected to:

(A) investigate the need for digital forensics;

(B) research careers in digital forensics along with the education and job skills required for obtaining a job in both the public and private sector;

(C) identify job and internship opportunities and accompanying job duties and tasks and contact one or more companies or organizations to explore career opportunities;

(D) identify and discuss certifications for digital forensics careers;

(E) explain ethical and legal responsibilities in relation to the field of digital forensics;

(F) identify and describe businesses and government agencies that use digital forensics;

(G) identify and describe the kinds of crimes investigated by digital forensics specialists; and

(H) solve problems and think critically.

(2) Employability skills. The student communicates and collaborates effectively. The student is expected to:

(A) apply effective teamwork strategies;

(B) collaborate with a community of peers and professionals;

(C) create, review, and edit a report summarizing technical findings; and

(D) present technical information to a non-technical audience.

(3) Ethics and laws. The student recognizes and analyzes ethical and current legal standards, rights, and restrictions related to digital forensics. The student is expected to:

(A) develop a plan to advocate for ethical and legal behaviors both online and offline among peers, family, community, and employers;

(B) research and discuss local, state, national, and international law such as the Electronic Communications Privacy Act of 1986, Title III (Pen Register Act); USA PATRIOT Act of 2001; and Digital Millennium Copyright Act;

(C) research and discuss historic cases or events regarding digital forensics or cybersecurity;

(D) analyze ethical and legal behavior when presented with confidential or sensitive information in various scenarios related to cybersecurity activities;

(E) analyze case studies of computer incidents;

(F) use the findings of a computer incident investigation to reconstruct a computer incident;

(G) identify and discuss intellectual property laws, issues, and use;

(H) contrast legal and illegal aspects of information gathering;

(I) contrast ethical and unethical aspects of information gathering;

(J) analyze emerging legal and societal trends affecting digital forensics; and

(K) discuss how technological changes affect applicable laws.

(4) Digital citizenship. The student understands and demonstrates the social responsibility of end users regarding digital technology, safety, digital hygiene, and cyberbullying. The student is expected to:

(A) identify and use digital information responsibly;

(B) use digital tools responsibly;

(C) identify and use valid and reliable sources of information; and

(D) gain informed consent prior to investigating incidents.

(5) Digital forensics skills. The student locates, processes, analyzes, and organizes data. The student is expected to:

(A) identify sources of data;

(B) analyze and report data collected;

(C) discuss how to maintain data integrity such as by enabling encryption;

(D) examine and describe metadata of a file; and

(E) examine and describe how multiple data sources can be used for digital forensics, including investigating malicious software (malware) and email threats.

(6) Digital forensics skills. The student understands software concepts and operations as they apply to digital forensics. The student is expected to:

(A) compare software applications as they apply to digital forensics;

(B) describe the purpose of various application types such as email, web, file sharing, security applications, and data concealment tools;

(C) identify the different purposes of data formats such as pdf, wav, jpeg, and exe;

(D) describe how application logs and metadata are used for investigations such as Security Information and Event Management (SIEM) reports;

(E) describe digital forensics tools;

(F) select the proper software tool based on appropriateness, effectiveness, and efficiency for a given digital forensics scenario;

(G) describe components of applications such as configurations settings, data, supporting files, and user interface; and

(H) describe how the "as a service" model applies to incident response.

(7) Digital forensics skills. The student understands operating systems concepts and functions as they apply to digital forensics. The student is expected to:

- (A) compare various operating systems;
- (B) describe file attributes, including access and creation times;
- (C) describe how operating system logs are used for investigations;
- (D) compare and contrast the file systems of various operating systems;
- (E) compare various primary and secondary storage devices; and
- (F) differentiate between volatile and non-volatile memory.

(8) Digital forensics skills. The student understands networking concepts and operations as they apply to digital forensics. The student is expected to:

- (A) examine networks, including Internet Protocol (IP) addressing and subnets;
- (B) describe the Open Systems Interconnection (OSI) model;
- (C) describe the Transmission Control Protocol/Internet Protocol (TCP/IP) model;
- (D) use network forensic analysis tools to examine network traffic data from sources such as firewalls, routers, intrusion detection systems (IDS), and remote access logs; and
- (E) identify malicious or suspicious network activities such as mandatory access control (MAC) spoofing and rogue wireless access points.

(9) Digital forensics skills. The student explains the principles of access controls. The student is expected to:

- (A) define the principle of least privilege;
- (B) describe the impact of granting access and permissions;
- (C) identify different access components such as passwords, tokens, key cards, and biometric verification systems;
- (D) explain the value of an access log to identify suspicious activity;
- (E) describe the risks of granting third parties access to personal and proprietary data on social media and systems;
- (F) describe the risks involved with accepting Terms of Service (ToS) or End User License Agreements (EULA) without a basic understanding of the terms or agreements; and
- (G) identify various access control methods such as mandatory access control (MAC), attribute-based access control (ABAC), role-based access control (RBAC), and discretionary access control (DAC).

(10) Incident response. The student follows a methodological approach to prepare for and respond to an incident. The student is expected to:

- (A) define the components of the incident response cycle, including preparation; detection and analysis; containment, eradication, and recovery; and post-incident activity;

- (B) describe incident response preparation;
- (C) discuss incident response detection and analysis;
- (D) discuss containment and eradication of and recovery from an incident;
- (E) describe post-incident activities such as reflecting on lessons learned, using collected incident data, and retaining evidence of an incident;
- (F) develop an incident response plan; and
- (G) describe ways a user may compromise the validity of existing evidence.

(11) Incident response. The student objectively analyzes collected data from an incident. The student is expected to:

- (A) identify the role of chain of custody in digital forensics;
- (B) describe safe data handling procedures;
- (C) explain the fundamental concepts of confidentiality, integrity, availability, authentication, and authorization;
- (D) identify and report information conflicts or suspicious activity;
- (E) identify events of interest and suspicious activity by examining network traffic; and
- (F) identify events of interest and suspicious activity by examining event logs.

(12) Incident response. The student analyzes the various ways systems can be compromised. The student is expected to:

- (A) analyze the different signatures of cyberattacks;
- (B) identify points of weakness and attack vectors such as online spoofing, phishing, and social engineering; and
- (C) differentiate between simple versus multistage attacks.

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 July 18, 2022.

TRD-202202704

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: August 7, 2022

Proposal publication date: May 6, 2022

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

◆ ◆ ◆

**CHAPTER 130. TEXAS ESSENTIAL
KNOWLEDGE AND SKILLS FOR CAREER
AND TECHNICAL EDUCATION
SUBCHAPTER J. HUMAN SERVICES
19 TAC §130.277**

The State Board of Education (SBOE) adopts the repeal of §130.277, concerning Texas Essential Knowledge and Skills (TEKS), for career development and career and technical edu-

ation. The repeal is adopted without changes to the proposed text as published in the May 6, 2022 issue of the *Texas Register* (47 TexReg 2693) and will not be republished. The adopted repeal removes the TEKS for a career and technical education (CTE) course that will be superseded by 19 TAC §127.317 beginning with the 2022-2023 school year.

REASONED JUSTIFICATION: The TEKS for courses associated with 17 CTE career clusters are codified by subchapter in 19 TAC Chapters 127 and 130. In December 2020, the SBOE began initial steps to prepare for the review and revision of CTE courses in programs of study for the education and training, health science, and science, technology, engineering, and mathematics career clusters. Two additional courses eligible to satisfy a graduation requirement in science were also part of the review. At the November 2021 SBOE meeting, the board approved for second reading and final adoption proposed new TEKS for these courses.

Due to the structure of Chapter 130, there were not enough sections to add the new CTE courses under consideration in their original subchapters. To accommodate the addition of new and future courses, the CTE TEKS in Chapter 130 are being moved to existing 19 TAC Chapter 127, which has been renamed "Texas Essential Knowledge and Skills for Career Development and Career and Technical Education."

The adopted repeal removes the TEKS for a CTE course that will be superseded by 19 TAC §127.317 beginning with the 2022-2023 school year.

The SBOE approved the repeal for first reading and filing authorization at its April 8, 2022 meeting and for second reading and final adoption at its June 17, 2022 meeting.

In accordance with Texas Education Code, §7.102(f), the SBOE approved the repeal for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2023-2024 school year. The earlier effective date will repeal superseded TEKS to avoid confusion with new TEKS that are being implemented at the beginning of the 2022-2023 school year. The effective date is August 1, 2022.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began May 6, 2022, and ended at 5:00 p.m. on June 10, 2022. The SBOE also provided an opportunity for registered oral and written comments at its June 2022 meeting in accordance with the SBOE board operating policies and procedures. No public comments were received.

STATUTORY AUTHORITY. The repeal is adopted 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; and 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.

CROSS REFERENCE TO STATUTE. The repeal implements Texas Education Code, §7.102(c)(4) and §28.002(a) and (c).

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 July 12, 2022.

TRD-202202616

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: August 1, 2022

Proposal publication date: May 6, 2022

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

◆ ◆ ◆
TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 10. WORKERS' COMPENSATION HEALTH CARE NETWORKS

The Commissioner of Insurance adopts the repeal of 28 TAC §10.102 and §10.103; new §10.3; and amendments to §§10.1, 10.2, 10.20 - 10.27, 10.40 - 10.42, 10.60 - 10.63, 10.80 - 10.86, 10.100, 10.101, 10.104, 10.120 - 10.122, and 10.200, concerning workers' compensation health care networks.

The Commissioner adopts the repeal of §10.102 and §10.103, new §10.3, and amended §§10.1, 10.21, 10.23 - 10.25, 10.27, 10.40, 10.42, 10.62, 10.63, 10.80, 10.84 - 10.86, 10.100, 10.101, 10.104, 10.122, and 10.200 without changes to the proposed text published in the February 4, 2022, issue of the *Texas Register* (47 TexReg 457). The rules will not be republished.

The Commissioner adopts amendments to the following sections with changes to the proposed text published in the February 4, 2022, issue of the *Texas Register*: §§10.2, 10.20, 10.22, 10.26, 10.41, 10.60, 10.61, 10.81 - 10.83, 10.120, and 10.121. Changes to the proposed rule text include changes made in response to comment, and additional minor changes to wording and punctuation for clarification, consistency within rule text, and consistency with department language preferences and drafting practices. These rules will be republished.

In the April 1, 2022, issue of the *Texas Register* (47 TexReg 1740), the Secretary of State's Office corrected an error it made to the proposed amendments to 28 TAC §10.60(j)(4). The text for proposed paragraph (4) of subsection (j) was incorrectly identified as new language. Only the paragraph number should have been listed as new language. In the same issue, the department posted a Notice of Hearing for the proposal.

REASONED JUSTIFICATION. The repeals, new section, and amendments in Chapter 10 are necessary to implement legislative amendments to the Insurance Code. Some of the amendments implement changes to Insurance Code Chapter 1305, as added by House Bill 7, 79th Legislature, 2005, and as amended by HB 4290, 81st Legislature, 2009; Title 5 of the Labor Code, as amended by HB 7 and HB 4290; and Occupations Code Chapter 111, as amended by Senate Bill 1107, 85th Legislature, 2019, and HB 2056, 87th Legislature, 2021. This adoption also removes unnecessary data requirements, reducing the burden on workers' compensation health care networks (certified networks) and carriers.

In addition, the amendments and repeals harmonize certified network requirements with rules for other networks and utilization review requirements to comply with Insurance Code Chapter 4201, which was recodified and amended after the Chapter

10 rules were adopted. Recent updates to the Utilization Review Agent rules in 28 TAC Chapter 19 also generally apply to certified networks, so conforming edits are made to Chapter 10 to decrease rule redundancy. The amendments update current rules to correct obsolete statutory citations and physical address references, shorten some rules with simpler citations to statutes or references to other rules, and comply with current department language preferences and drafting practices.

The new and amended sections are described in the following paragraphs, organized by subchapter.

Subchapter A. General Provisions and Definitions.

Section 10.1. The amendments to §10.1 update and add more complete statutory citations, reflect the addition of Insurance Code §1305.008 by HB 472, remove a 2006 applicability date, and make changes to conform to current department language preferences and drafting practices.

Section 10.2. The amendments to §10.2 update and add more complete statutory citations, clarify existing and add new definitions, and make changes to conform to current department language preferences and drafting practices. Specifically, the amendments:

- update the definition of "adverse determination" to clarify that the term does not include a denial of health care services because of a failure to request prospective or concurrent utilization review, and to provide consistency with the requirements in Labor Code §408.021(a) and §413.014(c)(6) and the definition in 28 TAC §19.2003(b)(1) and §134.600(a)(1);
- add the defined terms "administrator," "concurrent utilization review," "Division of Workers' Compensation," "MCQA," "physician," and "telehealth service, telemedicine medical service, and teledentistry dental service;"
- amend the definitions of "affiliate," "capitation," "complainant," "complaint," "credentialing," "emergency," "fee dispute," "independent review," "independent review organization," "medical emergency," "medical records," "mental health emergency," "network or workers' compensation health care network," "person," "quality improvement program," "rural area," "screening criteria," and "transfer of risk" to cite Insurance Code §1305.004 rather than repeat its provisions;
- amend the definition of "life-threatening" to cite Insurance Code Chapter 4201;
- remove the defined term "nurse" because the term is no longer used in 28 TAC Chapter 10;
- amend the definition of "preauthorization" because the definition of "utilization review" in Insurance Code §1305.004 refers to the definition in Insurance Code Chapter 4201, which includes retrospective review, and the 2009 amendments to Insurance Code Chapter 1305 by HB 4290 removed separate references to retrospective review in sections referring to utilization review;
- amend the definition of "retrospective review" to exclude the review of services for which prospective or concurrent utilization reviews were previously conducted or should have been previously conducted because preauthorization no longer includes retrospective review and retrospective review does not include preauthorization or concurrent review; and
- update the list of terms that have the meanings assigned by Labor Code §401.011 to include "impairment rating" and "maximum medical improvement."

The department revised proposed §10.2(a)(9) to clarify that the "Division of Workers' Compensation" has the meaning assigned to the "Division" by Labor Code §401.011.

In response to a comment, the department revised proposed §10.2(a)(33) to clarify that "service area" has the meaning assigned by Insurance Code §1305.004(a)(24).

Section 10.3. New §10.3 indicates that any contact information needed for the Division of Workers' Compensation or the Office of Managed Care Quality Assurance can be found on the department's website and notes that this contact information should be used when an email address, mailing address, or telephone number is referenced in Chapter 10.

Subchapter B. Certification.

Section 10.20. The amendments to §10.20 add more complete statutory citations and remove a reference to "contracting with more than one person" from the description of a person who must be certified as a workers' compensation health care network, because this language is not contained in Insurance Code Chapter 1305. The department revised the text of §10.20 as proposed to replace a comma with a semicolon after the word "chapter" in §10.20(1)(A).

Section 10.21. The amendments to §10.21 remove a specific web address and a specific mailing address contained in the section to avoid providing incorrect information should that information change.

Section 10.22. The amendments to §10.22 add more complete statutory citations and make changes to conform to current department language preferences and drafting practices. In addition, the amendments:

- specify submission of the National Association of Insurance Commissioners Uniform Certificate of Authority Application (NAIC UCAA) Form 11 biographical affidavit for providing biographic data;
- clarify that a description and map of the applicant's proposed service area is required and require a map with information for each specialty providing services to injured employees, to simplify applications and shorten processing times by eliminating delays when the department requests these materials;
- require information about providers that provide telehealth service, telemedicine medical service, or teledentistry dental service so the department can know who is providing services by telecommunications or other information technology and how that affects certified networks, as well as what services are available by telecommunications or other information technology and whether those services can actually be provided in that manner;
- clarify that an access plan is required for any service area in which the certified network does not meet accessibility and availability requirements, to simplify applications and shorten processing times by eliminating delays when the department must request the necessary access plans; and
- clarify that applicants must verify that certified network doctors have completed both training and testing as required by the Labor Code and rules adopted by the Commissioner of Workers' Compensation.

The department revised the proposed text of §10.22(20) to add the words "and be designed to reduce inappropriate or unnecessary health care while safeguarding necessary care" as stated in Insurance Code §1305.304 and 28 TAC §10.83(a).

Section 10.23. The amendments to §10.23 add more complete statutory citations and make changes to conform to current department language preferences and drafting practices.

Section 10.24. The amendments to §10.24 add more complete statutory citations, remove a specific mailing address contained in the section and reference an email address instead, to avoid providing incorrect information should that mailing address change, and make changes to conform to current department language preferences and drafting practices.

Section 10.25. The amendments to §10.25 add more complete statutory citations and make changes to conform to current department language preferences and drafting practices. The amendments also:

- refer to §10.27 in regard to material modifications;
- clarify that a certified network must file an expansion, elimination, or reduction of an existing service area, or addition of a new service area with the department for approval before implementation and in accordance with the prior approval requirement in §10.26; and
- add a requirement that a certified network notify the department of the merger of the certified network with another entity and any other organizational change at least 30 days before implementing the merger or organizational change.

Section 10.26. The amendments to §10.26 add more complete statutory citations and make changes to conform to current department language preferences and drafting practices. In addition, the amendments:

- remove a 30-day advance filing requirement for modification requests as duplicative of the requirement for prior approval;
- add statutory citations and references to rules with which a corrected notice of certified network requirements and employee information and acknowledgment form must comply; and
- remove a specific mailing address contained in the section to avoid providing incorrect information should that address change.

The department made a change from the proposal to replace a comma with a semicolon after the word "Requirements" in the text added to §10.26(f).

The department made a change from the proposal to replace a comma with a semicolon after the words "chapter" and "Networks."

Section 10.27. The amendments to §10.27 add more complete statutory citations and make changes to conform to current department language preferences and drafting practices. Also, the amendments:

- remove specific email and mailing addresses contained in the section to avoid providing incorrect information should the addresses change;
- add a requirement that a request for a modification to network configuration that adds or modifies telehealth service, telemedicine medical service, or teledentistry dental service must include an explanation about updating its provider directory and any statements or restrictions on those services in the request; and
- in response to continued questions from regulated entities, clarify that a material modification includes a change to the network configuration that alters the ability of the certified network to com-

ply with the availability and accessibility requirements described in §10.80.

Subchapter C. Contracting.

Section 10.40. The amendments to §10.40 add more complete statutory citations and make a change to conform to current department language preferences and drafting practices. Amendments also clarify that a person serving as both a management contractor or a third party and as an agent of the health care provider must comply with Insurance Code §1305.153.

Section 10.41. The amendments to §10.41 add more complete statutory citations and make changes to conform to current department language preferences and drafting practices. The amendments also:

- refer to both the carrier's and the certified network's responsibility for delegated functions, to conform to Insurance Code §1305.154(b);
- require reporting of claim numbers, which are already available and being reported, so that the department will know how many claims are affected;
- remove a separate reference to retrospective review because retrospective review is included in utilization review;
- correct a typographical error; and
- require certified network consent to subdelegation of network functions to avoid situations where networks are unaware of subdelegations or where there is no monitoring of subdelegations.

In response to a comment that the language in proposed §10.41(a) did not include statutory language about confidentiality, the department declined to adopt proposed §10.41(a) because it is not necessary to repeat statutory language. The department redesignated proposed §10.41(b) - (d) as §10.41(a) - (c).

Section 10.42. The amendments to §10.42 add more complete statutory citations and make changes to conform to current department language preferences and drafting practices. The amendments also require provider contracts to provide that:

- the provider agrees to follow the pharmacy closed formulary adopted by the Division of Workers' Compensation under 28 TAC §134.540 so the department can be assured that contracted providers are aware of and compliant with this existing requirement;
- billing and payment will be made in accordance with rules governing the billing and payment for certifications of maximum medical improvement and impairment rating examinations so the department can ensure that providers and certified networks are aware of and compliant with these existing requirements;
- the provider will receive written notice from the carrier if the carrier contests compensability of an injury the provider is treating, to conform to Insurance Code §1305.153(e); and
- the carrier may not deny payment for services provided before the issuance of the notice on the grounds that the injury was not compensable, to conform to Insurance Code §1305.153(e).

Subchapter D. Network Requirements.

Section 10.60. The amendments to §10.60 add more complete statutory citations and make changes to conform to current department language preferences and drafting practices. In addition, the amendments:

- provide that, upon notification that health care services are being provided through the network, an employee living within the service area of a network and who is being treated by a non-network provider for an injury that occurred before the employer's insurance carrier established or contracted with that network, may select a network treating doctor from a list of contracted doctors or request a doctor who the employee selected before the injury as the employee's primary care physician or provider under Insurance Code Chapter 843;

- remove the Health Maintenance Organization Division mailing address from the list of places from which a sample acknowledgment form may be obtained because there is no longer a program area named "Health Maintenance Organization Division;"

- revise language regarding retaliation to reflect the language of Insurance Code §1305.404;

- require the clear identification of providers who provide telehealth service, telemedicine medical service, or teledentistry dental service in lists of certified network providers, so it will be clear to injured employees, providers, certified networks, and the department who is providing these services;

- clarify that the failure of an employer or carrier, as applicable, to establish a standardized process for complying with the delivery of notice of network requirements in this section creates a rebuttable presumption that the employee has not received the notice and is not subject to network requirements; and

- provide that a dispute regarding whether an employer or carrier properly provided the information required by §10.60 to an employee may be resolved by requesting a benefit review conference as provided under Insurance Code §1305.103(c) and §1305.451(e).

The department revised the proposed amendments to §10.60(b) by placing the word "may" at the end of §10.60(b), rather than the beginning of §10.60(b)(1). The department also revised the proposed text by adding a comma after the word "section" in proposed §10.60(e). In addition, the department changed proposed §10.60(f)(2)(A)(i) by replacing a comma with a semicolon after the word "network," and the department made a change from the proposal to add a comma after the word "name" in §10.60(f)(3).

In response to comments, the department declined to adopt proposed new §10.60(g), which would have provided for an employer and carrier to determine which party would be responsible for obtaining a signed acknowledgment form. As part of this change from the proposed text, the department declined to establish a new §10.60(h), and it retained text that would have been deleted as part of the proposed change. For consistency with these changes, the department redesignated the subsections that follow §10.60(g) to reflect that new §10.60(g) is not adopted, and the department made additional changes to the proposal to delete references to "responsible party" in §10.60(b), (c), (e), (i), (j), and (k), as adopted.

The department made changes to §10.60(g) as adopted to add "concerning Treating Doctor; Referrals" following the citation to Insurance Code §1305.103(c) and to replace the word "shall" with "must" to conform to current department language preferences and drafting practices. The department revised proposed §10.60(h)(14)(A) to change "telehealth services, telemedicine medical services, or teledentistry dental services" to "a telehealth service, telemedicine medical service, or teledentistry dental service" for consistency in terminology within the rule text.

In response to a comment, the department declined to adopt proposed §10.60(k). The subsections that followed proposed §10.60(k) have been redesignated as appropriate to reflect this change from the proposed text.

Section 10.61. The amendments to §10.61 add more complete statutory citations and make changes to conform to current department language preferences and drafting practices. The amendments also add a reference to the rules of the Division of Workers' Compensation to provide guidance regarding treatment for compensable injuries to non-network providers.

In response to a comment that deleting §10.61(d) would remove the ability of an employee and network to agree that the employee may participate in a network even though the employee does not live within the network service area, the department retained §10.61(d). For consistency with this change, the department redesignated proposed §10.61(e) and (f) as §10.61(f) and (g) in the adopted text.

Section 10.62. The amendments to §10.62 make changes to conform to current department language preferences and drafting practices.

Section 10.63. The amendments to §10.63 add more complete statutory citations and make changes to conform to current department language preferences and drafting practices.

Subchapter E. Network Operations.

Section 10.80. The amendments to §10.80 make changes to conform to current department language preferences and drafting practices. The amendments also:

- clarify that providers must be licensed to practice in this state, unless exempt from licensing requirements;

- clarify that network adequacy is measured by the number of contracting doctors and specialists, not noncontracted ones;

- replace a requirement to give the reason or reasons that health care services or providers cannot be made available for each geographic area identified as not having adequate health care services or providers available with requirements to list the providers or physicians a certified network attempted to contract with, how and when the certified network contacted each provider, and a description of a reason each provider gave for declining to contract with the certified network to more closely track 28 TAC §3.3707, because these descriptions have resulted in better reporting by carriers and better oversight by the department;

- remove duplicative requirements in current §10.80(g)(4)(B) and (C), which are already included in §10.80(f) and new subsection (g)(6); and

- provide specific reporting requirements in §10.80(g)(5) when a general hospital is not available in an approved nonrural county, or a general acute hospital is available in an approved nonrural area but refuses to contract with the certified network.

Section 10.81. The amendments to §10.81 add more complete statutory citations and make changes to conform to current department language preferences and drafting practices. In addition, the amendments:

- remove a separate reference to retrospective review because a statutory change since the creation of the rule added retrospective review to the definition of utilization review;

- require certified networks to maintain documentation demonstrating that doctors who provide certifications of maximum medical improvement or assign impairment ratings to injured employees are authorized to do so under 28 TAC §130.1; and

- remove a now-obsolete subsection (g), dealing with actions permitted until January 1, 2007.

The department made a change to §10.81(c)(1) as proposed to change "the Joint Commission on Accreditation of Healthcare Organizations" to "The Joint Commission."

Section 10.82. The amendments to §10.82 make changes to conform to current department language preferences and drafting practices. The amendments also:

- substantially shorten the section, simplify the process for selection and retention of preferred providers, and make the process more cost effective by replacing lengthy and detailed credentialing requirements with nationally promulgated processes;

- reduce certified network effort and inquiries by including a reminder that requirements of §10.41 apply to delegation of credentialing; and

- allow time for compliance with the amendments by permitting entities subject to §10.82 to comply with the section as it currently exists until January 1, 2023; entities will have until January 1, 2023, to make a filing attesting to compliance with the rule amendments.

The department revised §10.82(a) as proposed to capitalize the word "the" before "Joint Commission."

In response to comments to change the September 23, 2022, compliance date in proposed §10.82(d) for credentialing standards, the department changed the date to January 1, 2023.

Section 10.83. The amendments to §10.83 make changes to conform to current department language preferences and drafting practices.

The department revised §10.83(a) as proposed to add "be" before "designed," for consistency with Insurance Code §1305.304 and 28 TAC §10.22(20).

Section 10.84. The amendments to §10.84 add more complete statutory citations and make changes to conform to current department language preferences and drafting practices.

Section 10.85. The amendments to §10.85 add more complete statutory citations and make changes to conform to current department language preferences and drafting practices.

Section 10.86. The amendment to §10.86 makes a change to conform to current department language preferences and drafting practices.

Subchapter F. Utilization Review.

The amendments delete "and Retrospective Review" from the title of the subchapter because a statutory change since the creation of the subchapter added retrospective review to the definition of utilization review.

Section 10.100. The amendments to §10.100 correct obsolete citations and add more complete statutory citations.

Section 10.101. The amendments to §10.101 make changes to conform to current department language preferences and drafting practices. The amendments also:

- remove separate references to retrospective review because retrospective review is a part of utilization review;

- add new subsections (c) and (d) to address Labor Code §§408.0043 - 408.0045 requirements relating to qualifications for utilization review reviewers and track the language currently used in the utilization review agent rules;

- add new subsection (e) to clarify the requirements that apply to health care providers through a certified network, as authorized by Labor Code §413.014;

- add new subsection (f) to shorten and simplify the rule by referring to the requirements of Insurance Code Chapter 1305 and 28 TAC Chapter 19, Subchapter U, rather than repeating the requirements of these statutes and rules in §10.102 and §10.103; and

- add new subsection (g) to include a requirement that reconsideration procedures must include a method for expedited reconsideration under Insurance Code §1305.354(b) and (c).

Section 10.102 and §10.103. Section 10.102 and §10.103 are repealed. The general standards for utilization review addressed in those sections are replaced with new subsections in §10.101.

Section 10.104. The amendments to §10.104 update obsolete statutory citations, add more complete statutory citations, and make changes to conform to current department language preferences and drafting practices. In addition, the amendments:

- insert references to Insurance Code Chapter 1305, Subchapter H, and department and Division of Workers' Compensation rules to clarify applicable requirements for compliance;

- reformat and redesignate some subsections of the rule;

- remove separate references to retrospective review because retrospective review is now included in the definition of utilization review;

- update a reference to conform to the redesignation of subsections;

- shorten and simplify the rule by citing Insurance Code §1305.354(a)(4) and 28 TAC §133.308(k) rather than listing requirements previously contained in §10.104(b)(2)(A) - (E);

- add new subsection (g) to conform to Labor Code §413.0311; and

- note, for the convenience of participants, that the department and the Division of Workers' Compensation are not considered to be parties to a medical dispute.

Subchapter G. Complaints.

Section 10.120. The amendments to §10.120 make changes to the section to conform to current department language preferences and drafting practices and provide clarity to providers and certified networks by clarifying that a complaint relating to a fee dispute is a complaint from a provider regarding the failure to pay a claim in accordance with the contract between the certified network and provider.

In response to a comment to change the language concerning "a network's failure to pay," the department deleted "the network" in proposed §10.120(b) because a health care network is not always the payor.

Section 10.121. The amendments to §10.121 make changes to conform to current department language preferences and drafting practices. The amendments also:

- require resolution letters to explain the certified network's procedures and deadlines for filing an appeal of the complaint;
- require the maintenance of a complaint-and-appeal log because a record of complaints is more useful if a record of appeals is included; and
- remove a reference to retrospective review.

The department changed proposed §10.121(e) in response to a comment for clarification on the meaning of the term "complaint appeal" by removing the term. The language now states that each network must maintain the required complaint-and-appeal log and documentation on each complaint, appeal, complaint proceeding, and action taken on the complaint until the third anniversary after the date the complaint was received.

Section 10.122. The amendments to §10.122 remove specific email addresses contained in the section to avoid providing incorrect information if the addresses change. The amendments also add a provision stating that the complaint form may be obtained from the department's website.

Subchapter H. Examinations.

Section 10.200. The amendments to §10.200 add more complete statutory citations, make changes to conform to current department language preferences and drafting practices, and make revisions to eliminate confusion among regulated entities by clarifying that examination fees are payable to the department at the address shown on the invoice.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: The department received written comments from 27 commenters, and two of the commenters also spoke at a public hearing on the proposal held on April 13, 2022. Commenters in support of the proposal with changes were American Property Casualty Insurance Association, Coventry, Jackson Star Consulting LLC, North Texas Pain Recovery Center, Office of Injured Employee Counsel, Stone Loughlin Swanson, and 20 individuals.

Comments on proposed rules generally

Comments. Two commenters expressed general support for the proposed workers' compensation health care network rules. One commenter supports updating the rules to add complete statutory citations and simplifying and updating rule language. Another commenter states that the amendments help reduce existing burdens on networks and carriers for supplying unnecessary data requirements, make the credentialing process more efficient and consistent with national standards, make the rules more consistent with statutory amendments, and update the rules by deleting obsolete references to statute.

Agency Response. The department appreciates the support.

Comment on §10.2

Comment. A commenter addresses the definitions for "preauthorization" and "service area" in §10.2, saying that they appear to have been updated in the proposed rule but do not align with definitions for the same terms contained in Insurance Code §1305.004(a)(19) and (24), respectively. The commenter requests aligning the definitions.

Agency Response. The department agrees to change the definition for "service area" in proposed §10.2(a)(33) for consistency with Insurance Code §1305.004(a)(24) by stating that "service area" has the meaning assigned by Insurance Code §1305.004.

The department declines to change the "preauthorization" definition, which conforms with the definition of "utilization review" under Insurance Code §4201.002(13) to include prospective, concurrent, and retrospective review. This definition is also consistent with Labor Code §413.014 and 28 TAC §134.600(a)(7).

Comment on §10.22

Comment. A commenter says that the requirement to include information about providers of telehealth service, telemedicine medical service, or teledentistry dental service in each certification application benefits the Texas workers' compensation system. The commenter states that as the use of these types of services increases, tracking these providers ensures compliance with the Labor Code and Division of Workers' Compensation rules and that these changes will simplify the application process and shorten processing times. The commenter says that requiring applicants to verify that the certified network doctors have completed training and testing required by the Labor Code and Division rules ensures that qualified doctors are available to help injured employees of Texas.

Agency Response. The department appreciates the support.

Comment on §10.22(10)

Comment. One commenter requests not requiring networks to provide credentialing information. The commenter explains that this is a manual process to complete and is administratively burdensome. The commenter states that with the revised credentialing requirements, a networks' NCQA/JCAHO/URAC accreditations could be considered by the state to be sufficient to demonstrate that providers within the network are appropriately credentialed, without a redundant separate listing of credentialing detail.

Agency Response. The department does not agree that the process to submit credentialing information is overly burdensome and declines to waive or otherwise modify the submission requirement. The department notes that credentialing information is only required to be submitted upon request, and the department has the option to verify the network's credentialing process upon request. The request would be in conjunction with a desk audit, complaint review, or an examination. This does not require an annual report and TDI does not expect it to be too burdensome for networks that are in compliance with the national accrediting standards.

Comment on §10.22(11)(A)

Comment. A commenter describes concerns about the requirement that a certificate application include maps that demonstrate compliance with the access and availability standards under Insurance Code Chapter 1305. The commenter says that providing a map for each and every specialty would be costly and overly burdensome and that creating maps for each specialty, including specialties that are not commonly involved in the treatment of workplace injuries, far outweighs the benefit such maps could provide. The commenter suggests that only specialties commonly related to the treatment of workplace accidents should be included in the maps. The commenter states that many networks include some providers in specialty areas that are not commonly needed to treat workplace industries, such as pediatric care, obstetrics and gynecology, urology, and nuclear medicine. The commenter notes that the current regulations discuss "the adequacy of the network configuration to provide comprehensive health care services sufficient to serve the population of injured employees within the service area" and suggests that the maps

in the proposed rule should likewise be limited to only those specialties adequate to serve the population of injured workers.

Agency Response. Although the number of maps for certain specialties can change, the department currently requests that workers' compensation networks submit maps for 21 specialties as opposed to group health plans, which submit maps for 42 specialties. Given the difference, the department does not anticipate that providing these maps will be overly burdensome. The changes made to the requirements for network adequacy reviews were done to standardize network review for all networks, including group health and certified workers' compensation health care networks. Furthermore, the department believes that network maps should contain providers who can provide the most commonly needed services for injured employees. Therefore, the department declines to further limit the specialties for which maps are required under this rule.

Comment on §10.22(11)(B) - (F)

Comment. A commenter requests confirmation that, when sharing provider data under proposed §10.22(11)(B) - (F), the required data elements include only the following (by provider category):

- Individual Providers: Name, Address, Specialty, Board Certifications, License Numbers, Hospital Affiliations, Accepting New Patients, and MMI/IR Certificates

- Telemedicine Offering Facilities: Name, Address, FEIN, License, Facility Type, Accepting New Patients, and Telemedicine Offering

The commenter also states that some recently submitted filings require additional data elements, such as credentialing dates and status, initial versus re-credentialing, hospital-based provider status, and telephone number.

The commenter also states that facility FEIN is not included in the state's current file layout but is referenced in the rule. The commenter requests clarification in the rules to streamline the process and to make certain the state receives the information in a timely and efficient manner.

Agency Response. The department declines to modify the rules in response to this comment, but notes that only elements included in statute and rule are required to be submitted, and no amendments were proposed to the existing data elements in §10.22(11)(B) - (E).

Comment on §10.22(11)(F)

Comment. A commenter discusses telehealth, noting that is an emerging field and medical providers, networks, carriers, and the public are currently, and on an ongoing basis, gauging the appropriate extent of the scope of telehealth and telemedicine. The commenter says that new developments in telehealth as an effective and appropriate way to provide medical services have been highlighted recently during the pandemic. The commenter states that, due to the fluid nature of the emerging practice of telemedicine, and providers adopting telemedicine processes on either a temporary or permanent basis, and perhaps, at times, disengaging from telemedicine, it is not possible to state categorically whether a provider may be offering telemedicine services at a particular time. Based on this, the commenter recommends that proposed §10.22(11)(F) not be included in the adopted rule.

Agency Response. The department disagrees with removing proposed §10.22(11)(F). Because telehealth, telemedicine medical, and teledentistry dental services are part of an emerging

field that is being utilized by patients more often, injured employees should be able to use the directory to find providers that provide those services.

Comment on §10.24(b)(1)

Comment. In regard to §10.24(b)(1), a commenter says that carriers do not want to receive the network's financial information and that carriers do not review them. The commenter says the annual filing includes confidential financial information, so changes should be made to allow for provision of these documents only upon request. The commenter proposes alternative text to effectuate this recommendation.

Agency Response. The department disagrees with the suggested changes because the commenter's concerns are outside the scope of the proposed rules. The financial statement submission requirements exist in the current rule, and the department only proposed nonsubstantive changes to §10.24(b)(1).

Comment on §10.25(a)(2)

Comment. A commenter recommends changing §10.25(a)(2) because most books and records are now housed electronically and not at a physical location. The commenter recommends that any updates to the "Physical Location of Books and Records" exhibit be filed as an information-only filing rather than 30 days before use and requiring the department's approval.

Agency Response. The department disagrees with the suggested changes because the commenter's concerns are outside the scope of the proposed rules. The filing requirement at issue currently exists in §10.25(a)(2), and the department proposed only nonsubstantive changes to the rule.

Comments on §10.27(b)(3)

Comment. A commenter expresses concern with the language "and any statements or restrictions on services that can be provided via telehealth service, telemedicine medical service, or teledentistry dental service" in §10.27(b)(3). The commenter states that it would be unduly complicated and burdensome for the department to require insurers to include "any statements or restrictions" on telehealth services in the directory because that could potentially be an extensive amount of information, which would be unrealistic to display in the directory and could be confusing to a claimant. The commenter says that because of the fluid nature of the emerging practice of telemedicine and because providers sometimes adopt telemedicine processes on either a temporary or permanent basis and at times disengaging from telemedicine, it is not possible to state categorically whether a provider may be offering telemedicine services at a particular time. The commenter recommends deleting the proposed provision.

Another commenter states that many health care networks previously submitted a summary of their telemedicine services to the department before the drafting of the proposed rules, in response to the overwhelming demand for telemedicine services seen during the pandemic. The commenter requests clarification in the rule that health care networks that have already submitted a summary of their telemedicine services to the department have already satisfied this requirement. The commenter also states that if the intention of the proposed rules is to require a duplicate material modification filing for telemedicine services, then the department should allow at least 90 days from the effective date of the rules for health care networks to gather necessary documentation to file the material modification.

Agency Response. Section 10.27(b)(3) applies to modifications made on or after January 1, 2023. The department disagrees with adding language to clarify that networks that have already submitted a summary of their telehealth service, telemedicine medical service, or teledentistry dental service to the department prior to the rule adoption will have already satisfied this requirement. The department also disagrees with deleting §10.27(b)(3). Because telehealth, telemedicine medical, and teledentistry dental services are part of an emerging field, it is important that health care networks inform the department about adding or modifying those services. Also, injured employees should be able to use the directory to find providers that provide those services. Provider directories exist to provide prospective patients with information to choose a provider that will meet their needs. Including the telehealth and telemedicine information via a legend or key in the directory should not be overly burdensome for the workers' compensation health networks and will provide injured employees with adequate information to select the appropriate provider for their needs. Group health provider directories already provide this information in an effort to better serve their members.

Comment on proposed §10.41(a)

Comment. A commenter states that, while the proposed language is taken from Insurance Code §1305.154, the draft rule omits the statutory language that network-carrier contracts are to remain confidential and are not subject to disclosure as public information. It is critical that such contracts remain confidential, in accordance with the statute. The commenter recommends that the language of proposed §10.41(a) not be adopted or, if adopted, that text based on the statutory language regarding confidential information be added to the rule.

Agency Response. The department has not included the text of proposed §10.41(a) in the adoption because it is not necessary to repeat Insurance Code §1305.154(a) in rule.

Comment on proposed §10.41(b)(7) (which is adopted as §10.41(a)(7))

Comment. A commenter states that many carriers do not wish to receive the specified data that networks provide to comply with monthly reporting requirements under proposed §10.41(b)(7); they would instead prefer to receive it only when requested. The commenter states that the required data list includes confidential information, including protected health information for injured workers and a network's financial records. The commenter suggests limiting distribution to ensure that only those who need the data for a valid purpose have access. The commenter proposes alternative text to effectuate its recommendation.

The commenter states that removing the burden of providing reports that the carrier may not want to receive helps to improve administrative efficiency for both the network providers as well as payors.

Agency Response. The department disagrees with the suggested changes because the commenter's concerns are outside the scope of the proposed rules. The filing requirement at issue existed in the rule prior to proposal, and the department proposed only one substantive amendment: the new requirement to include the claim number in the filing. The commenter does not specifically object to the inclusion of claim numbers, but objects to the existing filing requirement in general. As such, the commenter's concerns are outside the scope of this rulemaking.

Comment on proposed §10.41(b)(19) (which is adopted as §10.41(a)(19))

Comment. A commenter says that with §10.41(a)(19) the rules add a beneficial requirement for a delegate of the health care network to notify the health care network if the delegate further subdelegates services. The commenter also notes that the rule would require that a health care network delegate have a formal delegation agreement in place with the subdelegate. However, the commenter observes that the section does not specify whether the health care network is required to provide notification to the state of the subdelegation, and the commenter suggests that the section be modified to indicate whether state notification is required and, if it is required, provide that notification must follow the current standard 30-day notification time frame, measured from the date that the health care network is notified of the delegate's agreement with the subdelegate.

Agency Response. The department declines to make the suggested change because it is unnecessary. Insurance Code §1305.102(a) already provides that a network may not enter into a contract with another network for management services unless the proposed contract is first filed with the department and approved by the Commissioner. Also, Insurance Code §1305.154(c)(11) already provides that a network's contract with a carrier must include a provision that requires the network to provide to the department the license number of a management contractor or any delegated third party who performs a function that requires a license as a utilization review agent under Chapter 4201 or any other license under the Insurance Code or another insurance law of this state.

Comment on §10.42

Comment. A commenter supports the changes that require billing and payment to comply with rules governing billing and payment for maximum medical improvement and impairment rating. The commenter states that this change will ensure that providers and certified networks comply with billing and payment requirements.

Agency Response. The department appreciates the support.

Comment on §10.42(b)(2)

Comment. A commenter expresses support for the closed formulary adopted by the Division of Workers' Compensation under §134.540. The commenter states that, as provider contracts are largely standardized across states and products, there are no state-specific statutory references contained in the main contract itself, which allows for operational efficiency. For this reason, the commenter suggests that §10.42(b)(2) be clarified to note that reference to the specific Texas formulary by rule number is not necessary in the text of the provider contract, as long as the provider contract refers to compliance with state formularies as applicable by state law as a condition of contracting.

Agency Response. The department declines to remove the specific Texas formulary references. While the department understands that generic contracts can be used across states and products, this rule addresses workers' compensation coverage, and the applicable reference is necessary. This reference provides clarity to participants in the state of Texas workers' compensation system, and that benefit outweighs any burden to include the specific references, which the department believes to be minimal anyway.

Comment on §10.42(b)(13)

Comment. A commenter acknowledges that §10.42(b)(13) has been modified to add a requirement that network contracts include a statement that provider billing and payments will be made in compliance with rules governing the billing and payment for certification of maximum medical improvement and impairment rating examinations. The commenter states that each health care network provider is contractually required to comply with all applicable federal and state laws and regulations as a standard term of engagement. The commenter states that its Texas contracts currently mention the Labor Code and DWC rule requirements for maximum medical improvement and impairment rating training. The commenter recommends clarifying §10.42(b)(13) to state that specific reference to the billing and payment for MMI/IR is not required, as long as the provider contract references compliance with state law generally as a condition of provider contracting.

Agency Response. The department disagrees with removing the reference to Labor Code §408.027 and rules governing the billing and payment for certification of maximum medical improvement and impairment rating examinations. While the department understands that generic contracts can be used across states and products, this rule addresses workers' compensation coverage, and the applicable reference is necessary. This reference provides clarity to participants in the state of Texas workers' compensation system, and that benefit outweighs any burden to include the specific references, which the department believes to be minimal anyway.

Comment on §10.42(b)(15)

Comment. A commenter states that, although an insurer may not deny payment for services provided before the issuance of the notice that the injury was not compensable, Insurance Code §1305.153(e) sets a \$7,000 cap on such reimbursements. The commenter says that §10.42(b)(15) should state the \$7,000 maximum reimbursement amount.

Agency Response. The department declines to make the change because it believes repeating the statutory language in the rule text is unnecessary.

Comment on §10.60

Comment. A commenter recommends that the employee notification requirements of §10.60 be triggered at the time of injury only. The commenter believes that requiring notification of the health care network at the time of injury only would greatly reduce unnecessary notice and record-keeping burdens on employers and would likely promote greater use of a health care network.

Agency Response. The department declines to make the recommended change. The timing requirements for employee notification are set in Insurance Code §1305.005 and §1305.103.

Comment on §10.60(d)(1)

Comment. A commenter suggests removing the "10 percent or more" threshold for requiring the acknowledgment form to be provided in a language other than English and Spanish. The commenter states that as the Texas workforce becomes more diverse, the "10 percent or more" threshold will exclude some non-English speakers from receiving notice of network requirements. The commenter also states that it is not clear whether the 10 percent refers to a geographic location or the total number of employees at the employer, and that the threshold is not required by Insurance Code §1305.005 or §1305.041.

Agency Response. The department declines to make the suggested change. The department did not propose changes to §10.60(d)(1), thus the commenter's suggestions are outside the scope of the proposed rules.

Comments on proposed §10.60(g)

Comments. Twenty-five commenters object to the provision in §10.60(g) allowing a carrier and employer to determine which of the two is responsible for obtaining a signed employee acknowledgment form, stating that the provision is in conflict with and not permitted under Insurance Code §1305.005. The commenters state that after the passage of the 2005 Workers' Compensation Act, and during the original rulemaking process, the department recognized that the Insurance Code named the employer as the party responsible for delivering notice of network requirements to employees. The commenters state that the proposed change appears to contradict a prior agency position.

Another commenter states that the proposed changes would make Insurance Code §1305.103(c) meaningless. The commenter also states that mailing the notice to an injured employee has not been considered proper notice in the past, and no change in the law has taken place to initiate such a change. The commenter says that the department stated in the original adoption order that even a certified mail receipt cannot be considered proper notice. The commenter states that a carrier cannot truthfully document a refusal when an employee does not return the mailed acknowledgment form. The commenter cites §10.60(j) to provide that a standardized documentation of delivery of notice must contain the delivery date, delivery location, and to whom the notice was delivered. The commenter states that mailing the notice cannot possibly satisfy these requirements since mailing and delivery are different. The commenter further states that part of the employer's responsibility to notify employees under Insurance Code §1305.005(d) is to post a notice of network requirements at each place of employment. If an agreement that the carrier is responsible for the network notice is reached, it is then incumbent on the carrier to go to each place of employment and post the required notice.

Some commenters say they fail to see the need for this amendment to §10.60. The commenters state that its adoption would likely lead to confusion about who has responsibility for network notification.

A few commenters state that Insurance Code §1305.005(d), (e), and (g) clearly state that the employer must provide notice of network requirements at the time of hire and after notice of an injury. The commenters oppose the proposed rule changes to §10.60(g) because they say (1) the changes go beyond the agency's assigned rulemaking and changes the law, (2) it will create an undue burden on injured employees and make their understanding of the rules more difficult, (3) it will create more confusion regarding the process, and (4) that there is no compelling reason for the rule changes. The commenters also state the proposed rule will increase taxpayer cost.

Some commenters state that the employer should remain the responsible party for delivering the notice of network requirements and obtaining the employee's signature of receipt. The commenters state that the employer already has a relationship with the employee, and since it is typically done in person, the injured employee can ask questions, if needed. The commenters state that, in their experience, many of the employees have a limited understanding of workers' compensation insurance matters and have questions. The commenters state that, given the lack

of a prior relationship and an injured employee's skepticism of the insurance carrier, it would be a disservice to an injured employee to have the carrier supply this notice through a remote method such as mail, email, or a telephone conversation. The commenters state as well that the proposal would also increase the cost to the department, and the taxpayer, as it mandates additional record keeping.

One commenter recommends additional changes to include a deadline for the carrier and employer to reach an agreement and to obtain a signed acknowledgment form. The commenter states that an untimely agreement might delay providing notice of network requirements to the employees. The commenter states that delays in providing notice deprive employees of their rights under the law.

Agency Response. In response to these comments, the department has removed proposed §10.60(g) and its requirement for an employer and carrier to determine which party will be responsible for obtaining a signed acknowledgment form from the text as adopted and has also not adopted the references to "responsible party" in adopted §10.60(b), (c), (e), (i), (j), and (k).

Comment on proposed §10.60(i)(14)(A) (which is adopted as §10.60(h)(14)(A))

Comment. A commenter states that, because of the fluid nature of the emerging practice of telemedicine, and providers adopting telemedicine processes on either a temporary or permanent basis, and perhaps, at times, disengaging from telemedicine, it is not possible to state categorically whether a provider may be offering telemedicine services at a particular time. The commenter recommends that the references to telehealth service, telemedicine service, and teledentistry dental service not be included in the adopted text.

Agency Response. The department disagrees with removing the references to telehealth service, telemedicine service, and teledentistry dental service from the rule text. Telehealth services, telemedicine services, and teledentistry dental services are being utilized by patients more frequently, and often are the preferred method of engagement for many providers and patients. For this reason, the department believes this information should be included in the list of network providers.

Comment on proposed §10.60(k)

Comment. A commenter states that the statute does not require an employee to sign the acknowledgment form, and because of this, the employer or carrier should not be required to retain signed forms as specified in proposed §10.60(k). The commenter proposes alternative text to effectuate its recommendation.

Agency Response. The department has removed proposed subsection (k) from the text of §10.60 in response to this comment. The department acknowledges that Insurance Code §1305.005(f) does not require a signed acknowledgment form for the network requirements to be applicable, provided that the employee receives the notice and acknowledgment form as required by Insurance Code §1305.005(d)(1) and §10.60(g).

Comment on §10.61

Comment. A commenter opposes the proposed deletion of §10.61(d). The commenter says that deleting subsection (d) would remove the ability of an employee and network to agree that the employee may participate in a network even though the employee does not live within the network service area. The

commenter states that subsection (d) is beneficial to injured workers because it gives them more opportunities for appropriate treatment. The commenter states this is particularly true for injured workers who live in rural areas outside a network service area but work in urban areas inside the network service area. The commenter states that these workers often choose to receive treatment with network providers near their workplace, and giving such workers this option provides more opportunities for treatment. The commenter also states that deletion of subsection (d) is not required by Insurance Code §1305.451.

Agency Response. The department agrees to not delete §10.61(d).

Comments on §10.80(g)(4), (5), and (6)

Comment. A commenter opposes new paragraphs (5) and (6) because they would impose burdensome documentation requirements on networks that exceed the requirements of Insurance Code §1305.301 and §1305.302. The commenter says the rule should require only that networks demonstrate good faith attempts to obtain provider contracts as required by Insurance Code §1305.302(h)(2).

Another commenter says that a health care network would be required to submit significant detail related to contracting efforts in service areas where the department has determined the health care network has not met availability and accessibility standards under proposed §10.80(g)(4)(A) and (B), (g)(5)(A) and (B), and (g)(6)(A) and (B). The commenter states that while it appreciates that the department is working diligently to ensure that the needs of injured workers in the state are being met by requiring outreach efforts to providers in less-served areas, the proposed language should be streamlined to require a more general overview of contracting efforts within a service area to protect the proprietary nature of the contracting process. The commenter suggests as an alternative that if detailed contact information in underserved areas continues to be required, the rules should be clarified to mandate that detailed documentation needs to be included only on a prospective basis and only at such time as when the health care network undergoes a material modification to a network service area.

The commenter also states that the rules should be clarified to mandate that any information shared with the department under these sections would be kept confidential and out of the public record to protect the proprietary and competitive nature of contracting with providers across the state.

Agency Response. The department disagrees with deleting or limiting the requirements in §10.80(g)(4), (5), and (6). Networks should be able to provide the information in §10.80(g)(6), which includes a list of physicians, providers, and facilities within the service area with whom they attempted to contract but were unsuccessful. Without a list, the department cannot determine that a good faith effort to contract was made. Under §10.80(g)(4), an access plan must include a network development and contracting plan. The department needs this information to ensure the network can provide all necessary care to injured employees, and provide a plan for how care will be made available when a contracted provider is not available in the service area. The contracting plan can include elements such as continued attempts to contract with providers in the service area, case by case arrangements for specific injured employees, and when there is a gap in the network's availability and accessibility. Similarly, the department needs the information specified in §10.80(g)(5) in order to approve an access plan for a nonrural

county without a hospital contract. The required information can show whether the network made a good-faith effort to contract with the available facilities, and whether alternative facilities are available to provide the necessary care for an injured employee.

Also, in response to the comment regarding the prospective submission of information, the department notes that the lists required in §10.80(g)(5) and (6) must be provided after the effective date of this rule. In addition, while the department is not authorized to make records confidential by rule, it will follow the requirements of the Public Information Act (Government Code Chapter 552) and any other relevant laws.

Comment on §10.80(g)(5)(B)

Comment. A commenter requests that the department define and clarify which facilities would be "nonacute care facilities that can provide required acute hospital services" under §10.80(g)(5)(B). The commenter asks if urgent care facilities, freestanding ERs, walk-in clinics, ambulatory surgical centers, and the like would be included within this definition.

Agency Response. Examples of acute hospital services include emergency care, intensive care, coronary care, cardiology, and neonatal intensive care. However, the department is unable to definitively confirm that urgent care facilities, freestanding ERs, walk-in clinics, ambulatory surgical centers, and other similar facilities meet the standard in §10.80(g)(5)(B) because the department does not license facilities or regulate what services each can provide.

Comment on §10.81

Comment. A commenter supports the proposed changes to §10.81 requiring certified networks to maintain documentation demonstrating that doctors who provide certifications of maximum medical improvement and impairment rating to an injured employee are authorized to do so under Division of Workers' Compensation rules.

Agency Response. The department appreciates the support.

Comment on §10.82

Comment. A commenter expresses support for §10.82 as proposed because it simplifies the credentialing requirements within the health care networks, which would be an extremely positive change for networks in Texas. The commenter states that this would align Texas requirements and workflows with the credentialing practices and standards accepted across the country. Also, under these updated credentialing standards, the site visit requirement would be removed, which is also in line with national guidelines.

Agency Response. The department appreciates the support.

Comments on §10.82

Comment. A commenter requests that the department not require networks to provide credentialing information. The commenter explains that this is a manual process to complete and is administratively burdensome. The commenter states that with the revised credentialing requirements, a networks' NCQA/JC-AHO/URAC accreditations should be considered by the state to be sufficient to demonstrate that providers within the network are appropriately credentialed, without a redundant separate listing of credentialing detail.

Another commenter states opposition to new §10.82(a) because it would impose new, unpublished credentialing standards that

networks are unable to evaluate if they do not have access to them by virtue of being accredited or certified by NCQA or URAC. The commenter requests that the department publish the credentialing standards promulgated by those two entities so that networks that are not accredited by them can properly evaluate whether the proposed credentialing standards are feasible.

Agency Response. The department declines to remove the requirement in §10.82(a) to provide credentialing information to the department when requested. The department wants to make certain networks are following the credentialing requirements for their provider panels. The department does not require that the information be provided annually, but only upon request by the department. This limitation should reduce the burden on networks. The department also disagrees with the recommendation to publish the credentialing standards promulgated by NCQA and URAC because the credentialing standards are proprietary, and the department does not have permission to post or publish them. However, the standards are available from the accrediting bodies for a minimal cost and can be purchased separately from accreditation. Most of the networks also do group health and will already have access to the standards, as they are required to use the standards in group health.

Comments on §10.82(d)

Comment. A commenter requests a change to §10.82(d), which sets a deadline of September 23, 2022, for compliance with the proposed credentialing standards. The commenter states that networks will need time to revise their credentialing processes to comply with the new standards, and the deadline of September 23, 2022, may not provide enough time for compliance. The commenter requests that the department revise subsection (d) to provide 180 days for compliance. The commenter proposes alternative text to effectuate its recommendation. Another commenter requests that the compliance date be set for 12 months after final adoption of the rules.

Agency Response. The department agrees to make a change to subsection (d) as adopted and has changed the compliance deadline to January 1, 2023. The department declines to change the compliance deadline to 12 months after the adoption date because it does not believe it will require 12 months for networks to be compliant. The amended credentialing standards streamline the process by eliminating several outdated procedures currently being performed by networks. The re-credentialing time frames remain in place. The change will be in credentialing any new providers using the streamlined, nationally accredited processes.

Comment on §10.101

Comment. A commenter opposes §10.101(d) because the provision can be read to mean that only doctors and dentists may perform utilization review and nurses may not do so. The commenter states that the second sentence states that physicians, doctors, and other health care providers conducting utilization review "must have the appropriate credentials as required by Chapter 180," and the relevant rule in Chapter 180 appears to be 28 TAC §180.1(4), which defines "appropriate credentials," and which mentions only physicians, dentists, and chiropractors. The commenter asks the department to revise §10.101(d) to clarify that the subsection does not prohibit nurses from performing utilization review on initial requests where no adverse determination is issued. The commenter proposes alternative text to effectuate its recommendation.

Agency Response. The department declines to make the requested change. The language in §10.101(d) is consistent with the language in the utilization review rules under §10.200(a).

Comment on §10.120(b)

Comment. A commenter states that §10.120(b) references a "network's failure to pay." The commenter states that this language should be modified because in many cases the health care network is not the payor. The commenter explains that, although a health care network provider would be very involved in managing the research and response to the fee dispute and ensuring the payment level recommended is appropriate, the payment itself would be made by the health care network insurer.

Agency Response. The department agrees and has changed the language to delete the words "the network."

Comment on §10.121(e)

Comment. A commenter requests clarification on the meaning of the term "complaint appeal."

Agency Response. The department has removed "complaint appeal" from the adopted rule. The language now states that each network must maintain the required complaint-and-appeal log and documentation on each complaint, appeal, complaint proceeding, and action taken on the complaint until the third anniversary after the date the complaint was received.

SUBCHAPTER A. GENERAL PROVISIONS AND DEFINITIONS

28 TAC §§10.1 - 10.3

STATUTORY AUTHORITY. The Commissioner adopts amendments to §10.1 and §10.2 and new §10.3 under Insurance Code §§1305.007, 4201.003, and 36.001.

Insurance Code §1305.007 provides that the Commissioner may adopt rules as necessary to implement Chapter 1305, concerning Workers' Compensation Health Care Networks.

Insurance Code §4201.003 provides that the Commissioner may adopt rules as necessary to implement Chapter 4201, concerning Utilization Review Agents.

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.

§10.2. Definitions.

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

(1) Administrator--Has the meaning assigned by Insurance Code §4151.001, concerning Definitions.

(2) Adverse determination--A determination by a URA made on behalf of a payor that the health care services provided or proposed to be provided to an injured employee are not medically necessary or appropriate. The term does not include a denial of health care services due to the failure to request prospective or concurrent utilization review. For the purposes of this subchapter, an adverse determination does not include a determination that health care services are experimental or investigational.

(3) Affiliate--Has the meaning assigned by Insurance Code §1305.004, concerning Definitions.

(4) Capitation--Has the meaning assigned by Insurance Code §1305.004. The term includes predetermined payment to cover the average costs of services for a defined episode of care.

(5) Complainant--Has the meaning assigned by Insurance Code §1305.004.

(6) Complaint--Has the meaning assigned by Insurance Code §1305.004.

(7) Concurrent utilization review--A form of utilization review for ongoing health care or for an extension of treatment beyond previously approved health care.

(8) Credentialing--Has the meaning assigned by Insurance Code §1305.004.

(9) Division of Workers' Compensation--Has the meaning assigned to the "Division" by Labor Code §401.011, concerning General Definitions.

(10) Emergency--Has the meaning assigned by Insurance Code §1305.004.

(11) Employee--Has the meaning assigned by Labor Code §401.012, concerning Definition of Employee.

(12) Fee dispute--Has the meaning assigned by Insurance Code §1305.004.

(13) HMO--A health maintenance organization licensed and regulated under Insurance Code Chapter 843, concerning Health Maintenance Organizations.

(14) Independent review--Has the meaning assigned by Insurance Code §1305.004.

(15) Independent review organization--Has the meaning assigned by Insurance Code §1305.004.

(16) Life-threatening--Has the meaning assigned by Insurance Code Chapter 4201, concerning Utilization Review Agents.

(17) Live or lives--Where an employee lives includes:

(A) the employee's principal residence for legal purposes, including the physical address that the employee represented to the employer as the employee's address;

(B) a temporary residence necessitated by employment;

(C) a temporary residence taken by the employee primarily for the purpose of receiving necessary assistance with routine daily activities because of a compensable injury.

(18) MCQA--The Office of Managed Care Quality Assurance, or a successor office at the department.

(19) Medical emergency--Has the meaning assigned by Insurance Code §1305.004.

(20) Medical records--Has the meaning assigned by Insurance Code §1305.004.

(21) Mental health emergency--Has the meaning assigned by Insurance Code §1305.004.

(22) Network or workers' compensation health care network--Has the meaning assigned by Insurance Code §1305.004.

(23) Occupational medicine specialist--A doctor who has received a board certification in occupational medicine from the American Board of Preventive Medicine or who has completed all the re-

quirements of the American Board of Preventive Medicine in order to take the board examination.

(24) Person--Has the meaning assigned by Insurance Code §1305.004.

(25) Physician--Has the meaning assigned by Insurance Code §4201.002, concerning Definitions.

(26) Preauthorization--A form of prospective utilization review by a payor or a payor's URA of health care services proposed to be provided to an injured employee.

(27) Provider--A health care provider.

(28) Quality improvement program--Has the meaning assigned by Insurance Code §1305.004.

(29) Retrospective review--A form of utilization review for health care services that have been provided to an injured employee. Retrospective review does not include review of services for which prospective or concurrent utilization reviews were previously conducted or should have been previously conducted.

(30) Routine daily activities""Activities a person normally does in daily living, including sleeping, eating, bathing, dressing, grooming, and homemaking.

(31) Rural area--Has the meaning assigned by Insurance Code §1305.004.

(32) Screening criteria--Has the meaning assigned by Insurance Code §1305.004.

(33) Service area--Has the meaning assigned by Insurance Code §1305.004.

(34) Telehealth service, telemedicine medical service, and teledentistry dental service--Have the meanings assigned by Occupations Code §111.001, concerning Definitions.

(35) Transfer of risk--Has the meaning assigned by Insurance Code §1305.004.

(36) Utilization review--Has the meaning assigned by Insurance Code Chapter 4201.

(37) Utilization review agent or URA--Has the meaning assigned by Insurance Code Chapter 4201.

(b) When used in this chapter, the following terms have the meanings assigned by Labor Code §401.011:

- (1) administrative violation;
- (2) case management;
- (3) compensable injury;
- (4) doctor;
- (5) employer;
- (6) evidence-based medicine;
- (7) health care;
- (8) health care facility;
- (9) health care practitioner;
- (10) health care provider;
- (11) impairment rating;
- (12) injury;
- (13) insurance carrier;

(14) maximum medical improvement; and

(15) treating doctor.

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 July 13, 2022.

TRD-202202660

James Person

General Counsel

Texas Department of Insurance

Effective date: August 2, 2022

Proposal publication date: February 4, 2022

For further information, please call: (512) 676-6584



SUBCHAPTER B. CERTIFICATION

28 TAC §§10.20 - 10.27

STATUTORY AUTHORITY. The Commissioner adopts amendments to §§10.20 - 10.27 under Insurance Code §§1305.007, 1305.201, 4201.003, and 36.001.

Insurance Code §1305.007 provides that the Commissioner may adopt rules as necessary to implement Chapter 1305, concerning Workers' Compensation Health Care Networks.

Insurance Code §1305.201 provides for networks to prepare and file financial statements in the manner prescribed by Commissioner rule.

Insurance Code §4201.003 provides that the Commissioner may adopt rules as necessary to implement Chapter 4201, concerning Utilization Review Agents.

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.

§10.20. Certification Required.

Except as provided by Labor Code §504.053(b)(2), concerning Election:

(1) A person may not operate or perform any act of a workers' compensation health care network in this state:

(A) unless the person holds a certificate issued under Insurance Code Chapter 1305, concerning Workers' Compensation Health Care Networks, and this chapter; or

(B) except in accordance with the specific authorization of Insurance Code Chapter 1305 or this chapter.

(2) A person, including an insurance carrier, who provides or arranges to provide workers' compensation health care network services to injured employees within a service area, must be certified as a workers' compensation health care network under Insurance Code Chapter 1305 and this chapter.

(3) An entity performing any act of a workers' compensation health care network may not use in a network's name or in any informational literature distributed about a network any combination or variation of the words "workers' compensation," "certified," "managed care," or "network" to describe a network that is not certified in accordance with this chapter.

§10.22. *Contents of Application.*

Each certificate application must include:

(1) a description or a copy of the applicant's basic organizational structure documents and other related documents, including organizational charts or lists that show:

(A) the relationships and contracts between the applicant and any affiliates of the applicant; and

(B) the internal organizational structure of the applicant's management and administrative staff;

(2) a completed biographical affidavit, NAIC UCAA Form 11 (Rev. 12/8/2020), from each person who governs or manages the affairs of the applicant, including the members of the governing board of the applicant, the chief executive officer, president, secretary, treasurer, chief financial officer and controller, and any other individuals with substantially similar responsibilities, provided that a biographical affidavit is not required if a biographical affidavit from the person is already on file with the department;

(3) a copy of the form of any contract between the applicant and any provider or group of providers as required under Insurance Code Chapter 1305, Subchapter D, concerning Contracting Provisions, and §10.41 and §10.42 of this title (relating to Network-Carrier Contracts and Network Contracts with Providers);

(4) a copy of any agreement with any third party performing delegated functions on behalf of the applicant as required under Insurance Code §1305.154, concerning Network-Carrier Contracts, and §10.41 of this title (relating to Network-Carrier Contracts);

(5) a copy of the form of each contract with an insurance carrier, as described by Insurance Code §1305.154 and §10.41 of this title;

(6) each management contract as described in §10.40 of this title (relating to Management Contracts), if applicable;

(7) a financial statement, current as of the date of the application that includes the most recent calendar quarter, prepared using generally accepted accounting principles, and including:

(A) a balance sheet that reflects a solvent financial position;

(B) an income statement;

(C) a cash flow statement; and

(D) the sources and uses of all funds;

(8) a statement acknowledging that lawful process in a legal action or proceeding against the network on a cause of action arising in this state is valid if served in the manner provided by Insurance Code Chapter 804, concerning Service of Process, for a domestic company;

(9) a description and a map of the applicant's proposed service area or areas, with key and scale, that identifies each county, ZIP code, partial ZIP code, or part of a county to be served;

(10) a description of programs and procedures to be utilized, including:

(A) a complaint system, as required under Insurance Code Chapter 1305, Subchapter I, concerning Complaint Resolution, and Chapter 10, Subchapter G, of this title (relating to Complaints);

(B) a quality improvement program, including return-to-work and medical case management programs, as required under Insurance Code Chapter 1305, Subchapter G, concerning Provision of

Services by Network; Quality Improvement Program, and §10.81 of this title (relating to Quality Improvement Program);

(C) credentialing policies and procedures required under §10.82 of this title (relating to Credentialing);

(D) the utilization review program described in Insurance Code Chapter 1305, Subchapter H, concerning Utilization Review, and Chapter 10, Subchapter F, of this title (relating to Utilization Review), if applicable; and

(E) criteria and procedures for employees to select or change the employee's treating doctor, including procedures for employees to select as the employee's treating doctor a doctor who the employee selected, prior to injury, as the employee's HMO primary care physician or provider;

(11) a description of the network configuration that demonstrates the adequacy of the network to provide comprehensive health care services sufficient to serve the population of injured employees within the service area and maps that demonstrate compliance with the access and availability standards under Insurance Code Chapter 1305, Subchapter G, and §10.80 of this title (relating to Accessibility and Availability Requirements). This description must include, at a minimum, the following:

(A) a map for each specialty providing services to injured employees in accordance with §10.80 of this title, each of which must include:

(i) each location of health care providers and facilities within the proposed service area, indicating each location by symbols of the network's own choosing; and

(ii) the distance from any point in the network's designated service area to each location;

(B) names; addresses, including ZIP codes; specialty or specialties; board certifications, if any; professional license numbers; and hospital affiliations of network providers, including treating doctors, in sufficient number and specialty to provide all required health care services in a timely, effective, and convenient manner;

(C) names; addresses; federal employer identification number (FEIN); licenses; and types of health care facilities, including hospitals, rehabilitation facilities, diagnostic and testing facilities, ambulatory surgical centers, and interdisciplinary pain rehabilitation programs or interdisciplinary pain rehabilitation treatment facilities. The network must also demonstrate adequate access to emergency care;

(D) information indicating whether each network provider is accepting new patients from the workers' compensation health care network;

(E) information indicating which network doctors are trained and certified to perform maximum medical improvement determinations and impairment rating services;

(F) information identifying which network providers provide telehealth service, telemedicine medical service, or teledentistry dental service, indicating which of these providers will provide telehealth service, telemedicine medical service, or teledentistry dental service only; and

(G) for any service area in which the network does not meet accessibility and availability requirements described in §10.80 of this title, an access plan that complies with §10.80(a) and (f) of this title;

(12) the physical location of the applicant's books and records, including:

- (A) financial and accounting records;
- (B) investment records;
- (C) organizational documents of the applicant; and
- (D) minutes of all meetings of the applicant's governing board and executive or management committees;

(13) a business plan that describes the applicant's intended operations in this state, including both a narrative description and projections related to anticipated revenue and profitability for the first two years of operation after certification;

(14) a completed financial authorization form sufficient to allow the department to confirm directly with appropriate financial institutions the reported assets of the applicant, unless the entity is already licensed by the department;

(15) the applicant's plan for provision of care to injured employees who live temporarily outside the service area, if applicable;

(16) the applicant's plan for provision of maximum medical improvement determinations and impairment rating services, including verification that the network doctors reported under paragraph (11)(E) of this section have completed the training and testing required under Labor Code §408.023, concerning List of Approved Doctors; Duties of Treating Doctors, and rules adopted by the Commissioner of Workers' Compensation;

(17) the applicant's plan for obtaining certification by doctors and health care practitioners of filing the required financial disclosure with the Division of Workers' Compensation under Labor Code §408.023 and §413.041, concerning Disclosure;

(18) the form of the notice of network requirements and employee information, and the acknowledgment form required under Insurance Code §1305.005, concerning Participation in Network; Notice of Network Requirements, and §10.60 of this title (relating to Notice of Network Requirements; Employee Information);

(19) the applicant's plan for monitoring whether providers have been provided and are following treatment guidelines, return-to-work guidelines, and individual treatment protocols as required under Insurance Code §1305.304, concerning Guidelines and Protocols, and §10.83 of this title (relating to Guidelines and Protocols);

(20) a description of treatment guidelines and return-to-work guidelines, and the network medical director's certification that the guidelines are evidence-based, scientifically valid, and outcome-focused, and be designed to reduce inappropriate or unnecessary health care while safeguarding necessary care, as required under Insurance Code §1305.304 and §10.83(a) of this title; and

(21) a certification that:

(A) the network's medical director is an occupational medicine specialist; or

(B) the network employs or contracts with an occupational medicine specialist.

§10.26. Modifications to Service Area.

(a) A network must file a modification request with and receive approval from the department before the network may expand, eliminate, or reduce an existing service area, or add a new service area. An officer or other authorized representative of the network must verify the modification request by attesting to the truth and accuracy of the information in the modification request.

(b) A modification request for a service area modification must include:

(1) a description and a map with key and scale, showing both the currently approved service area and the proposed new service area, as required under §10.22(9) of this title (relating to Contents of Application);

(2) network configuration information, as required under §10.22(11) of this title; and

(3) separate and consolidated projections as described in §10.22(13) of this title for the existing network, the proposed new service area, and the proposed network.

(c) If a modification request for a service area changes any of the following items, the applicant must file the new item or any amendments to an existing item with the modification request filed under this section:

(1) a copy of the form of any new contracts or amendment of any existing contracts as described by and required under §10.22(3), (4), and (5) of this title;

(2) a brief narrative description of the administrative arrangements, organizational charts as required under §10.22(1) of this title, and other pertinent information;

(3) biographical data, on a form prescribed by the department, regarding each individual who governs or manages the affairs of the network as required under §10.22(2) of this title; and

(4) a copy of each management contract as described under §10.22(6) of this title.

(d) A modification request is not considered complete and reviewable until the department has received all information required under this section, including any additional information the department requests as needed to make that determination.

(e) Before the department considers a service area modification request, the applicant must be in good standing with the department and in compliance with all applicable requirements under this chapter; Insurance Code Chapter 1305, concerning Workers' Compensation Health Care Networks; and Labor Code Title 5, concerning Workers' Compensation, in the existing service areas and in each proposed service area.

(f) A corrected notice of network requirements and employee information form and acknowledgment form that comply with Insurance Code §1305.005, concerning Participation in Network; Notice of Network Requirements; and §1305.451, concerning Employee Information; Responsibilities of Employee; and §10.60 of this title (relating to Notice of Network Requirements; Employee Information) must be provided to affected employees.

(g) Prescribed modification request forms may be obtained from:

(1) the department's website;

(2) the department's workers' compensation network email address; or

(3) the MCQA mailing address.

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 July 13, 2022.

TRD-202202661

James Person
General Counsel
Texas Department of Insurance
Effective date: August 2, 2022
Proposal publication date: February 4, 2022
For further information, please call: (512) 676-6584



SUBCHAPTER C. CONTRACTING

28 TAC §§10.40 - 10.42

STATUTORY AUTHORITY. The Commissioner adopts amendments to §§10.40 - 10.42 under Insurance Code §§1305.007, 4201.003, and 36.001.

Insurance Code §1305.007 provides that the Commissioner may adopt rules as necessary to implement Chapter 1305, concerning Workers' Compensation Health Care Networks.

Insurance Code §4201.003 provides that the Commissioner may adopt rules as necessary to implement Chapter 4201, concerning Utilization Review Agents.

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.

§10.41. *Network-Carrier Contracts.*

(a) A network's contract with a carrier must include the following:

(1) a description of the functions to be performed by the network or its delegated entity, consistent with the requirements of Insurance Code §1305.154(b), concerning Network-Carrier Contracts, and the reporting requirements for each function;

(2) a statement that the network will perform all delegated functions in full compliance with all requirements of the Workers' Compensation Health Care Network Act, Insurance Code Chapter 1305, concerning Workers' Compensation Health Care Networks; the Texas Workers' Compensation Act, Labor Code Title 5, Subtitle A, concerning Workers' Compensation; and the rules of the department and the Division of Workers' Compensation;

(3) a provision that the contract:

(A) may not be terminated without cause by either party without 90 days' prior written notice; and

(B) must be terminated immediately if cause exists;

(4) a hold-harmless provision stating that the network, a management contractor, a third party to which the network delegates a function, and the network's contracted providers are prohibited from billing or attempting to collect any amounts from an employee for health care services for compensable injuries under any circumstances, including the insolvency of the carrier or the network;

(5) a statement that the carrier and the network retain ultimate responsibility for ensuring that all delegated functions and all management contractor functions are performed in accordance with applicable statutes and rules, and that the contract may not be construed to limit in any way the carrier's or network's responsibility, including financial responsibility, to comply with all statutory and regulatory requirements;

(6) a statement that the network's role is to provide the services listed in Insurance Code §1305.154(b) as well as any other ser-

vices or functions the carrier delegates, including functions delegated to a management contractor, subject to the carrier's oversight and monitoring of the network's performance;

(7) a requirement that the network provide the carrier, on at least a monthly basis and in a form that is usable for audit purposes, the data necessary for the carrier to comply with reporting requirements of the department and the Division of Workers' Compensation of the department with respect to any services provided pursuant to the carrier-network contract, including the following data:

(A) last name, first name, date of injury, date of birth, sex, address, telephone number, claim number, and social security number of each injured employee who is being served by the network, and name and license number of the injured employee's treating doctor;

(B) initial date of health care services delivered by the network for each employee; and

(C) any other data, as determined by the contract, necessary to assure proper monitoring of functions delegated to the network by the carrier;

(8) a requirement that the carrier, the network, any management contractor, and any third party to which the network delegates a function comply with a provision that requires the network to provide to the insurance carrier and department the license number of a management contractor or any delegated third party performing any function that requires a license under the Insurance Code or another insurance law of this state, including a license as a utilization review agent under Insurance Code Chapter 4201, concerning Utilization Review Agents;

(9) a contingency plan under which the carrier would, in the event of termination of the contract or a failure to perform, reassume one or more functions of the network under the contract, including functions related to:

(A) payment to providers and notification to employees, as applicable;

(B) quality of care;

(C) utilization review;

(D) continuity of care, including a plan for identifying and transitioning employees to new providers; and

(E) collecting and reporting of data necessary to comply with the reporting requirements described in paragraph (7) of this subsection;

(10) a provision that requires that any agreement by which the network delegates any function to a third party be in writing, and that such agreement require the delegated third party to be subject to all the requirements under Insurance Code Chapter 1305 and this chapter;

(11) a provision that requires the network to provide to the department the license number of a management contractor or any delegated third party performing any function that requires a license under the Insurance Code or another insurance law of this state, including a license as a utilization review agent under Insurance Code Chapter 4201;

(12) an acknowledgment that:

(A) any management contractor or third party to whom the network delegates a function must comply with this chapter and other applicable statutes and rules, and that the management contractor or third party is subject to the carrier's and the network's oversight and monitoring of its performance; and

(B) if the management contractor or third party fails to meet monitoring standards established to ensure that functions delegated or assigned to the management contractor or third party under the delegation contract are in full compliance with all statutory and regulatory requirements, the carrier or network may cancel delegation of any or all delegated functions;

(13) a requirement that the network and any management contractor or third party to which the network delegates a function provide all necessary information to allow the carrier to provide the information required by §10.60 of this title (relating to Notice of Network Requirements; Employee Information) to employers or employees;

(14) a provision that requires the network to require any third party with which it contracts, whether directly or through another third party, to permit the Commissioner to examine at any time any information the Commissioner believes is relevant to the third party's financial condition or the ability of the network to meet the network's responsibilities in connection with any function the third party performs or that has been delegated to the third party.

(15) a requirement that if the network delegates the complaint function, the delegate must:

(A) implement and maintain a complaint system in accordance with requirements under Insurance Code §1305.401, concerning Complaint System Required, and §10.120 of this title (relating to Complaint System Required); and

(B) make the complaint log and complaint files available to the carrier and the network upon request to the extent permitted by law;

(16) a statement that the contract and any network contract with a provider, management contractor, or other third party must not be interpreted to involve a transfer of risk as defined under Insurance Code §1305.004(a)(26), concerning Definitions;

(17) a statement that any network contract with a provider or third party must allow the carrier to effect a contingency plan in the event that the carrier is required to reassume functions from the network as contemplated under Insurance Code §1305.155, concerning Compliance Requirements;

(18) a statement that any network contract with a provider or third party must comply with all applicable statutory and regulatory requirements under federal and state law, including Insurance Code §1305.152, concerning Network Contracts with Providers, and §10.42 of this title (relating to Network Contracts with Providers); and

(19) a statement that if a network's delegate subdelegates a network function, the delegate must first obtain the network's consent to the subdelegation and have a delegation agreement that complies with this section.

(b) Except for the functions described under Insurance Code §1305.154(b) and §10.121 of this title (relating to Complaints; Deadlines for Responses and Resolution), a network's authority to perform a function under a network-carrier contract is conditioned upon whether:

(1) the carrier has delegated the function to the network by contract; and

(2) the network is appropriately licensed to perform the function.

(c) A network must not act as a network for any entity regarding an insurance plan being operated in violation of Insurance Code §101.102, concerning Unauthorized Insurance Prohibited.

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 July 13, 2022.

TRD-202202662

James Person

General Counsel

Texas Department of Insurance

Effective date: August 2, 2022

Proposal publication date: February 4, 2022

For further information, please call: (512) 676-6584

◆ ◆ ◆
SUBCHAPTER D. NETWORK REQUIREMENTS

28 TAC §§10.60 - 10.63

STATUTORY AUTHORITY. The Commissioner adopts amendments to §§10.60 - 10.63 under Insurance Code §§1305.007, 4201.003, and 36.001.

Insurance Code §1305.007 provides that the Commissioner may adopt rules as necessary to implement Chapter 1305, concerning Workers' Compensation Health Care Networks.

Insurance Code §4201.003 provides that the Commissioner may adopt rules as necessary to implement Chapter 4201, concerning Utilization Review Agents.

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.

§10.60. Notice of Network Requirements; Employee Information.

(a) An insurance carrier that establishes or contracts with a network must deliver to the employer, and the employer or carrier, as applicable under subsection (g) of this section, must deliver to the employer's employees in the manner and at the times prescribed by Insurance Code §1305.005, concerning Participation in Network; Notice of Network Requirements:

(1) the notice of network requirements and employee information required by Insurance Code §1305.005 and §1305.451, concerning Employee Information; Responsibilities of Employee, and this section; and

(2) the employee acknowledgment form described by Insurance Code §1305.005 and this section.

(b) An employee who lives within the service area of a network and who is being treated by a non-network provider for an injury that occurred before the employer's insurance carrier established or contracted with the network may:

(1) select a network treating doctor from the list of contracted doctors who contracted with the workers' compensation network; or

(2) request a doctor who the employee selected, prior to the injury, as the employee's HMO primary care physician or provider under Insurance Code Chapter 843, concerning Health Maintenance Organizations.

(c) The carrier must provide to the employee all information required by Insurance Code §1305.451. The notice must include an em-

ployee acknowledgment form and comply with all requirements under subsections (d) - (i) of this section, as applicable.

(d) The notice of network requirements and employee acknowledgment form:

(1) must be in English, Spanish, and any other language common to 10 percent or more of the employer's employees;

(2) must be in a readable and understandable format that meets the plain language requirements under §10.63 of this title (relating to Plain Language Requirements); and

(3) may be in an electronic format as long as a paper version is available upon request.

(e) The insurance carrier and employer may use an employee acknowledgment form that complies with this section or a sample acknowledgment form that may be obtained from the department's website.

(f) The employee acknowledgment form must include:

(1) a statement that the employee has received information that describes what the employee must do to receive health care under workers' compensation insurance;

(2) a statement that if the employee is injured on the job and lives in the service area described in the information, the employee understands that:

(A) the employee:

(i) must select a treating doctor from the list of doctors who contracted with the workers' compensation network; or

(ii) ask the employee's HMO primary care physician to agree to serve as the employee's treating doctor; and

(iii) must obtain all health care and specialist referrals for a compensable injury through the treating doctor except for emergency services;

(B) the network provider will be paid by the insurance carrier and will not bill the employee for a compensable injury; and

(C) if the employee seeks health care, other than emergency care, from someone other than a network provider without network approval, the insurance carrier may not be liable, and the employee may be liable, for payment for that health care;

(3) separate lines for the employee to fill in the date and employee's signature, printed name, and where the employee lives;

(4) a separate line that indicates the name of the employer; and

(5) a separate line that indicates the name of the network.

(g) The employer must obtain a signed employee acknowledgment form from each employee, and a carrier required to provide employee information to an employee under Insurance Code §1305.103(c), concerning Treating Doctor; Referrals, and subsection (b) of this section must obtain a signed employee acknowledgment form from that employee. For purposes of this subsection, an employer or carrier, as applicable, may obtain an acknowledgment of the notice required under this section through electronic means from an employee who makes an electronic signature in accordance with applicable law.

(h) The notice of network requirements must comply with Insurance Code §1305.005 and §1305.451 and include:

(1) a statement that the entity providing health care to employees is a certified workers' compensation health care network;

(2) the network's toll-free number and address for obtaining additional information about the network, including information about network providers;

(3) a description and map of the network's service area, with key and scale, that clearly identifies each county or ZIP code area or any parts of a county or ZIP code area that are included in the service area;

(4) a statement that an employee who does not live within the network's service area may notify the carrier as described under §10.62 of this title (relating to Dispute Resolution for Employee Requirements Related to In-Network Care);

(5) a statement that an employee who asserts that he or she does not currently live in the network's service area may choose to receive all health care services from the network during the pendency of the insurance carrier's review under §10.62 of this title and the pendency of the department's review of a complaint; and the employee may be liable, and the carrier may not be liable, for payment for health care services received out of network if it is ultimately determined that the employee lives in the network's service area;

(6) a statement that, except for emergency services, the employee must obtain all health care and specialist referrals through the employee's treating doctor;

(7) an explanation that network providers have agreed to look only to the network or insurance carrier and not to employees for payment of providing health care for a compensable injury, except as provided by paragraph (8) of this subsection;

(8) a statement that if the employee obtains health care from non-network providers without network approval, except for emergency care, the insurance carrier may not be liable, and the employee may be liable, for payment for that health care;

(9) information about how to obtain emergency care services, including emergency care outside the service area, and after-hours care;

(10) a list of the health care services for which the insurance carrier or network requires preauthorization or concurrent review;

(11) an explanation regarding continuity of treatment in the event of the termination from the network of a treating doctor;

(12) a description of the network's complaint system, including:

(A) a statement that an employee must file complaints with the network regarding dissatisfaction with any aspect of the network's operations or with network providers;

(B) any deadline for the filing of complaints, provided that the deadline may not be less than 90 days after the date of the event or occurrence that is the basis for the complaint;

(C) a single point of contact within the network for receipt of complaints, including the address and email address of the contact; and

(D) a statement that the network is prohibited from retaliating against:

(i) an employee, employer, or person acting on behalf of the employee or employer if the employee, employer, or person acting on behalf of the employee or employer files a complaint against the network or appeals a decision of the network; or

(ii) a provider if the provider, on behalf of an employee, reasonably files a complaint against the network or appeals a decision of the network; and

(E) a statement explaining how an employee may file a complaint with the department as described under §10.122 of this title (relating to Submitting Complaints to the Department);

(13) a summary of the insurance carrier's or network's procedures relating to adverse determinations and the availability of the independent review process;

(14) a list of network providers updated at least quarterly, including:

(A) the names and addresses of network providers grouped by specialty. Treating doctors must be identified and listed separately from specialists. Providers who are authorized to assess maximum medical improvement and render impairment ratings and providers who provide a telehealth service, telemedicine medical service, or teledentistry dental service must be clearly identified;

(B) a statement of limitations of accessibility and referrals to specialists; and

(C) a disclosure listing which providers are accepting new patients; and

(15) a statement that, except for emergencies, the network must arrange for services, including referrals to specialists, to be accessible to an employee on a timely basis on request and within the time appropriate to the circumstances and condition of the injured employee, but not later than 21 days after the date of the request.

(i) An employer or carrier, as applicable, must deliver the notice of network requirements and acknowledgment form to the employer's employees, and document:

- (1) the method of delivery;
- (2) to whom the notice was delivered;
- (3) the location of the delivery; and
- (4) the date or dates of delivery.

(j) The failure of an employer or carrier, as applicable, to establish a standardized process for complying with subsection (i) of this section creates a rebuttable presumption that the employee has not received the notice of network requirements and is not subject to network requirements.

(k) A dispute regarding whether an employer or carrier provided the information required by this section to an employee may be resolved by requesting a benefit review conference as provided by Chapter 141 of this title (relating to Dispute Resolution--Benefit Review Conference).

§10.61. Employees Who Live Within the Network Service Area, Employee Access, and Insurance Carrier Liability for Health Care.

(a) The employees of an employer who elects to contract with an insurance carrier for network health care services, and who live within the network's service area, must obtain medical treatment for a compensable injury from in-network providers, except as provided in Insurance Code §1305.006(1) and (3), concerning Insurance Carrier Liability for Out-of-Network Health Care; subsection (e)(1), (3), and (4) of this section; and the rules of the Division of Workers' Compensation.

(b) An employee is presumed to live at the physical address he or she has represented to the employer as his or her address or, if

the employee no longer works for the employer, the physical address of record on file with the insurance carrier.

(c) At any time after the receipt of the notice of network requirements, an employee who no longer lives at the physical address described in subsection (b) of this section, or who otherwise asserts that he or she does not live in the network's service area, may notify the insurance carrier and request a review under §10.62 of this title (relating to Dispute Resolution for Employee Requirements Related to In-Network Care).

(d) An employee who does not live within a network's service area may choose to participate in a network established by the insurance carrier or with which the insurance carrier has a contract upon mutual agreement between the employee and insurance carrier.

(e) An employee who is found to have fraudulently claimed to live outside the network's service area or made an intentional misrepresentation regarding where he or she lives and receives health care outside the network's service area may be liable for payment for that health care.

(f) An insurance carrier that establishes or contracts with a network is liable for in-network health care for a compensable injury that is provided to an injured employee in accordance with Insurance Code Chapter 1305, concerning Workers' Compensation Health Care Networks, and out-of-network care as follows:

- (1) emergency care;
- (2) health care provided to an injured employee who does not live within the service area of any network established by the insurance carrier or with which the insurance carrier has a contract;
- (3) health care provided by an out-of-network provider pursuant to a referral from the injured employee's treating doctor that has been approved by the network as follows:

(A) if an injured employee's treating doctor requests a referral to an out-of-network provider for medically necessary health care services that are not available from network providers, the network must approve or deny a referral to an out-of-network provider within the time appropriate under the circumstances, but, under any circumstance, not later than seven days after the date the referral is requested;

(B) if the network denies the referral request under subsection (a) of this section because the requested service is available from network providers, the employee may file a complaint in accordance with the network's complaint process under Insurance Code §1305.402, concerning Complaint Initiation and Initial Response; Deadlines for Response and Resolution, and §10.121 of this title (relating to Complaints; Deadlines for Response and Resolution);

(C) if the network denies the referral request under subparagraph (A) of this paragraph because the specialist referral is not medically necessary, the employee may file a request for independent review as described in §10.104 of this title (relating to Independent Review of Adverse Determination); and

(4) health care services provided to an injured employee before the employee received the notice of network requirements and the employee information for the appropriate network and service area under Insurance Code §1305.005, concerning Participation in Network; Notice of Network Requirements, and §10.60 of this title (relating to Notice of Network Requirements; Employee Information).

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 July 13, 2022.

TRD-202202664

James Person

General Counsel

Texas Department of Insurance

Effective date: August 2, 2022

Proposal publication date: February 4, 2022

For further information, please call: (512) 676-6584



SUBCHAPTER E. NETWORK OPERATIONS

28 TAC §§10.80 - 10.86

STATUTORY AUTHORITY. The Commissioner adopts amendments to §§10.80 - 10.86 under Insurance Code §§1305.007, 4201.003, and 36.001.

Insurance Code §1305.007 provides that the Commissioner may adopt rules as necessary to implement Chapter 1305, concerning Workers' Compensation Health Care Networks.

Insurance Code §4201.003 provides that the Commissioner may adopt rules as necessary to implement Chapter 4201, concerning Utilization Review Agents.

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.

§10.81. *Quality Improvement Program.*

(a) A network must develop and maintain a continuous and comprehensive quality improvement program designed to monitor and evaluate objectively and systematically the quality and appropriateness of health care and network services, and to pursue opportunities for improvement. The quality improvement program must include return-to-work and medical case management programs. The network must dedicate adequate resources, including personnel and information systems, to the quality improvement program.

(b) Required documentation of the quality improvement program, at a minimum, includes:

(1) Written description. The network must develop a written description of the quality improvement program that outlines the program's organizational structure, functional responsibilities, and committee meeting frequency;

(2) Work plan. The network must develop an annual quality improvement work plan designed to reflect the type of services and the population served by the network in terms of age groups, disease or injury categories, and special risk status, such as type of industry. The work plan must include:

(A) objective and measurable goals, planned activities to accomplish the goals, time frames for implementation, individuals responsible, and evaluation methodology;

(B) evaluation of each program, including:

(i) network adequacy, which encompasses availability and accessibility of care and assessment of providers who are and are not accepting new patients;

(ii) continuity of health care and related services;

(iii) clinical studies;

(iv) the adoption and periodic updating of treatment guidelines, return-to-work guidelines, individual treatment protocols, and the list of services requiring preauthorization;

(v) employee and provider satisfaction;

(vi) the complaint-and-appeal process, complaint data, and identification and removal of communication barriers that may impede employees and providers from effectively making complaints against the network;

(vii) provider billing and provider payment processes, if applicable;

(viii) contract monitoring, including delegation oversight, if applicable, and compliance with filing requirements;

(ix) utilization review processes, if applicable;

(x) credentialing;

(xi) employee services, including after-hours telephone access logs;

(xii) return-to-work processes and outcomes; and

(xiii) medical case management outcomes.

(3) Annual evaluation. The network must prepare an annual written report on the quality improvement program that includes:

(A) completed activities;

(B) trending of clinical and service goals;

(C) analysis of program performance; and

(D) conclusions regarding the effectiveness of the program.

(c) The network is presumed to be in compliance with statutory and regulatory requirements regarding quality improvement requirements, including credentialing, if:

(1) the network has received nonconditional accreditation or certification by the National Committee for Quality Assurance, The Joint Commission, URAC, or the Accreditation Association for Ambulatory Health Care;

(2) the accreditation includes all quality improvement requirements set forth in this section;

(3) the certification for a function, including credentialing, includes all requirements set forth in this section;

(4) the national accreditation organization's requirements are the same as, substantially similar to, or more stringent than the department's quality improvement requirements; and

(5) the network has and will maintain documentation demonstrating that doctors who provide certifications of maximum medical improvement or assign impairment ratings to injured employees are authorized under §130.1 of this title (relating to Certification of Maximum Medical Improvement and Evaluation of Permanent Impairment).

(d) The network governing body is ultimately responsible for the quality improvement program and must:

(1) appoint a quality improvement committee that includes network providers;

(2) approve the quality improvement program;

(3) approve an annual quality improvement work plan;

(4) meet no less than annually to receive and review reports of the quality improvement committee or group of committees, and take action when appropriate; and

(5) review the annual evaluation of the quality improvement program.

(e) The quality improvement committee must evaluate the overall effectiveness of the quality improvement program. The committee may delegate and oversee quality improvement activities to subcommittees that may, if applicable, include practicing doctors and employees from the service area. All subcommittees must:

(1) collaborate and coordinate efforts to improve the quality, availability, and accessibility of health care services; and

(2) meet regularly and routinely report findings, recommendations, and resolutions in writing to the quality improvement committee for the network.

(f) The network must have a medical case management program with certified case managers whose certifying organization must be accredited by an established accrediting organization, including the National Commission for Certifying Agencies, the American Board of Nursing Specialties, or another national accrediting agency with similar standards. In accordance with Labor Code §413.021(a), concerning Return-to-Work Coordination Services, a claims adjuster may not serve as a case manager. The case manager must work with providers, employees, doctors, and employers to facilitate cost-effective health care and the employee's return to work, and must be certified in one or more of the following areas:

- (1) case management;
- (2) case management administration;
- (3) rehabilitation case management;
- (4) continuity of care;
- (5) disability management; or
- (6) occupational health.

§10.82. *Credentialing.*

(a) Networks must have a documented process for selection and retention of preferred providers sufficient to ensure that preferred providers are adequately credentialed. At a minimum, a network's credentialing standards must meet the standards promulgated by the National Committee for Quality Assurance (NCQA) or URAC to the extent that those standards do not conflict with other laws of this state. Networks will be presumed to be in compliance with statutory and regulatory requirements regarding credentialing if they have received nonconditional accreditation or certification by the NCQA, The Joint Commission, URAC, or the Accreditation Association for Ambulatory Health Care; maintain evidence of that accreditation or certification; and provide it to the department on request.

(b) The requirements of §10.41 of this title (relating to Network-Carrier Contracts) apply to delegation of credentialing.

(c) Delegation of credentialing.

(1) If the network delegates credentialing functions to other entities, it must have:

- (A) a process for developing delegation criteria and for performing pre-delegation and annual audits;
- (B) a delegation agreement;
- (C) a monitoring plan; and

(D) a procedure for termination of the delegation agreement for non-performance.

(2) If the network delegates credentialing functions to an entity accredited by one of the national accreditation organizations as described in §10.81(c) of this title (relating to Quality Improvement Program), the annual audit of that entity is not required for the function(s) listed in the accreditation; however, evidence of this accreditation must be made available to the department for review.

(3) The network must maintain and must make available for the department to review:

- (A) documentation of pre-delegation and annual audits;
- (B) executed delegation agreements;
- (C) semi-annual reports received from the delegated entities;
- (D) evidence of evaluation of the reports;
- (E) current rosters or copies of signed contracts with doctors and health care practitioners who are affected by the delegation agreement; and
- (F) documentation of ongoing monitoring.

(4) Credentialing files maintained by the other entities to which the network has delegated credentialing functions must be made available to the department for examination upon request.

(5) In all cases, the network must maintain the right to approve credentialing, suspension, and termination of doctors and health care practitioners.

(d) Compliance. Until January 1, 2023, entities subject to this section will be deemed to be in compliance with the section if they are in compliance with the section as adopted to be effective December 5, 2005. Entities subject to this section must make a filing attesting to compliance no later than January 1, 2023.

§10.83. *Guidelines and Protocols.*

(a) Each network must adopt treatment guidelines, return-to-work guidelines, and individual treatment protocols, which must be evidence-based, scientifically valid, outcome-focused, and be designed to reduce inappropriate or unnecessary health care while safeguarding access to necessary care.

(b) An insurance carrier or network may not deny treatment for a compensable injury solely because its treatment guidelines do not specifically address the treatment or injury.

(c) A network must, through its quality improvement program under §10.81 of this title (relating to Quality Improvement Program), assure that all treatment guidelines, return-to-work guidelines, and individual treatment protocols are made accessible to all network providers. The network must contractually require providers to follow treatment guidelines, return-to-work guidelines, and individual treatment protocols pursuant to §10.42(b)(2) of this title (relating to Network Contracts with Providers).

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 July 13, 2022.
TRD-202202666

James Person
General Counsel
Texas Department of Insurance
Effective date: August 2, 2022
Proposal publication date: February 4, 2022
For further information, please call: (512) 676-6584



SUBCHAPTER F. UTILIZATION REVIEW

28 TAC §§10.100, 10.101, 10.104

STATUTORY AUTHORITY. The Commissioner adopts amendments to §§10.100, 10.101, and 10.104 under Insurance Code §§1305.007, 4201.003, and 36.001.

Insurance Code §1305.007 provides that the Commissioner may adopt rules as necessary to implement Chapter 1305, concerning Workers' Compensation Health Care Networks.

Insurance Code §4201.003 provides that the Commissioner may adopt rules as necessary to implement Chapter 4201, concerning Utilization Review Agents.

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.

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 July 13, 2022.

TRD-202202667
James Person
General Counsel
Texas Department of Insurance
Effective date: August 2, 2022
Proposal publication date: February 4, 2022
For further information, please call: (512) 676-6584



28 TAC §10.102, §10.103

STATUTORY AUTHORITY. The Commissioner adopts the repeals of §10.102 and §10.103 under Insurance Code §§1305.007, 4201.003, and 36.001.

Insurance Code §1305.007 provides that the Commissioner may adopt rules as necessary to implement Chapter 1305, concerning Workers' Compensation Health Care Networks.

Insurance Code §4201.003 provides that the Commissioner may adopt rules as necessary to implement Chapter 4201, concerning Utilization Review Agents.

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.

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 July 13, 2022.

TRD-202202659
James Person
General Counsel
Texas Department of Insurance
Effective date: August 2, 2022
Proposal publication date: February 4, 2022
For further information, please call: (512) 676-6584



SUBCHAPTER G. COMPLAINTS

28 TAC §§10.120 - 10.122

STATUTORY AUTHORITY. The Commissioner adopts amendments to §§10.120 - 10.122 under Insurance Code §§1305.007, 4201.003, and 36.001.

Insurance Code §1305.007 provides that the Commissioner may adopt rules as necessary to implement Chapter 1305, concerning Workers' Compensation Health Care Networks.

Insurance Code §4201.003 provides that the Commissioner may adopt rules as necessary to implement Chapter 4201, concerning Utilization Review Agents.

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.

§10.120. *Complaint System Required.*

(a) Each network must implement and maintain a complaint system compliant with Insurance Code Chapter 1305, Subchapter I, concerning Complaint Resolution, and this subchapter that provides reasonable procedures for resolving an oral or written complaint.

(b) For purposes of this subchapter, a complaint relating to a fee dispute is a complaint from a provider regarding failure to pay a claim in accordance with the contract between the network and provider.

§10.121. *Complaints; Deadlines for Response and Resolution.*

(a) Not later than seven calendar days after receipt of an oral or written complaint, a network must:

- (1) acknowledge receipt of the complaint in writing;
- (2) acknowledge the date of receipt; and
- (3) provide a description of the network's complaint procedures and deadlines.

(b) A network must investigate each oral or written complaint received in accordance with the network's policies and in compliance with this subchapter.

(c) After a network has investigated a complaint, the network must issue a resolution letter to the complainant not later than the 30th calendar day after the network receives the written complaint that:

- (1) explains the network's resolution of the complaint;
- (2) states the specific reasons for the resolution;
- (3) states the specialization of any health care provider consulted;
- (4) explains the network's procedures and deadlines for filing an appeal of the complaint; and
- (5) states that, if the complainant is dissatisfied with the resolution of the complaint or the complaint process, the complainant

may file a complaint with the department as described in §10.122 of this title (relating to Submitting Complaints to the Department).

(d) A network must maintain a complaint-and-appeal log regarding each complaint and categorize each complaint and appeal as one or more of the following:

- (1) quality of care or services;
- (2) accessibility and availability of services or providers;
- (3) utilization review;
- (4) complaint procedures;
- (5) health care provider contracts;
- (6) bill payment, as applicable;
- (7) fee disputes; and
- (8) miscellaneous.

(e) Each network must maintain the complaint-and-appeal log required under subsection (d) of this section and documentation on each complaint, appeal, complaint proceeding, and action taken on the complaint until the third anniversary after the date the complaint was received.

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 July 13, 2022.

TRD-202202668

James Person

General Counsel

Texas Department of Insurance

Effective date: August 2, 2022

Proposal publication date: February 4, 2022

For further information, please call: (512) 676-6584



SUBCHAPTER H. EXAMINATIONS

28 TAC §10.200

STATUTORY AUTHORITY. The Commissioner adopts amendments to §10.200 under Insurance Code §§1305.007, 1305.251, and 36.001.

Insurance Code §1305.007 provides that the Commissioner may adopt rules as necessary to implement Chapter 1305, concerning Workers' Compensation Health Care Networks.

Insurance Code §1305.251 provides for the Commissioner to set and collect fees for network examinations under §1305.251 or §1305.252.

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.

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 July 13, 2022.

TRD-202202669

James Person

General Counsel

Texas Department of Insurance

Effective date: August 2, 2022

Proposal publication date: February 4, 2022

For further information, please call: (512) 676-6584



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER O. STATE AND LOCAL SALES AND USE TAXES

34 TAC §3.340

The Comptroller of Public Accounts adopts amendments to §3.340, concerning qualified research, without changes to the proposed text as published in the June 10, 2022, issue of the *Texas Register* (47 TexReg 3425). The rule will not be republished.

The comptroller amends this section to provide guidance regarding the research and development sales tax exemption.

The comptroller amends the definition of Internal Revenue Code (IRC) in subsection (a)(6) to explain which federal Treasury Regulations are applicable to the 2011 federal income tax year. The comptroller has reconsidered comments received during the 2021 rulemaking process and agrees that the adopted definition is too restrictive. The amended definition includes any Treasury Regulation that a taxpayer could have applied to the 2011 federal income tax year. The amended definition also includes specific examples of Treasury Regulations applicable to the 2011 federal income tax year.

The comptroller amends subsection (d)(5) to remove items that are inconsistent with the changes made to the definition of IRC. The comptroller reletters subparagraph (C) accordingly.

The comptroller received comments regarding adoption of the amendment from Michael Thompson of Ryan. While Mr. Thompson welcomes the proposed revisions, he commented on the existing language of the rule rather than the text proposed for amendment. With one exception described below, Mr. Thompson made the same comments during the process of adopting the previous amendments to this rule and the comptroller addressed the comments at that time. The comptroller's response to each comment has not changed. A summary of the comments and the comptroller's responses can be found in the preamble to the previous amendments, as published in October 15, 2021 issue of the *Texas Register* (46 TexReg 7048).

Mr. Thompson requests a public hearing. Government Code, §2001.029 (Public Comment) requires a public hearing if a public hearing is requested by: at least 25 persons; a governmental subdivision or agency; or an association having at least 25 members. Ryan is not a governmental subdivision or agency, and it is not an association having at least 25 members. The minimum of 25 persons required to mandate a public hearing has not been met because Ryan was the only person to request a public hearing. The comptroller declines to hold a public hearing.

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

The amendments implement Tax Code, §151.3182 (Certain Property Used in Research and Development Activities; Reporting of Estimates and Evaluation).

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 July 15, 2022.

TRD-202202684

Jenny Burleson

Director, Tax Policy

Comptroller of Public Accounts

Effective date: August 4, 2022

Proposal publication date: June 10, 2022

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



SUBCHAPTER V. FRANCHISE TAX

34 TAC §3.599

The Comptroller of Public Accounts adopts amendments to §3.599, concerning margin: research and development activities credit, without changes to the proposed text as published in the June 10, 2022, issue of the *Texas Register* (47 TexReg 3434). The rule will not be republished.

The comptroller amends this section to provide guidance regarding the franchise tax research and development activities credit.

The comptroller amends the definition of Internal Revenue Code (IRC) in subsection (b)(5) to explain which federal Treasury Regulations are applicable to the 2011 federal income tax year. The comptroller has reconsidered comments received during the 2021 rulemaking process and agrees that the adopted definition is too restrictive. The amended definition includes any Treasury Regulation that a taxable entity could have applied to the 2011 federal income tax year. The amended definition also includes specific examples of Treasury Regulations applicable to the 2011 federal income tax year.

The comptroller amends subsection (d)(5) to remove items that are inconsistent with the changes made to the definition of IRC. The comptroller reletters subparagraph (C) accordingly.

The comptroller reorganizes subsection (i)(1) and (2) for readability and amends the language moved from paragraph (2) to paragraph (1) to explain that the combined group is the taxable entity for the purposes of calculating and reporting the credit.

The comptroller revises paragraph (3) to remove the current text restricting credit carryforwards and describes how to determine the credit carryforward when the membership of a combined group changes.

The comptroller amends subsection (m) by explaining that the conveyance, assignment, or transfer of an ownership interest in the taxable entity is not a conveyance, assignment, or transfer of the credit by the taxable entity.

The comptroller received comments regarding adoption of the amendment from Michael Thompson of Ryan and Mike Williams of RSM US LLP (RSM). While Mr. Thompson welcomes the proposed revisions, both he and Mr. Williams commented on the existing language of the rule rather than the text proposed for amendment. With two exceptions described below, the commenters made the same comments during the process of adopting the previous amendments to this rule and the comptroller addressed the comments at that time. The comptroller's response to each comment has not changed. A summary of the comments and the comptroller's responses can be found in the preamble to the previous amendments, as published in October 15, 2021, issue of the *Texas Register* (46 TexReg 7060).

Mr. Thompson also requests a public hearing. Government Code, §2001.029 (Public Comment) requires a public hearing if a public hearing is requested by: at least 25 persons; a governmental subdivision or agency; or an association having at least 25 members. Ryan is not a governmental subdivision or agency, and it is not an association having at least 25 members. The minimum of 25 persons required to mandate a public hearing has not been met because Ryan was the only person to request a public hearing. The comptroller declines to hold a public hearing.

Mr. Thompson comments that the amendment to subsection (b)(5) that now includes Treasury Regulations related to pilot models is inconsistent with the provision in subsection (b)(8)(A)(iii) explaining that certain sales tax exemptions are allowed for uses that are incompatible with the item also being used in qualified research activities. The pilot model Treasury Regulations referenced relate to the Section 174 Test. These regulations do not affect the other three parts of the Four-Part Test, the definition of "qualified research expenses," or any uses for which sales tax exemptions are allowed. The comptroller declines to modify the rule based on this comment.

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

The amendments implement Tax Code, Chapter 171, Subchapter M (Tax Credit for Certain Research and Development Activities).

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

Filed with the Office of the Secretary of State on July 15, 2022.

TRD-202202685

Jenny Burleson

Director, Tax Policy

Comptroller of Public Accounts

Effective date: August 4, 2022

Proposal publication date: June 10, 2022

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



CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER H. TAX RECORD REQUIREMENTS

34 TAC §9.3061

The Comptroller of Public Accounts adopts new §9.3061, concerning installment payments of taxes on property not directly damaged in a disaster or emergency area, without changes to the proposed text as published in the June 10, 2022, issue of the *Texas Register* (47 TexReg 3445). The rule will not be republished.

This new section implements Senate Bill 742, Section 4, 87th Legislation, R.S. (2021). This section closely follows the language in Tax Code, §31.033 so as not to create an undue burden on the taxing units that adopt this installment payment option and to allow them flexibility to create their own policies that comply with the requirements in Tax Code, §31.033.

Subsection (a) provides definitions for terms used in the new section.

Subsection (b) establishes the types of property and taxes to which the new section applies.

Subsection (c) establishes that Tax Code, §31.032(b), (b-1), (c), and (d) apply to the payment of taxes to a taxing unit that has adopted an installment payment option for taxes owed on property described in the new section.

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

This new section is authorized by Tax Code, §31.033 (d), which requires the comptroller to adopt rules to implement Tax Code, §31.033.

This new section implements Tax Code, §31.033, concerning Installment Payments of Taxes on Property in Disaster Area or Emergency Area That Has Not Been Damaged as a Result of Disaster or Emergency.

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 July 15, 2022.

TRD-202202686

Victoria North

General Counsel for Fiscal and Agency Affairs

Comptroller of Public Accounts

Effective date: August 4, 2022

Proposal publication date: June 10, 2022

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



TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 4. EMPLOYMENT PRACTICES

The Texas Department of Transportation (department) adopts the repeal of §§4.10 - 4.15, new §§4.10 - 4.16, concerning Job Application Procedures, and §§4.70 - 4.78, concerning Family Leave Pool Program, and amendments to §§4.22 - 4.25, concerning Employment and Education Programs. The repeal of §§4.10 - 4.15, new §§4.10 - 4.16 and §§4.70 - 4.78, and amendments to §§4.22 - 4.25 are adopted without changes to the pro-

posed text as Published in the May 6, 2022, issue of the *Texas Register* (47 TexReg 2724) and will not be republished.

EXPLANATION OF ADOPTED REPEAL, AMENDMENTS, AND NEW SECTIONS

The purpose of the repeal, amendments, and new sections is to respond to numerous legislative changes, to align the rules with the procedures that are currently being used, and to promote efficiencies in the department's employment practices.

New §4.10, Purpose, identifies the statutory requirements with which the department's job application procedures will comply. The new section is substantively the same as existing §4.10 with the addition of the recognition of preferences for former foster children.

New §4.11, Definition, defines "department" for this subchapter. Unused and unnecessary definitions from former §4.11 have not been included.

New §4.12, Job Postings, explains the department's job posting process to include the types of positions the department will post, the descriptive information, including military occupational specialty codes, that will be included in the department's job postings, and that the department will notify the Texas Workforce Commission when a vacant position has been filled. Government Code, §§656.002 and 656.023, amended by S. B. No. 389, Acts of the 84th Legislature, Regular Session, require state agencies to include on all employment opening forms and notices the military occupational specialty codes that correspond to the employment opening if the duties of the available position correlate with a military occupational specialty.

New §4.13, Application, requires that an applicant must complete an online application and identifies the online application systems available that an applicant may use to submit an employment application. Government Code, §656.002, amended by H. B. No. 426, Acts of the 84th Legislature, Regular Session, requires state agencies to accept applications through the Texas Workforce Commission's WorkInTexas.com website and allows state agencies to continue to accept employment applications in other ways. New §4.13 also identifies the information that must be included on an employment application and specifies when an application must be received and the minimum age of an applicant for an application to be considered.

New §4.14, Screening, lists the factors that the department considers when determining if an applicant meets the minimum job requirements.

New §4.15, Preferences, identifies employment preferences that the department will give an applicant in accordance with statutory requirements. Government Code, §657.003, amended by S. B. No. 805, Acts of the 84th Legislature, Regular Session, requires state agencies to provide a veterans' employment preference. Chapter 672, Government Code, was added by H. B. No. 1043, Acts of the 81st Legislature, Regular Session, and requires a hiring preference at state agencies for certain individuals who were in the state foster care system.

New §4.16, Medical Examination, provides that an applicant for a physically demanding position must pass a medical examination and adds a definition of physically demanding position. Labor Code, §505.054, which was amended by S. B. No. 1323, Acts of the 87th Legislature, Regular Session, no longer requires that all employees must pass a pre-employment physical examination. New §4.16 clarifies that the director of the Human Resources Division is responsible for determining which positions are phys-

ically demanding. New §4.16 also deletes the requirement that the department must designate practicing physicians to conduct the medical examinations and instead provides that the department may do so. Labor Code, §505.054, no longer requires that the department must designate practicing physicians to conduct the medical examinations.

Amendments to §4.22, College Cooperative Education Program, clarify that a student participating in the cooperative education program will be required to pass the medical examination only if the student's work assignment requires a medical examination under §4.16(a).

Amendments to §4.23, High School Cooperative Program, establish a new minimum age requirement of 16 years of age for a high school student to be eligible to participate in the high school cooperative program. The amendments also clarify that a student will be required to pass the medical examination only if the student's work assignment in the program requires a medical examination under §4.16(a).

Amendments to §4.24, College Intern Program, clarify that a student participating in the college intern program will be required to pass the medical examination only if the student's work assignment in the program requires a medical examination under §4.16(a).

Amendments to §4.25, Conditional Grant Program, correct typographical errors, remove redundancies, and update program procedures. In subsection (d) the due date for an application is changed to April 1. In subsection (g)(3) the amount for one conditional grant per academic semester is increased in response to rising costs of tuition. In subsection (j)(1) the references to freshman and sophomore years are replaced with specific college credit hours relating to repayment of a conditional grant. In subsection (j)(4) the time that a conditional grant recipient is to begin repayment of the conditional grant is changed until after the student's expected date of graduation. In subsection (j)(6) the requirement that a conditional grant recipient must adhere to the established repayment schedule as a part of the condition for the department to waive repayment of any remaining amounts owed to the department is deleted. Changes in subsection (j) expand the reasons that the department may temporarily reduce, defer, or extend repayment of grant funds on a student's submission of a formal request. The changes to §4.25 promote efficiency in the administration of the Conditional Grant Program.

New §4.70, Purpose, describes the purpose and authority for a family leave pool program for an eligible employee of the department to use for bonding and caring for the employee's children or a person over whom the employee has guardianship, or caring for an immediate family member's or the employee's serious illness, including a pandemic-related illness or complication. Government Code, Chapter 661, Subchapter A-1, which was added by H. B. No. 2063, Acts of the 87th Legislature, Regular Session, 2021, requires each state agency to create a family leave pool program.

New §4.71, Definitions, provides meaning for the words and terminology used in this subchapter.

New §4.72, Administration of the Pool, establishes the Pool Administrator's responsibilities for the administration of the family leave pool.

New §4.73, Eligibility, identifies eligibility requirements for the ability to use time contributed to the family leave pool and identifies ineligibility to use time contributed to the family leave pool.

New §4.74, Contributions, explains allowable contributions that employees and retiring employees may make to the family leave pool and clarifies that contributions are not returnable. The section authorizes the pool administrator to adjust employees' accounts and the family leave pool balances based on contributions to the family leave pool and use of leave granted under the family leave pool.

New §4.75, Requests for Withdrawals, establishes procedures for an eligible employee to apply for permission to withdraw time from the family leave pool and places limitations on the amounts that employees may withdraw from the family leave pool.

New §4.76, Decision on a Request, establishes the criteria the pool administrator must use when considering requests and the timeline in which the pool administrator must issue a determination.

New §4.77, Unused Leave, establishes the procedures for returning unused leave granted under the family leave pool program.

New §4.78, Equal Treatment, establishes that use of leave granted under the family leave pool program is equivalent to an employee's using sick leave earned by the employee.

COMMENTS

No comments on the proposed repeal, new, and amendments were received.

SUBCHAPTER B. JOB APPLICATION PROCEDURES

43 TAC §§4.10 - 4.15

STATUTORY AUTHORITY

The repeals are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Labor Code, §505.051, which provides the department with the authority to adopt rules to effectively administer Labor Code, Chapter 505; Education Code, §56.142, which requires the department to establish and administer a conditional grant program; and Government Code, §661.022, which provides the department with the authority to adopt rules to effectively administer a family leave pool program.

CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Education Code, §§56.141-56.145; Government Code, §§656.002, 656.023, and 657.003, Chapter 661, Subchapter A-1, and §§672.002 and 672.005; and Labor Code, §505.054.

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 July 12, 2022.

TRD-202202631

Becky Blewett

Deputy General Counsel

Texas Department of Transportation

Effective date: August 1, 2022

Proposal publication date: May 6, 2022

For further information, please call: (512) 463-3164



43 TAC §§4.10 - 4.16

STATUTORY AUTHORITY

The new sections are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

None.

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 July 12, 2022.

TRD-202202632
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Effective date: August 1, 2022
Proposal publication date: May 6, 2022
For further information, please call: (512) 463-3164



SUBCHAPTER C. EMPLOYMENT AND EDUCATION PROGRAMS

43 TAC §§4.22 - 4.25

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

None.

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 July 12, 2022.

TRD-202202633
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Effective date: August 1, 2022
Proposal publication date: May 6, 2022
For further information, please call: (512) 463-3164



SUBCHAPTER G. FAMILY LEAVE POOL PROGRAM

43 TAC §§4.70 - 4.78

STATUTORY AUTHORITY

The new sections are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

None.

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 July 12, 2022.

TRD-202202635
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Effective date: August 1, 2022
Proposal publication date: May 6, 2022
For further information, please call: (512) 463-3164



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

Commission on State Emergency Communications

Title 1, Part 12

The Commission on State Emergency Communications (CSEC) will review and consider whether to readopt, readopt with amendments, or repeal the rules in Title 1, Part 12, Texas Administrative Code, Chapter 251, 9-1-1 Service--Standards. This review is conducted in accordance with Government Code §2001.039.

CSEC has conducted a preliminary review of Chapter 251 and determined that the reasons for initially adopting the chapter continue to exist. CSEC does not at this time anticipate proposing amendments to its Chapter 251 rules.

All comments or questions regarding this review may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Patrick Tyler, General Counsel, at The Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942; by facsimile to (512) 305-6937; or by email to csecinfo@csec.texas.gov. Any proposed changes to Chapter 251 will be published for public comment in the "Proposed Rules" section of a subsequent issue of the *Texas Register*.

Chapter 251 - 9-1-1 Service--Standards

§251.1 Regional Strategic Plans for 9-1-1 Service

§251.2 Changes to 9-1-1 Service Arrangements

§251.3 Use of Revenue in Certain Counties

§251.4 Guidelines for Accessibility Equipment

§251.5 Guidelines for Management and Disposition of 9-1-1 Equipment and Controlled Assets

§251.7 Guidelines for Implementing Integrated Services

§251.8 Regional Planning Commission Procurement of 9-1-1 Equipment and Services with 9-1-1 Funds

§251.10 Guidelines for Implementing Wireless E9-1-1 Service

§251.12 Commission and Regional Planning Commission Contracts for 9-1-1 Service

§251.13 Use of 9-1-1 Database Information

§251.14 VoIP Positioning Center Operator Minimum Requirements

§251.15 Emergency Services Gateway Operator Minimum Requirements

§251.16 Direct Access to 9-1-1 Service

TRD-202202682

Patrick Tyler

General Counsel

Commission on State Emergency Communications

Filed: July 15, 2022



The Commission on State Emergency Communications (CSEC) is conducting its annual review of the definitions of the terms "local exchange access line" and "equivalent local exchange access line" as required by Health and Safety Code §771.063(c). Due to the potentially disruptive changes resulting from advancements in technology, including mobile Internet Protocol-enabled services, CSEC takes no position on whether current §255.4 sufficiently defines the foregoing terms.

Persons wishing to comment on CSEC's initial determination or recommend amendments to section 255.4 may do so by submitting written comments within 30 days following publication of this notice in the *Texas Register* to Patrick Tyler, General Counsel, Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942; by facsimile to (512) 305-6937; or by email to csecinfo@csec.texas.gov. Please include "Comments on Rule 255.4" in the subject line of your letter, fax, or email.

TRD-202202683

Patrick Tyler

General Counsel

Commission on State Emergency Communications

Filed: July 15, 2022



Credit Union Department

Title 7, Part 6

Chapter 91, Subchapter E, concerning direction of affairs, consisting of §91.501 (Director Eligibility and Disqualification), §91.502 (Director/Committee Member Fees, Insurance, Reimbursable Expenses, and Other Authorized Expenditures), §91.503 (Change in Credit Union President), §91.510 (Bond and Insurance Requirements), §91.515 (Financial Reporting), and §91.516 (Audits and Verifications).

Chapter 91, Subchapter F, concerning accounts and services, consisting of §91.601 (Share and Deposit Accounts), §91.602 (Solicitation and Acceptance of Brokered Deposits), §91.608 (Confidentiality of Member Records), and §91.610 (Safe Deposit Box Facilities).

This rule review will be conducted pursuant to Texas Government Code, §2001.039. The commission believes that the reasons for adopting the rules contained in these chapters continue to exist. The

commission will accept written comments received on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register* as to whether the reasons for adopting these rules continue to exist. The commission also invites comments on how to make these rules easier to understand. For example:

--Does the rule organize the material to suit your needs? If not, how could the material be better organized?

--Does the rule clearly state the requirements? If not, how could the rule be more clearly stated?

--Does the rule contain technical language or jargon that is not clear? If so, what language requires clarification?

--Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand? If so, what changes to the format would make the rule easier to understand?

--Would more (but shorter) sections be better in any of the rules? If so, what sections should be changed?

Each rule will also be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and

whether the rule reflects current procedures of the Credit Union Department.

Any questions or written comments pertaining to this notice should be directed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699, or by email to [cudmail@cud.texas.gov](mailto:cudmail@ cud.texas.gov). Any proposed amendments as a result of the review will be published in the *Texas Register* in compliance with Texas Government Code, Chapter 2001, and will be open for an additional 31-day public comment period prior to final adoption or repeal by the commission.

TRD-202202680
John J. Kolhoff
Commissioner
Credit Union Department
Filed: July 14, 2022



TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 10 TAC §10.625

Noncompliance Event	Program(s)	If HTC, on Form 8823?
Violations of the Uniform Physical Condition Standards	All Programs	Yes
Noncompliance related to Affirmative Marketing requirements	All Programs	No
Development is not available to the general public because of leasing issues	HTC	Yes
TDHCA has received notice of possible Fair Housing Act Violation from HUD or DOJ and reported general public use violation in accordance with IRS 8823 Audit Guide Chapter 13	HTC	Yes
TDHCA has referred unresolved Fair Housing Design and Construction issue or other Fair Housing noncompliance to the Texas Workforce Commission	All programs	No
Development has gone through a <u>deed in lieu of foreclosure</u> or <u>foreclosure</u>	All programs	Yes
Development is never expected to comply due to failure to report or allow monitoring	All programs	Yes [yes]
Owner did not allow [on-site]monitoring or <u>physical inspection and/or</u> failed to notify residents resulting in inspection cancelation	All programs	Yes
LURA not in effect	All programs	Yes
Project failed to meet minimum set aside	HTC and Bonds	Yes
No evidence of, or failure to certify to material participation of a non-profit or HUB, if required by LURA	HTC	Yes, if non- profit issue, No, if HUB issue
Development failed to meet additional state required rent and occupancy restrictions	All programs	No
Noncompliance with social service requirements	HTC and Bond	No
Development failed to provide housing to the elderly as promised at application	All programs	No
Failure to provide special needs housing as required by LURA	All programs	No

Changes in Eligible Basis or Applicable percentage	HTC	Yes
Failure to submit all or parts of the Annual Owner's Compliance Report	All programs	Yes for part A, No for other parts
Failure to submit quarterly reports as required by §10.607	All programs	No
Noncompliance with utility allowance requirements described in §10.614 of this subchapter and/or Treasury Regulation §1.42-10	All programs	Yes if rent exceeds limit, no if related to noncompliance with other requirements, such as posting, updating etc.
Noncompliance with lease requirements described in §10.613 of this subchapter	All programs	No
Asset Management Division has reported that Development has failed to establish and maintain a reserve account in accordance with §10.404 of this chapter	All programs	No
Failure to provide a notary public as promised at application	HTC	No
Violation of the Unit Vacancy Rule	HTC	Yes
Casualty Loss	All programs	Yes
Failure to provide <u>monitoring and/or physical inspection</u> [pre-onsite]-documentation	All programs	No
Failure to provide amenity as required by LURA	<u>All programs</u>	No
Failure to pay asset management, compliance monitoring or other required fee	HTC, TCAP, Bond, NHTF, TCAP-RF, Exchange, <u>HOME-ARP</u> , and HOME and <u>/NSP</u> Developments committed funds after August 23, 2013	No
Change in ownership without department approval (other than removal of a general partner in accordance with §10.406 of this chapter)	All programs	No

Noncompliance with written policy and procedure requirements	All programs	No, unless finding is because Owner refused to lease to Section 8 households
Program Unit not leased to Low-Income household/ Household income above income limit upon initial occupancy	All programs	Yes
Program unit occupied by nonqualified [full-time]-students	HTC during the Compliance Period, Bond, [and]-HOME/NSP developments committed funds after August 23, 2013, <u>and</u> , 811 <u>and</u> HOME-ARP Developments	Yes
Low Income Units used on a transient basis	HTC and Bond	Yes
Violation of the Available Unit Rule	All programs, but only during the Compliance Period for HTC, TCAP, and Exchange	Yes
Gross rent exceeds the highest rent allowed under the LURA or other deed restriction	All programs	Yes
Failure to provide Tenant Income Certification and documentation	All programs	Yes
Unit not available for rent	All programs	Yes
Failure to collect data required by §10.612[(b)(1) and/or §10.612(b)(2)]	All programs [HTC, TCAP, Exchange, and Bond]	No
Development evicted or terminated the tenancy of a low-income tenant for other than good cause	HTC, HOME, <u>HOME-ARP</u> , TCAP- RF, NHTF, and NSP	Yes

Household income increased above 80 percent at recertification and Owner failed to properly determine rent	HOME, <u>TCAP-RF</u> , HOME Match, and HOME ARP	No [NA]
Violation of the Integrated Housing Rule	All programs	No
Failure to resolve final construction deficiencies <u>within the corrective action period</u>	All programs	No
Noncompliance with the required accessibility requirements such as §504 of the Rehabilitation Act of 1973, the 2010 ADA standards as modified in the Department rules, or other accessibility related requirements of a Department rule	HOME, <u>HOME-ARP</u> , NSP, TCAP- RF, NHTF, THTF, and <u>for [For] those</u> HTC properties that were awarded after 2001 [or that were]	No
Noncompliance with the notice to the Department requirements described in §10.609 of this subchapter	All programs	No
Failure to reserve Units for Section 811 [PRA] participants	811 developments	No [NA]
Failure to notify the Department of the availability of units	811 developments	No [NA]
Owner failed <u>to check</u> required criminal history	811 <u>developments</u> [Developments]	No [NA]
Failure to use Enterprise Income Verification System	811 developments	No [NA]
Failure to properly document and calculate adjusted	811 developments	No [NA]
Failure to use required HUD forms	811 developments	No [NA]
Accepted funding that limits <u>Section</u> 811 participation	811 developments	No [NA]
Failure to properly calculate tenant portion of rent	811 developments	No [NA]

Failure to use HUD model lease	811 developments	No [NA]
Failure to disperse <u>Section 811 [PRA]-units</u>	811 developments	No [NA]
Failure to conduct interim certifications	811 developments	No [NA]
Failure to conduct annual income recertification	811 developments	No [NA]
Asset Management Division has reported that Development has failed to <u>submit [review]-rents</u> on an annual basis in accordance with §10.403 of this chapter	HOME, NSP, TCAP RF, <u>HOME-ARP</u> , and NHTF	No [NA]
Unit Leased to a household that is not qualified for the 811 PRA program	811 <u>developments</u> [Developments]	No [NA]
[Failure to submit documentation for a mail in review]	[All programs]	[Yes]
Noncompliance with CHDO Requirements	HOME	No [NA]
Failure to disperse unit designations across all unit types – Average Income only	<u>HTC</u>	No
<u>Household income designations was improperly changed or removed</u>	<u>All programs</u>	No
<u>Failure to maintain the specific unit mix required in the Land Use Restriction Agreement (LURA)</u>	HOME, HOME-ARP, TCAP-RF and NHTF	No
<u>Increased a household's rent more than one time during a 12-month period</u>	<u>All programs</u>	No

<u>Failure to issue a notice of rent increase in accordance with §10.622(k)</u>	<u>All programs</u>	<u>No</u>
<u>Failure to market to veterans as required in the LURA</u>	<u>HTC</u>	<u>No</u>
<u>Failure to include veteran statement in the application</u>	<u>All programs</u>	<u>No</u>
<u>Failure to properly calculate and/or collect security deposit-Section 811 only</u>	<u>Section 811</u>	<u>No</u>
<u>Development inaccurately charged an application or late fee- Section 811 only</u>	<u>Section 811</u>	<u>No</u>
<u>Failure to issue utility allowance reimbursement in accordance with Section 811 only</u>	<u>Section 811</u>	<u>No</u>
<u>Failure to issue HUD Notices – Section 811</u>	<u>Section 811</u>	<u>No</u>
<u>Failure to submit completed IRS Form(s) 8609 with Part II completed by the first year of the credit period</u>	<u>HTC, Exchange and TCAP</u>	<u>No</u>
<u>Failure to provide notice to applicants and households prior to the LURA term ending</u>	<u>All programs</u>	<u>No</u>

Figure: 40 TAC §610.20(c)

Legacy FSRP Compliance Corridors		
Year	Funded Ratio Corridor Size	Funding Period Corridor Size (years)
1	5.00%	10.0
2	4.75%	9.0
3	4.50%	8.0
4	4.25%	7.0
5	4.00%	6.0
6	3.75%	5.0
7	3.50%	4.0
8	3.25%	3.0
9	3.00%	2.0
10	Target Date—L-FSRP complete	

Figure: 40 TAC §610.32(c)

FSRP Compliance Corridors		
Year	Funded Ratio Corridor Size	Funding Period Corridor Size (years)
1	5.00%	10.0
2	4.75%	9.0
3	4.50%	8.0
4	4.25%	7.0
5	4.00%	6.0
6	3.75%	5.0
7	3.50%	4.0
8	3.25%	3.0
9	3.00%	2.0
10	No longer possible to trigger an R-FSRP	

Figure: 40 TAC §807.54

GRADUATED CORRECTIVE ACTIONS	
	<i>Sanction to Representative</i> (to serve as a representative in a school licensed in Texas)
Initial Violation	Conditional registration and retraining
Multiple Violations	Suspension of registration and retraining
Repeat Violation	Revocation or denial of registration
Felony Conviction	Denial, suspension, or revocation of registration
VIOLATIONS	
<i>Representative Approval</i>	
Soliciting or enrolling students without registration as a representative	
Failure to provide required or accurate information in the representative registration application	
Soliciting or enrolling students for multiple schools, without agreement of all school owners	
Soliciting or enrolling students without taking required training	
<i>Representative Behavior</i>	
Misrepresentation of the school's <u>courses or programs</u>	
Providing incomplete or inaccurate information about the school (such as employment outcomes, extent of transferability of credits)	
Discrediting other schools	
[Soliciting students in disallowed locations]	
Soliciting or enrolling students into unapproved <u>courses or programs</u>	
Soliciting students in disallowed locations	
Soliciting or enrolling students into unapproved <u>courses or programs</u>	
Offering students financial inducements to enroll	
Coercing students to enroll	
Administering entrance tests	
Advising students on financial aid	
Soliciting as, or on behalf of, an employment agency	
Failing to invite students to tour the school's facility and inspect the equipment	
<u>Omitting advising students on the school's policies and procedures regarding granting of credit</u>	
Violating any other provision of statute or rule relating to career schools and colleges	

Figure: 40 TAC §807.353(e)

Violation	First Offense: Penalty	Repeat Offenses: Penalty	Definition of Instance
Failure of a small school transitioning to a large school to notify the Agency of status change, timely apply, or remit increased fees	\$250	NA	Per violation
Failure to disclose to the Agency changes in tuition, fees, or other charges	\$250	Second Offense: \$500 Subsequent Offenses: \$1,000	Per violation
Failure to provide the Agency notice of a change of address prior to permanently vacating the school facility	\$250	Second Offense: \$500 Subsequent Offenses: \$1,000	Per violation
Failure to maintain records demonstrating compliance with requirements of statute or rule	\$250	Second Offense: \$500 Subsequent Offenses: \$1,000	Per record or student record
Failure to properly destroy or arrange for the destruction of sensitive personal information in the school's custody or control	\$250	Second Offense: \$500 Subsequent Offenses: \$1,000	Per student affected
Failure to protect student records against damage, loss, or misuse	\$250	Second Offense: \$500 Subsequent Offenses: \$1,000	Per record or student record
Failure to provide complete and accurate information as required by the Agency	\$250	Second Offense: \$500 Subsequent Offenses: \$1,000	Per violation
<u>Failure to provide an instructor who meets necessary qualifications and whose application was submitted within required time frames</u>	<u>\$250</u>	<u>Second Offense:</u> <u>\$500</u> <u>Subsequent</u> <u>Offenses:</u> <u>\$1,000</u>	<u>Per instructor, per</u> <u>course</u>

Violation	First Offense: Penalty	Repeat Offenses: Penalty	Definition of Instance
Failure to ensure a staff member has taken required training and been approved by the Agency	\$500	Subsequent Offenses: \$1,000	Per staff member
[Failure to provide an instructor who meets necessary qualifications and whose application was submitted within required time frames]	[\$500]	[Subsequent Offenses: \$1,000]	[Per instructor]
Failure to provide an instructor who meets necessary qualifications and whose application was submitted within required time frames	\$500	Subsequent Offenses: \$1,000	Per instructor
Failure to make arrangements satisfactory to the Agency for the completion of a discontinued <u>program</u> [course of instruction]	\$500	Subsequent Offenses: \$1,000	Per <u>program</u> [course of instruction]
Making a false statement in an application to the Agency	\$500	Subsequent Offenses: \$1,000	Per violation
Failure to maintain the instructors, facilities, equipment, or <u>programs</u> [courses of instruction] and outcomes on the basis of which approval was issued	\$500	Subsequent Offenses: \$1,000	Per <u>program</u> [course of instruction]
Failure to disclose limitations on transferability of courses of instruction to a prospective student	\$500	Subsequent Offenses: \$1,000	Per student affected
Advertising that financial aid is available or advertising that financial aid may be available for a program for which it is not available	\$500	Subsequent Offenses: \$1,000	Per student affected
Failure to establish that a student met the approved admission requirements when the student was enrolled	\$750	Subsequent Offenses: \$1,000	Per student affected

Violation	First Offense: Penalty	Repeat Offenses: Penalty	Definition of Instance
Failure to submit the annual program completion, job placement, and employment data required by the Agency by the required due date	\$750	Subsequent Offenses: \$1,000	Per school
Failure to submit annual financial statements no later than 180 days from the close of the school's or college's fiscal year	\$750	Subsequent Offenses: \$1,000	Per school
Transfer of all students from one school location to another school location, by an owner with multiple school locations, without Agency approval	\$750	Subsequent Offenses: \$1,000	Per violation
Dismissal of all students contrary to the school's class schedule as printed in the school catalog for reasons not approved by the Agency	\$750	Subsequent Offenses: \$1,000	Per dismissal event
<u>Failure to notify the Agency in writing of any legal actions or any change in accreditation status or Title IV status</u>	<u>\$750</u>	<u>Subsequent Offenses: \$1,000</u>	<u>Per action</u>
Operating a school without a certificate of approval	\$1,000	Subsequent Offenses: \$1,000	Per school, <u>per program</u>
Teaching a <u>program</u> [course of instruction] or revised <u>program</u> [course of instruction] that has not been approved by the Agency	\$1,000	Subsequent Offenses: \$1,000	Per <u>program</u> [course of instruction]
Using advertising that is false, misleading, or deceptive, including the misrepresentation of degrees other than those approved by the Coordinating Board	\$1,000	Subsequent Offenses: \$1,000	Per student affected

Violation	First Offense: Penalty	Repeat Offenses: Penalty	Definition of Instance
Failure to notify the Agency of the discontinuance of the <u>program</u> [course of instruction] or the operation of a school or college within 72 hours of cessation of classes, and to make available accurate records as required	\$1,000	Subsequent Offenses: \$1,000	Per <u>program</u> [course of instruction]
Solicitation of a prospective student in violation of statutory and rule requirements	\$1,000	Subsequent Offenses: \$1,000	Per student affected
Any misrepresentation	\$1,000	Subsequent Offenses: \$1,000	Per misrepresentation
<u>Failure to grant appropriate credit, both in time and monetarily, to any student based on the required evaluation of prior experience, education, or training</u>	<u>\$1,000</u>	<u>Subsequent Offenses: \$1,000</u>	<u>Per student affected</u>
Failure to pay any fee or penalty installment by the required due date	50% of the total amount of the fee	50% of the total amount of the fee	Per failure
Paying a refund late	A rate established annually by the Commission	A rate established annually by the Commission	Per refund, <u>per day</u>



IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Texas Water Code and Texas Health and Safety Code Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement action under the Texas Water Code and the Texas Health and Safety Code. Before the State may enter into a voluntary settlement agreement, pursuant to section 7.110 of the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Texas Water Code.

Case Title and Court: *Harris County, Texas, and the State of Texas, acting by and through the Texas Commission on Environmental Quality, a Necessary and Indispensable Party v. Alireza Lahijani, Individually and d/b/a MEGA*; Cause No. 2020-26009, in the 11th Judicial District, Harris County, Texas.

Nature of the Suit: Defendant Alireza Lahijani, owns a used car sales business known by the assumed name "MEGA" which he operates at 2520 W. Mount Houston Road, Houston, Harris County, Texas 77039. Between 2016 and 2021, Harris County Pollution Control Services Department inspected the Site and observed numerous solid waste violations. Harris County initiated suit against Defendant for the unauthorized dumping and disposal of municipal solid waste which violated the Texas Solid Waste Disposal Act and rules promulgated by the Texas Commission on Environmental Quality (TCEQ). The State of Texas, on behalf of the TCEQ, joined the suit as a necessary and indispensable party.

Proposed Settlement: The proposed Agreed Final Judgment settlement assesses against Defendant civil penalties in the amount of \$50,000 to be equally divided between Harris County and the State; and attorney's fees in the amount of \$10,000 to be equally divided between Harris County and the State; and court costs.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Roel Torres, Assistant Attorney General, Office of the Attorney General, P.O. Box 12548, MC 066, Austin, Texas 78711-2548, phone (512) 463-2012, facsimile (512) 320-0911, or email: roel.torres@oag.texas.gov. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-202202689
Austin Kinghorn
General Counsel
Office of the Attorney General
Filed: July 15, 2022

Comptroller of Public Accounts

Notice of General Meeting of the Multistate Tax Commission

Pursuant to Texas Tax Code §141.003, the comptroller provides notice of the general meeting of the Multistate Tax Commission.

The annual meeting of the commission will be held in person and virtually at 9:00 a.m., Alaska Daylight Time, Wednesday, August 3rd, 2022.

The in-person meeting will be held at the Sheraton Anchorage Hotel, 401 East 6th Avenue, Anchorage, Alaska. Virtual attendees may join the meeting at <https://meet.goto.com/417563333> or may dial in at +1 (872) 240-3212 with Access Code: 417-563-333.

For questions, please contact Shannon Brandt, Tax Policy Counsel, at shannon.brandt@cpa.texas.gov

Issued in Austin, Texas, on July 18, 2022.

TRD-202202700

Jenny Burleson
Director, Tax Policy
Comptroller of Public Accounts
Filed: July 18, 2022

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 07/25/22 - 07/31/22 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 07/25/22 - 07/31/22 is 18% for Commercial over \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 08/01/22 - 08/31/22 is 5.00% for Consumer/Agricultural/Commercial credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 08/01/22 - 08/31/22 is 5.00% for Commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

TRD-202202717
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: July 19, 2022

Court of Criminal Appeals

Final Approval of Amendment to Texas Rule of Appellate Procedure 9.4

IN THE COURT OF CRIMINAL APPEALS OF TEXAS

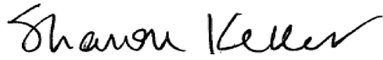
Misc. Docket No. 22-004

FINAL APPROVAL OF AMENDMENT TO TEXAS RULE OF APPELLATE PROCEDURE 9.4

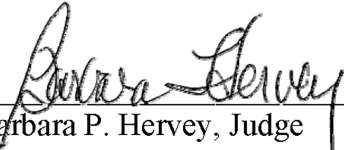
ORDERED that:

1. On April 5, 2022, the Court of Criminal Appeals (in Misc. Docket No. 22-003) preliminarily approved an amendment to Texas Rule of Appellate Procedure 9.4 and invited public comment.
2. Following public comment, the Court of Criminal Appeals made no change to the amendment. This order contains the final version of the rule, effective August 1, 2022.
3. The Clerk is directed to:
 - a. file a copy of this order with the Secretary of State;
 - b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
 - c. send a copy of this order to each elected member of the Legislature; and
 - d. submit a copy of the order for publication in the *Texas Register*.

Dated: July 20, 2022



Sharon Keller, Presiding Judge



Barbara P. Hervey, Judge

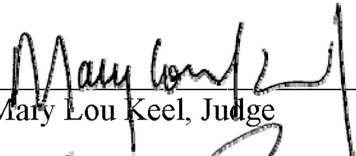


Bert Richardson, Judge



Kevin P. Yeary, Judge

David Newell, Judge



Mary Lou Keel, Judge



Scott Walker, Judge



Michelle M. Slaughter, Judge



Jesse F. McClure, Judge

Rule 9. Documents Generally

9.4. Form

(i) *Length.*

(2) Maximum Length. The documents listed below must not exceed the following limits:

(A) A brief and response in a direct appeal to the Court of Criminal Appeals in a case in which the death penalty has been assessed, and a subsequent application for a writ of habeas corpus filed pursuant to Article 11.071, Code of Criminal Procedure: 37,500 words if computer-generated, and 125 pages if not.

TRD-202202722
Deana Williamson
Clerk of the Court
Court of Criminal Appeals
Filed: July 20, 2022

Robert W. Etheridge
Interim Commissioner
Credit Union Department
Filed: July 20, 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 Energy Capital Credit Union, Houston, Texas, to expand its field of membership. The proposal would permit persons who live, work, worship or attend school or businesses and other legal entities located in Harris, Montgomery, Liberty, Walker, Grimes, San Jacinto, Brazoria, Fort Bend, Wharton, Austin, and Waller 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-202202724

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:

Articles of Incorporation Change - Approved

American Baptist Credit Union (Rosharon) - See *Texas Register* dated on May 27, 2022.

Merger or Consolidation - Approved

First Service Credit Union (Houston) and People's Trust Federal Credit Union (Houston) - See *Texas Register* dated on December 24, 2021.

TRD-202202723
Robert W. Etheridge
Interim Commissioner
Credit Union Department
Filed: July 20, 2022

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency, 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 **August 29, 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 **August 29, 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: Alan R. Truelove Jr.; DOCKET NUMBER: 2022-0709-WQ-E; IDENTIFIER: RN103248639; LOCATION: San Angelo, Tom Green County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$175; ENFORCEMENT COORDINATOR: Mark Gamble, (512) 239-2587; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(2) COMPANY: BKCK LTD.; DOCKET NUMBER: 2022-0293-PWS-E; IDENTIFIER: RN101278356; LOCATION: Boerne, Kendall County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(n)(1), by failing to maintain at the public water system accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank until the facility is decommissioned; PENALTY: \$500; ENFORCEMENT COORDINATOR: America Ruiz, (512) 239-2601; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: BRO Services, Incorporated; DOCKET NUMBER: 2022-0671-WQ-E; IDENTIFIER: RN111473054; LOCATION: Abilene, Taylor County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit (stormwater); PENALTY: \$875; ENFORCEMENT COORDINATOR: Mark Gamble, (512) 239-2587; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(4) COMPANY: Cajas Cleaners, LLC; DOCKET NUMBER: 2022-0266-DCL-E; IDENTIFIER: RN100597541; LOCATION: Austin, Travis County; TYPE OF FACILITY: dry cleaning facility; RULES VIOLATED: 30 TAC §337.11(e)(1) and Texas Health and Safety Code, §374.102(e), by failing to renew the facility's registration by completing and submitting the required registration form to the TCEQ for a dry cleaning and/or drop station facility; 30 TAC §337.20(e)(3)(A), by failing to install a dike or other secondary containment structure around each storage area for dry cleaning waste, dry cleaning solvent, and dry cleaning wastewater; and 30 TAC

§337.20(e)(6)(B), by failing to maintain weekly visible inspection logs of each installed secondary containment structure; PENALTY: \$2,239; ENFORCEMENT COORDINATOR: Stephanie McCurley, (512) 239-2607; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(5) COMPANY: City of Lipan; DOCKET NUMBER: 2019-1508-MWD-E; IDENTIFIER: RN101917417; LOCATION: Lipan, Hood 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 WQ0013590001, Effluent Limitations and Monitoring Requirements Numbers 1 and 6, by failing to comply with permitted effluent limitations; PENALTY: \$19,500; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$15,600; ENFORCEMENT COORDINATOR: Katelyn Tubbs, (512) 239-2512; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: City of Rockdale; DOCKET NUMBER: 2022-0672-WQ-E; IDENTIFIER: RN101388288; LOCATION: Rockdale, Milam County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general permit (stormwater); PENALTY: \$875; ENFORCEMENT COORDINATOR: Mark Gamble, (512) 239-2587; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(7) COMPANY: CM Custom and Remodel LLC; DOCKET NUMBER: 2022-0729-WQ-E; IDENTIFIER: RN111472296; LOCATION: Abilene, Taylor County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit (stormwater); PENALTY: \$875; ENFORCEMENT COORDINATOR: Mark Gamble, (512) 239-2587; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(8) COMPANY: Cooper, Brenda Michelle; DOCKET NUMBER: 2022-0805-WOC-E; IDENTIFIER: RN111359592; LOCATION: Chireno, Nacogdoches County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$175; ENFORCEMENT COORDINATOR: Carlos Molina, (512) 239-2557; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(9) COMPANY: Donahue Enterprises, Incorporated; DOCKET NUMBER: 2022-0664-WQ-E; IDENTIFIER: RN111473088; LOCATION: Abilene, Taylor County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit (stormwater); PENALTY: \$875; ENFORCEMENT COORDINATOR: Mark Gamble, (512) 239-2587; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(10) COMPANY: Earnest Wayne Weatherford; DOCKET NUMBER: 2022-0752-WOC-E; IDENTIFIER: RN103736724; LOCATION: Houston, Harris County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$175; ENFORCEMENT COORDINATOR: Devin Mendoza, (512) 239-1832; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(11) COMPANY: Flying V Enterprises LLC; DOCKET NUMBER: 2022-0693-WQ-E; IDENTIFIER: RN111473047; LOCATION: Abilene, Taylor County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit (stormwater); PENALTY: \$875; ENFORCEMENT COORDINATOR: Mark Gamble, (512) 239-2587; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(12) COMPANY: HICKS FAMILY PARTNERSHIP, LTD.; DOCKET NUMBER: 2022-0277-PWS-E; IDENTIFIER: RN100847599; LOCATION: Bandera, Bandera County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement covering land within 150 feet of the facility's two wells; 30 TAC §290.46(n)(1), by failing to maintain at the public water system accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank until the facility is decommissioned; and 30 TAC §290.46(n)(3), by failing to keep on file copies of well completion data as defined in 30 TAC §290.41(c)(3)(A) for as long as the well remains in service; PENALTY: \$925; ENFORCEMENT COORDINATOR: Miles Wehner, (512) 239-2813; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(13) COMPANY: J&T Legend Homes Abilene LLC; DOCKET NUMBER: 2022-0692-WQ-E; IDENTIFIER: RN111473062; LOCATION: Abilene, Taylor County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit (stormwater); PENALTY: \$875; ENFORCEMENT COORDINATOR: Mark Gamble, (512) 239-2587; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(14) COMPANY: L AND B TRADING INC dba Stanleys Ice House; DOCKET NUMBER: 2022-0279-PST-E; IDENTIFIER: RN101378222; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the regulated USTs; 30 TAC §334.10(b)(2), by failing to assure that all UST recordkeeping requirements are met; and 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the USTs in a manner which will detect a release at a frequency of at least once every 30 days, and failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$10,869; ENFORCEMENT COORDINATOR: Alain Elegbe, (512) 239-6924; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(15) COMPANY: Melton Truck Lines Incorporated; DOCKET NUMBER: 2022-0695-WQ-E; IDENTIFIER: RN104192315; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general permit (stormwater); PENALTY: \$875; ENFORCEMENT COORDINATOR: Mark Gamble, (512) 239-2587; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(16) COMPANY: Ray Iverson; DOCKET NUMBER: 2022-0801-PWS-E; IDENTIFIER: RN111435731; LOCATION: Murchison, Henderson County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$175; ENFORCEMENT COORDINATOR: Ashley Lemke, (512) 239-1118; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 72701-3734, (903) 535-5100.

(17) COMPANY: Sana Healthcare Carrollton, LLC dba Carrollton Regional Medical Center; DOCKET NUMBER: 2022-0320-PST-E; IDENTIFIER: RN100710300; LOCATION: Carrollton, Dallas County; TYPE OF FACILITY: hospital and emergency generator

facility; RULES VIOLATED: 30 TAC §334.7(d)(1)(A) and (3) and §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date, and failing to provide an amended registration for any change or additional information to the agency regarding the USTs within 30 days from the date of the occurrence of the change or addition; PENALTY: \$5,085; ENFORCEMENT COORDINATOR: Hailey Johnson, (513) 239-1756; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: Shirley & Sons Construction Co Incorporated; DOCKET NUMBER: 2022-0690-WQ-E; IDENTIFIER: RN106575046; LOCATION: Rockport, Aransas County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit (stormwater); PENALTY: \$875; ENFORCEMENT COORDINATOR: Mark Gamble, (512) 239-2587; REGIONAL OFFICE: 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(19) COMPANY: Southside Independent School District; DOCKET NUMBER: 2022-0314-PST-E; IDENTIFIER: RN101766210; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: fleet refueling facility; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tank (UST) for releases in a manner which will detect a release at a frequency of at least once every 30 days, and failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$4,875; ENFORCEMENT COORDINATOR: Karolyn Kent, (512) 239-2536; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(20) COMPANY: WM TRUCKING & EXCAVATING INC; DOCKET NUMBER: 2022-0793-WQ-E; IDENTIFIER: RN111187472; LOCATION: Magnolia, Montgomery County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general permit (stormwater); PENALTY: \$875; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-202202708

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: July 19, 2022



Enforcement Orders

An agreed order was adopted regarding City of Hackberry, Docket No. 2021-0469-PWS-E on July 19, 2022, assessing \$1,000 in administrative penalties with \$200 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 City of Leonard, Docket No. 2021-0539-PWS-E on July 19, 2022, assessing \$267 in administrative penalties with \$53 deferred. Information concerning any aspect of this order may be obtained by contacting Samantha Duncan, 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 NORTH RURAL WATER SUPPLY CORPORATION, Docket No. 2021-0777-PWS-E on July

19, 2022, assessing \$50 in administrative penalties with \$10 deferred. Information concerning any aspect of this order may be obtained by contacting Miles Wehner, 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 Williamson-Travis Counties Municipal Utility District 1, Docket No. 2021-0784-WQ-E on July 19, 2022, assessing \$938 in administrative penalties with \$187 deferred. Information concerning any aspect of this order may be obtained by contacting Deanna Dunseith, 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 Three Community Water Supply Corporation, Docket No. 2021-0790-PWS-E on July 19, 2022, assessing \$1,900 in administrative penalties with \$380 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 Harris County Water Control and Improvement District No. 99, Docket No. 2021-0966-PWS-E on July 19, 2022, assessing \$50 in administrative penalties with \$10 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 Pecan Valley Ranch & Farms, LLC, Docket No. 2021-1030-PWS-E on July 19, 2022, assessing \$1,138 in administrative penalties with \$227 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 Copano Cove Water Company, Inc., Docket No. 2021-1051-PWS-E on July 19, 2022, assessing \$1,876 in administrative penalties with \$375 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding 122ND & FRANKFORD / DISCOUNT SHOP RENTALS, INC., Docket No. 2021-1097-PWS-E on July 19, 2022, assessing \$2,500 in administrative penalties with \$500 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 R. R. DONNELLEY & SONS COMPANY, Docket No. 2021-1108-WQ-E on July 19, 2022, assessing \$675 in administrative penalties with \$135 deferred. Information concerning any aspect of this order may be obtained by contacting Monica Larina, 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 LANTERN RV & CABINS INC, Docket No. 2021-1195-PWS-E on July 19, 2022, assessing \$500 in administrative penalties with \$100 deferred. Information concerning any aspect of this order may be obtained by contacting Miles Wehner, 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 Hallsville, Docket No. 2021-1235-PWS-E on July 19, 2022, assessing \$2,434 in administrative penalties with \$486 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Lyford Superette, LLC, Docket No. 2021-1323-PST-E on July 19, 2022, assessing \$3,250 in administrative penalties with \$650 deferred. Information concerning any aspect of this order may be obtained by contacting Karolyn Kent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Smalley Drilling & Trucking Corp, Docket No. 2022-0051-WR-E on July 19, 2022, assessing \$350 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Ellen Ojeda, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202202725

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 20, 2022



Enforcement Orders

A default order was adopted regarding Rose Bailey, Docket No. 2019-0346-MSW-E on July 20, 2022, assessing \$5,249 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Taylor Pearson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default and shutdown order was adopted regarding Lumbini Enterprise LLC dba Neighborhood Food Mart, Docket No. 2019-1551-PST-E on July 20, 2022, assessing \$8,195 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Taylor Pearson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Roscoe, Docket No. 2019-1683-MSW-E on July 20, 2022, assessing \$24,900 in administrative penalties. 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 Billy Kizer, Docket No. 2020-0083-MSW-E on July 20, 2022, assessing \$20,850 in administrative penalties with \$17,250 deferred. Information concerning any aspect of this order may be obtained by contacting Jess Robinson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding ASIF ENTERPRISES, LLC dba Quick Stop, Docket No. 2020-0569-PST-E on July 20, 2022, assessing \$11,430 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Taylor Pearson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Inland Recycling La Grange LC, Docket No. 2020-0750-MLM-E on July 20, 2022, assessing \$137,805

in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jess Robinson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Lakeview Water Supply & Sewer Service Corporation, Docket No. 2020-1330-PWS-E on July 20, 2022, assessing \$2,300 in administrative penalties with \$1,725 deferred. Information concerning any aspect of this order may be obtained by contacting Benjamin Pence, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Uriel Chavira, Docket No. 2020-1343-WQ-E on July 20, 2022, assessing \$2,100 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Lora Naismith, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Reunion Ranch Water Control and Improvement District, Docket No. 2020-1510-MWD-E on July 20, 2022, assessing \$15,100 in administrative penalties with \$3,020 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, 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 Bridgeport, Docket No. 2020-1588-MLM-E on July 20, 2022, assessing \$10,065 in administrative penalties with \$2,013 deferred. Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Josh Commiato dba Lakeside Water, Docket No. 2021-0129-PWS-E on July 20, 2022, assessing \$9,124 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jess Robinson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding TexPac Hide & Skin Ltd., Docket No. 2021-0147-AIR-E on July 20, 2022, assessing \$6,750 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Mackenzie Mehlmann, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Valero Refining-Texas, L.P., Docket No. 2021-0202-AIR-E on July 20, 2022, assessing \$27,414 in administrative penalties with \$5,482 deferred. Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding FRONK OIL CO., INC. dba Imo's Country Store ("ICS") 1, ICS 3, ICS 4, and ICS 8, Docket No. 2021-0321-PST-E on July 20, 2022, assessing \$8,500 in administrative penalties with \$1,700 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 Exxon Mobil Corporation, Docket No. 2021-0339-AIR-E on July 20, 2022, assessing \$13,126 in administrative penalties with \$2,625 deferred. Information concerning any aspect of this order may be obtained by contacting Margarita Den-

nis, 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 Artex Petroleum LLC dba Extra Miles Truck Stop and Kings B and B business LLC dba Hooks Mini Mart, Docket No. 2021-0394-PST-E on July 20, 2022, assessing \$10,462 in administrative penalties with \$2,092 deferred. Information concerning any aspect of this order may be obtained by contacting John Fennell, 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 Magna Properties, Ltd., Docket No. 2021-0395-PWS-E on July 20, 2022, assessing \$20,457 in administrative penalties with \$4,091 deferred. Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Aqua Texas, Inc., Docket No. 2021-0476-MWD-E on July 20, 2022, assessing \$41,812 in administrative penalties with \$8,362 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, 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 Dean Haws, Docket No. 2021-0530-MLM-E on July 20, 2022, assessing \$6,000 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Alyssa Loveday, 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 El Paso Water Utilities Public Service Board, Docket No. 2021-0537-PWS-E on July 20, 2022, assessing \$9,660 in administrative penalties with \$1,932 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 James E. Danning dba North Whispering Meadows Water and Christel L. Danning dba North Whispering Meadows Water, Docket No. 2021-0561-PWS-E on July 20, 2022, assessing \$6,375 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Samantha Duncan, 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 Gallagher Acquisitions, LLC, Docket No. 2021-0565-PWS-E on July 20, 2022, assessing \$8,350 in administrative penalties with \$1,670 deferred. Information concerning any aspect of this order may be obtained by contacting Julianne Matthews, 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 PETTY WATER SUPPLY AND SEWER SERVICE CORPORATION, Docket No. 2021-0614-MLM-E on July 20, 2022, assessing \$3,222 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Samantha Salas, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Harris County Fresh Water Supply District No. 51, Docket No. 2021-0618-MWD-E on July 20, 2022, assessing \$9,375 in administrative penalties with \$1,875

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 City of La Joya, Docket No. 2021-0642-PWS-E on July 20, 2022, assessing \$10,400 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting America Ruiz, 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 Cowtown RV Park, Ltd., Docket No. 2021-0675-MWD-E on July 20, 2022, assessing \$12,000 in administrative penalties with \$2,400 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 SHERBANO VENTURE, INC. dba Brownies, Docket No. 2021-0722-PST-E on July 20, 2022, assessing \$13,375 in administrative penalties with \$2,625 deferred. Information concerning any aspect of this order may be obtained by contacting John Fennell, 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 Cypress Cove, LLC, Docket No. 2021-0723-WQ-E on July 20, 2022, assessing \$2,438 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Alyssa Loveday, 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 I-10 EXPRESS LLC dba Flatonia Travel Plaza, Docket No. 2021-0779-PST-E on July 20, 2022, assessing \$16,300 in administrative penalties with \$3,260 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie McCurley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Mateo's Store & Gas, LLC dba H Express, Docket No. 2021-0880-PST-E on July 20, 2022, assessing \$15,776 in administrative penalties with \$3,155 deferred. Information concerning any aspect of this order may be obtained by contacting John Fennell, 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 Timpson, Docket No. 2021-0931-MWD-E on July 20, 2022, assessing \$12,000 in administrative penalties with \$2,400 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 SRS Petroleum, LLC dba Edgar's Shell, Docket No. 2021-0989-PST-E on July 20, 2022, assessing \$11,125 in administrative penalties with \$2,225 deferred. Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding The Goodyear Tire & Rubber Company, Docket No. 2021-1084-AIR-E on July 20, 2022, assessing \$9,625 in administrative penalties with \$1,925 deferred. Information

concerning any aspect of this order may be obtained by contacting Toni Red, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding ALIAHSAN NADIA ENTERPRISES, INC. dba Diadem Food Mart, Docket No. 2021-1180-PST-E on July 20, 2022, assessing \$8,750 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Megan L. Grace, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202202726
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: July 20, 2022



Notice of Correction to Agreed Order Number 7

In the February 25, 2022, issue of the *Texas Register* (47 TexReg 993), the Texas Commission on Environmental Quality (commission) published notice of Agreed Orders, specifically Item Number 7, for Patrick C. Elliott Properties, Ltd., Docket Number 2021-0356-MLM-E. The error is as submitted by the commission.

The reference to the Company should be corrected to read: "PATRICK C. ELLIOTT PROPERTIES, LTD."

For questions concerning these errors, please contact Michael Parrish at (512) 239-2548.

TRD-202202710
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: July 19, 2022



Notice of District Petition

Notice issued July 14, 2022

TCEQ Internal Control No. D-04062022-005; CMC Railroad, LLC, a Texas limited liability company, (Petitioner) filed a petition for creation of Liberty 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 no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 1,156.34 acres located within Liberty County, Texas; and (4) all of the land within the proposed District is within the corporate limits of Dayton, Texas. By Resolution No. R2021-4, passed and adopted on January 25, 2021, the City of Dayton, 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, design, construct, acquire, maintain, own, operate, repair, improve, and extend a waterworks and sanitary sewer system 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 proposed District; (3) control, abate, and amend local storm waters or

other harmful excesses of water; and (4) purchase, construct, acquire, maintain, own, operate, repair, improve, and extend such additional facilities, including roads, firefighting or fire department system, 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 Petitioner that the cost of said project will be approximately \$81,750,000 (\$63,500,000 for utilities, \$16,750,000 for roads, and \$1,500,000 for firefighting and fire department system).

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-202202678

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 14, 2022



Notice of Hearing on Restore the Grasslands, LLC and Harrington/Turner Enterprises, LP: SOAH Docket No. 582-22-02856; TCEQ Docket No. 2022-0326-MWD; Permit No. WQ0016003001

APPLICATION.

Restore the Grasslands, LLC and Harrington/Turner Enterprises, LP, 4801 West Lovers Lane, Dallas, Texas 75209, has applied to the Texas Commission on Environmental Quality (TCEQ) for a new

Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016003001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day.

The facility will be located approximately 0.4 miles northwest from the intersection of North Murphy Road and Rolling Ridge Drive, in Collin County, Texas 75002. The treated effluent will be discharged to Maxwell Creek, thence to Muddy Creek, thence to Lake Ray Hubbard in Segment No. 0820 of the Trinity River Basin. The unclassified receiving water use is high aquatic life use for Maxwell Creek. The designated uses for Segment No. 0820 are primary contact recreation, public water supply, and high aquatic life use. This 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. For the exact location, refer to the application.

<https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-96.616388%2C33.041666&level=12>

In accordance with 30 Texas Administrative Code (TAC) §307.5 and the TCEQ's *Procedures to Implement the Texas Surface Water Quality Standards* (June 2010), an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Maxwell Creek, which has been identified as having high aquatic life use. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

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 Rita & Truett Smith Public Library, 300 Country Club Road, #300, Wylie, 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. - August 29, 2022

To join the Zoom meeting via computer:

<https://soah-texas.zoomgov.com/>

Meeting ID: 161 601 8891

Password: veFQv8

or

To join the Zoom meeting via telephone:

(669) 254-5252 or (646) 828-7666

Meeting ID: 161 601 8891

Password: 872800

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 May 20, 2022. 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 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 web site at www.tceq.texas.gov.

Further information may also be obtained from Restore the Grasslands, LLC and Harrington/Turner Enterprises, LP at the address stated above or by calling Ms. Ashley Broughton, P.E., Project Manager, LJA Engineering, Inc., at (713) 380-4431.

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: July 15, 2022

TRD-202202699

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 18, 2022



Notice of Opportunity to Comment on a Default Order 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 Default Order (DO). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is 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 **August 29, 2022**. The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO 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 DO is not required to be published if those changes are made in response to written comments.

A copy of the proposed DO 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 the DO should be sent to the attorney designated for the DO 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 August 29, 2022**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorney is available to discuss the DO and/or the comment procedure at the listed phone number; however, TWC, §7.075, provides that comments on the DO shall be submitted to the commission in **writing**.

(1) COMPANY: CIRCLE "R" RANCHETTES RECREATION AND COMMUNITY CORPORATION; DOCKET NUMBER: 2020-1394-PWS-E; TCEQ ID NUMBER: RN101256063; LOCATION: corner of Circle R Road North and Circle R Road South near Fort Worth, Tarrant County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.108(e), by failing to provide the results of radionuclides sampling to the executive director (ED) for the January 1, 2016 - December 31, 2018, monitoring period; 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the ED, accompanied with a signed Certificate of Delivery, regarding the failure to collect, within 24 hours of notification of the routine distribution total coliform-positive samples on September 21, 2017, and October 25, 2017, at least one raw groundwater source *Escherichia coli* (*E. coli*) (or other approved fecal indicator) sample from each active groundwater source in use at the time the distribution coliform-positive samples were collected; 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the ED, accompanied with a signed Certificate of Delivery, regarding the failure to provide the results radionuclides contaminants sampling to the ED for the January 1, 2016 - December 31, 2018, monitoring period and failed to collect, within 24 hours of notification of the routine distribution total coliform positive samples on April 25, 2019, at least one raw groundwater source *E. coli* (or other approved fecal indicator) sample from each active groundwater source in use at the time the distribution coliform positive samples were collected; 30 TAC §290.106(e) and §290.107(e), by failing to provide the results of minerals and synthetic organic chemical (Methods 504, 515, and 531) contaminants sampling to the ED for the January 1, 2017 - December 31, 2019, monitoring periods; 30 TAC §290.106(e) and §290.107(e), by failing to provide the results of nitrate, synthetic organic chemical Group 5, and volatile organic chemical contaminants sampling to the ED for the January 1, 2019 - December 31, 2019, monitoring period; TWC, §5.702 and 30 TAC §291.76, by failing to pay regulatory assessment fees for the TCEQ Public Utility Account regarding Certificate of Convenience and Necessity Number 12298 for calendar years 2016 - 2019; and TWC, §5.702 and 30 TAC §290.51(a)(6), by failing to pay Public Health Service fees and/or any associated late fees for TCEQ Financial Administration Account Number 92200148 for Fiscal Years 2017 - 2020; PENALTY: \$3,719; STAFF ATTORNEY:

Casey Kurnath, Litigation, MC 175, (512) 239-5932; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-202202715

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: July 19, 2022



Notice of Opportunity to Comment on an Agreed Order 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 Order (AO) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AO, the commission shall allow the public an opportunity to submit written comments on the proposed AO. 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 **August 29, 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 the 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 August 29, 2022**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: VEER GANESH INC; DOCKET NUMBER: 2020-0852-PST-E; TCEQ ID NUMBER: RN101434330; LOCATION: 2376 Lavon Drive, Garland, Dallas County; TYPE OF FACILITY: out-of-service underground storage tank (UST) system; RULES VIOLATED: TWC, §26.352(e-2) and 30 TAC §37.867(a), by failing to ensure the USTs were empty no later than 90 days after financial assurances were terminated; TWC, §26.3475(d) and 30 TAC §334.49(c)(2)(C) and §334.54(b)(3), by failing to inspect the impressed current corrosion protection system at least once every 60 days to ensure the rectifier and other system components are operating properly; and TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A) and §334.54(c)(1), by failing to monitor the temporarily out-of-service UST system for releases; PENALTY: \$9,103; STAFF ATTORNEY: Casey Kurnath, Litigation, MC 175, (512) 239-5932; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-202202714

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: July 19, 2022



Notice of Water Rights Application

Notice Issued July 14, 2022

APPLICATION NO. 5712A; SR Superior LLC, 12100 Wilshire Blvd., Suite 1750, Los Angeles, California 90025-7101, Applicant, seeks to amend Water Use Permit No. 5712 to reduce the authorized storage volume of Lake "A", located on an unnamed tributary of Lake Creek, San Jacinto River Basin in Montgomery County, to 199 acre-feet, remove Special Conditions Paragraph 1.a., and add an accounting plan to account for inflows and outflows of state water. More information on the application and how to participate in the permitting process is given below. The application was received on October 13, 2011. Additional information and fees were received January 10, January 18, March 9, March 15, and May 4, 2012. The application was declared administratively complete and filed with the Office of the Chief Clerk on May 16, 2012. Additional information was received on July 2, December 14, December 19, 2012, January 27 and May 6, 2014, and May 25, August 9, and October 14, 2021.

The Executive Director has completed the technical review of the application and prepared a draft amendment. The draft amendment, if granted, would authorize impoundment of state water on a non-priority basis and include special conditions including, but not limited to, maintaining the accounting protocol. The application, technical memorandum, and Executive Director's draft amendment are available for viewing on the TCEQ web page at: https://www.tceq.texas.gov/permitting/water_rights/wr-permitting/view-wr-pend-apps.

Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk by phone at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

The TCEQ may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of this notice. The Executive Director may approve the application unless a written request for a contested case hearing is filed within 30 days after newspaper publication of this 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) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions for the requested permit which would satisfy your concerns. 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.

If a hearing request is filed, the Executive Director will not issue the permit and will forward the application and hearing request to

the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at <http://www14.tceq.texas.gov/epic/eComment/> by entering WRPERM 5712 in the search field. 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 Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our website at www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040 o por el internet al <http://www.tceq.texas.gov>.

TRD-202202677

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 14, 2022



Notice of Water Rights Applications

Notices Issued July 19, 2022

APPLICATION NO. 18-1935B; Robert P. Michel and Edythe S. Michel, 712 Sparks Ave., Austin, Texas 78705, Owners/Applicants, seek to amend Certificate of Adjudication No. 18-1935 to increase their combined diversion rate to 0.2451 cfs (110 gpm) in Kerr County, Guadalupe River Basin. More information on the application and how to participate in the permitting process is given below. The application and partial fees were received on July 16, 2018. Additional fees were received on August 23, 2018. The application was declared administratively complete and filed with the Office of the Chief Clerk on August 31, 2018.

The Executive Director has completed the technical review of the application and prepared a draft amendment. The draft amendment, if granted, would include special conditions, including, but not limited to, streamflow restrictions. The application, technical memoranda, and Executive Director's draft amendment are available for viewing on the TCEQ web page at: https://www.tceq.texas.gov/permitting/water_rights/wr-permitting/view-wr-pend-apps. Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk by phone at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711.

Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice. A public meeting is intended for the taking of public comment and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

The TCEQ may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of this notice. The Executive Director may approve the application unless a written request for a contested case hearing is filed within 30 days after newspaper publication of this 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) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions for the requested permit which would satisfy your concerns. 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.

If a hearing request is filed, the Executive Director will not issue the permit and will forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments, or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at <https://www14.tceq.texas.gov/epic/eComment/> by entering ADJ 1935 in the search field. 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 Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our website at www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040 o por el internet al <http://www.tceq.texas.gov>.

APPLICATION NO. 13817; Granite Construction Company, 701 E. Main St., Lewisville, Texas 75057, Applicant, seeks a temporary water use permit to divert and use not to exceed 21 acre-feet of water, within a period of two years, from a point on a reservoir on Long Branch, tributary of Waxahachie Creek, Trinity River Basin, at a maximum diversion rate of 3.34 cfs (1,500 gpm), for industrial purposes in Ellis County. More information on the application and how to participate in the permitting process is given below.

The application and partial fees were received on October 28 and November 2, 2021. Additional information and fees were received on December 7, 15 and 17, 2021, January 24, 2022, and February 24 and 25, 2022. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on March 14, 2022.

The Executive Director completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would include special conditions including, but not limited to, streamflow restrictions and installing a measuring device for diversions. The application, technical memoranda, and Executive Director's draft permit are available for viewing on the TCEQ web page at: https://www.tceq.texas.gov/permitting/water_rights/wr-permitting/view-wr-pend-apps. Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk by phone at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711.

Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below, by August 08, 2022. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

The TCEQ may grant a contested case hearing on this application if a written hearing request is filed by August 08, 2022. The Executive Director may approve the application unless a written request for a contested case hearing is filed by August 08, 2022.

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) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions for the requested permit which would satisfy your concerns. 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.

If a hearing request is filed, the Executive Director will not issue the permit and will forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments, or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at <https://www14.tceq.texas.gov/epic/eComment/> by entering WRTP 13817 in the search field. 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 Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our website at www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040 o por el internet al <http://www.tceq.texas.gov>.

APPLICATION NO. 13814; Apple's Crossing Residential Association, Inc., 2805 Dallas Parkway #400, Plano, Texas 75093, Applicant, seeks authorization to maintain a dam and reservoir located on Barksdale Creek, Trinity River Basin, for recreational purposes in Collin County and to use groundwater from the Woodbine Aquifer to maintain the reservoir. More information on the application and how to participate in the permitting process is given below.

The application was received on October 12, 2021. Additional information and fees were received on November 23, 2021. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on December 3, 2021.

The Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would contain special conditions including, but not limited to, maintaining an alternate source of water for the reservoir. The application, technical memoranda, and Executive Director's draft permit are available for viewing on the TCEQ web page at: https://www.tceq.texas.gov/permitting/water_rights/wr-permitting/view-wr-pend-apps. Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711.

Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

The TCEQ may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of this notice. The Executive Director may approve

the application unless a written request for a contested case hearing is filed within 30 days after newspaper publication of this 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) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions for the requested permit which would satisfy your concerns. 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.

If a hearing request is filed, the Executive Director will not issue the permit and will forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments, or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at <https://www14.tceq.texas.gov/epic/eComment/> by entering WRPERM 13814 in the search field. 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 Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our website at www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040 o por el internet al <http://www.tceq.texas.gov>.

TRD-202202713

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 19, 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 July 11, 2022 to July 15, 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 website. The notice was published on the website on Friday, July 22, 2022. The public comment period for this project will close at 5:00 p.m. on Sunday, August 21, 2022.

FEDERAL AGENCY ACTIVITIES:

Applicant: U.S. Fish and Wildlife Service

Location: The project site is located in the Bahia Grande Unit in the Laguna Atascosa National Wildlife Refuge, approximately 1.1 miles southwest of Laguna Vista, Cameron County, Texas.

Latitude & Longitude (NAD 83): 26.083669, -97.302098

Project Description: The applicant proposes to restore freshwater flows and moderate salinity levels within the Laguna Larga by modifying the existing culvert under SH-100 and excavating an approximate 1.6-mile earthen channel to allow for more complex and ultimately into the Laguna Larga. The total excavated area of the channel would be 10.75 acres that would include 9.34 acres of wetland habitat and 1.41 acres of upland vegetation. A water control structure consisting of an articulated concrete block mat weir would be constructed near the southern terminus of the channel to impound water during low rainfall events and further divert flows into the Laguna Larga during high rainfall events. This would impact 0.25 acre of jurisdictional waters of the U.S. Additionally, there is an existing ditch located to the east of the proposed channel that currently drains north toward SH-100 that would be filled level with the natural ground elevation to prevent flows from draining away from the wetlands complex. This project would also involve 50-foot work areas along the east and west sides of the proposed earthen channel and existing ditch and a portion of the access routes that are primarily located along the upland ridges within the basin.

Type of Application: U.S. Army Corps of Engineers permit application # SWG-2022-00420. This application will be reviewed pursuant to Section 404 of the Clean Water Act.

CMP Project No: 22-1355-F2

FEDERAL AGENCY ACTIONS:

Applicant: KBB, INC.

Location: The project site is located in wetlands adjacent to the Corpus Christi Ship Channel and Corpus Christi Bay, northeast of the intersection of Avenue I and Alister Street, in Blocks 34, 47, and 48 within Port Aransas, Nueces County, Texas.

Latitude & Longitude (NAD 83): 27.82743, -97.06808

Project Description: The applicant proposes to place fill material into 0.58 acre of wetlands adjacent to Corpus Christi Bay and the Corpus Christi Ship Channel (CCSC) on a 4.79-acre parcel in order to construct two separate pad sites for a mixed-use urban development project that will include a restaurant on the pad site fronting Alister Street (0.52 acre of fill into estuarine wetlands), and boutique hotel venue (0.06 acre of fill into estuarine wetlands) located on the pad site northwest of the existing CVS Pharmacy fronting Avenue G. The applicant states that the proposed project would provide both commercial venues with a direct view of the existing estuarine marsh system so patrons might enjoy the wildlife and bird populations. Both pad sites are designed to receive and treat urban stormwater discharge, while meeting state and federal water quality standards for its own runoff. The applicant further states that the restaurant and hotel would be connected by an elevated walkway that would have an observation deck and several educational plaques, helping to educate patrons on the local wildlife and birding populations.

Type of Application: U.S. Army Corps of Engineers permit application # SWG-2012-00871. 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 Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 22-1354-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-202202716

Mark Havens

Chief Clerk, Deputy Land Commissioner

General Land Office

Filed: July 19, 2022

Texas Health and Human Services Commission

Public Notice - Texas State Plan for Medical Assistance 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 September 1, 2022.

The purpose of the amendment is to update the fee schedules in the current state plan by adjusting fees, rates, or charges for the following services:

Physicians, Vaccine Administration under the Pediatric Immunization Program, Birthing Centers, Durable Medical Equipment Prosthetics Orthotics (DMEPOS), Outpatient Hospital Services, Early and Periodic Screening, Diagnosis and Treatment (EPSDT), Vision Services, Medication Assistance Treatment (MAT) and Ambulatory Surgical Center (ASC).

The proposed amendment is estimated to result in an annual aggregate expenditure of \$4,448,357 for federal fiscal year (FFY) 2022, consisting of \$ 2,663,231 in federal funds and \$1,785,126 in state general revenue. For FFY 2023, the estimated annual aggregate expenditure is \$6,138,697 consisting of \$3,675,238 in federal funds and \$2,463,459 in state general revenue. For FFY 2024, the estimated annual aggregate expenditure is \$5,824,663 consisting of \$3,487,226 in federal funds and \$2,337,437 in state general revenue.

Further detail on specific reimbursement rates and percentage changes is available on the HHSC Provider Finance website under the proposed effective date at: <https://pfd.hhs.texas.gov/rate-packets>

Rate Hearings.

Rate hearings were conducted in person and online on December 13, 2021, and May 16, 2022. Information about the proposed rate changes and hearings was published in the December 3, 2021, and the April 22, 2022, issues of the *Texas Register* (46 TexReg 8272-8273, 47 TexReg 2360-2361, respectively). Additional information and the notice of hearings can be found at <https://www.sos.state.tx.us/texreg/index.shtml>. Archived recordings of the hearings can be found at <https://www.hhs.texas.gov/about/meetings-events>.

A rate hearing was held online on July 20, 2022 at 1:00 p.m. to address additional rate updates proposed to be effective September 1, 2022. Information about the proposed rate changes and the hearing was published in the June 24, 2022, issue of the *Texas Register* (47 TexReg 3729-3730) at <https://www.sos.state.tx.us/texreg/index.shtml>. Additional information can be found at <https://www.hhs.texas.gov/about/communications-events/meetings-events/2022/07/20/notice-public-hearing-proposed-updates-medicaid-payment-rates>.

Copy of Proposed Amendment.

Interested parties may obtain additional information and/or a free copy of the proposed amendment by contacting Shaneqwea James, State Plan Policy Advisor, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 487-3349; by facsimile at (512) 730-7472; or by e-mail at Medicaid_Chip_SPA_Inquiries@hhsc.state.tx.us. Copies of the proposed amendment 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 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: Provider Finance Department

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 Department

North Austin Complex

Mail Code H-400

4601 W. Guadalupe St.

Austin, Texas 78751

Phone number for package delivery: (512) 730-7401

Fax

Attention: Provider Finance at (512) 730-7475

Email

PFDacuteCare@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 quickest response, and to help curb the possible transmission of infection, please use e-mail or phone if possible, for communication with HHSC related to this state plan amendment.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Provider Finance at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made

TRD-202202718

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: July 19, 2022

◆ ◆ ◆
Department of Information Resources

Notice of Public Hearing for Texas Work Group on Blockchain Matters

COMMITTEE: Texas Work Group on Blockchain Matters

TIME & DATE: 9:00 a.m. Friday, August 19, 2022

PLACE: Capitol Extension, E1.030

CHAIR: Carla Reyes

The Work Group, created by HB 1576 (87R), will meet to hear testimony from invited guests and the public relating to the development of a master plan for the expansion of the blockchain industry in this state and recommending policies and state investments in connection with blockchain technology. In developing the master plan, the work group must:

1. Identify economic growth and development opportunities presented by blockchain technology;
2. Assess the existing blockchain industry in this state;
3. Review workforce needs and academic programs required to build blockchain expertise across all relevant industries; and
4. Legislative recommendations that will help promote innovation and economic growth by reducing barriers to and expediting the expansion of the state's blockchain industry based on its findings.

Oral public testimony will be limited to three minutes. To provide public testimony, please complete a witness registration card located at the back of the hearing room. Written testimony may be submitted to blockchainworkgroup@bcwg.texas.gov, and if providing written testimony to members, please provide 16 copies to the clerk.

More information about the workgroup can be found at: <https://portal.bcwg.texas.gov/stories/s/fxddd-vpwt>

The Texas Department of Information Resources (department) is statutorily authorized to provide administrative support to the Texas Work Group on Blockchain Matters. The department is posting this notice of public hearing on behalf of the Texas Work Group on Blockchain Matters.

NOTICE OF ASSISTANCE AT PUBLIC MEETINGS

Persons with disabilities who plan to attend this meeting and who may need assistance, such as a sign language interpreter, are requested to contact Nicholas Eastwood at (512) 463-0688 72 hours prior to the meeting so that appropriate arrangements can be made.

TRD-202202706

Carla Reyes

Chair, Texas Work Group on Blockchain Matters

Department of Information Resources

Filed: July 19, 2022

◆ ◆ ◆
Texas Department of Insurance

Company Licensing

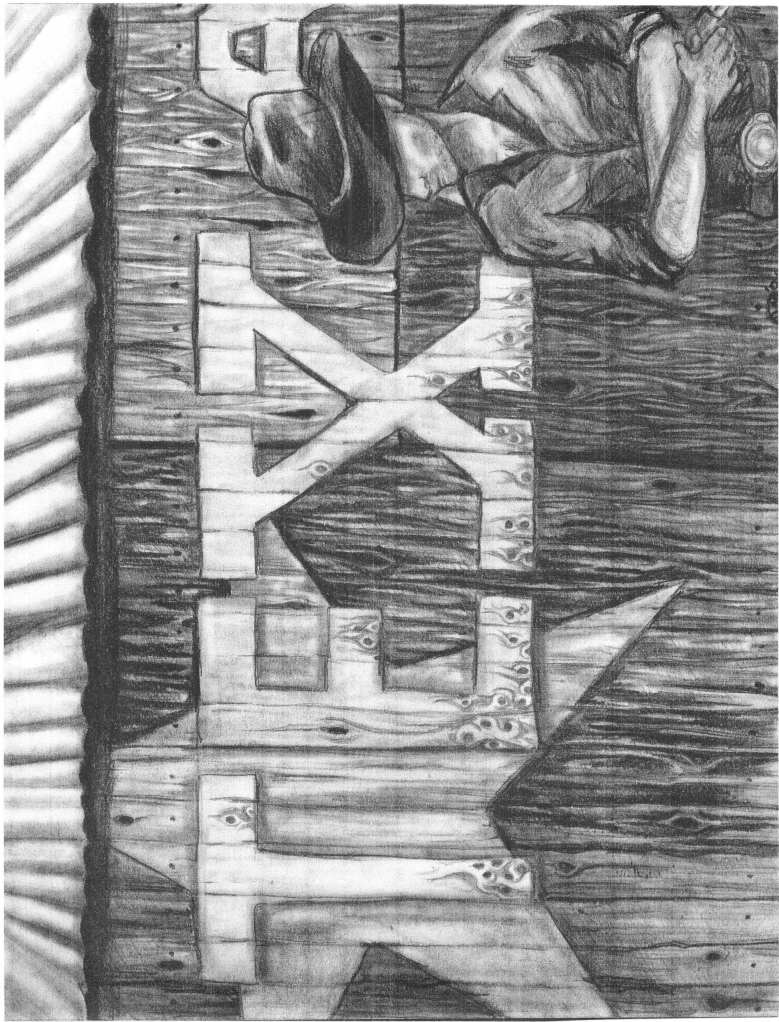
Application for First Professionals Insurance Company, Inc., a domestic fire and/or casualty company, to change its name to Verde Insurance Company. The home office is in Dallas, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of John Carter, 333 Guadalupe Street, MC FRD-CL, Austin, Texas 78701.

TRD-202202719

Justin Beam
Chief Clerk
Texas Department of Insurance
Filed: July 19, 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)

SALES AND CUSTOMER SUPPORT

Sales - To purchase subscriptions or back issues, you may contact LexisNexis Sales at 1-800-223-1940 from 7 a.m. to 7 p.m., Central Time, Monday through Friday. Subscription cost is \$502 annually for first-class mail delivery and \$340 annually for second-class mail delivery.

Customer Support - For questions concerning your subscription or account information, you may contact LexisNexis Matthew Bender Customer Support from 7 a.m. to 7 p.m., Central Time, Monday through Friday.

Phone: (800) 833-9844

Fax: (518) 487-3584

E-mail: customer.support@lexisnexis.com

Website: www.lexisnexis.com/printedsc



LexisNexis